

SC INFORMATION LETTER #98-16

SUBJECT: Tax Legislative Update for 1998

DATE: August 3, 1998

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1997)  
SC Revenue Procedure #97-8

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 are **official advisory opinions** of the Department.

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

**Also attached is a brief summary of House Bill 4853 that has not been signed or vetoed by the Governor as of the date of this information letter.** This bill effects taxation and alcoholic beverage issues, and is summarized by tax type at the end of this information letter for your reference. At such time when this bill is signed or vetoed by the Governor, the Department will issue an information letter explaining the action taken by the Governor and the effective date of the laws.

This information letter is divided into five major categories of legislation and can be found as indicated below.

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Other legislation enacted this year solely under the jurisdiction of the Department of Public Safety, the Department of Transportation, and the South Carolina Law Enforcement Division is not discussed in this information letter.

A complete copy of the legislation discussed in this information letter can be obtained from the South Carolina Legislative Council’s Internet home page at <http://www.lpittr.state.sc.us/>

# **INCOME TAXES AND CORPORATE LICENSE FEES**

Senate Bill 477, (Act No. 394)

## **Retirement Contributions - Credit for Tax Paid to Another State**

Code Section 12-6-3500 has been added to provide a credit to be claimed over the taxpayer's lifetime for taxes paid on qualified retirement income contributions while residing in a state other than South Carolina. The Department will prescribe the amount of the annual credit based on the taxpayer's life expectancy at the time the taxpayer is allowed the South Carolina retirement income deduction election made pursuant to Code Section 12-6-1170. The total credit allowed may not exceed an amount determined by multiplying the contributions taxed in each year by the marginal South Carolina individual income tax rate for that year.

Effective Date: Tax years beginning after 1996.

House Bill 3069, (Act No. 358)

## **Motion Picture Project and Motion Production Facility - Credits**

Code Section 12-6-3510 has been added to provide for two nonrefundable income tax credits. These credits are:

1. Credit for Investment in Qualified South Carolina Motion Picture Project. An income tax credit equal to 33% of a taxpayer's investment in a qualified South Carolina motion picture project. The total credit for a project is limited to \$15,000 for all years. This credit, when combined with all the taxpayer's other South Carolina income tax credits, cannot exceed 50% of the taxpayer's South Carolina income tax liability. Any unused credit can be carried forward for 5 years.
2. Credit for Investment in South Carolina Motion Picture Production Facility. An income tax credit equal to 33% of the value of a taxpayer's investment in constructing, converting, or equipping a motion picture production facility in South Carolina in which the taxpayer purchases an ownership interest with his investment. The total credit claimed by all investors for a single investment is limited to \$5 million

for all years. This credit, when combined with all the taxpayer's other South Carolina income tax credits, cannot exceed 50% of the taxpayer's South Carolina income tax liability. Any unused credit can be carried forward for 5 years.

## **Credit for Investment in Qualified South Carolina Motion Picture Project**

### Qualification

To qualify for the credit for investing in a qualified South Carolina motion picture project provided in Code Section 12-6-3510(A), a taxpayer must meet the following criteria:

1. The taxpayer must invest cash in the qualified South Carolina motion picture project. Only cash investments qualify for the credit.
2. The taxpayer must obtain approval to claim the credit from the Department and register with the Department prior to claiming the credit. To register with the Department a taxpayer must submit a record of allocation of credits and investment documentation to the Department. A policy document will be issued in the near future providing more information.
3. The qualified South Carolina motion picture project must certify to the Department that: (1) at least 2.5 times the total amount invested by all South Carolina investors in a single motion picture project has been spent directly in South Carolina, and (2) at least 20% of the filming days of principal photography, but not less than 10 filming days, is filmed in South Carolina. A policy document will be issued in the near future providing more information.
4. The project must incur at least \$1 million of costs to produce a master negative motion picture.

### Definitions

The term "qualified motion picture project" is defined in Code Section 12-6-3510(F)(5). The term means a motion picture project which has met the above criteria. The term "motion picture project" is defined in Code Section 12-6-3510(F)(4) as:

"Motion picture project" means a product intended for commercial exploitation that incurs at least one million dollars of costs to produce a master negative motion picture for theatrical or television exhibition in the United States.

## **Credit for Investment in South Carolina Motion Picture Production Facility**

### Qualification

To qualify for the credit for investing in a South Carolina motion picture production facility provided in Code Section 12-6-3510(B), a taxpayer must meet the following criteria:

1. The taxpayer must purchase an ownership interest in a South Carolina motion picture production facility with cash or real property or both. Only cash and the value of the real property qualify for the credit.
2. The total amount invested must be expended directly in South Carolina.
3. The total investment in the motion picture production facility must be at least \$2 million, excluding land costs, or at least \$1 million, excluding land costs, if the facility is a post-production facility.
4. The taxpayer must submit documentation to the Department to confirm the investment prior to claiming the credit.

### Definitions

The term “motion picture production facility” is defined in Code Section 12-6-3510(F)(3) as:

“Motion picture production facility” means a site that contains soundstages designed for the express purpose of film and television production for both theatrical and video release. Production includes, but is not limited to, motion pictures, made-for-television movies and episodic television. The motion picture production facility site must include production offices, construction shops/mills, prop and costume shops, storage area, parking for production vehicles, all of which complement the production needs and orientation of the overall facility purpose. ‘Motion picture facility’ also includes a facility designed for the express purpose of accomplishing the post-production stage of film and television production for both theatrical and video release including, but not limited to, the creation of visual effects, editing, and sound mixing for motion picture/television projects. A post-production facility site is not required to contain a soundstage nor be physically located at or near soundstages.

Effective Date: June 9, 1998 and with respect to qualified motion picture investments made pursuant to Section 12-6-3510 giving rise to tax credits and may only be claimed by a taxpayer for tax years beginning after December 31, 1998. This section is repealed effective for taxable years beginning after June 30, 2004, but this repeal will not affect credits previously earned.

House Bill 4466, (Act No. 268)

### **Income Tax Conformity**

Code Section 12-6-40 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, 1997. The effective date provisions contained in the Internal Revenue Code are also adopted.

Effective Date: Tax years beginning after 1996.

House Bill 4535, Section 2, (Act No. 418)

### **College Tuition - Refundable Credit**

Code Section 12-6-3385 has been added to provide for a refundable individual income tax credit for tuition paid to an institution of higher learning. The credit for each taxable year is equal to 25% of the tuition paid, not to exceed \$850 for a student attending a 4-year institution or \$350 for a student attending a 2-year institution.

“Tuition” is defined in the statute to mean the amount charged, including required fees, necessary for enrollment. Tuition at an independent institution means the average tuition at the 4-year public institution of higher learning in South Carolina. Any amounts received toward tuition payment by any other scholarship grants must be deducted before calculating the credit.

The credit may be claimed by the student paying the tuition or by an individual paying the tuition who is eligible to claim the student as a dependent on his federal income tax return, whoever actually paid the tuition. It may be claimed for no more than 4 consecutive years after the student enrolls in an eligible institution.

To qualify for the tuition tax credit, a student must:

1. Have graduated from high school during or after May 1997;
2. Within 12 months before enrolling in the institution of higher learning, have graduated from a South Carolina high school, completed a South Carolina high school home school program, or graduated from a preparatory high school outside of South Carolina while a dependent of a parent or guardian who is a legal resident of South Carolina has custody of the student;
3. Be eligible for in-state tuition;
4. Be admitted, enrolled, and classified as a degree-seeking undergraduate or be enrolled in a certificate or diploma program of at least 1 year and be in good standing at the institution; and,
5. Have completed at least 15 credit hours a semester for every regular semester ending during the tax year for which the credit is claimed.

The tuition tax credit is not available to a student who:

1. Is a Palmetto Fellowship recipient;
2. Is a Legislative Incentives for Future Excellence (LIFE) Scholarship recipient;
3. Is in default of a federal Title IV or South Carolina educational loan or owes a refund on a financial aid program; or,
4. Has been adjudicated delinquent or been convicted or pled guilty or nolo contendere to any felonies, or any alcohol or drug related offenses.

The statute also provides definitions for the terms “institution of higher learning”, “designated institution”, and “student.”

Effective Date: Tax years beginning after 1997.

House Bill 4700, Part II, Section 37, (Act No. 419)

**Corporate Tax Moratorium**

Code Section 12-10-35 has been added to grant a 10 year moratorium on corporate income taxes for a taxpayer who:

1. Creates at least 100 new full-time jobs, as defined Section 12-6-3360(F) of the job tax credit statute, in a county with average unemployment of at least twice the state average during the last two calendar years; and,
2. Places at least 90% of its investment in this State in a county with average unemployment of at least twice the state average during the last two calendar years.

If a company creates at least 200 new full-time jobs, the moratorium period is extended to 15 years. The moratorium begins with the taxable year after the taxpayer first qualifies and applies to that portion of a company's income tax that represents the ratio of the company's new investment to its total South Carolina investment. Currently, Marion, Georgetown, Williamsburg, and Marlboro counties have an unemployment rate at least twice the State average.

Effective Date: Taxable years beginning after 1997. Code Section 12-10-35 is repealed effective July 1, 2003, however, the repeal does not affect any moratorium in effect on that date.

House Bill 4700, Part II, Section 49. I, (Act No. 419)

**Deduction for Taxpayer 65 and Older and Retirement Income Deduction - Changes**

Code Section 12-6-1140, providing for an income tax deduction of up to \$11,500 against any South Carolina taxable income of a resident individual who is 65 or older by the end of the tax year, has been repealed and in an amended form has been made part of Code Section 12-6-1170. Also, Code Section 12-6-1170, providing that a taxpayer receiving retirement income may (1) deduct up to \$3,000 annually, or (2) irrevocably elect to defer claiming a retirement income deduction until age 65, at which time the taxpayer may deduct up to \$10,000 of such retirement income, has been amended.



Code Section 12-6-1170(A), as amended, provides for the following income tax deduction for retirement income:

1. At any age, an individual taxpayer may deduct up to \$3,000 of retirement income annually.
2. At age 65 or older, an individual taxpayer may deduct up to \$10,000 of retirement income annually beginning in the year the taxpayer reaches age 65.

As provided under prior law, a surviving spouse receiving retirement income that is attributable to the deceased spouse applies this deduction in the same manner that the deduction applied to the deceased spouse.

Code Section 12-6-1170(B), as amended, provides for an income tax deduction of up to \$11,500 against any South Carolina taxable income of a resident individual who is 65 or older by the end of the year. The following requirements apply to this deduction:

1. Amounts deducted as retirement income under Code Section 12-6-1170(A) reduce this \$11,500 deduction.
2. Amounts deducted as a surviving spouse under Code Section 12-6-1170(A) do not reduce this \$11,500 deduction.
3. Taxpayers' filing a joint return are allowed a deduction of up to \$11,500 when only one spouse is 65 or older and up to \$23,000 when both spouses are 65 or older by the end of the tax year.

NOTE: The effect of this amendment is to delete the irrevocable election for the \$10,000 retirement income tax deduction. This amendment provides that, for the 1994 tax year only, the statute of limitations is extended through April 15, 1999, for taxpayers filing a claim based on their not having made the irrevocable election provided under Section 12-6-1170 prior to its amendment this year, notwithstanding the statute of limitations provisions of Section 12-54-85(F).

Effective Date: Tax years beginning after 1997.

House Bill 4700, Part II, Section 49. II, (Act No. 419)  
(See also House Bill 4853, Section 14)

### **Economic Impact Zone Investment Tax Credit - Changes**

Code Section 12-14-60, providing an income tax credit for placing qualified manufacturing and productive equipment property into service in an “economic impact zone,” has been amended. The substantial changes are summarized below.

1. Code Section 12-14-60(A) has been amended to change the amount of the credit to:

- #1% of the total aggregate bases of 3 year property;
- #2% of the total aggregate bases of 5 year property;
- #3% of the total aggregate bases of 7 year property;
- #4% of the total aggregate bases of 10 year property; and,
- #5% of the total aggregate bases of 15 year property.

Whether property is 3, 5, 7, 10, or 15 year property is determined based on the applicable recovery period for the property under Internal Revenue Code Section 168(e). Prior to amendment, the credit was equal the 5% of the aggregate bases of the qualifying property.

2. Code Section 12-14-60(E) has been added to provide for recapture of the credit. If the property is disposed of or removed from the economic impact zone before the end of the applicable recovery period, then all credit previously claimed for that property must be recaptured.

NOTE: This amendment is different to that ratified in House Bill 4853 which has not yet been signed or vetoed by the Governor. See the summary at the end of this information letter.

3. Code Section 12-14-60(F) has been added to provide for a property basis reduction for the amount of the credit claimed. A taxpayer required to recapture the credit may increase the basis by the amount of any basis reduction attributable to the credit claimed in prior years. The basis must be increased in the year of recapture.

4. Code Section 12-14-60(G) has been added to provide that the credit claimed is limited to \$1 million for a taxpayer subject to the license tax under Code Section 12-20-100 (including utilities and electric cooperatives) for investments made after June 30, 1998.

NOTE: This amendment is different to that ratified in House Bill 4853 which has not

yet been signed or vetoed by the Governor. See the summary at the end of this information letter.

5. Code Section 12-14-60(H) has been added to provide that credits claimed for taxable years beginning after 1997 for investments made before July 1, 1998, may not reduce a taxpayer's state income tax liability by more than 50%.
6. Code Section 12-14-40 has been amended to eliminate the provision that ends the designation of an area as an economic impact zone on the earlier of the end of 15 years following designation or the termination date set by the General Assembly. This amendment provides that the designation will continue unless the General Assembly revokes the designation.

Effective Date: Qualifying investments made after June 30, 1998, however, Code Section 12-14-60(H) is effective for taxable years beginning after 1997 for investments made before July 1, 1998.

House Bill 4851, Section 3, (Act No. 432)

### **Job Tax Credit - Changes**

Code Section 12-6-3360, providing a \$1,500 to \$4,500 tax credit against South Carolina income tax or insurance premium tax for a qualifying business (manufacturing, processing, tourism, warehousing, distribution, or research and development, or a qualifying service related facility or corporate office facility) creating new jobs in South Carolina, has been amended as follows:

1. The definition of "corporate office facility" in subsection (M)(10) has been amended to mean a corporate headquarters that meets the definition of "corporate headquarters" in Code Section 12-6-3410(J)(1).

A corporate headquarters is defined as the facility or portion of a facility where corporate staff employees are physically employed, and where the majority of the company's financial, personnel, legal, planning, or other headquarters related functions are handled either on a regional or national basis. It must be a regional or national corporate headquarters as defined in the statute.

2. The definition of “qualified service related facility” in subsection (M)(13) has been amended. A taxpayer is a “qualified service related facility” if it is:
  - a. engaged in an activity under Standard Industrial Code 80 (health related facilities) or,
  - b. engaged in a business, other than legal, accounting, investment services, or retail sales, that has a net increase of at least:
    - # 250 jobs at a single location;
    - # 125 jobs at a single location where the average cash compensation for those jobs is 1.5 times the county average;
    - # 75 jobs at a single location where the average cash compensation for those jobs is 2 times the county average; or,
    - # 30 jobs at a single location where the average cash compensation for those jobs is 2.5 times the county average.

The per capita income for each county is determined by using the most recent data available from the Board of Economic Advisors. The required number of new full time jobs is determined based on a monthly average computation in accordance with Code Section 12-6-3360(F).

Effective Date: Property tax years beginning after 1998.

House Bill 4851, Section 4, (Act No. 432)

### **Water Impoundment and Control Credit - Permit Requirements Revised**

Code Section 12-6-3370(D), concerning the tax credit for construction, installation or restoration of water impoundments and water control structures, has been amended to revise the permit requirements and reinsert the proof of exemption from permit requirements provision that was omitted during income tax recodification in 1995. The statute now provides that to qualify for the credit the taxpayer must obtain a construction permit issued by the Department of Health and Environmental Control (DHEC) or proof of exemption from permit requirements issued by DHEC, the Natural Resources Conservation Service, or a local Soil and Water Conservation District. Previously, the

statute required a construction permit from DHEC or a local Soil and Water Conservation District.

Effective Date: June 23, 1998

House Bill 4851, Section 5, (Act No. 432)

### **Foreign Corporation Returns or Electronic Returns - Due Dates**

Code Section 12-6-4970, providing the due date of returns, has been amended as follows:

1. Subsection (B) has been amended to conform the due date of income tax returns (Form 1120F) of foreign corporations that do not maintain an office or place of business in the United States to the due date of the foreign corporation's federal income tax return - the fifteenth day of the sixth month following the taxable year. Previously, these returns were due on or before the fifteenth day of the third month following the taxable year.
2. Subsection (D) has been added to provide that returns filed electronically have the same due dates provided in Code Section 12-6-4970 for paper returns.

Effective Date: June 23, 1998

House Bill 4851, Section 6, (Act No. 432)

### **Deceased Spouse Refund - Technical Correction**

Code Section 12-6-5550, providing that an income tax refund due a person deceased at the time of the refund is the sole property of the surviving spouse irrespective of the deceased's filing status on the return, has been amended to clarify that the statute applies to both federal and state tax refunds.

Effective Date: June 23, 1998

House Bill 4851, Section 8, (Act No. 432 )

**Use of Tax Credits by Insurance Company - Technical Correction**

Code Section 12-20-175 has been added to provide that the license fee imposed under Chapter 20 may be offset by (1) the corporate headquarters credit in Code Section 12-6-3410, and (2) any credit under the insurance premium tax in Code Section 12-6-3480. This provision was enacted as Code Section 12-20-105 in 1996, but inadvertently replaced by another section in 1997.

Effective Date: June 23, 1998

# PROPERTY TAXES AND FEES IN LIEU

Senate Bill 396, (Act No. 298)

## **Assessment Notice Contents**

Code Section 12-60-2510 has been amended to eliminate the requirement that the property tax assessment notice sent by the county assessor to a taxpayer contain the percentage change over the prior market value.

Effective Date: May 28, 1998

Senate Bill 443, (Act No. 299)

## **Assessor May Enter New Nonresidential Structures**

Code Section 12-37-90(i) has been added to allow the county assessor the right to enter and examine all new nonresidential buildings and structures and those portions of an existing nonresidential building or structure covered by a building permit for renovations or additions.

Effective Date: May 27, 1998

Senate Bill 876, (Act No. 370)

## **County Auditor Duties**

Code Sections 12-39-140, 12-39-310, and 12-45-300 have been amended to simplify and update the language of the statute to more accurately reflect the current duties of the county auditor. Code Sections 12-39-290 and 12-45-340, regarding sending certain property tax information to the Comptroller General, are no longer necessary and have been repealed.

Effective Date: May 26, 1998

Senate Bill 1058, (Act No. 408)

### **Portion of Ashley River Designated a “Scenic River”**

Code Section 49-29-230 has been amended to designate that portion of the Ashley River located between the Highway 17A bridge crossing of the Ashley River and the railroad crossing located 21.5 miles downstream commonly known as the Drayton Hall Railroad Trestle as a “Scenic River.” After a perpetual easement under the South Carolina Scenic Rivers Act is granted, the property is exempt from ad valorem property taxes. The taxpayer may deduct from South Carolina income taxes the fair market value of the easement granted. See Code Section 49-29-100.

Effective Date: June 8, 1998

House Bill 3908, Sections 1, 2, and 3, (Act No. 285)

### **Delinquent Tax Sales**

This Act amended several sections dealing with delinquent tax notices, delinquent tax sale proceeds, and interest payable on property sold for taxes and redeemed by the owner. The changes are as follows:

1. Code Section 12-51-40(a), concerning the mailing of delinquent tax notices, has been amended to indicate that the notice must be mailed to the current owner of record. Code Section 12-51-40(b) has also been amended to provide that the current owner of record’s property will be seized to satisfy the payment of unpaid taxes. “Current owner of record” replaced “defaulting taxpayer.”
2. Code Section 12-51-60 has been amended to provide that monies received from a tax sale in excess of the delinquent taxes will be paid to the current owner of record. “Current owner of record” replaced “defaulting taxpayer.”
3. Code Section 12-51-100 has been amended to provide that when property sold for taxes and redeemed by the former owner, the purchaser at the delinquent tax sale shall be refunded the purchase price paid plus interest as provided for in Code Section 12-51-90. Previously, the statute required interest be payable at 8%.

Effective Date: July 6, 1998



House Bill 4634, (Act No. 338)

**Tax Prorated on Items Titled by State and Federal Agencies**

Code Section 12-37-735 has been added to provide for the proration of personal property taxes on property required to be titled by a state or federal agency, such as boats and airplanes. This provision does not apply to motor vehicles and manufactured housing.

When such property is transferred, the transferor's liability for property taxes ends on the transfer date if the transfer occurs on the first day of the month, otherwise the transferor's liability ends on the first day of the following month. The auditor is required to prepare prorated tax bills, one for the transferor and one for the transferee. A lien for the payment of property taxes is enforceable only for the collection of the taxes due from the transferee. This section applies only if the transferor files with the county auditor before the first penalty date for property taxes a form signed by the transferee in which the transferor assumes personal liability for his share of the taxes, and which provides that information necessary to prorate and bill the taxes.

Effective Date: January 1, 1998 for transfers occurring after 1997.

House Bill 4700, Part II, Section 60, (Act No. 419)

**Assessment Ratio Prorated if Property Changes From Legal Residence**

Code Section 12-43-220(c)(2)(vi) has been amended to provide that if a change in ownership of a legal residence which qualifies for the 4% assessment ratio occurs and the new owner does not qualify for the 4% assessment ratio, then the 6% assessment ratio applies to the property for the portion of the tax year the property is owned by the new owner.

This amendment also extends the time provided in Code Section 12-60-2510 by which a written notice of objection to the assessment ratio used for the 1997 property tax year must be filed to August 9, 1998, for a taxpayer who paid taxes for the 1997 property tax year at the 6% assessment ratio on property which qualified for the 4% assessment ratio on December 31, 1996, but which lost its status as the current owner's residence because of a change in ownership.

Effective Date: June 30, 1998

House Bill 4700, Part II, Section 61, (Act No. 419)

### **Homeowners' Association Property Includes Golf Course**

Code Section 12-43-230(d) has been amended to delete the provision that homeowners' association property could not include a golf course. Subject to making a written application, a homeowners' association may designate one or any number of its qualifying tracts or parcels as homeowners' association property for purposes of the special valuation contained in Code Section 12-43-227.

Effective Date: Property tax years beginning after 1997.

House Bill 4700, Part II, Section 68, (Act No. 419)

### **Education Finance Act - Changes**

Chapter 20 of Title 59, the Education Finance Act (EFA), has been amended. If an underpayment to a school district caused by an error in the information provided to the Department by a county for the purpose of computing the index of taxpaying ability exceeds 1% of the EFA funds allocated to the school district for the 1997-98 school year, the underpayment is made up in EFA distributions to the district over two years, beginning with the 1998-99 school year distribution. The makeup payment to the district is deducted from EFA funds before the allocation of EFA funds for the two years. Previously, such underpayments could not be corrected.

Effective Date: June 30, 1998

House Bill 4802, (Act No. 383)

### **Watercraft Registration Renewal**

Code Section 50-21-425 has been added to provide that the registration of watercraft may not be renewed if property taxes are owed on the watercraft. If renewal has been denied, a tax receipt from the county of residence will be accepted as proof that the taxes have been paid.

Effective Date: June 12, 1998

House Bill 4851, Section 19, (Act No. 432)

### **Fee-in-Lieu on Leases by Political Subdivisions**

Code Section 4-12-20 has been amended to require that if a political subdivision of the state leases property to another, then the lease must contain a provision requiring the lessee to make fee payments to the political subdivision equivalent to the property tax that would have been due if the property was not exempt from property tax as a result of ownership by the political subdivision. Previously, the statute applied only to counties and not to other political subdivisions.

Effective Date: Leases entered into after June 23, 1998.

House Bill 4998, Section 3, (Joint Resolution)

### **Tax Increment Financing Districts**

This joint resolution proposed an amendment to the South Carolina Constitution, which will be voted on at the next general election, to allow counties, upon terms and conditions imposed by the General Assembly, to incur debt for redevelopment projects and to provide for the service of the debt from the added increment of tax revenues resulting from the project. Currently, only municipalities have authority to establish such Tax Increment Financing Districts.

Effective Date: June 17, 1998

Regulation Document No. 2252

### **Cadastral Maps and Parcel Identifiers**

Code Section 12-37-90(a) requires the county assessor to maintain a continuous record of recorded deed sales transactions, building permits, tax maps and other records necessary for a continuing reassessment program. South Carolina Regulation 117-117 has been revised to bring county tax mapping within current practices and in line with current technology. It clarifies the development and maintenance of tax maps, types of maps, content and scales of maps, and uniform numbering systems.

Effective Date: June 26, 1998

# SALES AND USE TAXES

House Bill 4672, Sections 1, 2, and 3, (Act No. 340)

(See also House Bill 4700, Part II, Section 61, (Act No. 419))

## **Exchanges of Accommodations Exempt**

Code Section 12-36-2120(31) has been amended to exempt from the sales tax on accommodations all exchanges of accommodation in which the accommodations to be exchanged is the primary consideration. All other accommodations remain subject to tax, including sales of accommodations through membership plans.

Effective Date: June 9, 1998. This amendment is identical to that enacted by House Bill 4700 that was effective July 1, 1998.

House Bill 4700, Part II, Section 31, (Act No. 419)

## **Fire Truck Equipment - Additional Exemption**

Code Section 12-36-2110 has been amended to include within the \$300 maximum tax on motor vehicles equipment provided, supplied, or installed on a firefighting vehicle at the time of the purchase of the vehicle and included in the purchase price at the time of the sale. This exemption does not include individual firefighter's protective clothing.

Effective Date: June 29, 1999

House Bill 4700, Part, II, Section 65, (Act No. 419)

## **Automatic Teller Machine Transactions - New Exemption**

Code Section 12-36-2120(11) has been amended to add an exemption for "transactions involving automatic teller machines."

Effective Date: June 30, 1998

House Bill 4801, Section 1, (Act No. 362)

**Books Used In Schools**

Code Section 12-36-2120(3), exempting sales of textbooks, books, magazines, periodicals, newspapers, and access to on-line information systems sold to schools and public libraries, has been amended. The following changes have been made:

1. The requirement that the textbook, books, magazines, periodicals, and newspapers be “sold to primary and secondary schools and institutions of higher learning” has been deleted. As a result, textbooks, books, etc. used in a course of study or sold for students’ use in the library of a primary or secondary school or a library of an institution of higher learning are exempt from sales and use tax. This now includes books which are used in a course of study sold in the college bookstore.
2. The requirement that transactions taxed under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3) (imposing the tax on certain communications services and equipment) do not come within this exemption has been added. Items exempt from tax can be in any form, including microfilm, microfiche, and CD ROM.

Effective Date: June 10, 1998

House Bill 4801, Section 1, (Act No. 362)

**Festival Sales - Exemption Clarified**

Code Section 12-36-2120(39), exempting concession sales at festivals by organizations devoted exclusively to public or charitable purposes, has been amended to delete the requirement that the festival must be listed as a special event in the calendar of events provided by the Department of Parks, Recreation and Tourism.

Effective Date: June 10, 1998

House Bill 4801, Section 2, (Act No. 362)

(See also House Bill 4700, Part II, Section 70, (Act No. 419))

### **Cancer Drugs Exempt**

Code Section 12-36-2120(28)(a), exempting medicine and prosthetic devices sold by prescription from sales and use tax, has been amended. The exemption has been expanded to include “prescription medicines and therapeutic radiopharmaceuticals used in the treatment of cancer, lymphoma, leukemia, or related diseases, including prescription medicines used to relieve the effects of any such treatment.”

Effective Date: June 28, 1999. This amendment is identical to that enacted by House Bill 4700.

House Bill 4851, Section 11, (Act No. 432)

### **Requirement to Obtain Retail License and Collect Tax**

Code Section 12-36-1340, concerning the collection of tax by retailers, has been amended to clarify who must obtain a retail license and collect sales and use tax. The statute now provides that each seller making retail sales of tangible personal property for storage, use, or other consumption in this State shall collect and remit the tax and obtain a retail license, if the retail seller: (1) maintains a place of business; (2) qualifies to do business; (3) solicits and receives purchases or orders by an agent or salesman; or (4) distributes catalogs, or other advertising matter, and by reason of that distribution receives and accepts orders from residents within the State. Previously, the statute did not require the seller obtain a retail license.

Effective Date: June 23, 1998

# MISCELLANEOUS

## **ADMINISTRATIVE AND PROCEDURAL MATTERS (Summarized by Subject Matter)**

Senate Bill 22, (Act No. 423)

### **Freedom of Information Act - Changes**

Several amendments have been made to the South Carolina Freedom of Information Act. These changes are designed to make certain documents and information concerning public bodies and their employees more accessible to the public. These amendments include an amendment to Code Section 30-4-40 which previously listed items exempt from disclosure. It now provides a slightly modified list of items that a public entity may, but is not required to, exempt from disclosure.

Effective Date: June 12, 1998

Senate Bill 1167, (Act No. 374)

### **Electronic Records and Electronic Signatures**

Chapter 5, The South Carolina Electronic Commerce Act, has been added to Title 26. The Act clarifies the legality of electronic records and signatures. It applies to records generated, stored, processed, communicated, or used for any purpose by or with public entities in this State or private, commercial entities for transactions including contracts and record keeping. The statute does not require any public or private entity to use, or permit the use of, electronic records or signatures.

Article 3 contains general rules concerning electronic signatures and records. Except as provided below, a record cannot be denied legal effect, validity, or enforceability solely because it is an electronic record or signature. Further, an electronic record or signature is deemed to satisfy any rule of law that may require that a record be in writing or requires a signature or which provides consequences if the record is not in writing or signed. An electronic record is signed as a matter of law if it contains a secure electronic signature. Otherwise, a signature may be provided in any manner, including by showing

that a procedure existed by which a party must of necessity have executed a symbol in order to proceed further in the use or processing of information. Additionally, a contract between public and/or private entities is not unenforceable, or inadmissible in evidence based solely on the grounds that the contract is evidenced by an electronic record or contains an electronic signature.

In certain instances, electronic records and signatures will be denied legal effect. Electronic records and signatures will be denied legal effect if: (1) it would result in a construction of law clearly inconsistent with the intent of the lawmaking body or repugnant to the context of the same rule of law; or (2) the record serves as a unique and transferable physical token of rights and obligations.

Rules are also provided for the retention of electronic records. Code Section 26-5-340 provides that if a rule of law requires a record to be presented or retained in its original form, that requirement can be met by the retention of an electronic record, if there is reasonable assurance that the information in the electronic record is complete and unaltered, apart from changes that would be made in the normal course of communications, storage or display. Further, Code Section 26-5-360 provides that if a rule of law requires that a record be retained, that requirement is met if the electronic record accurately reproduces the original record as it existed at the time in question or for as long as is required by law.

Code Section 26-5-350 provides that in any legal proceeding, an electronic record or signature is not inadmissible in evidence on the sole ground that it is: (1) an electronic record or electronic signature; (2) not an original or in its original form; or, (3) recognized and approved pursuant to the regulations developed by the Budget and Control Board or the model procedures developed by the Secretary of State.

Article 5 contains provisions for securing electronic records and signatures. An electronic signature or record is deemed to be secure if: (1) it is created by application of a security procedure that is commercially reasonable and agreed to by the parties (“security procedure” is defined) or (2) it can be verified by use of a procedure that is recognized and approved pursuant to the methods prescribed by the Budget and Control Board or Secretary of State. An electronic record is also deemed to be secure if it can be verified not to have been altered since a specified point in time. An electronic signature is also deemed secure if it is: (a) unique to the party using it, (b) capable of identifying the party, (c) created in a manner or using a means under the sole control of the party using it, and (d) linked to the electronic record to which it relates in a manner such that, if the record is changed, the electronic signature is invalidated.



For purposes of civil disputes, it is presumed that a secure electronic record has not been altered since the time it was secured. It is also presumed that a secure electronic signature is that of the party in question and that it was attested to by the party with the intention of signing the electronic record. Both these presumptions may be challenged by providing the evidence that is described in the statute.

In the absence of a secure electronic record or signature, existing legal or evidentiary rules regarding the burden of proving authenticity and integrity of the electronic record or signature continue to apply.

The Budget and Control Board is authorized to develop regulations for electronic record keeping, electronic signatures and security procedures for political subdivisions and entities of the State. The Secretary of State is authorized to develop model procedures for electronic record keeping and electronic signatures for all other purposes, including private commercial transactions and contracts.

Effective Date: May 26, 1998

House Bill 4700, Part II, Section 55, (Act No. 419)

### **Setoff Debt Collection Act - South Carolina Student Loan Corporation**

Chapter 56 of Title 12, the "Setoff Debt Collection Act," allows the Department to assist a claimant agency in the collection of any delinquent account or debt by setting off any refunds due the debtor from the Department. Code Section 12-56-20(1) has been amended to add to the definition of "claimant agency" the South Carolina Student Loan Corporation.

Effective Date: June 30, 1998

House Bill 4804, Section 1, (Act No. 435)

### **Threatening Public Employees - Penalties**

Code Section 16-3-1040 makes it a crime to threaten to take the life of or to inflict bodily harm upon a public official, public employee, elementary school teacher or principal, or any member of their immediate family, if the threat is related to their professional responsibilities. Prior to this amendment public employees were not included.

A person who threatens a public employee may be fined not more than \$500, or be imprisoned not more than 30 days, or both. A person who threatens a public official, teacher or principal may be fined \$5,000 or imprisoned for not more than 5 years, or both.

Effective Date: July 6, 1998

House Bill 4821, (Act No. 385)

### **Penalties for Impersonating Officers and Filing Sham Liens**

Chapter 17, Title 16 has been amended to add Code Section 16-17-735 to make it unlawful to impersonate a state or local official or employee or falsely assert authority of law in connection with a sham legal process, including the presentment and filing of sham judgements and other liens. “Sham legal process” and “state or local employee” are defined. Also, it is a crime to intimidate a state or local official or employee or a law enforcement officer in the discharge of their duties, or to impersonate judges and certain officers of the court. Criminal penalties are provided for violations. Code Section 15-75-60 has been added to provide civil penalties for violations of Code Section 16-17-735.

Code Section 30-9-35 has been added to provide that the clerk of court or register of deeds may not file a judgment or other lien against a state official or employee, whether past or present, unless the judgement or lien has been issued by a court, an appropriate government entity, or is otherwise authorized by statute. Procedures are provided whereby the official or employee can have the lien removed if it has been improperly filed. Additionally, Code Section 30-9-30 has been amended to allow the clerk of court or register of deeds to refuse to file any document that he or she believes to be materially false or fraudulent or to be issued by a sham legal process and to provide a mechanism where he or she can remove such a document from the records if it is mistakenly filed.

Effective Date: June 12, 1998

House Bill 4822, (Act No. 345)

### **Tax Liens for Unpaid Taxes**

The rules regarding state tax liens have been amended to put South Carolina’s lien statutes on parity with federal tax liens. Under prior law, the state tax lien was effective when it was recorded in the Office of the Register of Deeds. A federal tax lien is

effective as of the date assessed. The amendment makes the state tax lien effective as of the date assessed. The amendment also makes it clear that the lien is against all the person's real and personal property, whether tangible or intangible. The changes are:

1. Code Section 12-54-120 has been amended to create a tax lien in favor of the Department and against all property of a person that has failed to pay past due taxes.
2. A tax lien will arise if a person liable to pay taxes neglects or refuses to pay a tax after assessment by the Department. The amount of the lien is equal to the tax plus any accrued interest, additions to tax, penalties, and/or any accrued costs.
3. A tax lien is effective as of the date of the assessment of the tax and allows the Department, through its agents, to seize and sell the property of the person against whom the tax lien has been filed if the assessment remains unpaid.
4. A tax lien continues for 10 years from the date of filing.
5. Code Section 12-54-122 has been added to provide definitions and list the interests that have priority over the tax lien. In order to protect innocent parties, the statute provides that as to purchasers, holders of security interests, mechanic's lienors, and judgement lien creditors, the lien is not effective until it is recorded with the clerk of the court or the register of mesne conveyances. Other persons are given priority over the tax lien even if notice of the lien has been filed. These persons include purchasers of motor vehicles who do not have actual notice of the lien, purchasers of personal property at retail, purchasers of personal property at a casual sale, personal property subject to a possessory lien, ad valorem real property taxes, attorney's liens, certain insurance contracts, passbook loans, commercial transactions, financing agreements and security interests which come into existence after filing of the lien to the extent of disbursements made within 45 days after the filing of the lien. The statute also addresses when a person will be deemed to have actual notice or knowledge of a fact of a particular transaction.
6. Code Section 12-54-122(G) provides that the form and content of the notice of tax lien must be determined by the Department and may be filed with the clerk of the court or the register of mesne conveyances at anytime and in any county the Department finds appropriate.

Effective Date: June 9, 1998

House Bill 4848, Sections 1 and 5, (Act No. 386)

**Payment Time Extended in Hardship Cases**

Code Section 12-58-185 has been added to provide the Department authority to grant a taxpayer an extension of time for payment of an amount due for up to 18 months from the original payment date. An extension may be granted where the taxpayer satisfactory shows that full payment on the original due date will result in undue hardship to the taxpayer. An extension will not be granted if the taxpayer acted negligently, disregarded rules or regulations intentionally, or committed fraud. In exceptional cases, the Department may grant an additional extension of up to 12 months.

**Installment Agreements - Repealed**

Code Section 12-58-140, providing for 90 day written installment agreements for taxpayer's unable to pay taxes, penalties, or interest, has been repealed. It is no longer necessary because of Code Section 12-58-185.

Effective Date: Tax years beginning after December 31, 1997.

House Bill 4848, Section 2, (Act No. 386)

**Punishment for Certain Frivolous or False Acts**

Code Section 12-54-40, providing for penalties and punishment for certain criminal acts, has been reworded and renumbered, and amended as follows:

1. Code Section 12-54-40(J) has been amended to provide that a taxpayer appearing before an administrative law judge who institutes or maintains proceedings primarily for delay or for frivolous or groundless reasons is liable for damages up to \$5,000 in addition to the tax deficiency. Previously, the statute pertained to circuit court proceedings.
2. Code Section 12-54-40(K)(6)(b) has been added to prohibit a person convicted of wilfully assisting in the preparation or presentation of a fraudulent or materially false return, affidavit, claim, or document from preparing or assisting in the preparation of a South Carolina tax return. A person violating this provision is guilty of a felony, and, upon conviction, must be fined \$10,000 and imprisoned at least 5 years without probation, parole, or suspension of sentence. This provision does not affect an action

or proceeding commenced or a right accrued before the effective date of this act.

Effective Date: Tax years beginning after December 31, 1997.

House Bill 4848, Sections 3 and 5, (Act No. 386)

### **Federal Corporate Income Changes - Notification Period Extended**

Code Section 12-54-85(D), concerning notification to the Department by a corporation of all changes in taxable income by the Internal Revenue Service, has been amended to extend the period of time to notify the Department after the receipt of a final determination from the Internal Revenue Service from 30 days to 90 days.

Corporations should be aware that the time period to file a South Carolina claim for refund resulting from an overpayment due to changes in taxable income made by the Internal Revenue Service remains at 30 days from the date the Internal Revenue Service changes taxable income. This 30 day time period is in addition to the general limitation that claims for refund must be filed within 3 years of a timely filed return or 2 years from the date of payment.

### **Repeal of Code Section**

Code Section 12-54-140, relating to adjustments in a corporation's tax return following income changes made by the Internal Revenue Service, has been repealed. This section is no longer necessary since its provisions are covered in Code Section 12-54-85.

Effective Date: Tax years beginning after December 31, 1997.

House Bill 4848, Section 4, (Act No. 386)

### **Delinquent Tax Claims**

Code Section 12-54-227(A), providing for the use of a collection agency to collect delinquent taxes, has been amended to revise the definition of "delinquent tax claim." Prior to this change, the phrase was defined as "a tax liability that is due and owing for a period longer than six months and for which the taxpayer has been given at least three notices requesting payment, one of which has been sent by certified or registered mail."

The phrase has been amended to add any subsequent tax debts issued.

Effective Date: Tax years beginning after December 31 1997.

House Bill 4850, Sections 4 and 8, (Act No. 387)

### **Penalty for Supplying False Withholding Information - Clarified**

Code Section 12-54-40(b)(6)(e) has been amended as follows:

1. To clarify that the penalty is \$1,000 for wilfully supplying false or fraudulent withholding information or wilfully failing to supply information which would require an increase in withholding under Chapter 8 of Title 12.
2. To provide that the offense is triable in magistrates court. The statute continues to provide that such person is guilty of a misdemeanor, and upon conviction, must be fined, or imprisoned not more than one year, or both.
3. Code Section 12-54-45 has been repealed since its provisions are now covered in Code Section 12-54-40(b)(6)(e).

Effective Date: June 15, 1998

House Bill 4850, Section 5, (Act No. 387)

### **Penalty Increased for Claiming Incorrect Number of Exemptions**

Code Section 12-54-46 has been amended to delete the maximum penalty amount that may be imposed on an individual who supplies a withholding exemption certificate which exceeds the number of exemptions to which he is entitled. A penalty of not less than \$50 for each exemption claimed that exceeds the number entitled may be imposed. Previously, the total penalty imposed could not exceed \$1,000.

Effective Date: June 15, 1998

House Bill 4851, Section 1, (Act No. 432)

### **Defense and Indemnification of DOR Employees**

Code Section 12-4-325 has been added to provide that the State will defend Department employees and indemnify them from loss from any liability arising out of actions within the scope of their employment. Employees are acting within the scope of employment when administering any South Carolina statute which has not been held to be unconstitutional or unlawful by a final decision of a court of competent jurisdiction.

Effective Date: June 23, 1998

House Bill 4851, Section 2, (Act No. 432)

### **Witness and Service Fees for Department Actions**

Code Section 12-4-330(D), concerning witnesses and officers serving summons or subpoenas on behalf of the Department, has been amended to make compensation for such services payable out of taxes collected on individuals, estates, and trusts under Code Section 12-6-510.

Effective Date: June 23, 1998

House Bill 4851, Section 14, (Act No. 432)

### **Penalty on Underpayment of Estimated Tax for Individuals - Conformity**

Code Section 12-54-55 has been amended to conform the penalty imposed on the underpayment of estimated tax by an individual, estate, or trust to that prescribed by the provisions of Internal Revenue Code Section 6654. No penalty is imposed on any individual, estate, or trust whose tax for the year, after credit for withheld tax, is less than \$1,000. Previously, no penalty was imposed for South Carolina purposes if the amount was less than \$100.

NOTE: South Carolina's safe harbor provisions for individuals now conform to the federal provisions (90% of tax shown on return for taxable year or 100% of tax shown for the preceding taxable year.) For individual taxpayers with adjusted gross income of more than \$150,000 a penalty for underpayment of estimated tax

can be avoided if the lesser of 90% of the current year's tax or the applicable percentage of prior year's tax liability for the preceding year is paid:

If the preceding taxable year begins in:	The applicable % is:
1997	100%
1998, 1999, or 2000	105%
2001	112%
2002 or thereafter	110%

Effective Date: June 23, 1998

House Bill 4851, Section 15, (Act No. 432)

### **Waiver of Interest**

Code Section 12-54-160, providing for the waiver, dismissal, or reduction of penalties, has been amended to delete the provision that interest may not be waived, dismissed, or reduced.

Effective Date: June 23, 1998

Regulation Document No. 2199

### **Model Recordkeeping and Retention**

South Carolina Regulation 117-7 has been added to define the requirements imposed on taxpayers for the maintenance and retention of records under Code Section 12-54-210, including records that are created or retained electronically and those that are reduced to microfiche or microfilm.

A taxpayer must maintain all records that are necessary to determine the taxpayer's correct tax liability. The Department will allow the retention or creation of records in an electronic format (referred to as a "machine-sensible record") provided certain requirements are met. These requirements are:

1. The record must contain sufficient transaction level detail information so that the details of the underlying electronic records can be identified and made available to the Department upon request.



2. The records must be capable of being retrieved and converted to a standard format.
3. If the taxpayer retains a record in both electronic and hardcopy format, the taxpayer has to make the electronic record available to the Department upon request.

When a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records relating to the transactions, must be equal to those contained in an acceptable paper record. The taxpayer may capture the information necessary to satisfy this requirement at any level within the accounting system and need not retain the original electronic data interchange transaction records.

Upon the request of the Department, the taxpayer must provide a description of the process that created the retained record and must be capable of demonstrating certain other matters relating to the records. It is recommended, but not required, that a taxpayer refer to the National Archives and Record Administration's standards for guidance on the maintenance and storage of electronic records.

The taxpayer must make available to the Department all relevant electronic records. The taxpayer may satisfy this requirement in a number of ways, several of which are listed in the regulation. A taxpayer may create files solely for the use of the Department. The taxpayer may also contract with a third party to provide custodial or maintenance services for the records.

In addition to providing rules regarding the creation and use of electronic records, the regulation addresses the use of microfiche, microfilm and other storage-only imaging systems. For purposes of the retention and storage of records, a taxpayer may use microfiche, microfilm or other methods of storage-only imaging systems and may then discard the hardcopy documents if certain requirements are met. These requirements include:

1. Documentation regarding how the records were converted must be maintained and made available to the Department upon request.
2. Procedures must be established for identification, processing, storage and preservation of the stored documents.
3. Upon request of the Department, the taxpayer must provide facilities and equipment necessary for the Department to review the records.
4. The reproduced document must exhibit a high degree of legibility and readability.

Unless otherwise provided in the regulation, the taxpayer is not relieved of the responsibility of maintaining hardcopy records. However, if a hardcopy record is not produced or received in the ordinary course of transacting business, such hardcopy records do not need to be created. The regulation does not prevent the Department from requesting hardcopy printouts in lieu of electronic records at the time of examination.

Effective Date: June 26, 1998

## **ADMISSIONS TAX**

House Bill 4526, Section 1, (Act No. 334)

### **Admissions Tax Not Imposed on Fees by Local or County Governments**

Code Section 12-21-2420, concerning the imposition of the State's admissions tax on charges to places of amusements, has been amended to exclude from the tax "any amount of the charge for admission, whether or not separately stated, that is a fee or tax imposed by a political subdivision of the State." As a result, a local tax charged as part of the amount paid to enter into or use a place of amusement will no longer be subject to the State's admissions tax.

Effective Date: January 1, 1999

House Bill 4851, Section 9, (Act No. 432)

### **Requirement to File Admissions Tax Return**

Code Section 12-21-2550, which establishes the time for filing an admissions tax return, has been amended as follows:

1. Obsolete language for failing to make a true and correct return or failing to file a return has been deleted. It is no longer necessary since its provisions are covered in Chapter 54 of Title 12.
2. Added language to allow the Department to make a return and assess the tax due when a person fails to make a true and correct return or fails to file a return.

Effective Date: June 23, 1998

# ALCOHOLIC BEVERAGE LICENSING AND REGULATION

Senate Bill 1074, (Act No. 429)

## **Wine - Three Tier Law**

Code Section 61-4-735 has been added to establish a three tier system for wine to regulate certain practices between manufacturers, importers, wholesalers, and retailers. This addition is similar to the three tier law for beer set forth in Code Section 61-4-940. The law provides:

1. With some minor exceptions for domestic wineries, manufacturers must not sell, transfer, or deliver for resale wine to a person not having a wholesale permit.
2. Wholesalers must not sell, transfer, or deliver for resale wine to a person not having a wholesale permit or a retail permit, unless that person is the American producer or the primary American source of supply of that wine as defined in Section 61-4-340.
3. A manufacturer, vintner, winery, importer or wholesaler of wine must not furnish, give, rent, lend, or sell, directly or indirectly, to the holder of a retail permit any equipment, fixtures, free wine, or service. The holder of a retail permit may not accept, directly or indirectly, any equipment, fixtures, free wine, or service from a manufacturer, vintner, winery, importer or wholesaler. However, a wholesaler may furnish at no charge to the holder of a retail permit draft wine equipment replacement parts of nominal value, including washers, gaskets, hoses, hose connectors, clamps, and tap markers, product displays as provided under 27 Code of Federal Regulations, Section 6.83 and point of sale advertising specialties. A wholesaler may also furnish the following services to a retailer: cleaning wine lines, rotating stock, affixing price tags to wine products, building wine displays, setting boxes, conducting wine tasting in accordance with Department regulations, developing shelf schematics, stocking shelves, providing wine party wagon for temporary use, and assisting in wine resets a maximum of three times a year for any store having a retail permit during the hours of 8:00 a.m. to 8:00 p.m.
4. A producer, winery, vintner and importer are in business on one tier, a wholesaler on another tier, and a retailer on another tier. A person on one tier may not have an ownership or financial interest in a wine business operation on another tier, except:
  - a. domestic wineries as provided for in Sections 61-4-720 and 61-4-730;

- b. an interest held on July 1, 1993 by the holder of a wholesale permit in a business operated by the holder of a retail permit at premises other than where the wholesale business is operated;
- c. ownership of less than one percent of the stock in a corporation with a class of voting shares registered with the Securities and Exchange Commission; or
- d. a consulting agreement under which the consultant has no control over business decisions and whose compensation is unrelated to the profits of the business.

The three tier law does not affect or prohibit the operation of licensed wineries that produce, provide taste samples, sell, deliver or ship domestic wine as authorized and in accordance with Sections 61-4-720 and 61-4-730.

### Beer and Wine

However, a manufacturer or importer of beer or wine may own in whole or part a business that holds an on-premises retail beer and wine permit provided all beverages to be handled or sold by the retail dealer must be purchased from licensed wholesalers and purchased on the same terms and conditions as other retail dealers and sales of the any manufacturer's product shall not exceed 10% of the annual gross sales of beer or wine by the retail permit holder.

Effective Date: June 29, 1998

### House Bill 4870, (Act No. 363)

#### **Protests of Beer and Wine Permits, Retail Liquor Licenses, and Minibottle Licenses**

Code Sections 61-4-525 (beer and wine), 61-6-185 (retail liquor), and 61-6-1825 (minibottles) have been added to establish the criteria a person must follow in order to protest the issuance or renewal of a beer and wine permit, a retail liquor license, or a minibottle license. A person protesting the issuance or renewal of a permit or license must:

1. Reside in the county in which the permit or license is requested to be granted or reside within 5 miles of the location for which the permit or license is requested; and,

2. File a written protest containing:
  - a. his name, address, and telephone number;
  - b. the name of the applicant for the permit and the address of the location;
  - c. the specific reasons why the application should be denied; and,
  - d. a statement as to whether he wishes to attend a contested case hearing concerning the application before an Administrative Law Judge.

Upon receipt of a timely filed protest, the Department must determine if the person intends to attend the hearing. If so, the Department must forward the file to the Administrative Law Judge Division. If not, the protest is deemed invalid and the Department must continue the process and issue the permit or license if all other statutory requirements are met. A person who affirms a desire to attend a hearing and who fails to appear at the hearing may be assessed a penalty, including court costs.

Effective Date: Applies to all applications for beer and wine permits, retail liquor store licenses, and minibottle licenses filed on or after August 1, 1998.

# **BINGO**

House Bill 3908, Section 4, (Act No. 285)

## **New Class F Bingo License**

Code Section 12-21-4020 was amended to create a new “Class F” bingo license. An organization which has a game of bingo that is operated exclusively by bona fide members who are South Carolina residents and who do so on a strictly volunteer basis can obtain a Class F license providing:

1. Prizes do not exceed \$4,000 a session and gross bingo proceeds do not exceed \$40,000 a calendar quarter; and,
2. Bingo proceeds are only used to pay the organization’s utility bills, to pay charges for bingo paper, and for the charitable purpose of the organization.

The holder of a Class F license may not conduct more than one bingo session a week. The license cost is \$100.

Several other amendments were made to the bingo laws concerning Class F bingo. These changes are:

1. Code Section 12-21-4030 was amended to allow a Class F bingo operation to impose a \$3 entrance fee.
2. Code Section 12-21-4190 was amended to impose a charge of five cents for each dollar of face value of bingo cards sold for use by a Class F license instead of the sixteen and one-half cents charge for each dollar of face value of bingo cards sold for use by other bingo licensees. The five cent charge will be used for State purposes as set forth in Code Section 12-21-4200. No money is returned to the charity as is the case with the sixteen and one-half cents collected from other charities operating bingo games.

Effective Date: April 7, 1998. However, any organization issued a Class F license shall receive the benefits of the license retroactive to October 7, 1997, except that the limitation on the use of the bingo proceeds is effective April 7, 1998.

House Bill 4526, Section 2, (Act No. 334)

**Catawba Indians Bingo**

Code Section 27-16-110 has been amended to change the Catawba Indian Claims Settlement Act to require the Catawbans to conduct bingo games under Article 24, Chapter 21, Title 12 - the bingo rules followed by all nonprofit organizations licensed to conduct bingo. The Catawbans must now play bingo and purchase bingo cards in the same manner as the nonprofit organizations; however, the Catawbans will pay a charge of 10% of the face value of the cards instead of the 16.50% of the face value of the cards paid by the nonprofit organizations. Previously, the Tribe, in lieu of an admission, a head, a license, or any other bingo tax, paid a special bingo tax equal to 10% of the gross proceeds received during each session.

Effective Date: June 9, 1998

House Bill 4526, Section 3, (Act No. 334)

**Class C Bingo Licenses - Hard Cards Allowed**

Code Section 12-21-4020(3) has been amended to allow the Department, at its discretion, to allow a Class C bingo licensee to use hard bingo cards in lieu of the paper cards if the bingo game meets the following criteria:

1. It is operated solely by volunteers;
2. The person managing, conducting, or operating the bingo game is not paid or otherwise compensated and must be a designated member of the organization;
3. Renumeration (including wages or other compensation) may not be made to any individual or corporation;
4. All equipment used to operate the game of bingo, including chairs, tables, and other equipment, must be owned by the charity;
5. The organization must lease the building directly from its owner or own the building in which the game is played; and,
6. The only expenses allowed to be paid from the proceeds of the game are utility bills,



prizes, purchases of cards, payments for the lease of the building, purchases of equipment required to operate a game, and the charitable purposes of the organization.

Effective Date: June 9, 1998

House Bill 4672, Section 4, (Act No. 340)

(See also House Bill 4850, Section 6, (Act No. 387))

### **Class D Bingo Licenses - Hard Cards Allowed**

The Bingo Act of 1996 added Article 24, Chapter 21, Title 12, repealed Article 23, Chapter 21, Title 12, and implemented a number of changes to the bingo laws. Under the Bingo Act of 1996, only paper cards meeting the requirements of the Department could be used in conducting a licensed bingo operation in South Carolina.

Code Section 12-21-4020(4), concerning Class D bingo licenses, has been amended to allow the Department, at its discretion, to allow a Class D bingo licensee to use hard bingo cards in lieu of the paper cards. A Class D license permits the conduct of a bingo game at a fair where the prize offered for each game of bingo may not exceed \$50 in merchandise.

Effective Date: June 9, 1998. This amendment is identical to that enacted by House Bill 4850 that was effective June 15, 1998.

House Bill 4672, Section 5, (Act No. 340)

(See also House Bill 4850, Section 7, (Act No. 387))

### **Class D Bingo Licenses - Special Checking Account**

Code Section 12-21-4090(A), requiring a special bingo checking account to ensure money raised from bingo is used for purposes for which the nonprofit organization was organized, has been amended to relieve a Class D bingo licensee of the requirement to maintain a special bingo checking or a bingo savings account. A Class D license permits the conduct of a bingo game at a fair where the prize offered for each game of bingo may not exceed \$50 in merchandise.

Effective Date: June 9, 1998. This amendment is identical to that enacted in House Bill 4850 that was effective June 15, 1998.

## **LOCAL TAXES**

Senate Bill 881, (Act No. Unassigned)

### **Cherokee County 1% Sales & Use Tax - Property Tax Credit**

Beginning July 1, 1996, Cherokee County imposed a 1% sales and use tax following a referendum approval pursuant to the Cherokee County School District 1 School Bond - Property Tax Relief Act (Act No. 588 of 1994). The revenue from the 1% tax is used to pay debt service on general obligation bonds which were issued to defray the costs of specified improvements for Cherokee County School District One.

Section 6 of Act No. 588, concerning the debt service of the bonds, has been amended to provide for a refund or credit to taxpayers who had to pay property tax to service debt in the prior year because the sales tax collected was insufficient to eliminate the property tax liability associated with the debt if the current year collection has resulted in an excess amount to service the debt.

The excess in the current year must be rebated pro rata to property taxpayers who paid the levy in the prior year in the form of a credit against the taxpayer's current property taxes as they become due and payable. When such a credit cannot be applied, and upon application of the taxpayer, the rebate must be refunded directly to the taxpayer. No credit or refund is allowed for amounts less than \$10.

Effective Date: April 7, 1998

House Bill 4700, Part II, Section 34, (Act No. 419)

### **State & County Athletic Commissions - No Fees on Certain Events**

Code Section 52-7-37 has been added to provide that notwithstanding any other provision of law, no tax or fee may be imposed by the State Athletic Commission or a county athletic commission on the gross receipts received by reason of the lease or sale of television, motion picture, or radio rights in connection with any boxing, wrestling, kick boxing, full contact karate, or sparring exhibition or performance in this State.

Effective Date: June 30, 1998. This section is repealed July 30, 1999, unless the General Assembly extends it by act or resolution.

House Bill 4700, Part II, Section 63, (Act No. 419)

**Local Accommodations & Local Hospitality Tax - Payment of Tax**

Article 5 of Chapter 1, Title 6, allows local governing bodies to impose, by ordinance, a local accommodations tax, not to exceed 3% for (1) tourism-related buildings; (2) cultural, recreational, or historic facilities; (3) beach access and renourishment; (4) highways, roads, streets, and bridges providing access to tourist destinations; (5) advertisements and promotions related to tourism development; or (6) water and sewer infrastructure to serve tourism-related demand. Article 7 of Chapter 1, Title 6, allows a local governing body to impose, by ordinance, a local hospitality tax not to exceed 2% of the charges for food and beverages.

Code Sections 6-1-570 and 6-1-770 have been added to provide the time period to remit the taxes. Each tax must be remitted to the local governing body as follows:

1. On a monthly basis when the estimated amount of average tax is more than \$50 a month;
2. On a quarterly basis when the estimated amount of average tax is \$25 to \$50 a month; and,
3. On an annual basis when the estimated amount of average tax is less than \$25 a month.

Prior to this amendment, there were no provisions for when to remit the tax.

Effective Date: July 1, 1998

House Bill 4916, (Act No. 389)

**Public Works Improvement Act - Changes**

The County Public Works Improvement Act (Chapter 35, Title 4) allows counties to construct and repair improvements within the county. Improvements may include sidewalks, pedestrian facilities, and roads and streets. The county may finance these improvements through the issuance of special district bonds, general obligation bonds, or revenue bonds, from general revenues not restricted from that use by law. These

improvements may also be financed through special assessments that are levied on real property within an improvement district. To create an improvement district, certain requirements must be met including the requirement that the governing body obtain written consent from a majority of the owners having an aggregate assessed value in excess of 66% of the assessed value of all real property within the improvement district. Once created, a mechanism is provided whereby the owner of the property within the improvement district may appeal the assessment.

The Public Work Improvement Act has been amended as follows:

1. Code Section 4-35-30 has been amended to clarify the definitions of “assessment” and “improvement”. The definition of “assessment” has been amended to exclude the value of the improvements to be constructed as a basis for determining the amount of the assessment levied and to provide that the assessment will continue even upon later subdivision and transfer of the real property in the district unless the improvement plan provides otherwise. The definition of “improvement” has been amended to include recreational and other facilities for public use in its definition and to include certain other facilities designated as public works or a system of related projects eligible for revenue bond funding. A definition of “governing body” has been added to mean the governing body of a county.
2. Code Section 4-35-50 has been amended to allow the county to find that the improvements are likely to significantly improve property values within the district by promoting development of the property instead of the requiring the governing body find that the improvements may preserve property values in the district and in the absence of the improvements, property values in the area would likely depreciate.
3. Code Section 4-35-80 has been amended to clarify that the governing body may use the provisions of Chapter 21, Title 6 to issue revenue bonds, and assessments authorized under the Public Works Improvement Act will be considered revenues of the system for that purpose.

Effective Date: June 15, 1998

House Bill 5031, (Act No. Unassigned)

**Colleton County 1% Sales & Use Tax**

The Colleton County School District School Bond - Property Tax Relief Act has been enacted. The Act allows the governing body of the Colleton County School District to impose, by referendum, a 1% sales and use tax within Colleton County for a specific purpose and for a specified period of time. The revenues collected may be used to pay debt service on general obligation bonds issued pursuant to Article 1 of Chapter 71, Title 59 of the 1976 Code (“School Bond Act”).

If the tax is approved in the referendum, it is imposed on the first day of the third full month following the filing of the required declaration of the results of the referendum with the Department. The tax terminates on the final day of the maximum time specified for the imposition or, if earlier, upon payment of the final maturing installments of principal of the bonds to which the application of the tax is authorized, or upon payment of the final maturing installments of principal of general obligation bonds issued to refund the bonds.

This tax must be administered and collected by the Department in the same manner that other sales and use taxes are collected. The 1% tax is in addition to all other local sales and use taxes. It applies to the gross proceeds of sales in the applicable jurisdiction which are subject to the tax imposed by Chapter 36, Title 12 and the enforcement provisions of Chapter 54, Title 12. The gross proceeds of the sale of food which may lawfully be purchased with food stamps and items subject to a \$300 maximum tax are exempt from this 1% tax.

Those persons required to pay the 1% use tax must identify the county in which the tangible personal property purchased at retail is stored, used, or consumed. Utilities are required to report sales in the county in which consumption of the tangible personal property occurs. Taxpayers subject to the sales tax on accommodations who own or manage rental units in more than one county must separately report the gross proceeds from business done in each school district.

Sales of tangible personal property delivered after the imposition date of the tax, either under the terms of a construction contract executed before the imposition date, or a written bid culminating in a construction contract entered into before or after the imposition date, are exempt from this 1% tax provided a verified copy of the construction contract is filed with the Department within six months after the imposition date of the tax. With respect to services regularly billed on a monthly basis, the tax is to be billed

beginning on the first day of the billing period beginning on or after the imposition date.

The Department will furnish data to the State Treasurer and to the school districts receiving tax revenues from this special local sales and use tax for the purpose of calculating distributions and estimating revenues.

Effective Date: May 28, 1998

House Bill 5143 (Act No. Unassigned)

**Union County Sales & Use Taxes - School Construction and Renovations**

The School District of Union County School Bond - Property Tax Relief Act has been enacted. The Act allows the Union County Board of School Trustees to impose, by referendum, a sales and use tax, not to exceed 2%, within Union County for a specific purpose and for a specified period of time not to exceed 25 years. The revenues collected are to be used to pay debt service on general obligation bonds issued pursuant to Article 1 of Chapter 71, Title 59 of the 1976 Code ("School Bond Act"), or to pay directly costs of acquisition or construction of any of the improvements identified in the resolution providing for the imposition of the tax.

If the tax is approved in the referendum, it is imposed on the first day of the third full month following the filing of the required declaration of the results of the referendum with the Department. The tax terminates on the final day of the maximum time specified for the imposition or, if earlier, upon payment of the final maturing installments of principal of the bonds to which the application of the tax is authorized, or upon payment of the final maturing installments of principal of general obligation bonds issued to refund the bonds.

The tax must be administered and collected by the Department in the same manner that other sales and use taxes are collected. The tax is in addition to all other local sales and use taxes. It applies to the gross proceeds of sales in Union County which are subject to the tax imposed by Chapter 36, Title 12 and the enforcement provisions of Chapter 54, Title 12. The gross proceeds of sales of food which may lawfully be purchased with food stamps and items subject to a \$300 maximum tax are exempt from this tax.

Those persons required to pay the county use tax must identify the county in which the tangible personal property purchased at retail is stored, used, or consumed. Utilities are required to report sales in the county in which consumption of the tangible personal

property occurs. Taxpayers subject to the sales tax on accommodations who own or manage rental units in more than one county must separately report the gross proceeds from business done in each county.

Sales of tangible personal property delivered after the imposition date of the tax, either under the terms of a construction contract executed before the imposition date, or a written bid culminating in a construction contract entered into before or after the imposition date, are exempt from the tax provided a verified copy of the construction contract is filed with the Department within six months after the imposition date of the tax. With respect to services regularly billed on a monthly basis, the tax is to be billed beginning on the first day of the billing period beginning on or after the imposition date.

The revenue must be remitted to the State Treasurer and credited to a fund separate and distinct from the general fund. The Department will furnish data to the State Treasurer and to the district for the purpose of calculating distributions and estimating revenues.

Effective Date: June 16, 1998

# **VIDEO GAME MACHINE LICENSING AND REGULATION**

Senate Bill 994, (Act No. 433)

## **Video Poker and Check Cashing**

Chapter 39 (South Carolina Deferred Presentation Services Act) and Chapter 41 (Check Cashing Services) have been added to Title 34 so as to regulate deferred presentation services and check cashing.

A deferred presentation service is a transaction pursuant to a written agreement whereby in exchange for a fee the service company accepts a check dated on the date it was written and holds that check for a period of time before it is presented for payment or deposit. A check cashing service is a person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration. It does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.

Both types of businesses must be licensed under the new law and any person licensed as a deferred presentation service or a check cashing service may not be licensed pursuant to Section 12-21-2720(A)(3) to operate video poker machines or permit others to engage in operating video poker machines at the licensed location.

NOTE: The provisions of this law are administered by the State Board of Financial Institutions and not by the Department of Revenue.

Effective Date: June 11, 1998

Regulation Document No. 2230

## **Technical Standards for Video Game Machines and Location Controllers**

South Carolina Regulation 117-191 has been added to establish the technical standards for video game machines and location controllers in order that all video game machines which meet these standards can be linked to the central computer system as required by law.



Each single place or premise operating video game machines must provide a location controller and modem meeting requirements set forth by the Department. The location controller must be capable of receiving, storing, and transmitting to the central monitoring system all information received from, and required of, video game machines.

In order for the location controller to connect to the central computer monitoring system a phone line must be installed for the sole purpose of communication with the central system (a dedicated phone line). The costs associated with the location controller, cabling between the location controller and machines, modem, and phone line are the responsibility of the location. In addition, the location is responsible for arranging for, and costs of, installation.

Also, each type, model or version of a video game machine, location controller and modem must be certified by an approved testing laboratory for adherence to the protocols and specifications set forth by the Department.

The costs associated with certifying video game machines, location controllers and modems as well as the costs to convert equipment to pass certification are not the responsibility of the State of South Carolina.

Effective Date: June 26, 1998

## **WITHHOLDING**

Senate Bill 1078, Section 2, (Act No. 421)

### **Redevelopment Fees - Changes**

Code Section 12-10-88 provides that redevelopment authorities that are vested with authority to oversee “closed or realigned military installations” may receive “redevelopment fees” consisting of South Carolina withholding tax remitted equal to 5% of all South Carolina wages paid to employees of the federal government at such installations.

Code Section 12-10-88(E) has been amended to change the definition of “closed or realigned military installation”. Previously, a closed or realigned military installation was defined as “a federal military base or installation in which permanent employment was reduced by 3000 or more jobs after December 31, 1990 and which is closed or realigned under: (1) the Defense Base Closure and Realignment Act of 1990; (2) Title 11 of the Defense Authorization Amendments and Base Closure and Realignment Act; or, (3) Section 2687 of Title 10, United States Code.” The statute has been amended to define a closed or realigned military installation as a federal defense site in which permanent employment was reduced by 3000 or more jobs after December 31, 1990, or a federal military base or installation which is closed or realigned under one of the above listed sections.

Effective Date: Tax years beginning after 1998.

House Bill 4700, Part II, Section 62, (Act No. 419)

### **No Withholding for Certain Disabled Persons**

Code Section 12-8-520(D) has been amended to exclude from withholding income earned for services which are performed by a disabled person if that person:

1. Is disabled as defined by the Department of Disabilities and Special Needs;

2. Is employed in a program approved by the Department of Disabilities and Special Needs; and,
3. Has a projected income of \$7,500 a year or less.

Effective Date: Tax years beginning after 1998.

House Bill 4850, Section 1, (Act No. 387)

### **Nonresident Beneficiary Distributions - Withholding Exceptions**

Code Section 12-8-570, requiring 7% withholding by a trust or estate on a distribution of South Carolina taxable income to a nonresident, has been amended to provide for additional exceptions to the withholding requirements. The withholding no longer applies to a:

1. Nonresident beneficiary who is exempt from taxation under Internal Revenue Code Section 501; or
2. Nonresident beneficiary who agrees to be subject to the jurisdiction of the Department and the courts of this State to determine South Carolina tax liability, including estimated taxes and related interest and penalties.

Effective Date: June 15, 1998

House Bill 4850, Section 2, (Act No. 387)

### **Nonresident Withholding From Nonresident Seller - Clarification**

Code Section 12-8-580, requiring withholding by the buyer of real property and associated tangible property from a nonresident seller, has been amended to clarify that the withholding provisions also apply to purchases of real property only.

Effective Date: June 15, 1998

**Withholding Exemption Certificates - New Verification Requirements**

Code Section 12-8-1030, concerning incorrect withholding exemption certificates, has been amended to further provide that an employer receiving a withholding exemption certificate from an employee claiming 10 or more withholding exemptions must furnish a copy of the certificate to the Department within 30 days after receipt. Previously, the statute only required the exemption certificate be submitted to the Department if the employer believed it to be incorrect.

The amendment to Code Section 12-8-1030 provides for the following verification and appeal procedures when a withholding exemption certificate that is believed by the employer to be incorrect or that shows 10 or more exemptions is furnished to the Department:

1. The Department may request the employee submit written verification of the statements on the certificate within 30 days.
2. Until otherwise informed by the Department, the employer shall withhold on the basis of the claimed exemptions.
3. If the information is determined to be incorrect, the Department will inform the employee that the exemption certificate is invalid and of the number of exemptions allowed.
4. If the employee does not provide adequate verification to support the exemptions claimed, the Department will allow only one exemption.
5. The determination may be appealed as provided under the Revenue Procedures Act within 30 days after the Department's decision. If the employee does not appeal the Department's determination, the department will notify the employer of the number of exemptions to allow in computing the employee's withholding. The correct number of exemptions, as determined by the Department, Administrative Law Judge Division, or court, must begin on the first payroll period ending on or after the date the employer receives notification.

NOTE: By March 31, 1999, an employer must review all withholding exemption certificates submitted before the effective date of this section of all employees who remain employed by the employer. The employer shall furnish the

Department a copy of all withholding exemption certificates claiming 10 or more exemptions.

Effective Date: October 1, 1998

## **OTHER ITEMS**

Senate Bill 778, (Act No. 399)

### **911 Communication Systems - Monthly Charges**

Chapter 47 of Title 23, effective October 1, 1991, allows a local government to adopt an ordinance to impose a monthly 911 charge which is the liability of the telephone subscribers in the area served by the 911 service.

Code Section 23-47-50(F) has been amended to add a new fee imposed by the State for 911 services. The amendment provides:

1. A monthly commercial mobile radio service (CMRS 911) charge is levied for each CMRS connection (each mobile number assigned to a CMRS customer) for which there is a mobile identification number containing an area code assigned to South Carolina by the North American Numbering Plan Administrator.
2. The amount of the charge must be approved annually by the State Budget and Control Board at a level not to exceed the average monthly telephone (local exchange access facility) 911 charges paid in South Carolina. The CMRS 911 charge must have uniform application and be imposed throughout the State; however, trunks or service lines used to supply service to CMRS providers are not subject to the fee.
3. Every CMRS provider must file a return with the Department and remit the collected fees on or before the 20th day of the second month following each monthly collection of the fee. Collection of the fee begins on November 1, 1998. CMRS providers may retain 2% of the fees collected as reimbursement for collection and handling.
4. CMRS subscribers are liable for the fee until paid to the CMRS provider. The fees collected are not subject to any tax, fee, or assessment, and are not considered revenue of the CMRS provider.
5. The funds must be kept separate from the general fund by the State Treasurer and be used to implement a wireless enhanced 911 system as provided in Section 23-47-65.

Further, Code Sections 23-47-65 and 23-47-75 have been added. Section 23-47-65 creates the CMRS Emergency Telephone Services Advisory Committee to assist the State Budget and Control Board in implementing a wireless enhanced 911 system. The

committee's existence terminates on August 1, 2001, unless the General Assembly adopts a joint resolution extending its existence. Code Section 23-47-75 provides that CMRS location information obtained by safety personnel or for public safety personnel for public safety purposes is not public information under the Freedom of Information Act. A person may not disclose or use, for any purpose other than the 911 or other emergency calling system, information contained in the data base of the telephone network portion of a 911 or other emergency calling system.

Effective Date: June 11, 1998, with the committee commencing operations on August 1, 1998, and CMRS collection of surcharges commencing on November 1, 1998.

House Bill 3605, (Act No. 324)

**Deed Recording Fee - New Exemption**

Code Section 12-24-40, exempting certain transfers from the deed recording fee, has been amended to add item (13), an exemption for deeds "transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceeding."

Effective Date: Deeds recorded on or after June 11, 1998.

House Bill 4700, Part II, Section 41, (Act No. 419)

**Out of State Hospital Excise Tax - Repealed**

Code Section 12-23-810(B), imposing an excise, license, or privilege tax on every hospital licensed as a general hospital in another state not licensed as a general hospital in South Carolina, and doing business in South Carolina, has been repealed.

Effective Date: June 30, 1998

House Bill 4851, Section 7, (Act No. 432)

**Banks Subject to Deed Recording Fee**

Code Section 12-11-30 has been amended to clarify that the income tax on banks provided in Chapter 11 of Title 12 is in lieu of other taxes except for the use tax, the deed recording fee, and real property taxes.

Effective Date: June 23, 1998



# House Bill 4853 Summary

**WARNING: THE GOVERNOR HAS NOT SIGNED OR VETOED HOUSE BILL 4853. THEREFORE, THIS BILL IS NOT IN EFFECT. THIS BILL HAS BEEN SUMMARIZED BY TAX TYPE FOR YOUR REFERENCE ONLY. SEE EXPLANATORY NOTE IN THE INTRODUCTION OF THIS INFORMATION LETTER.**

## INCOME TAXES

House Bill 4853, Section 14

(See also House Bill 4700, Part II, Section 49.II, (Act No. 419))

### **Economic Impact Zone Investment Tax Credit - Changes**

Code Section 12-14-60, providing an income tax credit for placing qualifying manufacturing and productive equipment property into service in an “economic impact zone,” has been amended. The substantial changes are summarized below.

1. Code Section 12-14-60(A) has been amended to change the amount of the credit to:

- #1% of the total aggregate bases of 3 year property;
- #2% of the total aggregate bases of 5 year property;
- #3% of the total aggregate bases of 7 year property;
- #4% of the total aggregate bases of 10 year property; and,
- #5% of the total aggregate bases of 15 year property.

Whether property is 3, 5, 7, 10, or 15 year property is determined based on the applicable recovery period for property under Internal Revenue Code Section 168(e). Prior to amendment, the credit was equal the 5% of the aggregate bases of the qualifying property.

2. Code Section 12-14-60(E) has been added to provide for recapture of the credit. If the property is disposed of or removed from the economic impact zone before the end of the applicable recovery period, then the tax due must be increased by an amount of any credit claimed in prior years for such property determined by assuming that the

credit is earned ratably over the useful life of the property and the taxpayer must recapture pro rata the unearned portion of the credit.

NOTE: This amendment is different from that enacted in House Bill 4700, Part II, Section 49.II.

3. Code Section 12-14-60(F) has been added to provide for a property basis reduction for the amount of the credit claimed. A taxpayer required to recapture the credit may increase the basis by the amount of any basis reduction attributable to the credit claimed in prior years. The basis must be increased in the year of recapture.

4. Code Section 12-14-60(G) has been added to provide that the credit claimed is limited to \$5 million for a taxpayer subject to the license tax under Code Section 12-20-100 (including utilities and electric cooperatives) for investments made after June 30, 1998.

NOTE: This amendment is different from that enacted in House Bill 4700, Part II, Section 49.II.

5. Code Section 12-14-60(H) has been added to provide that credits claimed for taxable years beginning after 1997 for investments made before July 1, 1998, may not reduce a taxpayer's state income tax liability by more than 50%.

6. Code Section 12-14-60(I) has been added to provide that the amendments relating to any reduction in the amount of credit that may be claimed will not apply in the case of investments at a project operated by a company pursuant to a revitalization agreement entered into between the company and the South Carolina Advisory Council for Economic Development effective on or before July 1, 1996.

NOTE: This amendment is not contained in House Bill 4700, Part II, Section 49.II.

7. Code Section 12-14-40 has been amended to eliminate the provision that ends the designation of an area as an economic impact zone on the earlier of the end of 15 years following designation or the termination date set by the General Assembly. This amendment provides that the designation will continue unless the General Assembly revokes the designation.

## **PROPERTY TAXES AND FEES IN LIEU**

House Bill 4853, Section 4.A.

### **Uncollectible Property Taxes to be Removed From Duplicate List**

Code Section 12-49-85 has been added to provide that if the person charged with the collection of ad valorem taxes on real or personal property for a county determines that the taxes are uncollectible, he will record that determination and the reason for it on a list. At least annually he will provide the list to the county auditor, who may remove a particular determination from the duplicate list. The auditor will record the removal and the reason for it. The auditor and the tax collector will review the list annually. If it is determined that the tax was improperly removed from the list or that it is collectible, it must be returned to the duplicate list for collection, with all penalties and interest accruing.

House Bill 4853, Section 4.B.

### **Reassessment - Consumer Price Index for All Urban Consumers**

The first sentence of Code Section 12-37-251(E), which provides for an increase in the rollback millage in a year of reassessment by the percentage increase in the consumer price index for all urban consumers, has been deleted. Authorized increases in the rollback millage are now covered in Article 3 of Title 6.

House Bill 4853, Section 4.C.

### **4% Assessment Ratio for Legal Residence Purchased Under Bond for Title or Contract for Sale**

Code Section 12-43-220(c)(5) has been added to provide that to qualify for the legal residence 4% assessment ratio, the owner-occupant of a legal residence that is being purchased under a contract for sale or a bond for title must record the contract for sale or the bond for title in the office of the register of mesne conveyances or the clerk of court. A contract for sale or a bond for title is the sale of real property by a seller, who finances the sale and retains title to the property solely as security for the debt.

House Bill 4853, Section 4.D.

**“Assessment of the Tax” Defined**

Code Section 12-54-85(E), providing that a tax may not be collected by levy, warrant for distraint, or a proceeding in court, unless such was begun within 10 years after the assessment of the tax, has been amended to provide that, for property tax purposes, the “assessment of the tax” occurs on the later of the last day the tax may be paid without penalty or the date of the tax notice.

House Bill 4853, Section 4.E.

**County Assessor Can Correct Error Without Conference**

Code Section 12-60-2520(B), dealing with an appeal by a taxpayer of a property valuation, has been amended to provide that if, upon examination of the property taxpayer’s written objection to a property tax assessment made by a county assessor, the county assessor agrees with the taxpayer, the county assessor must correct the error, without the need for a conference. If, upon the examination, the county assessor does not agree with the taxpayer, the assessor shall schedule a conference with the taxpayer.

House Bill 4853, Section 4.F.

**Personal Property Tax Assessment or Homestead Exemption Denial - Change in Time Period to Request Meeting**

Code Section 12-60-2910(A) has been amended to provide that a taxpayer may object to a personal property tax assessment or a denial of a homestead exemption made by the county auditor by requesting, in writing, to meet with the auditor at any time on or before the later of: (1) 30 days after the tax notice is mailed; or (2) last day the tax levied upon the assessment may be timely paid. Previously, the statute provided that the taxpayer request a meeting by the last day the tax could be timely paid.

House Bill 4853, Section 4.G.

**Repeal of Code Sections**

Code Sections 12-43-225, concerning certain provisions for applications for special assessment ratios, and 12-49-80, concerning bringing suit for back taxes within 10 years of payment, are no longer necessary and have been repealed.

House Bill 4853, Section 12

**Motor Carrier Changes**

This section made a number of amendments to the motor carrier provisions. The changes are as follows:

1. Code Section 12-37-2810(A) has been amended to include in the definition of “motor carrier” buses for the transportation of property or persons in intrastate or interstate commerce except for scheduled intercity bus service. Code Section 12-37-2810(G) has been added to define bus. “Bus” means every motor vehicle designed for carrying more than sixteen passengers and used for the transportation of persons, for compensation, other than a taxicab or intercity bus. The value of a motor carrier’s vehicles subject to property taxes in South Carolina is determined by the Department based on the ratio of total mileage operated within South Carolina during the preceding calendar year to the total mileage of its entire fleet operated everywhere during the same preceding calendar year.
2. The fair market value of motor vehicles of motor carriers is determined by depreciating the gross capitalized cost of each motor vehicle by an annual percentage depreciation allowance. Code Section 12-37-2820(B) has been added to provide that “gross capitalized cost” means the original cost upon acquisition for income tax purposes of the motor carrier, but not to include taxes, interest, or cab customizing.
3. Code Section 12-37-2840 has been amended to provide that if a motor carrier fails to file its property tax return, the Department shall issue a proposed assessment which assumes all mileage was within this State.
4. Code Section 12-37-2850 has been amended to provide that the Department shall assess annually the taxes due by motor carriers based on the value determined in Code Section 12-28-2820 and an average millage for all purposes statewide for the

preceding calendar year, rather than the current tax year, and shall publish the average millage for the preceding year by June 1 of each year. The amendment deletes the provision that allowed the Department to increase the average millage to cover the loss of revenue incurred from not licensing trailers.

House Bill 4853, Section 13

**Joint Industrial Park Property - Local Option Sales Tax Credit**

Chapter 10 of Title 4 provides for a local option sales tax where a county, upon referendum approval, may levy a sales and use tax of 1% on the gross proceeds of sales within the county. Part of the proceeds from this 1% tax must go into a Property Tax Credit Fund. All of the revenue in the Property Tax Credit Fund must be used to provide a credit against the property tax liability of taxpayers in the county and municipality. Code Section 4-10-40(B) has been amended to clarify the term “property tax liability.” It provides that: “(a) property tax liability includes liability to pay fees in lieu of property taxes; (b) taxable property includes exempt property for which the owner must pay fees in lieu of property taxes; and (c) reference to liability for fees in lieu of tax applies to fees arising pursuant to Section 4-1-170 in connection with location in a multi-county industrial or business park as provided in Section 13 of Article VIII of the Constitution of the State of South Carolina.”

**MISCELLANEOUS**

**ALCOHOLIC BEVERAGE LICENSING AND REGULATION**

House Bill 4853, Section 5

**Issuance of Beer, Wine, and Liquor Licenses**

Code Section 61-2-100 has been amended to allow the Department to issue permits and licenses to organizations, associations, or business entities (partnerships, corporations, etc.). Previously, a license had to be issued to an officer of the entity or a person designated by the entity’s Chief Executive Officer.

Under this amendment:

1. Only the owner of the business may be issued the permit or license. However, in the case of a publicly held corporation, the corporation must designate an officer or other employee of good moral character (over 21 years of age and a resident of South Carolina) in whose name the permit or license must be held on behalf of the corporation.
2. The Department must initiate action to revoke the permit or license for any permit or license issued to a person not the owner of the business or when the licenced individual or a principal of the licensed entity is under 21 years of age.
3. For purposes of determining if an applicant owes delinquent taxes and is not entitled to a permit or license, all principals of the entity will be considered to be applicants.
4. The Department may not issue a permit or license unless the applicant and all principals of the applicant are of good moral character.
5. A business issued a permit or license must designate an agent and mailing address for service of notices.
6. A “principal” of a business or entity as used in this section means a person who is described in any one or more of the following items:
  - a. An officer of the business or entity which owns the business;
  - b. A partner, other than a limited partner who cannot exercise any management control;
  - c. A manager of a limited liability company which is managed by managers;
  - d. A member of a limited liability company which is not managed by managers;
  - e. A fiduciary, including personal representatives, trustees, guardians, committees, and receivers, who manage, hold, or control title to or who otherwise direct or indirect control of the business;
  - f. A person who holds 25% or more of the combined voting power of the business or entity;
  - g. A person who owns 25% or more of the value of the business entity; or
  - h. An employee who has day-to-day operational management responsibilities for the business or entity.

## House Bill 4853, Section 5

### **Temporary Licenses and Bonding Requirements for Liquor Licensees**

Code Sections 61-6-505 (retail liquor), 61-6-2005 (minibottles), and 61-4-210 (beer and wine) have been amended to allow a person who purchases or acquires by lease, inheritance, divorce decree, eviction, or otherwise a retail business that sells alcoholic beverages to obtain a temporary alcoholic beverage license, not to exceed 120 days, upon initiating the application process for obtaining a permanent license. Previously, the temporary license could only be issued upon the purchase of a retail alcoholic beverage location and not the lease, inheritance or other acquisition of the location.

Code Section 61-6-2890, concerning the licensing of a warehouse of a registered producer, has been amended to no longer require the registered producer to post a bond to ensure the proper handling of the liquor stored in the licensed warehouse.

Code Section 61-6-300 through 61-6-350 (Subarticle 3 of Article 3), concerning bonds for manufacturers of liquor, liquor wholesalers, and liquor retailers, have been repealed.

## **OTHER ITEMS**

### House Bill 4853, Section 1

#### **Motor Fuel Tax - New Exemptions**

Code Section 12-28-710(9) has been amended to exempt from the motor fuel tax kerosene used as heating oil or in trains or used in equipment not licensed as a motor vehicle.

Code Section 12-28-710(12) has been amended to exempt taxable motor fuel (diesel and gasoline) used in the transportation of students by state-funded institutions of higher learning from the motor fuel tax.



House Bill 4853, Section 2

**Penalty for Illegal Use of Dyed Fuel - Technical Correction**

Code Section 12-28-1730(F), imposing a penalty in an amount equivalent to that imposed by the Internal Revenue Code for the illegal use of dyed fuel on South Carolina highways, has been amended to correct an incorrect reference to the Internal Revenue Code. The corrected reference is IRC §6715.

House Bill 4853, Section 3

**Road Tax on Motor Carriers - Technical Corrections**

Code Section 12-31-220, regarding temporary permits for motor carriers having infrequent trips into and through South Carolina, and Code Section 12-31-250, regarding application for a biennial registration card and identification marker for motor carriers, have been repealed. These provisions, in amended form, are contained in Code Sections 56-11-220 and 56-11-250.