

SC INFORMATION LETTER 99-17

SUBJECT: Tax Legislative Update for 1999

DATE: September 14, 1999

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1998)  
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 tax laws that were enacted by the General Assembly during the past legislative session. This information letter is divided into four categories of legislation as indicated below.

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The tax law changes are summarized in this information letter in bill number order, except that changes in the “Miscellaneous” category are summarized by subject matter. Also, there are several instances where more than one substantially similar bill was

enacted. In such cases, these bills are cross referenced by bill number and then summarized only once.

**WARNING:** This Information Letter is intended to be a summary of the main points of the legislation. Please refer to the full text of the legislation for specific details and requirements. A complete copy of the legislation discussed can be obtained from the South Carolina Legislative Council's website at [www.lpittr.state.sc.us](http://www.lpittr.state.sc.us).

# **INCOME TAXES, CORPORATE LICENSE FEES, AND WITHHOLDING**

House Bill 749, (Act No. A132)

## **Operation Allied Force - Tax Relief**

This joint resolution allows the Department to provide the following tax relief for military personnel serving in Operation Allied Force (Yugoslavia, Albania, the Adriatic Sea, and the northern Ionian Sea):

1. Extend the time for filing individual income tax returns and paying taxes in a manner similar to that allowed by the Internal Revenue Service;
2. Waive penalties and interest with respect to the extended payment period; and
3. Suspend collection activities until a reasonable time after the taxpayer returns from service.

See South Carolina Revenue Procedure #99-2 for further details.

Effective Date: June 1, 1999

House Bill 3259, (Act No. A131)

## **Retirement Income Deduction - Tax Years 1994-1997 Amended Returns**

This joint resolution allows a retirement income deduction not to exceed \$3,000 for retirement income received in taxable years 1994, 1995, 1996, or 1997 for individuals who did not claim the \$3,000 retirement deduction pursuant to Code Section 12-6-1170 (as applied for taxable years 1994 through 1997) because the taxpayer:

1. Chose to defer the retirement deduction of up to \$10,000 until age 65, or
2. Failed to claim the \$3,000 deduction.

Further, the time period to file such claims for refunds for taxable years 1994 and 1995 has been extended through December 31, 1999.

Effective Date: March 23, 1999

House Bill 3359, Section 3B, (Act No. A114)

### **Income Tax Conformity**

Code Section 12-6-40(A) 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, 1998, and includes its effective date provisions.

Effective Date: June 30, 1999, however, all liabilities incurred and rights accrued before June 30, 1999 are unaffected.

House Bill 3359, Section 3C, (Act No. A114)

### **Palmetto Seed Capital Fund Limited Partnership - Technical Correction**

Code Section 12-6-1120(8) provides an exclusion from South Carolina gross income for a portion of a partner's share of income in the Palmetto Seed Capital Fund Limited Partnership, established under Code Section 41-44-60, that is derived from certain South Carolina businesses operating in certain counties. It has been amended to revise the reference to a less developed county as defined in Section 12-6-3360 to a least developed county. This correction was necessary since the provisions in Code Section 12-6-3360 (job tax credit statute) were substantially revised in 1996.

Effective Date: June 30, 1999, however, all liabilities incurred and rights accrued before June 30, 1999 are unaffected.

House Bill 3359, Section 3D, (Act No. A114)

### **Corporate Headquarters Credit - Per Capita Income Requirement Changes**

Code Section 12-6-3410(D)(2), providing criteria for a credit for the cost of tangible personal property purchased for establishing or expanding certain corporate headquarters in South Carolina, has been amended to provide that the average cash compensation level required of all employees must be based on the most recent South Carolina per capita income data available as of the end of the taxpayer's taxable year in which the jobs are filled. Previously, the statute based the required cash compensation level on South Carolina's per capita income at the time the jobs were filled.

Effective Date: June 30, 1999, however, all liabilities incurred and rights accrued before June 30, 1999 are unaffected.

House Bill 3359, Section 3E, (Act No. A114)

### **Recycling Facility Tax Credits - Technical Corrections**

Code Section 12-6-3465, providing credits for a taxpayer constructing or operating a qualified recycling facility, has been amended to correct cross references to Chapters 7 and 19. These chapters were recodified in 1995 and renumbered as Chapters 6 and 20.

Effective Date: June 30, 1999, however, all liabilities incurred and rights accrued before June 30, 1999 are unaffected.

House Bill 3359, Section 3G, (Act No. A114)

### **Annual Reports of Corporations - Technical Correction**

Code Section 12-20-20(A), providing for the filing of an annual report by certain corporations, has been amended to correct a cross reference to Chapter 6. Every domestic corporation, foreign corporation qualified to do business in South Carolina, and any other corporation required by Section 12-6-4910 to file income tax returns must file an annual report. Previously, the cross reference was to Section 12-6-530 (the imposition of the corporate income tax.)

Effective Date: June 30, 1999, however, all liabilities incurred and rights accrued before June 30, 1999 are unaffected.

House Bill 3359, Section 3J, (Act No. A114)

### **Federal Corporate Income Changes - Claim for Refund Period Extended**

Code Section 12-54-85(D), concerning the time period to file a South Carolina claim for refund by a corporation resulting from an overpayment due to changes in taxable income made by the Internal Revenue Service, has been amended to extend the time from 30 days to 90 days from the date the Internal Revenue Service changes taxable income. This 90 day time period is in addition to the general limitation period that claims for refund must be filed within 3 years of a timely filed return or 2 years from the date of payment.

Effective Date: June 30, 1999, however, all liabilities incurred and rights accrued before June 30, 1999 are unaffected.

House Bill 3359, Section 4F, (Act No. A114)

### **Internal Revenue Code - New Innocent Spouse Provisions Adopted**

Code Section 12-6-50(14) lists certain Internal Revenue Code sections that South Carolina has specifically not adopted. This amendment clarifies that South Carolina has adopted Internal Revenue Code Section 6015, Relief for Joint and Several Liabilities on a Joint Return.

Effective Date: June 30, 1999

House Bill 3359, Sections 4G and 4H, (Act No. A114)

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

Code Section 12-6-3360, providing a job tax credit for certain businesses creating new full time jobs, allows a \$1,500 to \$5,500 credit per new job based, in part, on the number of new jobs created and where a taxpayer's facility is located. The amendments are:

1. Subsection (B) has been amended to clarify that the counties are ranked using the last 3 years of available per capita income data and the last 36 months or 3 years of available unemployment rate data. Previously, the counties were ranked using data from the most recent 36 month period.

2. Subsection (B)(5)(b) has been amended to clarify that a county in which an applicable military installation or applicable federal facility is located is allowed an additional increased credit designation for 5 years beginning with the year the installation or facility meets the requirements. This increased designation is in addition to any increased county designation provided in subsection (B)(5)(a). The Department issues an Information Letter ranking South Carolina counties for job tax credit purposes. The rankings published reflect the final county rankings for the year after making all adjustments to county designations required by statute.
3. Subsection (K), providing for the pass through of the credit to a shareholder of an S corporation, partner in a partnership, or member of a limited liability company taxed as a partnership, has been amended to clarify the pass through provisions. These amendments are:
  - a. To provide that the job tax credit is now allowed against taxes due under Section 12-6-530 (income taxes of corporations) and may not exceed 50% of the shareholder's, partner's, or member's tax liability under Sections 12-6-510 and 12-6-530. Previously, the statute provided for the pass through of the credit only to persons subject to tax pursuant to Section 12-6-510 (income of individuals, estates, and trusts.)
  - b. To clarify references to "taxpayer" in order to distinguish between the entity earning the credit and the shareholder, partner, or member to whom the credit is being passed through.
  - c. To clarify that limited liability company means a limited liability company taxed as a partnership.
  - d. To clarify that the credit earned by an S corporation owing corporate level income tax must be used first at the entity level. Only the remaining credit will pass through to each shareholder.
4. Subsection (M)(13), pertaining to a qualifying service-related facility that must create a required number of jobs with a certain average cash compensation level, has been amended to clarify that a taxpayer shall use the most recent per capita income data available as of the end of the taxable year in which the jobs are filled. Previously, the statute provided that the per capita income figures were based on the time the jobs were filled.

Effective Date: June 30, 1999, however, the amendment to Code Section 12-6-3360(M)(13) is effective for taxable years after 1998.

House Bill 3359, Section 4I, (Act No. A114)

**Certain Persons 65 and Older No Longer Required to File Income Tax Returns**

Code Section 12-6-4910, providing a list of persons who must file income tax returns, has been amended. As a result, an individual who meets the following requirements is no longer required to file a South Carolina income tax return:

1. An individual who has (1) a single, surviving spouse, or head of household federal filing status and (2) gross income less than the sum of the federal exemption amount, the standard deduction (increased as provided in Internal Revenue Code Section 63(c)(3) and 63(f)(1)(A) for the aged and blind), and any age 65 and older deduction that the taxpayer qualifies for under Section 12-6-1170(B).
2. An individual who has (1) a joint federal filing status and (2) combined gross income of less than the sum of: (a) twice the federal exemption amount, (b) the standard deduction if the individual and spouse had the same household at the close of the tax year (increased as provided in Internal Revenue Code Section 63(c)(3) and 63(f)(1)(A) for the aged and blind), and (c) any age 65 and older deduction the taxpayers qualify for under Section 12-6-1170(B).

Previously, the statute did not contain the provision pertaining to the addition of the qualifying age 65 and older deduction in determining whether a person was required to file a South Carolina income tax return.

Effective Date: Taxable years after 1998.

House Bill 3359, Section 5, (Act No. A114)

**Job Development Credit - Amended**

Under Chapter 10 of Title 12, job development credits are available to qualifying businesses approved by the Advisory Coordinating Council for Economic Development (“Council”) at the Department of Commerce. The following amendments affect the Council’s duties and obligations under the law:

1. Code Section 12-10-50 has been amended to provide that the Council shall determine that the negotiated incentives are appropriate for the project. Prior to this amendment, the Council determined that the available incentives were appropriate.

2. Code Sections 12-10-60 and 12-10-100(A) have been amended to add that the decision to enter into a revitalization agreement with a qualifying business is solely within the discretion of the Council and a business does not have a right of appeal from that decision.
3. Code Section 12-10-100(A) has been amended to replace the word “shall” with “may.” The statute now provides that the Council may establish criteria for the determination and selection of qualifying businesses and the approval of revitalization agreements.
4. Code Section 12-10-100(E) has been amended to delete the provision concerning the promulgation and effective date of regulations to implement the provisions of the chapter.

Effective Date: June 30, 1999

House Bill 3620, (Act No. A99)

### **First Steps to School Readiness Fund - Check Off on Individual Income Tax Return**

Code Section 12-6-5060 has been amended to provide for a designation on South Carolina’s individual income tax form enabling a taxpayer to make a contribution to the First Steps to School Readiness Fund. The First Steps to School Readiness Fund, created by Section 20-7-9740, was established to improve early childhood development. Funds will be used to support high-quality early childhood development and education services for preschool children.

Effective Date: June 28, 1999. The provisions of this act are repealed July 1, 2007, unless reauthorized by the General Assembly.

House Bill 3696, Part II, Section 23, (Act No. A100)

### **Volunteer Firefighter and Rescue Squad - New Deduction**

Code Section 12-6-1140 has been amended to add an income tax deduction for a volunteer firefighter or rescue squad member who earns a minimum number of performance based points set by the Fire Marshal pursuant to Code Section 23-9-190.

The deduction amount is as follows:

<b>TAX YEAR</b>	<b>DEDUCTION AMOUNT</b>
1999	\$ 300
2000	\$3,000
2001 and thereafter	Lesser of \$3,000 or the amount certified to the Department by the Board of Economic Advisors based on an individual income tax revenue loss from this deduction of \$3,100,000.

Further, Code Section 23-9-190(C) provides that the local fire chief or rescue squad leader must provide written records to each member and the Department by January 31 of the year following the applicable tax year that shows the points obtained. Each member's social security number must be included in the copies forwarded to the Department.

Effective Date: Taxable years beginning after 1998.

House Bill 3696, Part II, Section 24, (Act No. A100) and  
House Bill 3836, Section 19C, (Act No. A93)

### **Corporate Tax Moratorium - Amended**

Code Section 12-10-35 provides a 10 year, or in some cases a 15 year, moratorium on a corporation's corporate income tax that represents the ratio of the company's new investment to its total South Carolina investment, beginning with the taxable year after the taxpayer first qualifies.

The amendment in House Bill 3836 clarifies that the moratorium period is available for a qualifying taxpayer who: (1) creates at least 100 new full time jobs, as defined and determined in Code Section 12-6-3360, in a county with an 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 that county. The statute continues to provide that if a company creates at least 200 new full time jobs, the moratorium period is 15 years.

The amendment in House Bill 3696 expands the moratorium to also apply to a qualifying business that creates the required number of new jobs in a county which is one of the

three lowest per capita income counties based on the average of the three most recent years of average per capita income data and (2) places at least 90% of its investment in this State in that county.

Effective Date: Taxable years beginning after 1998. 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 3696, Part II, Section 28, (Act No. A100)

**Age 65 and Older Deduction Increased**

Code Section 12-6-1170(B), providing an income tax deduction against any South Carolina taxable income of a resident individual who is 65 or older by the end of the year, has been increased from up to \$11,500 to up to \$15,000. Taxpayers filing a joint return are allowed a deduction of up to \$15,000 (previously \$11,500) when only one spouse is 65 or older and up to \$30,000 (previously \$23,000) when both spouses are 65 or older by the end of the tax year. Amounts deducted as retirement income under Code Section 12-6-1170(A), not including amounts deducted as a surviving spouse, continue to reduce this age 65 and older deduction.

Effective Date: Taxable years beginning after 1998.

House Bill 3696, Part II, Section 57, (Act No. A100)

**Allocation and Apportionment Alternative Methods - Changes**

Code Sections 12-6-2320(B)(1) and (2), concerning the use of an alternative method of allocating or apportioning income for a period not to exceed 5 years for qualifying taxpayers establishing a new facility or expansion of a facility that is certified by the Advisory Coordinating Council for Economic Development, has been expanded. Code Section 12-6-2320(B)(3) has been added to provide that, notwithstanding the provisions of Code Section 12-6-2320(B)(1), the Department may enter into an agreement with a taxpayer meeting the requirements listed below to use a method other than the statutorily

prescribed method for apportioning or allocating its South Carolina taxable income for a period not to exceed 10 years:

1. A taxpayer must be planning a new facility in this State or an expansion of an existing facility that results in: (1) a total investment of \$10 million or more and (2) the creation of 200 new full time jobs with an average cash compensation level of more than three times the per capita income of the State at the time the jobs are filled which must be within 5 years of the Advisory Coordinating Council for Economic Development's certification;
2. The Department must agree by contract to the use of the new method; and
3. The Advisory Coordinating Council for Economic Development certifies that the new facility or expansion will have a significant beneficial economic effect on the region for which it is planned and that its benefits to the public exceed its costs to the public.

Effective Date: Applies to contracts entered into with the Department on or after January 1, 1999.

House Bill 3696, Part II, Section 73, (Act No. A100)

### **College Tuition Tax Credit - Changes**

Code Section 12-6-3385, providing a refundable individual income tax credit for tuition paid to a South Carolina institution of higher learning for students graduating from high school during or after May 1997 and meeting other requirements, has been amended. The amendments are:

1. A student is now defined, in part, as an individual that meets all other provisions of the law who at the end of the taxable year for which the credit is claimed has completed at least 30 credit hours each year, or its equivalent, as determined by the Commission on Higher Education. Previously, the law required the student complete at least 15 credit hours a semester, or its equivalent, as determined by the Commission on Higher Education, for every regular semester ending during the applicable taxable year.
2. A student who has been adjudicated delinquent or been convicted of, or pled guilty or nolo contendere to, an alcohol or drug related misdemeanor is now only ineligible for the tuition tax credit for the taxable year in which the adjudication, conviction, or plea

occurred. Previously, the student would be ineligible for all years. A student who has been adjudicated delinquent or been convicted of, or pled nolo contendere to, any felonies, including any alcohol or drug related offense, continues to be ineligible for the tuition tax credit.

3. For the 1998 tax year, the Department must recognize a tax credit for an individual paying the tuition for a student who, during the fall semester, completed a minimum of 15 hours, or its equivalent, as determined by the Commission on Higher Education. Previously, a student who took less than 15 hours in the spring 1998 semester and 15 or more hours, or its equivalent, in the fall 1998 semester would not qualify for the credit in 1998.

Effective Date: June 30, 1999

House Bill 3696, Part II, Section 95, (Act No. A100)

### **Habitat Management Credit**

Code Section 12-6-3520 has been added to provide an income tax credit equal to 50% of the costs incurred for habitat management or construction and maintenance of improvements on real property that are made to land described in Section 50-15-55(A) as a certified management area for endangered species or of species in need of management and which meets the requirements of regulations promulgated by the Department of Natural Resources.

The amount of credit allowed a shareholder, partner, or member of a limited liability company is equal to the shareholder's percentage of stock ownership, partner's interest in the partnership, or member's interest in the limited liability company for the taxable year multiplied by the amount of credit the entity would have been entitled to if it were taxed as a corporation. The credit must be claimed in the year that the costs are incurred and may not exceed 50% of the taxpayer's income tax liability. Any credit generated by an S corporation must be used first against any tax liability of the S corporation and any remaining credit passes through to the shareholders. Any unused credit can be carried forward 10 years.

For a taxpayer to qualify for the credit, Code Section 12-6-3520(B) provides that all costs must be incurred on land that has been designated as a certified management area for endangered species provided in Code Section 50-15-40 or for nongame and wildlife species determined to be in need management under Code Section 50-15-30.

Code Section 12-6-3520(D) provides for recapture of the credit. If the landowner voluntarily chooses to leave the agreement made concerning the certified areas after taking the tax credit, then the taxpayer's tax liability must be increased by the full amount of the credit previously claimed.

Effective Date: July 1, 1999, only if sufficient funding, in the opinion of the Department, is available to fund the credit.

House Bill 3836, Section 15A, (Act No. A93)

### **Infrastructure Credit Against License Fee - Expanded**

Code Section 12-20-105 allows certain transportation providers, utilities, electric cooperatives, and telephone companies a credit against license fees for amounts paid in cash to provide infrastructure for an eligible project. Code Section 12-20-105(C) has been amended to expand the definition of the term "infrastructure" for an eligible project defined in Code Section 12-20-105(B)(2) (*i.e.* an office, business, commercial, or industrial park which is constructed by a county or political subdivision in this State) to include industrial shell buildings and the purchase of land for an office, business, commercial, or industrial park which is constructed by a county or political subdivision of this State.

Effective Date: June 11, 1999

House Bill 3836, Section 16, (Act No. A93)

### **Tire Manufacturers - New Job Development Credit**

The Enterprise Zone Act of 1995 and the Rural Development Act of 1996, contained in Chapter 10 of Title 12, provide a job development credit to new or expanding companies that invest in South Carolina by allowing them to receive a portion of South Carolina employee withholding for approved business uses. The requirements to qualify for the benefits are contained in Code Section 12-10-50 and include entering into a revitalization agreement with the Advisory Coordinating Council for Economic Development ("Council") at the Department of Commerce.

Code Section 12-10-81 has been added to allow the Council to approve job development credits for a business that qualifies under Code Section 12-10-50 and who:

1. Is a tire manufacturer;

2. Has more than \$425 million in capital invested in South Carolina and employs more than 1,000 people in South Carolina; and
3. Commits within a period of 5 years from the date of a revitalization agreement to invest an additional \$350 million and create an additional 350 jobs in this State pursuant to current or future revitalization agreements. The Council may extend the 5 year period for two additional years.

Under this provision, a qualifying tire manufacturer may claim a job development credit equal to 2% to 5% of the gross wages of each new employee (based on their hourly wage amount) plus the increase in the state sales and use tax of the business from the year of the effective date of its revitalization agreement pursuant to this section and subsequent years, over its state sales and use tax for the first of the three years preceding the effective date of this revitalization agreement.

A company that qualifies under this provision may place its job development credits in an escrow account prior to meeting its minimum job and minimum capital requirements. The statute of limitations for assessing withholding taxes is suspended during the period that the taxpayer has for completing the project.

Effective Date: Taxable years beginning after 1998, however, no business shall be entitled to any benefits under a revitalization agreement entered into under this section before July 1, 2000.

House Bill 3836, Section 19A, (Act No. A93)

### **Job Tax Credit - Definition of “New Job” Expanded**

Code Section 12-6-3360(M)(3) has been amended to expand the definition of the term “new job.” The term now includes an existing job at a facility of an employer which is reinstated after the employer has rebuilt the facility due to involuntary conversion as a result of condemnation or exercise of eminent domain by the State, political subdivisions of the State, or the federal government.

Involuntary conversion as a result of condemnation or exercise of eminent domain includes a legally binding agreement for the purchase of a facility of an employer entered into between an employer and the State or a political subdivision of the State under threat of exercise of eminent domain by the State or its political subdivision.

Effective Date: Taxable years after 1998.

House Bill 3836, Section 19B, (Act No. A93)

### **Job Development Credit - “New Job” Defined**

Code Section 12-10-30, providing definitions of terms used in the job development credit, has been amended to add a definition of “new job.” A “new job” is defined as a job created or reinstated as defined in Section 12-6-3360(M)(3), the job tax credit statute.

Effective Date: Taxable years after 1998.

## **REMINDERS**

**THE FOLLOWING ACTS WERE ENACTED IN 1998, BUT DID NOT BECOME EFFECTIVE UNTIL 1999. THEY ARE SUMMARIZED BELOW FOR INFORMATIONAL PURPOSES.**

House Bill 3069 of 1998, (Act No. 358)

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

South Carolina Code Section 12-6-3510 was added to provide for two nonrefundable income tax credits. These credits are for investments in: (1) a qualified South Carolina motion picture project and (2) a motion picture production facility. Credits may be claimed for qualifying investments made in tax years beginning after December 31, 1998. These credits, 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.

The two credits are briefly summarized as follows:

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. A taxpayer’s total credit for a project is limited to \$15,000 for all 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 motion picture production facility is limited to \$5 million for all years.

See South Carolina Revenue Ruling #99-10 for further information.

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 4700 of 1998, Part II, Section 62, (Act No. 419)

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

Code Section 12-8-520(D) was 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 of 1998, Section 3 , (Act No. 387)

### **Withholding Exemption Certificates - New Verification Requirements**

Code Section 12-8-1030, concerning incorrect withholding exemption certificates, was 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.

Effective Date: October 1, 1998, however, by March 31, 1999, an employer must have reviewed all withholding exemption certificates submitted before October 1, 1998 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.

# PROPERTY TAXES AND FEES IN LIEU OF PROPERTY TAXES

Senate Bill 11, (Act No. A130)

## **Personal Motor Vehicle Relief - Proposed Constitutional Amendment**

This joint resolution proposes an amendment to Section 1(8), Article X of the South Carolina Constitution to establish a separate class of property for property tax purposes consisting of personal motor vehicles (passenger motor vehicles and pick-up trucks) which must be titled by a state or federal agency. Under the amendment, the property would be assessed at a rate of 9.75% of fair market value for the first year and would decline in equal reductions of .75% to a permanent assessment ratio of 6% in the sixth year and thereafter.

Effective Date: Property tax years beginning after 2001 or earlier tax years as the General Assembly provides by law if approved by the voters and ratified by the General Assembly.

House Bill 3037, Section 1, (Act No. A109)  
(See also House Bill 3836, Section 11, (Act No. A93))

## **Tax Increment Financing for Counties**

House Bill 3037, Section 1, (Act No. A109) was enacted in Chapter 7 of Title 31. See the discussion of House Bill 3836, Section 11, (Act No. A93) that enacted the same provision but in Chapter 33 of Title 6. House Bill 3836, Section 11, was effective June 11, 1999.

Effective Date: June 30, 1999

House Bill 3037, Sections 2 and 3, (Act No. A109)  
(See also House Bill 3836, Sections 17 and 18, (Act No. A93))

### **Municipal Tax Increment Financing - Amendments**

House Bill 3836, Sections 17 and 18, replaced an identical amendment enacted in House Bill 3037, Sections 2 and 3.

Effective Date: June 30, 1999

House Bill 3332, (Act No. A11)

### **Tax Increment Financing - Constitutional Amendment**

This Act ratifies an amendment to Section 14(10), Article X of the South Carolina Constitution, prepared under the terms of a joint resolution in 1998, authorizing counties to use tax increment financing to fund redevelopment projects subject to the General Assembly providing a law for implementing tax increment financing.

House Bill 3836, Section 11, Act No. A93, and House Bill 3037, Section 1, Act No. A109, implement tax increment financing for counties. Municipalities already have the ability to use tax increment financing pursuant to Chapter 6 of Title 31. See the summary of House Bill 3836, Section 11, below.

Effective Date: March 17, 1999

House Bill 3359, Section 1, (Act No. A114)

### **Motor Home May Qualify as Residence**

Code Section 12-37-224 has been added to provide that a motor home may qualify as a primary or secondary residence for purposes of ad valorem taxation in this State and treated as real property if the interest portion of indebtedness on the motor home is deductible under the Internal Revenue Code as an interest expense on a qualified primary or secondary residence. A motor home that is a primary residence qualifies for the 4% assessment ratio and a motor home that is a secondary residence qualifies for the 6% assessment ratio.

Effective Date: Property tax years beginning in 1999.

House Bill 3359, Section 3I, (Act No. A114)

### **Estimates of Total School Revenue Lost No Longer Prepared by Department**

Code Section 12-37-251(F), providing for the estimate of total school revenue lost as a result of the exemption for school operating costs, has been amended to provide that the Economic Research Section of the Budget and Control Board is responsible for providing these estimates. Prior to this amendment, these estimates were determined by the Department.

Effective Date: June 30, 1999

House Bill 3359, Sections 4B, 4C, and 4V, (Act No. A114)

### **Fee In Lieu of Property Taxes Replacement Property**

Code Sections 4-12-30(F)(2)(a), 4-29-67(F)(2)(a), and 12-44-60, addressing replacement property in fee in lieu transactions under the “Little Fee,” “Big Fee,” and “Simplified Fee” respectively, have been amended to provide that replacement property is deemed to replace the oldest property subject to the fee, whether real or personal, which is disposed of in the same tax year as the replacement property is placed in service.

Effective Date: Sections 4B and 4C pertaining to the Little Fee and Big Fee are effective for property tax years beginning after 1998 and Section 4V pertaining to the Simplified Fee is effective June 30, 1999.

House Bill 3359, Section 4D, (Act No. A114)

### **Special Source Revenue Bond Provision Expanded**

Code Section 4-29-68(F), addressing the use of special source revenue bonds to fund improvements, has been amended to expand its provisions to include the “Little Fee” and the “Simplified Fee.” Now a county, municipality, or special purpose district that receives and retains revenue from a fee in lieu of taxes pursuant to Code Sections 4-1-170, 4-12-30 (“Little Fee”), 4-29-60, 4-29-67 (“Big Fee”), or Chapter 44, Title 12 (“Simplified Fee”) in which the revenues are derived from a redevelopment project area established pursuant to Title 31, Chapter 6 (involving areas established for tax increment financing by municipalities) shall allocate these revenues in accordance with the ordinance of the

municipality adopted pursuant to Section 31-6-70 as if those revenues remained ad valorem taxes.

Effective Date: Property tax years beginning after 1998.

House Bill 3359, Section 4E, (Act No. A114)

### **Receipts Provided to County Treasurer**

Code Section 11-1-10, addressing receipts given by an officer of South Carolina or his agent, employee, or servant who collects delinquent taxes, fines, or other monies due the county or State, has been amended to provide that an officer or employee of the Department may turn in only those documents and reports that are required by the rules and regulations promulgated by the Department's director. Previously, Department employees were required to keep a stub similar to the receipt and turn it over to the county treasurer of the county in which the collections were made.

Effective Date: Property tax years beginning after 1998.

House Bill 3359, Section 4W, (Act No. A114)

### **Millage Rate Limitation**

Code Section 6-1-320, addressing limitations on increases in a millage rate, has been amended to provide that a local governing body may increase the millage rate imposed for general operating purposes above the rate imposed for such purposes for the preceding tax year only to the extent of the increase in the consumer price index for the preceding calendar year. Prior to this amendment, this increase was based on the preceding fiscal year.

Effective Date: Property tax years beginning after 1998.

House Bill 3359, Section 4X, (Act No. A114)

**1999 Index of Taxpaying Ability**

The Department may amend the 1999 Index of Taxpaying Ability, as defined in Section 59-20-20(3).

Effective Date: June 30, 1999

House Bill 3639, (Act No. A198)

**Greenwood County - Distribution of Levy**

In Greenwood County, three mills of the countywide property tax levied for school operating purposes must be distributed to the school district with the lowest assessed value. Previously, one mill of the countywide property tax was distributed to this school district.

Effective Date: Beginning with the 1999-2000 school year.

House Bill 3696, Part II, Section 20, (Act No. A100)

**Fee in Lieu Investment Reduced for Certain Counties**

Code Sections 4-12-30(B)(3) (“Little Fee”) and 12-44-30(14) (“Simplified Fee”) have been amended to reduce the minimum level of investment to \$1 million to qualify for fee in lieu of property taxes in a county that has an average annual unemployment rate of at least twice the state average during each of the last two completed calendar years. The minimum level of investment in counties that do not meet this unemployment rate figure remains at \$5 million for the “Little Fee” and “Simplified Fee,” and \$45 million for the “Big Fee” in Code Section 4-29-67.

Effective Date: June 30, 1999

House Bill 3696, Part II, Section 51, (Act No. A100)

**School District Reimbursement for Homestead Exemption for School Operations**

Code Section 12-37-251(B), providing for reimbursement of school districts for revenue lost as a result of the homestead exemption for school operations, has been amended.

The changes are:

1. It has been clarified that the Comptroller General must make the calculations and distributions required.
2. If amounts received by a school district are insufficient to reimburse fully for the base year operating millage (the lower of the 1995 tax year school operating millage or the current school operating millage), the local school board shall decide how to make up the shortfall. If there is an excess of funds distributed, the excess must be used to reduce any operating millage imposed since the 1995 base year and then used for school debt purposes. Any funds remaining thereafter may be retained by the school district.
3. School districts are to be reimbursed on a per capita basis, but the reimbursement for a fiscal year may not be less than the actual reimbursement received in fiscal year 1998-1999. If amounts credited to the Trust Fund for Tax Relief for any fiscal year are insufficient to pay the full amount of reimbursements, then all amounts credited to the Trust Fund for a fiscal year for this reimbursement that exceed the amount of the reimbursements paid in 1998-1999 must be allocated only to those districts receiving less than the full per capita reimbursement. This allocation must be on a per capita basis among only those counties receiving some part of the allocation.

Effective Date: Property tax years beginning after 1998.

House Bill 3696, Part II, Section 59, (Act No. A100)

**Transfer of Real Property to a Church**

Code Section 12-37-220, containing general exemptions from property tax, has been amended to add a subsection that provides that the property tax liability of a person selling real property to a church will end once the church acquires the real property that will be exempt from property taxes when owned by the church.

The property taxes that have accrued up to the date of the acquisition by the church must be paid to the county within 30 days of the date of transfer. If the millage has not been set for the year, the county auditor shall apply the previous year's millage in determining any taxes owed by the transferor. If the millage has been determined, then the current year's millage will be applied. The statute further provides that all taxes, assessments, penalties, and interest on the property acquired by a church are a first lien on such property.

Effective Date: Property tax years beginning after 1997.

House Bill 3696, Part II, Section 66, (Act No. A100)

### **Motor Carrier Vehicles**

Code Section 12-37-2830, pertaining to the determination of value of motor carrier vehicles, has been amended to delete the word "entire." The value of a motor carrier's vehicles subject to property taxes in South Carolina must be determined based on the ratio of total mileage operated within the State during the preceding calendar year to the total mileage of its fleet operation within and without this State during the preceding calendar year.

Effective Date: Calendar years after December 31, 1998.

House Bill 3696, Part II, Section 91, (Act No. A100)

### **Legal Residence Assessed at 4% for Entire Year**

Code Section 12-43-220(c) has been amended to provide that a residence which has been qualified as a legal residence for any part of a year is entitled to the 4% assessment ratio for the entire year, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 for the entire year, and for the homestead exemption under Section 12-37-250, if otherwise eligible, for the entire year. Previously, the 4% assessment ratio applied only for the portion of the year that the residence qualified as a legal residence and a 6% assessment ratio applied for the remaining portion of the year.

The provision concerning the application that the taxpayer must file to get the 4% assessment ratio has been clarified. In addition to the required information, the applicant must now certify that neither the applicant nor any member of the applicant's household

is residing in or occupying any other residence in South Carolina which the applicant or his immediate family has qualified for the 4% assessment ratio.

Effective Date: Property tax years beginning after 1998.

House Bill 3696, Part II, Section 111, (Act No. A100)

### **Personal Motor Vehicle Tax Relief**

Code Section 12-37-2735, establishing the Personal Property Tax Relief Fund, has been added. The fund, credited with \$20 million for a fiscal year, must be used to make allocations to the counties for the purpose of reducing the ad valorem tax on personal motor vehicles.

Monies in the fund must be divided and allocated to a separate account for each county based on a ratio equal to the total number of personal motor vehicles registered in a county divided by the total number of personal motor vehicles registered statewide at the close of the preceding calendar year or fiscal year as determined by the State Treasurer.

Allocations from the fund must be distributed to eligible persons within each county in an equitable manner based on the fair market value of the vehicle.

Effective Date: June 30, 1999

House Bill 3698, (Act No. A119)

### **Real Property Value Increases Can Be Limited**

This joint resolution adds Code Section 12-37-223 to authorize the governing body of a county, by ordinance, to exempt an amount of fair market value of real property located in the county sufficient to limit to 15% any valuation increase attributable to a reassessment program conducted pursuant to Code Section 12-43-217. The county can cap the increase in value attributable to real property to 15% of its value as it existed at the time of the last reassessment. The cap in the increase does not apply to:

1. Property valued by the unit valuation method;

2. Value attributable to property or improvements that have not been previously taxed, such as new construction and renovations of existing structures; and
3. Property transferred after the implementation of the most recent reassessment, pursuant to Section 12-43-217, however, property transfers that are not subject to income tax under Internal Revenue Code Sections 102, 351, 355, 368, 721, 1031, 1033, or 1041 are not subject to this exception.

The assessed value of the property, not the capped value, is used for purposes of any formula using assessed value to determine state aid to school districts for public education and computing the bonded indebtedness limit for a political subdivision or school district. The ordinance may be given retroactive effect, but shall not affect taxes due prior to its enactment.

Effective Date: June 30, 1999. House Bill 3836, Section 12A, (Act No. A93) contained a different provision concerning the 15% cap on increases of real property value but was replaced by House Bill 3698 (Act No. A119) before it could be implemented by the counties.

House Bill 3725, (Act No. A20)

### **Additional Portion of Ashley River Designated as “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 downstream to the Highway 526 bridge crossing of the Ashley River 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 under Code Section 49-29-100. The taxpayer may deduct from South Carolina income taxes the fair market value of the easement granted pursuant to Code Section 49-29-100.

Effective Date: May 3, 1999

House Bill 3777, (Act No. A173)

**Aiken County School District Tax Millage**

A tax millage of up to 94 mills is authorized to be levied for the operations of the school districts of Aiken County as determined by the governing board of the district. Beginning with 1999 and each year thereafter, the district may increase the millage above the millage levied in the preceding year as the governing board of the district determines is reasonable and necessary for the operation of the school district.

Act No. 268 of 1989, authorizing a levy of 84 mills for the Aiken County School District, and Act No. 579 of 1994, authorizing the levy of an additional 10 mills above that levied for 1993 provided that certain conditions were met, have been repealed.

Effective Date: June 16, 1999

House Bill 3833, Section 2, (Act No. A121)

**Historic Preservation Property - Additional Exemption**

Code Section 12-37-220(B)(42) has been added to provide an additional exemption for real property of charitable trusts and foundations held for historic preservation. All real property which extends beyond the building and premises actually occupied by the charitable trusts or foundations which own the real property will be exempt from property taxes if:

1. The property is held for the historic preservation of forts and battlegrounds;
2. No profit or benefit from any operations on the property inures to any private stockholder or individual; and
3. No income producing ventures are located on the property.

This exemption does not change any exemption provided in Code Section 12-37-220(A)(4) or Section 3, Article X of the South Carolina Constitution.

Effective Date: June 30, 1999

House Bill 3836, Section 11, (Act No. A93)  
(See also House Bill 3037, Section 1, (Act No. A109))

## **Tax Increment Financing for Counties**

In 1998, a constitutional amendment passed to allow counties to use tax increment financing to finance the improvement of redevelopment project areas subject to the General Assembly providing implementing legislation. Chapter 33 of Title 6 has been added by House Bill 3836, Section 11, to enact the “Tax Increment Financing Act for Counties.” House Bill 3037, Section 1, enacted Chapter 7 of Title 31 to enact the same provisions. This Act provides rules for a county using tax increment financing to improve a redevelopment project area.

The legislation includes numerous details and requirements. Only the main points are summarized below. A complete copy of the legislation can be found at the South Carolina Legislative Council’s website at [www.lpittr.state.sc.us](http://www.lpittr.state.sc.us). Questions concerning disbursements under the tax increment financing law should be directed to the Comptroller General.

In order to use tax increment financing, a county must pass an ordinance designating an area as a “redevelopment project area.” The county may issue obligations to fund improvements in the area, and may service those obligations from the property taxes attributable to the incremental increase in the value of the real property located within the redevelopment project area. An area must be classified as a blighted area, conservation area, or sprawl area, or combination of two or three of them, in order to be a redevelopment project area. Code Sections 6-33-30(8) and 31-7-30(8). The total aggregate amount of all redevelopment project areas of any county may not exceed 5% of the total acreage of the county.

As provided in Code Sections 6-33-30(1) and 31-7-30(1), a “blighted area” is any improved or vacant area within the boundaries of the redevelopment project where future growth of the area is jeopardized by certain factors. A “conservation area” is any vacant or improved area within the boundaries of a redevelopment project area that is not yet blighted, but because of a combination of factors, is detrimental to public safety, health, morals, or welfare and may become a blighted area. Code Sections 6-33-30(2) and 31-7-30(2). A “sprawl area” is a vacant or improved area within the boundaries of a redevelopment project which is one of the following: (a) an unincorporated area of the county that has a population density equal to the average population density in the incorporated municipalities of the county; (b) a limited geographical zone where due to development in the zone, vehicular and pedestrian traffic is impeded; or (c) land which if

provided with infrastructure could be developed as a planned community. Code Sections 6-33-30(3) and 31-7-30(3).

All redevelopment project areas must have a redevelopment plan. The plan is the comprehensive program for the redevelopment area which must include information about the redevelopment projects to be completed in the area and the source for servicing any obligation that is issued to fund redevelopment. Code Sections 6-33-30(6) and 31-7-30(6). It must also include information about the redevelopment costs. Redevelopment costs are all reasonable or necessary costs incurred or estimated to be incurred in connection with a redevelopment project. Code Sections 6-33-30(9) and 31-7-30(9).

Before adopting a redevelopment plan, the governing body must hold a hearing on the redevelopment plan. Code Sections 6-33-80(B) and 31-7-80(B). At least 45 days prior to the public hearing, the county must give notice of the hearing to all taxing districts that are within the redevelopment project area and allow them to submit comments concerning the redevelopment plan. If a taxing district does not file an objection to the redevelopment plan, they are deemed to have consented to the plan. Under the provisions of Code Sections 6-33-80 and 31-7-80, if they do file an objection, then that taxing district's portion of the distribution of tax monies from the redevelopment project area may not be used to fund redevelopment costs. Code Sections 6-33-80(C) and 31-7-80(C). The redevelopment plan must include information concerning the displacement impact on persons that would be displaced by the redevelopment. Code Sections 6-33-90 and 31-7-60.

Once a county has designated the redevelopment project area and has adopted a redevelopment plan, the county may by ordinance provide for the issuance of obligations to help fund redevelopment costs. A certified copy of the ordinance authorizing the issuance of the obligations must be filed with the treasurer of the county. Code Sections 6-33-40 and 31-7-40. The obligations, income from the obligations, and security agreements and indentures executed as security for the obligations are exempt from all South Carolina taxes, except for inheritance, estate and transfer taxes. Code Sections 6-33-60 and 31-7-60. If five years pass from the date a redevelopment project area is designated, and no obligations have been issued, the county must, by ordinance, terminate the designation of the redevelopment project area.

In order to fund the obligations, the county will set up a special tax allocation fund. Pursuant to Code Sections 6-33-100 and 31-7-100, if the county approves the redevelopment plan, the auditor is required to certify the equalized assessed value of all taxable real property within the redevelopment project area (known as the initial equalized assessed value) and must certify the total initial equalized assessed value for all real property in the redevelopment project area. Thereafter, any revenues generated by a

property tax that is attributable to the increase in the value of the property in the redevelopment area is allocated to the special tax allocation fund (except any amount of incremental property tax that is attributable to a taxing district that did not agree to the redevelopment plan as provided in Code Sections 6-33-80(C) and 31-7-80(C)). Under Code Sections 6-33-70 and 31-7-70, the property tax that is attributable to the total initial equalized assessed value is distributed to all the tax districts in the redevelopment area in accordance with the distribution that occurs for property tax purposes. If the redevelopment plan includes residential development and there is likely to be an increase in public school enrollment because of the redevelopment plan, then a certain amount of funds (based on estimated school enrollment) is not credited to the special tax allocation fund, but is allocated to the affected school district. Code Sections 6-33-80(D) and 31-7-80(D).

Once the obligations have been retired and the redevelopment costs paid, any excess monies that are not used to fund redevelopment costs are allocated to the taxing districts based on the distribution that occurs for property tax purposes. Once the obligations have been paid in full, the county council will adopt an ordinance dissolving the special tax allocation fund for the redevelopment project.

Effective Date: June 11, 1999. This same provision was also enacted in House Bill 3037, Section 1, (Act No. A109) but in Chapter 7 of Title 31. House Bill 3037 is effective June 30, 1999.

House Bill 3836, Section 12B, (Act No. A93)

### **Delays on Assessments**

Code Section 12-43-417, regarding a required reassessment every five years, has been amended to allow a county, by ordinance, to postpone the implementation of the revised values that result from a reassessment for one property tax year. The delay applies to state assessed real property as well as property that is assessed by the county. The postponement of the implementation of the new values does not, however, postpone the five year period for conducting reassessments.

Effective Date: July 1, 1999

House Bill 3836, Section 15C, (Act No. A93)

### **Depreciation for Certain Electronic Devices - Expanded**

Item 6(c) in Code Section 12-37-930, which provides a 30% depreciation rate for machinery and equipment of manufacturers of electronic interconnection component assembly devices for computers and computer peripherals used in the conduct of the manufacturing business, has been amended to allow the 30% depreciation rate for the manufacture of semiconductors and semiconductor devices, flat panel displays, and liquid crystal displays. It includes these devices when incorporated into computers or computer peripherals, or other electronic control applications, and telecommunications devices. Further, the statute now provides that computer peripherals include routers and servers.

Effective Date: Taxable years beginning after 1998.

House Bill 3836, Section 15D, (Act No. A93)

### **Depreciation for Clean Rooms**

Code Section 12-37-930, which provides depreciation rates for manufacturer machinery and equipment used in the conduct of the manufacturing business, has been amended to add a 10% annual depreciation rate for Class 100 or better (as defined in Federal Standard 209E) clean room modules and associated mechanical systems, process piping, wiring and environmental systems, and water purification systems.

Effective Date: Taxable years beginning after 1998.

House Bill 3836, Sections 17 and 18, (Act No. A93)

(See also House Bill 3037, Sections 2 and 3, (Act No. A109))

### **Municipal Tax Increment Financing - Amendments**

The municipal tax increment financing law, allowing municipalities to use property taxes that result from the incremental increase in value of real property in blighted and conservation areas to fund redevelopment in that area, has been amended. The changes are:

1. The definition of a “redevelopment project” in Code Section 31-6-30(6) has been amended to provide that the project must be publicly owned. Previously, the statute provided that the project must be owned by the municipality.

2. The definition of “taxing district” in Code Section 31-6-30(9) has been amended to include school districts which have taxes levied on their behalf.
3. Code Section 31-6-80 has been amended to provide that the municipality may issue obligations to finance the redevelopment project to the extent that each affected taxing district consents to the redevelopment plan. If a taxing district does not consent to the redevelopment plan, then the tax increment attributable to that district must not be included in the special tax allocation fund. Previously, a district that did not consent would be included in the special tax allocation fund for only the first 15 years after the issuance of obligations.
4. Code Section 31-6-80 has been amended to provide that certain changes to the redevelopment plan must be approved by resolution of each affected tax district. Previously, these changes had to be approved only by ordinance of the municipality.

Effective Date: June 11, 1999. This amendment replaced an identical amendment enacted in House Bill 3037, Sections 2 and 3, (Act No. A109). House Bill 3037 was effective June 30, 1999.

House Bill 3856, (Act No. A188)

**Dillon County - Additional Tax Levy**

This joint resolution provides that the auditor of Dillon County shall levy 117 mills on all taxable property of the county for fiscal year 1999-2000 for school purposes.

Effective Date: June 16, 1999

House Bill 3963, (Act No. A206)

**Richland-Lexington School District 5 Equivalent Millage**

If a property tax equalization and reassessment occurs in a particular year in taxing districts in one county of Richland-Lexington School District 5, but not the other, then the school board of trustees must set an equivalent millage to be used to compute the ad valorem property taxes in the taxing districts where the reassessment is occurring until a

reassessment occurs in the other county. The purpose of this Act is to equalize the tax burdens within this school district.

The methodology used to calculate the millage shall be established by the respective county auditors and must be consistent with the methodology used to calculate equivalent millage pursuant to Code Section 12-37-251.

In computing equivalent millage for purposes of the exemption for school operations for Richland-Lexington School District 5, the equivalent millage calculation is made on a taxing district basis rather than a school district basis.

Effective Date: June 30, 1999

# SALES AND USE TAXES

Senate Bill 684, (Act No. 178)

## **Berkeley County 1% Sales & Use Tax**

The Berkeley County School District School Bond - Property Tax Relief Act has been enacted. The Act allows the governing body of the Berkeley County School District to impose, by referendum, a 1% sales and use tax within Berkeley 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: June 30, 1999

House Bill 3359, Section 3H, (Act No. A114)

### **Special Event Sales Tax Return - Technical Correction**

Code Section 12-36-510(C) has been amended to delete from the definition of the term “special event,” a festival listed in the calendar of events provided by the South Carolina Department of Parks, Recreation and Tourism. This correction was made since the Department of Parks, Recreation and Tourism no longer publishes this calendar of events.

Effective Date: June 30, 1999, however, all liabilities incurred and rights accrued before June 30, 1999 are unaffected.

House Bill 3359, Section 4O, (Act No. A114)

### **Individual Sales of LP Gas - Exempt**

Code Section 12-36-2120(33), which exempts from the sales tax electricity, natural gas, fuel oil, kerosene, LP gas, coal, or any other combustible heating material or substance used for residential purposes, has been amended to provide that individual sales of LP gas of 20 gallons or less by retailers are considered used for residential heating purposes.

Effective Date: June 30, 1999

House Bill 3696, Part II, Section 30, (Act No. A100)

**Bad Debts Not Subject to Sales Tax**

Code Section 12-36-90, which defines the term “gross proceeds of sales,” has been amended to exclude from the sales tax the sales price, not including sales tax, of property on sales which are actually charged off as bad debts or uncollectible accounts for state income tax purposes.

A taxpayer who pays the tax on the unpaid balance of an account which has been found to be worthless and is actually charged off for state income tax purposes may take credit for the tax paid on a return filed pursuant to this chapter, except that if an amount charged off is later paid in whole or in part to the taxpayer, the amount paid must be included in the first return filed after the collection and the tax paid.

Effective Date: For debt incurred after 1999.

House Bill 3836, Sections 2, 3, 4, and 5, (Act No. A93)

**Capital Projects Sales Tax - Miscellaneous Changes**

The Capital Projects Sales Tax Act, allowing a governing body to impose a 1% sales and use tax to defray the debt service on bonds issued to pay for authorized capital projects, has amended as follows:

1. Code Section 4-10-330(E) has been amended to change the date a county election commission must certify the results of a referendum on the tax to the county governing body and the Department from December 31 to November 30.
2. Code Sections 4-10-350(C), (D), and (E), concerning the reporting requirements of taxpayers remitting the tax, have been amended to provide that a taxpayer remitting the capital projects tax to the Department must identify the county in which the transaction occurred. The taxpayer no longer needs to identify the municipality where the transaction occurred.
3. Code Section 4-10-360 has been amended to add that allocations to counties of capital projects tax revenue made as a result of city or county code errors must be corrected prospectively.

4. Code Section 4-10-380 has been added to provide that funds collected by the Department from the capital project sales tax which are not identified as to the governmental unit due the tax, must be transferred to the State Treasurer's Office annually in June, after the Department has made reasonable effort to determine the appropriate governmental unit. The Treasurer shall calculate this supplemental distribution on a proportional basis, based on the current fiscal year's county area revenue collections.

Effective Date: June 11, 1999

House Bill 3836, Sections 6 and 7, (Act No. A93)

**Transportation Facilities Tax - Miscellaneous Changes**

The statute allowing a governing body of a county to raise revenue for a transportation project by either imposing a 1% sales and use tax or by authorizing a transportation authority created by the county governing body to impose tolls has been amended as follows:

1. Code Section 4-37-30(A)(4) has been amended to change the date that a county election commission must certify the results of a referendum on the tax to the county governing body and the Department to no later than November 30 after the date of the referendum. Previously, the certification was due no later than 60 days after the referendum date.
2. Code Section 4-37-30(A)(4) has been amended to change the effective date of the tax approved by the qualified electors from the first day of the month occurring 180 days after the referendum to the first day of May following the referendum date.
3. Code Section 4-37-30(A)(15) has been amended to provide that allocations to counties as a result of city or county code errors must be corrected prospectively.
4. Code Section 4-37-50 has been added to provide that funds collected by the Department from the transportation facility tax, which are not identified as to the governmental unit due the tax, must be transferred to the State Treasurer's Office annually in June, after reasonable effort by the Department to determine the appropriate governmental unit. The Treasurer shall calculate this supplemental distribution on a proportional basis, based on the current fiscal year's county area revenue collections.

Effective Date: June 11, 1999

House Bill 3836, Section 8, (Act No. A93)

**Cherokee County School District 1 Bond - Miscellaneous Changes**

Act 588 of 1994, allowing the imposition of a 1% optional sales and use tax to pay debt service on general obligation bonds issued to defray costs of specified improvements for Cherokee County School District One, has been amended as follows:

1. Section 6(A) has been amended to provide that allocations to counties made as a result of city or county code errors must be corrected prospectively.
2. Section 7(A) has been added to provide that funds collected by the Department from the school district tax, which are not identified as to the governmental unit due the tax, must be transferred to the State Treasurer's Office annually in June, after reasonable effort by the Department to determine the appropriate governmental unit. The Treasurer shall calculate this supplemental distribution on a proportional basis, based on the current fiscal year's county area revenue collections.

Effective Date: June 11, 1999

House Bill 3836, Section 13, (Act No. A93)

**Local Accommodations Tax - Use Clarified**

Code Section 6-1-530(A) has been amended to provide that accommodations tax revenue used for cultural, recreational, or historic facilities must only be used for "tourism-related cultural, recreational, or historic facilities."

Effective Date: June 11, 1999

House Bill 3836, Section 14, (Act No. A93)

**Local Hospitality Tax - Use Clarified**

Code Section 6-1-730(A) has been amended to provide that hospitality tax revenue used for cultural, recreational, or historic facilities must only be used for "tourism-related cultural, recreational, or historic facilities."

Effective Date: June 11, 1999

House Bill 3836, Section 15B, (Act No. A93)

**Clean Room Environment Attire - New Exemption**

Code Section 12-36-2120 has been added to exempt from sales and use tax the sales price of clothing and other attire required for working in a Class 100 or better as defined in Federal Standard 209E clean room environment.

Effective Date: Taxable years beginning after 1998.

**REMINDERS**

**THE FOLLOWING ACTS WERE ENACTED IN 1998, BUT DID NOT BECOME EFFECTIVE UNTIL 1999. THEY ARE SUMMARIZED BELOW FOR INFORMATIONAL PURPOSES.**

House Bill 4700 of 1998, Part II, Section 31, (Act No. 419)

**Fire Truck Equipment - Additional Exemption**

Code Section 12-36-2110 was 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 4801 of 1998, 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, was amended to expand the exemption 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.

# MISCELLANEOUS

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

House Bill 3359, Section 4T, (Act No. A114)

### **Authority to Grant Tax Relief in Special Situations**

Code Section 12-4-320(6) has been amended to broaden the Department's permissive powers to extend the date for filing returns, paying taxes, collecting taxes, conducting audits, and waiving interest and penalties for taxpayers affected by damage caused by war, terrorist act, or natural disaster, or service with the United States armed forces or national guard in or near a hazard duty zone.

Effective Date: June 30, 1999

House Bill 3359, Section 4S, (Act No. A114)

### **Repeal of Certain Code Sections**

The following Code Sections have been repealed for the reasons indicated:

1. Code Section 12-6-5590, dealing with the revision of a tax assessed by the Department, is no longer necessary since the relevant statute of limitations is now contained in Code Section 12-54-85 and the appeals procedures are now covered by the Revenue Procedures Act, Chapter 60 of Title 12.
2. Code Section 12-54-35, concerning the modifications to the innocent spouse rules contained in Internal Revenue Code Section 6013(e), is no longer necessary since Section 6013(e) has been repealed. The innocent spouse rules are now governed by Internal Revenue Code Section 6015 which South Carolina has adopted.
3. Code Section 12-54-40, concerning the imposition of penalties, is no longer necessary since its provisions are covered in Code Sections 12-54-43 and 12-54-44.

Effective Date: June 30, 1999

House Bill 3359, Sections 4A and 4S, (Act No. A114)

**Civil and Criminal Penalties - Recodified**

Code Section 12-54-43, containing civil penalty provisions, and Code Section 12-54-44, containing criminal penalty provisions, have been added. Prior to this amendment, these provisions were contained in Code Section 12-54-40 which was repealed.

Other minor changes include:

1. Code Section 12-54-43(C)(2), concerning the imposition of a failure to file penalty of the lesser of \$100 or 100% of the tax, no longer applies in cases in which the tax owed is \$100 or less. This exception was not provided in Code Section 12-54-40(C)(2). The provision provided in Code Section 12-54-43(C)(1) (formerly Code Section 12-54-40(C)(1)) concerning the failure to file penalty of 5% of the tax amount for each month or fraction thereof, not to exceed 25%, continues to apply in cases in which the tax owed is \$100 or less.
2. Code Section 12-54-44(A)(4), concerning the criminal penalty for furnishing a false or fraudulent statement, and Code Section 12-54-44(B)(5), concerning the criminal penalty for supplying false withholding information, no longer include the phrase “instead of any other penalty provided” that was contained in Code Sections 12-54-40(K)(4) and (5), respectively.

Effective Date: Taxable years after 1998.

House Bill 3696, Part II, Sections 69 and 107, (Act No. A100)

**Year 2000 Computer Failures and Penalties**

Code Section 15-1-330 has been added to provide that a governmental entity is not liable for a loss arising from the failure of a computer, software program, database, network, information system, firmware, or any other device due to the Year 2000 date change. This immunity does not apply to software or devices programmed and operated by a governmental entity in a wilful, reckless, or grossly negligent manner thereby causing a Year 2000 computer failure.

In addition, if a failure of a computer, software program, network, or database resulting from a Year 2000 date change causes any kind of notice or bill, issued by a State or a

political subdivision, requiring payment to be made by a taxpayer to be mailed or forwarded late or otherwise untimely provided to the taxpayer, the taxpayer may not be penalized or assessed any penalties or interest for making a late payment.

Effective Date: June 30, 1999

House Bill 3359, Section 4N, (Act No. A114)

### **Proposed Assessment for Admissions Tax Liabilities**

Code Section 12-21-2550(B) has been amended to permit the Department to estimate a taxpayer's admissions tax liability from the best information available when such person fails to file a return or fails to make a true and correct return. Previously, the Department made a return based upon the information it was able to obtain.

Effective Date: Taxable years beginning after 1998.

House Bill 3833, Section 1, (Act No. A121)

### **Electronic Payment of Taxes**

Code Section 12-54-75 has been added to provide that the State Treasurer may authorize the Department to accept payment for taxes or license fees by electronic forms of payment. Such payment methods include credit cards, debit cards, bank debits or credits, or electronic purse options. Currently, the Department is only authorized to accept MasterCard and Visa for payment of delinquent taxes.

Effective Date: June 30, 1999

House Bill 3359, Section 4U, (Act No. A114)

### **Assignment of Refunds**

Code Section 12-60-470(C) has been amended to clarify that only the taxpayer legally liable for the tax may file a claim for refund or receive a refund. The amendment provides that the assignment of a refund may be made only after the Department has authorized the refund and issued an order for the refund to the State Treasurer's office. As a result of this amendment, South Carolina law now conforms to the federal law.

Effective Date: June 30, 1999

House Bill 3218, Section 2, (Act No. A111)

### **Confidentiality of Admissions Tax Return Information**

Code Section 12-54-240(A), which pertains to the prohibition against disclosure of information filed with the Department, has been amended to prohibit disclosure of admissions tax return information required under Article 17 of Chapter 21.

Effective Date: June 30, 1999

House Bill 3359, Section 4P, (Act No. A114)

### **Disclosure of Information to South Carolina Retirement System**

Code Section 12-54-240(B), pertaining to the prohibition of disclosure of records and returns by Department employees, has been amended to provide that the Department may submit taxpayer names and home addresses to the Director of the South Carolina Retirement System to effectuate the provisions of Section 9-1-1650 relating to the disposition of inactive accounts.

Effective Date: July 1, 1999

House Bill 3836, Section 10, (Act No. A93)

**Disclosure of Liens**

Code Section 12-54-240(B)(6) has been amended to clarify that the Department is not prohibited from disclosing a deficiency assessment to a probate court, the filing of a tax lien for uncollected taxes, or the issuance of a notice of levy.

Effective Date: June 11, 1999

House Bill 3359, Section 4Q, (Act No. A114)

**Setoff Debt Collection Act - Claimant Agency Added**

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 the debt from 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 United States Department of Education.

Effective Date: June 30, 1999

House Bill 3359, Section 4R, (Act No. A114)

**Setoff Debt Collection Act - Definition of Debtor**

Code Section 12-56-20(3), defining the term “debtor,” has been amended to define the term as any person having a delinquent debt or account with a claimant agency which has not been adjusted, satisfied, or set aside by court order, or discharged in bankruptcy. Previously, the statute referred to an individual.

Effective Date: Taxable years after 1998.

**Setoff Debt Collection Act - Notice and Hearing Procedure Amended**

The Setoff Debt Collection Act in Chapter 56 of Title 12, allowing the Department to assist in the collection of a delinquent account or debt owing to a claimant agency by setting off the debt from a refund due the debtor from the Department, has been amended. The amendments are summarized below:

1. Code Section 12-56-20(1) now provides that a political subdivision who submits a claim through an association is a claimant agency for the purpose of the notice and appeal provisions and other requirements of this chapter. This subsection still provides that political subdivision includes the Municipal Association of South Carolina and the South Carolina Association of Counties when these organizations submit claims on behalf of their members or other political subdivisions.
2. Code Section 12-56-60(A), providing notification to the debtor by the claimant agency of the intent to seek setoff of a refund, has been amended. The claimant agency may not make a request for setoff unless the claimant agency has notified the debtor of its intention to request setoff not less than 30 days before the request to the Department. The method of providing notice to the debtor has been changed and moved to Code Section 12-56-62, see item 4 below.
3. Code Section 12-56-60(B), concerning the determination by the Department of whether a refund is due, has been amended to add a provision that a person has no property right or property interest in a refund until all amounts due the State and claimant agencies are paid. Further, the amendment adds that the Department is not liable for a wrongful or improper setoff.
4. Code Section 12-56-62, providing requirements of the notice of intention to setoff, has been added. The notice must be mailed to the address provided to the claimant agency when the debt was incurred or to the last known address and the notice must include a statement of appeal procedures available to the debtor. The giving of notice is complete 30 days after mailing, even if the notice has not actually been received by the debtor. A sample notice is provided in this section.
5. Code Section 12-56-63 has been added. Subsection (A) provides that a debtor who protests the debt must file the protest in writing with the claimant agency within 30 days of the date of notice of intention to setoff. The notice must contain the debtor's

name, address, and social security number, identify the type of debt in dispute, and give a detailed statement of all the reasons which support the protest.

Subsection (B) provides that an association defined as a political subdivision in Code Section 12-56-20(1) may contract with another political subdivision for the processing of debts submitted to the Department. These services may be funded through an administrative fee. The association is exempt from the notice and appeal procedures of this chapter. The political subdivision submitting the claim through the association or governmental entity is responsible for the notice and hearing requirement.

6. Code Section 12-56-65 has been added. Subsection (A) provides that a claimant agency shall appoint a hearing officer to hear a debtor protest. The Department must be informed of the name, address, and telephone number of the hearing officer.

Subsection (B) provides that upon receipt of a notice of protest the claimant agency shall hold an informal hearing at which the debtor may present evidence, documents, and testimony to dispute the debt. The claimant agency must notify the debtor of the date, time, and location of the informal hearing. The hearing officer will render a determination at the end of the hearing. The Department may proceed with setoff upon receipt of a sworn certification from the hearing officer of a ruling in favor of the claimant agency, regardless of a subsequent debtor appeal.

Subsection (C) provides that the debtor may appeal the hearing officer's decision by requesting a hearing before the Administrative Law Judge Division within 30 days of a determination. Additionally, Code Section 12-56-67 provides that a debtor is not required to request an Administrative Law Judge hearing if a right to a jury trial exists and the debtor wishes to exercise that right. In that case, the debtor must file a summons and complaint in the Court of Common Pleas and serve the pleadings on the claimant agency within 30 days from the hearing officer's determination.

Subsection (G) provides that a setoff may not be contested more than 1 year after setoff.

Subsections (D) through (F) provide for refund of setoff amounts, administrative fees, and interest in certain situations. These provisions are:

- a. The claimant agency shall refund appropriate amounts to the debtor if the hearing officer's determination is reversed. The claimant agency shall refund the entire amount and the administrative fee retained if found to be entitled to no part of the setoff. The administrative fee portion must be paid from claimant agency funds. If

a claimant agency is found to be entitled to a portion of the setoff amount, then the administrative fee does not have to be refunded.

- b. A claimant agency shall pay interest to the debtor if the refund is retained in error. However, interest does not accrue if the claimant agency is the Office of Child Support Services of the South Carolina Department of Social Services. The statute states that interest is calculated as provided in Chapter 54 from the date interest is paid on refunds until the appeal is final.
- c. If the claimant agency determines money is erroneously or illegally setoff, it may refund the setoff amount, even if the debtor does not file a protest.

Effective Date: A liability incurred or a right accrued on and after June 30, 1999.

House Bill 3836, Section 9, (Act No. A93)

### **Fees Retained on Contracts to Collect Liabilities**

Code Section 12-4-580(B) has been amended to provide that fees charged for any collection effort on behalf of a governmental entity may be retained and expended by the Department and carried over from one fiscal year to the next.

Effective Date: June 11, 1999

Senate Bill 526, (Act No. A73)

### **Department May Collect Delinquent Payments Due the Employment Security Commission**

Code Sections 41-31-390 and 41-31-400 have been amended to allow the Employment Security Commission to contract with the Department for purposes of collecting delinquent payments of contributions, interest, penalties, contingency assessments, and other reasonable costs due the Employment Security Commission. The Commission and the Department can use the powers conferred upon the Department by Title 12 for the collection of unpaid income taxes for the collection of these payments due the Employment Security Commission.

Effective Date: June 11, 1999

House Bill 3359, Section 3A, (Act No. A114)

### **Revenue Impact Statements No Longer Prepared by Department**

Code Section 2-7-76, providing for a fiscal or revenue impact statement for certain bills and resolutions affecting the expenditures of funds by counties and municipalities, has been amended to provide that these statements are provided by the Budget Division or the Economic Research Section of the Budget and Control Board. Prior to this amendment, these statements were prepared by the Budget Division or the Department of Revenue.

Effective Date: June 30, 1999, however, all liabilities incurred and rights accrued before June 30, 1999 are unaffected.

## **REGULATORY MATTERS (Alcoholic Beverage and Video Gaming)**

Senate Bill 581, (Act No. A97)

### **Prohibition Of Malt Liquor Deleted**

Section 16 of Act 434 of 1998, providing that the holder of a retail permit authorizing the sale of beer may not sell any container of more than one liter of malt liquor effective July 1, 2000, has been deleted. Sections 17 and 18 of Act 434 of 1998 have been redesignated as Sections 16 and 17, respectively.

Effective Date: June 16, 1999

House Bill 3907, (Act No. A149)

### **Hospitality Cabinets - New Regulation**

Regulation 7-64 has been enacted to establish requirements for the sale of alcoholic liquors, beer, and wine in hospitality cabinets located in hotel, motel, and inn rooms. The requirements include:

1. A hospitality cabinet may only be placed in rooms used for sleeping accommodations.

2. The key, magnetic card, or device required to obtain access to a hospitality cabinet may only be provided to a guest that requests it, whether on his own or upon being informed by the hotel of the availability of the hospitality cabinet.
3. The hotel, motel, or inn must inform the guest of the specific areas where alcoholic liquors purchased may and may not be consumed.
4. The hotel, motel, or inn may not advertise, sell, or dispense alcoholic liquors, beer, or wine from the hospitality cabinets for free, at a price less than one-half the price regularly charged, or on a two or more for the price of one basis.
5. The hospitality cabinet may only be restocked and replenished with alcoholic liquors by an employee 21 years or older.

A hotel, motel, or inn selling alcoholic beverages in hospitality cabinets must be licensed to sell alcoholic liquors for on-premises consumption and comply with all the provisions of Code Sections 61-6-2300 through 61-6-2370 and any other applicable provisions of Title 61.

Effective Date: June 25, 1999

House Bill 3951, (Act No. A52)

(See also House Bill 3834, Part III, Section 15, (Act No. A125))

### **Establishment Licensed to Sell Beer and Wine - Gambling and Game of Chance**

House Bill 3834, Part III, Section 15, (Act No. A125) replaced an identical amendment enacted in House Bill 3951 to Code Section 61-4-580.

Effective Date: June 1, 1999

**Repeal of Alcoholic Beverage Licensing Regulations**

With the creation of the Administrative Law Judge Division and the enactment of the South Carolina Revenue Procedures Act (Act 60 of 1995, Section 4A), the following regulations concerning the appeals and hearing process for alcoholic beverage licensing are obsolete and have been repealed:

<b>Regulation Number</b>	<b>Subject Matter</b>
7-3	Hearings
7-46	Policy on Hearings on Initial and Renewal Applications
7-59	Protests Concerning Licensed Renewal, Time of.
7-90	Renewal Protests Must Be Received Sixty Days Prior to Expiration of Permit, Exceptions to, Will Hear When

Effective Date: May 28, 1999

House Bill 3834, (Act No. A125)  
(See also House Bill 3951, (Act No. A52))

**Video Gaming - New Taxes and Regulations**  
**Referendum on November 2, 1999**  
**Establishment Licensed to Sell Beer and Wine**

A package of reform measures designed to tax and regulate the video gaming industry was approved by the Legislature. This legislation includes numerous details and requirements. A copy of the full text of the legislation can be obtained at the South Carolina Legislative Council’s website at [www.lpitr.state.sc.us](http://www.lpitr.state.sc.us). Only the main points of the legislation are summarized below.

1. A statewide referendum will be held November 2, 1999, to determine if payouts will continue (See Part II, Section 9.) If a majority of voters say no, all payouts on video gaming will be banned beginning July 1, 2000 and it will be unlawful to possess the machines in the state. If a majority of voters say yes, payouts will increase to \$500 per sitting for machines connected to the system (the earliest connection date is December 1, 1999.)

2. A \$50 fee must be paid on all licensed machines by September 1, 1999, to cover the cost of the referendum. (See Part II, Section 9.)
3. A 25% tax must be paid monthly on the net machine income beginning January 1, 2000. (See Code Section 12-22-510.)
4. In addition to the \$4,000 biennial licensing fee per machine, manufacturers and distributors must obtain \$10,000 biennial licenses and machine owners must obtain \$2,000 biennial licenses. Operators and establishments must be licensed, but there is no fee for the license. (See Code Sections 12-22-320 and 12-22-330.)
5. Players must be 21. (See Code Section 12-22-710.)
6. Each location may have no more than 5 video game machines, with the exception of "casinos" that meet the requirements of the law. (See Code Sections 12-22-710 and 12-22-740.)
7. Casinos will be allowed to operate until July 1, 2004. Local governments may pass an ordinance to allow casinos to operate beyond July 1, 2004. (See Code Section 12-22-740.)
8. Subject to one exception, each new video gaming location must be at least 100 feet from an existing location. A new location is one which was not in operation on May 31, 1999. (See Code Section 12-22-720.)
9. All machines must be connected to the monitoring system by February 1, 2000. (See Code Section 12-22-910.)
10. Until machines are certified ready for hook-up to the central monitoring system, operators will not be allowed to make the \$500 payouts. Once certified, operators may make the increased payouts beginning December 1, 1999. (See Code Section 12-22-1020.)
11. Machines will be disabled and reset once prize credits reach \$500. Payouts will not exceed \$500 no matter how much money was put into the machine. (See Code Section 12-22-1020.)
12. The maximum bet per hand is \$3. (See Code Section 12-22-1020.)

13. Background checks will be performed on all applicants for any license connected with video gaming. A license may be denied for a number of reasons, including the applicant's conviction in the past 15 years for any offense punishable by at least two years in prison, any gambling offense, or criminal fraud. (See Code Sections 12-22-1110 through 12-22-1180.)
14. Players cannot sue to recover losses of more than \$50 if the game was conducted according to the video gaming laws. (See Code Section 32-1-60.)
15. Code Section 61-4-580, prohibiting gambling and games of chance at an establishment licensed to sell beer and wine, has been amended to permit game promotions including contests, games of chance, or sweepstakes in which the elements of chance and prize are present and which comply with the following:
  - a. The game promotion is conducted or offered in connection with the sale, promotion, or advertisement of a consumer product or service, or to enhance the brand or image of a supplier of consumer products or services;
  - b. No purchase payment, entry fee, or proof of purchase is required as a condition of entering the game promotion or receiving a prize; and,
  - c. All materials advertising the game promotion clearly disclose that no purchase or payment is necessary to enter and provide details on the free method of participation.

Note: This amendment to Code Section 61-4-580 replaced an identical amendment enacted by House Bill 3951, (Act No. A52). House Bill 3951 was effective June 1, 1999.

Effective Date: Some provisions of this Act are effective June 1, 1999 and July 1, 1999. Other provisions are effective December 1, 1999 if there is a yes vote on the referendum or July 1, 2000 if there is a no vote on the referendum. Items 1, 2, and 14 above are effective July 2, 1999. Items 3, 4, 5, 8, 9, 10, 11, 12, and 13 above are effective December 1, 1999 if there is a yes vote on the referendum. Items 6, 7, and 15 above are effective June 1, 1999. See Part VI, Section 23 of this Act for specific effective dates.

## **OTHER ITEMS**

### **(Summarized by Subject Matter)**

House Bill 3359, Section 3F, (Act No. A114)

#### **Estate Tax - Income Tax Conformity**

Code Section 12-16-20(5), defining the term “Internal Revenue Code” for purposes of the South Carolina Estate Tax Act, has been amended to update the definition to mean the Internal Revenue Code as described in Section 12-6-40(A). Previously, the term was defined as the Internal Revenue Code 1986, as amended through December 31, 1991.

Effective Date: June 30, 1999, however, all liabilities incurred and rights accrued before June 30, 1999 are unaffected.

House Bill 3789, (Act No. A47)

#### **Tobacco Escrow Fund**

On November 23, 1998, leading United States tobacco product manufacturers entered into the “Master Settlement Agreement” with South Carolina. This agreement obligates these manufacturers, in return for a release of past, present, and certain future claims against them, to pay substantial sums to the State based in part on the volume of sales of their products in South Carolina.

In enacting this Act, the General Assembly found that:

1. It is the policy of this State that financial burdens imposed on the State by cigarette smoking be borne by tobacco product manufacturers rather than by the State.
2. On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the “Master Settlement Agreement,” with the State. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present, and certain future claims against them as described therein, to pay substantial sums to the State (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial

changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

3. It would be contrary to the policy of the State if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to drive large, short-term profits in the years before liability may arise without ensuring that the State will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

Code Section 11-47-30 of the “Tobacco Escrow Fund” provides that any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) after June 1, 1999, the date of enactment of this Act, shall:

1. Become a participating manufacturer, as defined in section II(jj) of the Master Settlement Agreement, and generally perform its financial obligations under the Master Settlement Agreement; or
2. Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts:

<b>YEARS</b>	<b>AMOUNT PER UNIT SOLD* EACH YEAR</b>
1999	\$.0094241
2000	\$.0104712
2001 and 2002	\$.0136125
2003 through 2006	\$.0167539
2007 and thereafter	\$.0188482

\* The term “units sold” means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer during the year in question, as measured by excise taxes collected by the State on packs or “roll-your-own” tobacco containers.

The Department will determine the number of cigarettes sold in the State by the applicable tobacco product manufacturer during the year in question, as measured by excise taxes collected by the State on packs or “roll-your-own” tobacco containers. The Department will determine the amount of state excise tax paid pursuant to Article 5, Chapter 21, Title 12 on the cigarettes of such tobacco product manufacturer for each year, and may promulgate regulations necessary for that determination. This is the Department’s only duty with respect to this law.

The Act also provides that each tobacco product manufacturer that elects to place funds into the escrow account must annually certify to the Attorney General that it is in compliance with the law and also provides under what circumstances the funds in escrow will be released. A civil penalty may be imposed for knowing violations of this Act.

Effective Date: June 30, 1999

House Bill 3696, Part II, Section 7, (Act No. A100)

**Annual Revenue from Tax on Hospitals Increased**

Code Section 12-23-810(C) has been amended to increase the annual revenue from the tax on licensed hospitals from \$21.5 million to \$29.5 million.

Effective Date: July 1, 1999

House Bill 3218, Section 1, (Act No. A111)

**Confidentiality of Tax Information Provided to Counties and Municipalities**

Code Section 6-1-120 has been added to provide that except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for an officer or employee of a county or municipality, or the agent of such an officer or employee to divulge or make known in any manner the information provided by a taxpayer included in a report, tax return, or application required to be filed by the taxpayer with that county or municipality, pursuant to a county or municipal ordinance imposing a:

1. Tax authorized under Article 5 (the local accommodation tax) or Article 7 (the local hospitality tax) of this chapter;

2. Business license tax authorized under Section 4-9-30(12) or Section 5-7-30;
3. Fee the measure of which is gross proceeds of sales of goods or services or paid admissions to a place of amusement.

Code Section 6-1-120(B) does not prohibit:

1. Publication of statistics, if they do not identify a particular report, return, or application or the information on them; and
2. Inspection of reports, returns, or applications and the information on them by any officer or employee of the county or municipality or an agent retained by an officer or employee in connection with audits of the taxpayer, appeals by the taxpayer, and collection efforts.

Any person violating the provisions of Code Section 6-1-120(A) is guilty of a misdemeanor and, upon conviction, must be fined not more than \$1,000 or be imprisoned for not more than one year, or both. If the person convicted is an officer or employee of the county or municipality, the person will be dismissed from office or his position and may not hold a public office in this State for five years following his conviction.

Effective Date: June 30, 1999

House Bill 3696, Part II, Section 70, (Act No. A100)

### **State and County Athletic Commissions - Repeal Extended on No Fees**

Code Section 52-7-37 was added by Act 419 of 1998 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.

This Act changes the automatic repeal of this statute from July 30, 1999 to July 30, 2000.

Effective Date: June 30, 1999. This section is repealed July 30, 2000, unless the General Assembly extends it by act or resolution.

House Bill 3357, Sections 2 and 20, (Act No. A113)

**Joint Municipal Water Systems - Tax Treatment**

Under the Joint Municipal Water Systems Act, any two or more governing bodies may form a Joint Municipal Water System to plan, finance, develop, enlarge, improve, lease, sell, maintain, or operate a project within this State. A project under this Act is any project undertaken by a joint municipal water system for the purpose of impounding, production, treatment, transmission, distribution, sale, and service of water to any of its members, or to other municipalities and also for the collection, transportation, processing, treating, disposing of, and controlling of municipal, domestic, industrial, or communal waste, flood water, or storm water. The amendments to the Act are:

1. Code Section 6-25-115 has been added to allow municipalities to create “financing pools” for the purpose of financing the building and operation of joint municipal water systems. Financing pools are to be funded by issuance of “construction notes.”
2. Code Section 6-25-129 has been added to provide that income of a joint municipal water system is exempt from state taxes.
3. Code Section 6-25-160 has been amended to provide that the principal and interest on construction notes issued pursuant to the Act have tax exempt status prescribed by Code Section 12-2-50.

Effective Date: June 30, 1999

House Bill 3276, (Act No. A112)

**Municipal Charges to Telecommunications Providers**

Article 20, pertaining to municipal charges to telecommunication providers for use of public rights-of-way, has been added to Chapter 9 of Title 58. The General Assembly has found that shifting of current taxation and fees from a franchise fee basis to the basis set forth in Article 20 is necessary and appropriate due to the transition of the telecommunications industry and is fair and reasonable, and taxes and fees exceeding such amount, except upon extraordinary circumstances, would be unreasonable.

The legislation includes numerous details. Only the main points are summarized below. A complete copy of the legislation can be obtained from the South Carolina Legislative Council's website at [www.lpittr.state.sc.us](http://www.lpittr.state.sc.us).

Notwithstanding any provision of law to the contrary, Code Section 58-9-2220(1) provides that a business license tax levied by a municipality upon retail telecommunications services for 1999 through 2003 shall not exceed three-tenths of one percent of the gross income derived from the sale of retail telecommunication services for the preceding calendar or fiscal year which either originate or terminate in the municipality and which are charged to a service address within the municipality. The tax levied by a municipality upon retail telecommunications services for 2004 and thereafter is the lesser of seventy-five one hundredths of one percent of gross income derived from the sale of retail telecommunication services or the maximum tax rate calculated by the Board of Economic Advisors. If the maximum rate calculated by the Board of Economic Advisors exceeds seventy-five one hundredths of one percent, then a joint telecommunications study committee will verify the calculation and must sponsor a joint resolution to allow a municipality to levy the greater tax.

A business license tax levied by a municipality upon the retail telecommunications services provided by a telecommunications company must be levied in a competitively neutral and nondiscriminatory manner upon all providers of retail telecommunications services. A business license tax levied by a municipality upon a telecommunications company must be reported and remitted on an annual basis.

Code Section 58-9-2230(A) provides that a municipality may impose a fair and reasonable franchise or consent fee on a telecommunications company for use of the public streets and public property to provide telecommunications service unless the telecommunications company has an existing contractual, constitutional, statutory, or other right to construct or operate in the public streets and public property including, but not limited to, consent previously granted by a municipality. This annual franchise or consent fee may not exceed \$100 to \$1,000 depending upon population.

Code Section 58-9-2230(B) provides that a municipality may impose an administrative fee upon a telecommunications company not subject to the franchise or consent fee in subsection (A) that constructs or installs or has previously constructed or installed facilities in the public streets and public property to provide telecommunications service. The annual fee may not exceed \$100 to \$1,000 depending upon population.

A municipality may not levy any tax, license, fee, or other assessment on, with respect to, or measured by the receipts from any telecommunications service, other than the business

license tax authorized in this article and franchise fees as defined and regulated under 47 U.S.C. Section 542. Nothing herein restricts the right of any municipality to impose ad valorem taxes, service fees, sales taxes, or other taxes and fees lawfully imposed on other businesses within the municipalities.

Code Section 58-9-2260 provides for exceptions to the provisions of this article for municipalities who have entered into an agreement with a telecommunications provider prior to December 31, 1997 or had a business license tax or franchise fee ordinance adopted prior to December 31, 1997.

Effective Date: June 30, 1999

House Bill 3641, Section 1, (Act No. A118)

### **Development Impact Fee May be Charged by Counties and Municipalities**

The South Carolina Development Impact Fee Act, allowing a county or municipality to fund certain capital improvements through the imposition of a development impact fee, has been enacted. The legislation includes numerous details and requirements. Only the main points are summarized below. A complete copy of the legislation can be obtained from the South Carolina Legislative Council's website at [www.lpittr.state.sc.us](http://www.lpittr.state.sc.us).

Under Code Section 6-1-930(A)(1), only a governmental entity that has a comprehensive plan (as provided in Chapter 29 of Title 6) or a capital improvement plan that substantially complies with the law may impose a development impact fee. Pursuant to Code Section 6-1-930(B), in order to impose an impact fee, the governing body for the county or municipality must adopt an ordinance by a positive majority. Under Code Section 6-1-950, to begin the process of adopting the ordinance, the governing body enacts a resolution directing the local planning commission to conduct certain studies and to recommend an impact fee ordinance. The planning commission shall develop a "capital improvement plan" and determine impact fees by service area. A capital improvement plan is a plan that identifies capital improvements for which development impact fees may be used as a funding source. Code Section 6-1-920(3). A capital improvement is defined as an improvement with a useful life of five years or more which increases the service capacity of a public facility. Code Section 6-1-920(2). The capital improvements plan must contain certain information as set forth in Code Section 6-1-960. A public hearing must be held before final action to adopt the ordinance approving a capital improvement plan.

Once a governing body has adopted a capital improvement plan it may, by ordinance, impose an impact fee. However, before imposing an impact fee on residential units, a government entity is required to prepare a report which estimates what the effect of recovering capital costs through impact fees will have on the availability of affordable housing within that area. Code Section 6-1-930(A)(2). The amount of the impact fee must be based on actual improvement costs or a reasonable estimate of the costs. Pursuant to Code Section 6-1-930, the ordinance authorizing the fee must contain certain provisions, including a provision terminating the fee. Under Code Section 6-1-940, the impact fee ordinance also must provide for the amount of fee due for each unit of development in a project for which an individual building permit or certificate of occupancy is issued. The ordinance must also contain information about how the impact fee is calculated and must specify certain other information regarding the fee.

The impact fee for each service unit, as that term is defined in Code Section 6-1-920(8), may not exceed the amount determined by dividing the costs of the capital improvements by the total number of projected service units that potentially could use the capital improvement. Code Section 6-1-980. The impact fee imposed upon a fee payor may not exceed a proportionate share of the costs incurred by the governmental entity in providing system improvements to the new development. Code Section 6-1-990.

Effective Date: June 30, 1999

House Bill 3641, Section 2, (Act No. A118)

### **Municipal Improvements Act of 1999**

The Municipal Improvement Act of 1973 in Chapter 37 of Title 5 has been amended by the Municipal Improvements Act of 1999 that allows a municipality to fund certain improvements to infrastructure and public facilities through the use of bonds or assessments on the properties that will be affected by the improvements. In order to do this, the municipality may create an improvement district that contains the property that will bear the additional assessment.

The legislation includes numerous details and requirements. Only the main points are summarized below. A complete copy of the legislation can be obtained from the South Carolina Legislative Council's website at [www.lpittr.state.sc.us](http://www.lpittr.state.sc.us).

The Act has been amended as follows:

1. Code Section 5-37-20(1) has been amended to allow the assessment on property on a per parcel basis or any other basis that the municipality deems appropriate. Previously, the assessment could only be based on assessed value, front footage, or the value of the improvements to be constructed within the district. Further, the amendment added that an assessment for improvements will remain valid even though the property with the additional assessment is subsequently subdivided.
2. Code Section 5-37-20(2) has been amended to provide that recreational and athletic facilities and buildings for public use, and public works eligible for financing under Code Section 6-21-50, now qualify as improvements.
3. Code Section 5-37-25 has been amended to provide that municipalities may use money obtained from assessments in the improvement district to fund improvements outside the district that benefit the district, however, the municipality must obtain the consent of the governing body where the improvement will be located prior to spending the money.
4. Code Sections 5-37-40 and 5-37-100 have been amended to provide that residential property may not be included in the improvement district unless the owner of the property gives the governing body permission to include his property in the district.

Effective Date: June 30, 1999, except that the provisions which provide that owner-occupied residential property which is taxed under Section 12-43-220(c) must not be included within an improvement district unless the owner gives the governing body written permission to include the property within the improvement district, apply only to improvement districts created after June 30, 1999.

House Bill 3359, Section 6, (Act No. A114)

### **County Public Works Improvement Act - Amended**

Under the County Public Works Improvement Act, a county may establish an improvement district and fund improvements in that district through additional assessments on the property located in the district. Code Section 4-35-150 of the County Public Works Improvement Act has been amended to provide that improvements, as defined in Code Section 4-35-30, must be owned by the county, State, or another public

entity for the benefit of the residents of the improvement district or the entity owning the improvement. Prior to this amendment, these improvements had to be the property of the county.

Effective Date: June 30, 1999

House Bill 3677, (Act No. A129)

**Constitutional Amendment Proposed to Allow a State Run Lottery**

This joint resolution was enacted that would allow, if approved by qualified electors at the next general election, the State to conduct lotteries in the manner that the General Assembly provides by law.

Effective Date: June 9, 1999

**REMINDERS**

**THE FOLLOWING ACTS WERE ENACTED IN 1998, BUT DID NOT BECOME EFFECTIVE UNTIL 1999. THEY ARE SUMMARIZED BELOW FOR INFORMATIONAL PURPOSES.**

House Bill 4526 of 1998, 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, was 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

**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) was 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 was 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.