

SC REVENUE INFORMATIONAL BULLETIN #00-15

SUBJECT: Tax Legislative Update for 2000

DATE: September 19, 2000

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
SC Revenue Procedure #99-4

SCOPE: A Revenue Informational Bulletin is a written statement issued to the public by the Department to announce general information useful in complying with the laws administered by the Department. **A Revenue Informational Bulletin has no precedential value, and is not binding on the public or the Department.**

Attached is a brief summary of most of the significant changes in laws that were enacted by the General Assembly during the past legislative session. The summary is divided into four categories of legislation and can be found as indicated below.

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Also attached is a brief summary of three bills, House Bill 3358, House Bill 3393, and House Bill 3649, that have not been signed or vetoed by the Governor as of the date of this informational bulletin. These bills are summarized by tax type on pages 64 - 66 for your reference. At such time when these bills are signed or vetoed by the Governor, the Department will issue an informational bulletin stating the action taken by the Governor and the effective dates of any signed legislation.

The law changes are summarized 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 bill with related subject matters were enacted. In such cases, these summaries are cross referenced. Further, some laws have not been assigned act numbers as of the date of this informational bulletin and this is indicated in the summary.

WARNING: This 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.

INCOME TAXES, CORPORATE LICENSE FEES, AND WITHHOLDING

Senate Bill 80, Section 2. (Act No. A314)

Community Development Corporation Investment Credit

Code Section 12-6-3530 has been added to provide an income tax, bank tax, or insurance premium tax credit equal to 33% of an investment (see exceptions below) in a community development corporation or community development financial institution. The total credit that may be claimed by all taxpayers is \$1 million in one year and \$5 million for all years. Any unused credit may be carried forward, however, the carry forward must be used before the taxable year that begins on or after 10 years from the date of the acquisition of stock or other equity interest that is the basis for the credit.

Exceptions to the amount of credit eligible to be claimed include:

1. One community development corporation or community development financial institution may not receive more than 25% of the total tax credits authorized in any one tax year.
2. If on April 1, 2001, or as soon thereafter as the Department of Commerce is able to determine, the total amount of tax credits claimed by all taxpayers exceeds the limitations, the credits will be determined on a pro rata basis.

The following requirements apply to the credit:

1. A taxpayer must obtain a certificate from the Department of Commerce certifying that: (a) the investment is in a certified community development corporation as defined in Code Section 34-43-20(2) or a certified community development financial institution as defined in Code Section 34-43-20(3) and (b) the credit available will not exceed the \$1 million or \$5 million limitation.
2. The community development corporation or community development financial institution must be certified by the Department of Commerce at the time the investment is made. A taxpayer who invested in good faith in a certified corporation

or institution may claim the credit if the Department of Commerce later revokes or does not renew the certification.

3. The taxpayer must file with the Department of Revenue the form issued by the Department of Commerce certifying the stock or other equity interest. The Department of Commerce will provide these forms to the taxpayer before the fifteenth day of the second month following the month of acquisition and to the Department of Revenue before the fifteenth day of the third month following the month of acquisition.
4. Banks and financial institutions chartered by the State of South Carolina may invest up to 10% of their total capital and surplus in a community development corporation or community development financial institution.
5. The credit is not allowed if the taxpayer claims a charitable contribution deduction under Internal Revenue Code Section 170 for the investment in a community development financial institution.
6. If stock or another equity interest is the investment and is redeemed by the community development corporation or community development financial institution within 5 years of the date acquired, the credit is disallowed and must be repaid with the tax return for the period the redemption occurred. The amount collected must be handled as if no credit had been allowed.

The Act added Chapter 43 of Title 34 - The South Carolina Community Economic Development Act. The term “community development corporation,” defined in Code Section 34-43-20(2), means, in part, a nonprofit corporation which is chartered pursuant to Chapter 31, Title 33, is tax exempt under Internal Revenue Code Section 501(c)(3), and has a primary mission of developing and improving low-income communities and neighborhoods through economic and related development.

The term “community development financial institution,” defined in Code Section 34-43-20(3), means, in part, an organization that has a primary mission of promoting community development by providing credit, capital, or development services to small businesses or home mortgage assistance to individuals, and is not an agent or instrumentality of the United States, or of a state or political subdivision of a state, nor maintains an affiliate relationship with any of them.

Effective Date: Tax years beginning after 2000. The provisions of this chapter terminate on June 30, 2005, and this chapter and all other laws and

regulations governing, authorizing, and otherwise dealing with community development corporations and community development financial institutions are deemed repealed on June 30, 2005.

Senate Bill 575, Section 3.A.1. (Act No. A399)

Job Tax Credit - Processing Facility Definition Revised

Code Section 12-6-3360(M)(6), defining the term “processing facility” as a type of business eligible for the job tax credit, has been amended to clarify that it is an establishment that prepares, treats, or converts tangible personal property into finished goods or another form of tangible personal property. The statute continues to include a business engaged in processing agricultural, aquacultural, or maricultural products in the definition of processing facility, and continues to exclude an establishment in which retail sales of tangible personal property are made to retail customers.

Effective Date: August 17, 2000

Senate Bill 575, Sections 3.A.2. and 3.B.1. through 6. (Act No. A399)

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 amendments to the job development credit provisions are as follows:

1. Code Section 12-10-82 has been added to provide that a qualifying business may make an irrevocable election to assign job development credit benefits to a designated trustee. A designated trustee is the single financial institution designated by the Council to receive all assignments of payments. The election must be made on a form provided by the Department of Revenue (“Department”), including a waiver of confidentiality under Code Section 12-54-240.

2. Code Section 12-10-30, containing definitions, has been amended as follows:
 - a. The definition of “manufacturing” has been deleted.
 - b. “Gross wages” is defined as wages subject to withholding.
 - c. “Job development credit” is defined as the amount a qualifying business may claim as a credit against employee withholding pursuant to Code Sections 12-10-80 and 12-10-81 and a revitalization agreement.
 - d. “Preliminary revitalization agreement” is defined as the application by a qualifying business for benefits pursuant to Code Section 12-10-80 if the Council approves the application and agrees in writing at the time of approval to allow the approved application to serve as the preliminary revitalization agreement. The date of the preliminary revitalization agreement is the date of the Council approval.
 - e. “Revitalization agreement” is defined as an executed agreement entered into between the council and a qualifying business that describes the project and the negotiated terms and conditions for a business to qualify for a job development credit pursuant to Code Sections 12-10-80 or 12-10-81.
 - f. “Qualifying expenditures” is defined as those expenditures that meet the requirements of Code Sections 12-10-80(C) or 12-10-81(D).
 - g. “Technology employee” is defined as an employee whose job qualifies for jobs tax credit pursuant to Code Section 12-6-3360(M)(14).
3. Code Section 12-10-50, listing criteria a business must satisfy to qualify for benefits, has been amended to provide that:
 - a. A benefits package, including health care, must be provided to employees located at the project site where the investment is made.
 - b. The revitalization agreement must describe a minimum job and capital investment requirement for the project as provided in Code Section 12-10-90.

4. Code Section 12-10-60, concerning revitalization agreements, has been amended to provide that:
 - a. The Council has discretion to enter into a revitalization agreement based on the appropriateness of the negotiated incentives to the project and the determination that approval of the project is in the best interests of the State.
 - b. A qualifying business that is amending a revitalization agreement entered into before January 1, 1997, in order to increase its minimum job requirement, shall use the law in effect on the date of the amendment to determine the job development credit for the additional jobs created after the date of the amendment. This provision, however, does not apply to a business whose application has been approved before August 17, 2000, the effective date of this Act.
5. Code Section 12-10-80, providing procedures for claiming the job development credit, has been amended as follows:
 - a. To clarify that the credit may be claimed beginning with the first quarter after the Council certifies that both the minimum employment level and the minimum capital investment level have been met for the entire quarter.
 - b. To clarify that the qualifying business must create at least 10 new full time jobs at the project described in the revitalization agreement within 5 years of the effective date of the agreement.
 - c. To add that the Council may grant a written extension of time, for good cause, to file the audited report itemizing the sources and uses of the funds for a business claiming over \$10,000 in job development credits in one calendar year. The report is due to the Council and the Department by June 30th of the year following the year the credits are claimed.
 - d. To add that a business claiming \$10,000 or less in job development credits in one calendar year must file a report prepared by the company that itemizes the sources and uses of the funds to the Council and the Department by June 30th of the year following the year the credits are claimed. Extensions may be granted in writing by the Council for good cause.
 - e. To add that the qualified expenditures eligible for job development credit benefits include financing the costs of an approved expenditure.
 - f. To clarify that the county designation in effect at the time a business enters into a

preliminary revitalization agreement is effective for the entire revitalization agreement period unless the business has amended a revitalization agreement entered into before January 1, 1997, in order to increase its minimum job requirement. In such instances, the county designation in effect on the date of the amendment is effective for the additional jobs created after the effective date of the amendment.

- g. To add the provision that the statute of limitations in Code Section 12-54-85 is suspended for withholding taxes until the end of the five year period allowed to create at least 10 new full time jobs. See b. above.
- 6. Code Section 12-10-81, concerning job development credits for tire manufacturers, has been amended to make the same changes as described above. Further, Code Section 12-10-81 has been amended to revise the date upon which qualifying expenditures can first be made.

Effective Date: August 17, 2000

Senate Bill 575, Section 3.D.3. (Act No. A399)

Certain Persons 65 and Older Not Required to File Income Tax Returns - Clarified

Code Section 12-6-4910(1)(a), listing requirements for certain persons age 65 and older who are not required to file a South Carolina income tax return, has been amended to clarify this provision. As amended, the statute provides that an individual who has a married filing separate status and whose spouse does not itemize deductions is not required to file an income tax return if the income requirements of this section are met. Further, the amendment clarified that the age 65 and older deduction of up to \$15,000 is not reduced by the retirement deduction when computing the income limitations.

Previously, the statute applied only to those individuals who had a federal filing status of single, surviving spouse, head of household, or joint.

Effective Date: Tax years beginning after December 31, 2000.

Senate Bill 575, Section 3.D.4. (Act No. A399)

2% Withholding on Nonresidents Conducting Business or Performing Personal Services in South Carolina - New Exception

Code Section 12-8-550, requiring 2% withholding on payments exceeding \$10,000 a year by a person hiring or contracting with a nonresident who is conducting business or performing personal services of a temporary nature in South Carolina, has been amended to provide that this withholding requirement does not apply to payments on purchase orders for tangible personal property when those payments are not accompanied by services to be performed in South Carolina.

Effective Date: Tax years beginning after December 31, 2000.

Senate Bill 575, Section 3.D.5. (Act No. A399)

Withholding on Sales of Property by Nonresidents - Sale of Principal Residence

Code Section 12-8-580, requiring withholding on the proceeds of sales of real and tangible personal property paid to nonresidents, has been amended to delete the provisions in (B)(2) concerning when the sale of a principal residence is a deferred transaction not subject to withholding. This provision is no longer necessary as a result of changes in the sale of principal residence rules in the Internal Revenue Code. The statute continues to provide that a sale does not include tax exempt or tax deferred transactions, other than installment sales.

Effective Date: Tax years beginning after December 31, 2000.

Senate Bill 575, Section 3.D.6. (Act No. A399)

(See also Senate Bill 1210, Section 1. (Act No. A277))

Corporate Moratorium - Qualifying Counties

Code Section 12-10-35, concerning the corporate income tax moratorium, has been amended to clarify that the qualifying counties are determined using the average annual unemployment rate of at least twice the state average based on the two most recent calendar years of data available on November 1 of the preceding year. Previously, the counties were determined using the information available during the last two completed calendar years. The counties also continue to include those of the three lowest per capita

income counties based on the average of the three most recent years of average per capita income data.

NOTE: Senate Bill 1210, summarized below, added a corporate tax moratorium provision, Code Section 12-6-3365, that is similar to that in Code Section 12-10-35.

Effective Date: Tax years beginning after December 31, 2000.

Senate Bill 575, Section 3.Y. (Act No. A399)

Motion Picture Project and Motion Picture Production Facility Credits - Changes

Code Section 12-6-3510, providing a credit for investment in a qualified South Carolina motion picture project and a credit for investment in a South Carolina motion picture production facility or post production facility, has been amended.

The credits are summarized below:

1. Credit for Investment in a Qualified South Carolina Motion Picture Project. Code Section 12-6-3510(A) provides an income tax credit equal to 33% of a taxpayer's cash investment in a qualified South Carolina motion picture project. The total credit for a project is limited to \$15,000 for all years per taxpayer. This credit, when combined with all the taxpayer's other South Carolina income tax credits, cannot exceed 50% of the taxpayer's South Carolina income tax liability. Any unused credit may be carried forward for 15 years.

NOTE: The credit is earned when the cash is spent. If the motion picture project does not meet the requirements of Code Section 12-6-3510 within 3 years from the end of the taxpayer's tax year when the credit was first claimed, then the taxpayers who claimed the credit must increase their income tax liability in the fourth year by the amount of the credits previously claimed.

2. Credit for Investment in a South Carolina Motion Picture Production Facility. Code Section 12-6-3510(B) provides 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 or post production facility in South Carolina. The total credit claimed by all taxpayers for a single motion picture production facility or post production facility is limited to \$5 million. This credit, when combined with all the taxpayer's other South Carolina income tax credits, cannot exceed 50% of the taxpayer's South Carolina income tax liability. Any unused credit may be carried

forward for 15 years.

NOTE: The credit is earned when the cash is spent or when qualifying real property is dedicated for use as part of a motion picture production facility or post production facility. If the motion picture production facility or post production facility does not meet the requirements of Code Section 12-6-3510 within 3 years from the end of the taxpayer's tax year when the credit was first claimed, then the taxpayers who claimed the credit must increase their income tax liability in the fourth year by the amount of the credits previously claimed.

Credit for Investment in a Qualified South Carolina Motion Picture Project

To qualify for the credit for investing in a qualified South Carolina motion picture project provided in Code Section 12-6-3510(A), a taxpayer must meet the following criteria. A "taxpayer" is defined as the investor who invests in a qualified motion picture project. For purposes of a motion picture equity fund created for the sole purpose of facilitating a slate of qualified motion picture projects, however, the "taxpayer" is defined as the investor, partner, member, or shareholder who invests in the motion picture equity fund.

1. The taxpayer must invest cash in a qualified motion picture project that is expended for: (a) services performed in South Carolina, (b) tangible personal property dedicated for first use in South Carolina, or (c) real property in South Carolina. Investments in real property must be located in South Carolina on which facilities are located and can include the fair market value of a long term lease less the fair market value of any consideration paid for the lease.
2. The qualified motion picture project must register with the Department by submitting a record of allocation of credits and documentation.
3. The project must incur at least \$1 million of costs directly in South Carolina to produce a master negative motion picture for theatrical or television exhibition in the United States and at least 20% of the filming days of principal photography, but not less than 10 filming days, is filmed in South Carolina.

Credit for Investment in a South Carolina Motion Picture Production Facility

To qualify for the credit for investing in a South Carolina motion picture production facility in Code Section 12-6-3510(B), a taxpayer must meet the following criteria. A “taxpayer” is defined as the investor who invests in the company that constructs, converts, or equips a qualified South Carolina motion picture production facility.

1. The taxpayer must invest cash or real property. Investments in cash must be expended for: (a) services performed in South Carolina, (b) tangible personal property dedicated for first use in South Carolina, or (c) real property in South Carolina. Investments in real property must be located in South Carolina on which facilities are located and can include the fair market value of a long term lease less the fair market value of any consideration paid for the lease.
2. The total investment in the motion picture production facility must be at least \$2 million, excluding land costs. The total investment in the post production facility must be at least \$1 million, excluding land costs.
3. A taxpayer may claim the credit only one time in connection with a single motion picture production facility and only one time for a single post production facility.
4. Documentation must be provided to the Department to confirm the total amount invested.

The terms “motion picture production facility” and “post production facility” are defined in Code Sections 12-6-3510(F)(2) and (4), respectively, as follows:

“Motion picture production facility” means a site in this State that contains soundstages designed for the express purpose of film and television production for both theatrical and video release. Production includes, but is not limited to, motion pictures, made for television movies, and episodic television to a national audience. The motion picture production facility site must include production offices, construction shops/mills, prop and costume shops, storage area, parking for production vehicles, all of which complement the production needs and orientation of the overall facility purpose. The term does not include television stations, recording studios, or facilities predominately used to produce videos, commercials, training films, or advertising films.

“Post production facility” means a site in this State designated for the express purpose of accomplishing the post production stage of film and television production for both theatrical and video release including the creation of visual effects, editing, and sound mixing. A post production facility site is not required to contain a soundstage or be

physically located at or near soundstages.

Effective Date: Tax years beginning after December 31, 1999, for qualifying motion picture projects and South Carolina motion picture production facilities if the taxpayer has not claimed the credit for these projects or facilities under the previous law. This section is repealed effective for taxable years beginning after June 30, 2005, but this repeal does not affect credits previously earned.

Senate Bill 575, Section 4. (Act No. A399)

Like-Kind Exchanges - Conform to Internal Revenue Code Section 1031

South Carolina's like-kind exchange rules have conformed to those in Internal Revenue Code Section 1031. The following Code Sections pertaining to like-kind exchanges have been repealed.

1. Code Section 12-6-1120(3) was repealed. It used to provide that the exclusion permitted by Internal Revenue Code Section 1031 is not permitted for the sale or exchange of real estate located in South Carolina unless the real estate received in the exchange is located in South Carolina.
2. Code Section 12-6-1180 was repealed. It used to provide for a South Carolina basis adjustment for property that qualified as a like-kind exchange for federal tax purposes but did not qualify for South Carolina tax purposes.

Effective Date: August 17, 2000

Senate Bill 1020, (Act No. A234)

South Carolina Business Development Corporation - Subsidiary Corporation

A South Carolina Business Development Corporation is a corporation of 25 or more persons, a majority of whom are South Carolina residents, who desire to create a corporation having the powers and privileges set forth in Chapter 37 of Title 33, for the purpose of promoting, developing, and advancing the prosperity and economic welfare of South Carolina. This Act provides that a South Carolina Business Development Corporation may organize and incorporate a subsidiary corporation to carry out the powers and purposes expressly granted as provided for by Chapter 37 of Title 33.

Code Section 33-37-70, providing that a South Carolina Business Development Corporation is not subject to income taxes levied by the State or any license fee imposed by Chapter 20 of Title 12, has been expanded. This section now provides that the subsidiary corporation will also not be subject to income taxes levied by the State or any license fee imposed by Chapter 20 of Title 12.

Effective Date: March 7, 2000

Senate Bill 1210, Section 1. (Act No. A277)

(See also Senate Bill 575, Section 3.D.6. (Act No. A399))

Corporate Tax Moratorium

Code Section 12-6-3365 has been added to grant a 10 year, or in some cases a 15 year, moratorium on a taxpayer's corporate income tax that represents the ratio of the company's new investment in the qualifying county to its total South Carolina investment. The moratorium begins the first full taxable year after the taxpayer qualifies and ends either at the earlier of: (a) 10 years from that date or (b) the year when the taxpayers number of new full time jobs falls below 100.

The corporate tax moratorium is available to a taxpayer who:

1. Creates and maintains at least 100 new full time jobs, as defined in Code Section 12-6-3360(M) (the job tax credit provision), within 5 years from the date it creates the first new full time job;
2. Creates and maintains the new full time jobs at a facility identified in Code Section 12-6-3360(M) that is located in: (a) a county with an average annual unemployment rate of at least twice the State average during the last two completed calendar years (based on the most recent unemployment rates available) or (b) one of the three lowest per capita income counties (based on the average of the three most recent years of available average per capita income data); and
3. Places at least 90% of its investment in this State in the qualifying county.

If a taxpayer creates and maintains at least 200 new full time jobs within 5 years from the date the taxpayer creates the first new full time job at the facility, the moratorium period is extended to 15 years. The moratorium begins the first full taxable year after the taxpayer qualifies and ends either at the earlier of: (a) 15 years from that date or (b) the year when the taxpayers number of new full time jobs falls below 200.

NOTE: Code Section 12-10-35 also provides for a similar corporate tax moratorium.

Effective Date: Tax years beginning after 1999. Code Section 12-6-3365 is repealed effective July 1, 2005, however, the repeal does not affect any moratorium in effect on that date.

Senate Bill 1210, Section 2. (Act No. A277)

Job Tax Credit - Suspended During Corporate Tax Moratorium

Code Section 12-6-3360(H), providing a 15 year job tax credit carry forward, has been amended to provide that a taxpayer who is eligible for the corporate income tax moratorium in Code Section 12-6-3365 and the job tax credit may claim the job tax credit and carry forward the unused job tax credits after the moratorium period expires.

Effective Date: Tax years beginning after 1999.

House Bill 3699, (Act No. Unassigned)

Funds to Commissioners of Pilotage

Code Section 12-6-640 has been added to provide that monies appropriated to the Commissioners of Pilotage must be used as a grant to the Maritime Association of the Port of Charleston to support the establishment of a maritime exchange system to provide vessel information services. This money is not taxable income for purposes of Title 12, Chapter 6 (Income Tax Act).

Effective Date: May 19, 2000

Conservation Credit

Code Section 12-6-3515 has been added to provide an income tax credit for landowners who voluntarily convey land or certain other interests in land to a qualified conservation organization. A taxpayer who is entitled to and claims a federal charitable deduction for a gift of land for conservation or for a qualified conservation contribution donated after May 31, 2001, on a qualified real property interest located in South Carolina may claim an income tax credit equal to 25% of the deduction attributable to the gift of land for conservation or to the qualified real property interest located in South Carolina. The credit cannot exceed \$250 per acre of property to which the qualified conservation contribution or gift of land for conservation applies and the total credit claimed by a single taxpayer may not exceed \$52,500 per year. For purposes of applying the per acre and per taxpayer limitations, the attribution rules of Internal Revenue Code Section 267 apply. The fair market value of all qualified donations must be substantiated by a “qualified appraisal” prepared by a “qualified appraiser” as defined under applicable federal law and regulations relating to charitable contributions.

Any unused credit may be carried forward until used. The unused credit may be transferred, devised, or distributed, with or without consideration, to another taxpayer upon written notification to, and approval by, the Department of the transfer. The unused credit retains all its original attributes in the hands of the recipient. The gain on the sale or exchange of this credit is subject to South Carolina income taxes.

For purposes of this credit, the terms “qualified conservation contribution” and “qualified real property interest” have the same meaning as defined in Internal Revenue Code Section 170(h). The term “gift of land for conservation” is defined as “a charitable contribution of fee simple title to real property conveyed for conservation purposes as defined in Internal Revenue Code Section 170(h)(4)(A) to a qualified conservation organization as defined in Internal Revenue Code Section 170(h)(3).”

Notwithstanding Internal Revenue Code Section 170(h), a taxpayer is not disqualified from claiming this credit because of silvacultural and forestry practices permitted by or undertaken pursuant to a conservation contribution on a real property interest provided that: (1) the practices conform to Best Management Practices established by the South Carolina Forestry Commission; (2) the conservation contribution otherwise conforms to the requirements of Internal Revenue Code Section 170(h); and, (3) the taxpayer provides the Department with information to determine that the taxpayer would otherwise be eligible for the deduction under Internal Revenue Code Section 170(h). The credit is 25% of the deduction that would otherwise be allowable under Internal Revenue Code

Section 170(h) but for the silvacultural and forestry activities performed on the real property interest and is subject to all the other conditions and limitations of this section.

In addition, Code Section 62-3-715, concerning transactions authorized for personal representatives, has been amended to allow a personal representative of a decedent to donate a qualified conservation easement or fee simple gift of land for conservation on any real property of the decedent in order to obtain the benefit of the estate tax exclusion under Internal Revenue Code Section 2031(c) and the conservation credit provided in Code Section 12-6-3515, provided that the personal representative has the written consent of all heirs, beneficiaries, and devisees whose interests are affected by the donation. Upon petition of the personal representative, the probate court may consent on behalf of any unborn, unascertained, or incapacitated heirs, beneficiaries, and devisees whose interests are affected by the donation.

Effective Date: Except where otherwise stated in the Act, June 1, 2001.

House Bill 3782, Sections 5.A. and B. (Act No. A283)

Job Tax Credit - Technology Intensive Facility Qualifies

Code Section 12-6-3360(A), providing a job tax credit for certain businesses creating new full time jobs, has been expanded to include “technology intensive facilities” as a qualifying type of business.

Code Section 12-6-3360(M)(14) has been added to define the term “technology intensive facility” as a firm engaged in the design, development, and introduction of new products or innovative manufacturing processes, or both, through the systematic application of scientific and technical knowledge. Included in the definition of “technology intensive facility” are the following North American Industrial Classification System (NAICS) codes:

- Code 51114 Database and Directory publishers
- Code 5112 Software publishers
- Code 54151 Computer systems design and related services
- Code 541511 Custom computer programming services
- Code 541512 Computer systems design services

Code 541710 Scientific research and development services
Code 9271 Space research and technology

Effective Date: Tax years beginning after June 30, 2001.

House Bill 3782, Section 5.C. (Act No. A283)

Research and Development Credit

Code Section 12-6-3415 has been added to provide a corporate income tax credit or license fee credit (for license fees imposed under Code Section 12-20-50) equal to 5% of the qualified expenditures for research and development made in South Carolina. Qualified research and development has the same meaning as provided in Internal Revenue Code Section 41. The credit is limited to 50% of the taxpayer’s tax liability remaining after all other credits have been applied. Any unused credit can be carried forward, but must be used before a taxable year beginning 10 years or after from the date of the qualified expenditure.

For a taxpayer to qualify for the credit, the taxpayer must claim a federal income tax credit pursuant to Internal Revenue Code Section 41 for increasing research activities for the taxable year.

Note: The original bill referred to Internal Revenue Code Section 174. It is our understanding that the Code Commissioner has determined that this was a scrivener’s error and will be corrected to read Internal Revenue Code Section 41.

Effective Date: Tax years beginning after June 30, 2001.

House Bill 3782, Sections 5.D, E, and F. (Act No. A283)

Job Development Credit - Technology Intensive Facility Qualifies

The Enterprise Zone Act of 1995 contains incentives in Chapter 10 of Title 12 designed to provide benefits to qualifying new or expanding companies that invest in this State by allowing them to receive a portion of South Carolina employee withholding for approved business uses by means of a “job development credit” or “job retraining credit.”

This amendment expands the Enterprise Zone Act to include technology intensive facilities. The amendments are:

1. Code Section 12-10-20(1) has added technology intensive facilities to the types of businesses the Advisory Coordinating Council for Economic Development should induce to locate or expand in South Carolina.
2. Code Section 12-10-30, the definition section, has been amended to add subitem 10 to define “technology employee.” The term means an employee whose job qualifies for jobs tax credit pursuant to Code Section 12-6-3360(M)(14). See summary of the job tax credit amendments above in House Bill 3782, Sections 5.A. and B.
3. Code Section 12-10-80(C), providing for the types of expenditures to which the job development credit is restricted, has been expanded to provide that employee relocation expenses associated with new or expanded technology intensive facilities as defined in Code Section 12-6-3360(M)(14) are qualified expenditures.
4. Code Section 12-10-80(D), providing a \$500 job retraining credit for production employees, has been expanded to provide that the job retraining credit also applies to technology employees being retrained, where the retraining is necessary for the qualifying business to remain competitive or to introduce new technologies.

Effective Date: Tax years beginning after June 30, 2001.

House Bill 4775, Part II, Section 7. (Act No. A387)

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, 1999, and includes its effective date provisions.

Effective Date: June 30, 2000

House Bill 4775, Part II, Section 40. (Act No. A387)

Capital Gain Deduction - Holding Period Same as Federal

Code Section 12-6-1150, providing individuals, estates, and trusts a deduction from South Carolina taxable income equal to 44% of the net capital gain recognized in South Carolina, has been amended to revise the definition of “net capital gain.” The term has the same meaning as that in Internal Revenue Code Section 1222 and related sections. The exception in Code Section 12-6-1150(B) that only those assets which have been held for 2 or more years qualify as a net capital gain has been deleted.

Effective Date: Tax years beginning after 2000.

House Bill 4775, Part II, Section 52. (Act No. A387)

War Between the States Heritage Preserve Trust 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 War Between the States Heritage Trust Fund. This program, created by Chapter 18 of Title 51, was established to provide for the inventorying, preservation, use, and management of unique and outstanding natural or cultural areas and features in South Carolina.

Effective Date: July 1, 2000

PROPERTY TAXES AND FEES IN LIEU OF PROPERTY TAXES

Senate Bill 518, (Act No. A334)

Interest Due on Redemption of Property From Tax Sale - Revised

Code Section 12-51-90, concerning redemption of property sold at a tax sale, has been amended to change the interest rate charged upon the redemption of the property. Interest is due on the whole amount of the delinquent tax sale based on the month during the redemption period the property is redeemed according to the following schedule:

Month Property Redeemed	Interest Due
Months 1, 2, and 3	3%
Months 4, 5, and 6	6%
Months 7, 8, and 9	9%
Months 10, 11, and 12	12%

In every redemption, however, the interest due will not be more than the bid price submitted by the Forfeited Land Commission pursuant to Code Section 12-51-55. Previously, the interest rate charged was 8%, or 12% if the property was redeemed in the last 6 months of the redemption period.

Note: These provisions are under the jurisdiction of the Comptroller General pursuant to Regulation 117-8. Questions concerning this matter should be directed to the Comptroller General.

Effective Date: Redemptions of property sold for delinquent taxes at sales held on or after June 6, 2000.

Senate Bill 575, Section 2. (Act No. A399)

Commercial Fishing Boats, Tugboats, and Pilot Boats - 5% Assessment Ratio

Code Section 12-43-220(f), providing a 5% assessment ratio to commercial fishing boats, has been amended to expand the 5% assessment ratio to commercial tugboats and pilot boats. Further, the term “commercial fishing boats” was amended to mean boats used exclusively for commercial fishing, shrimping, or crabbing and (1) licensed by the Department of Natural Resources, or (2) on or from which is used commercial fishing equipment licensed by the Department of Natural Resources. The Act also defines “commercial tugboats” and “pilot boats.”

Effective Date: The change to the definition of “commercial fishing boat” applies to property tax years beginning after 1999. The definitions of “commercial tugboats” and “pilot boats” and the provision adding these boats to the 5% assessment ratio is effective for tax years beginning January 1, 1999, and after.

Senate Bill 575, Section 3.I. (Act No. A399)

Transfer of Title if Simplified Fee is Declared Illegal or Unconstitutional

Code Section 12-44-160, relating to the “Simplified Fee,” has been amended to provide that if all or part of Chapter 44 is declared illegal or unconstitutional, a sponsor has 180 days from the date of such determination to transfer title to economic development property to the county and have it qualify for fee in lieu of property taxes under Chapter 12 of Title 4 (the “Little Fee”) or Code Section 4-29-67 (the “Big Fee”).

Effective Date: August 17, 2000

Senate Bill 575, Section 3.O. (Act No. A399)

Code Section Repealed

Code Section 12-4-755, concerning the procedure for appealing the denial of a property tax exemption, has been repealed. It is no longer necessary because of the Revenue Procedures Act in Chapter 60 of Title 12.

Effective Date: August 17, 2000

Senate Bill 575, Section 3.Q.1. (Act No. A399)

Disabled Veterans and Paralyzed Persons Exemption

Code Section 12-37-220(B)(1) exempts from property tax the residence of a veteran who is permanently and totally disabled from a service related disability. This exemption is also available to the veteran's surviving spouse or the surviving spouse of a serviceman or law enforcement officer killed in the line of duty if certain requirements are met. Code Section 12-37-220(B)(2) exempts from property tax the residence of a paraplegic, a hemiplegic, or a surviving spouse of such person if certain requirements are met.

The exemptions provided in Code Section 12-37-220(B)(1) and (2) have been amended. The changes are as follows:

1. For item (B)(1), the veteran's qualifying surviving spouse can file the certificate of total and permanent disability for the veteran with the Department.
2. The property must be the domicile of the person who qualifies for the exemption.
3. Property held in trust for any eligible beneficiary who qualifies for the exemption is eligible for the exemption.
4. The requirement that the property be transferred by devise to the surviving spouse has been removed.

Effective Date: August 17, 2000

Senate Bill 575, Section 3.Q.2. (Act No. A399)

Depreciation for Clean Rooms - Clarified

Code Section 12-37-930(34) has been amended to clarify that a manufacturer who uses a Class 100 or better clean room, as that term is defined in Federal Standard 209E, in manufacturing its product may elect to use a depreciation rate of 10% on clean room modules and associated mechanical systems, and on process piping, wiring environmental systems, and water purification systems associated with the clean room. Included are waffle flooring, wall and ceiling panels, foundation improvements that isolate the clean room to control vibrations, clean air handling and filtration systems, piping systems for fluids and gases used in the manufacturing process and in the clean room that touch the product during the process, flat panel displays, liquid crystal displays, process equipment

energy control systems, ultra pure water processing and wastewater recycling systems, and safety alarm and monitoring systems.

Effective Date: August 17, 2000

Senate Bill 575, Section 3.Q.3. (Act No. A399)

Code Sections Repealed

The following Code Sections have been repealed. Limitations on increases in millage are now solely contained in Code Section 6-1-320.

1. Code Section 12-43-280 has been repealed. It provided that after a reassessment the total tax imposed by a county, school district, municipality, or any other political subdivision may not increase by more than 1% over the total tax imposed by the same entity for the prior tax year.
2. Code Section 12-43-290 has been repealed. It provided that a county, school district, municipality, or any other political subdivision may increase millage in order to obtain money for increased or new services or for the increase in cost of existing services.

Effective Date: August 17, 2000

Senate Bill 575, Section 3.R. (Act No. A399)

Fee in Lieu Amendments

For an explanation of this bill, see the summary of House Bill 3782, Section 3. (Act No. A283) below.

Effective Date: Inducement agreements entered into after December 31, 2000.

Motor Carrier Provisions

The following amendments have been made to the motor carrier provisions:

1. Code Section 12-37-2810(A) has been amended to provide that farm vehicles using FM tags are not included in the definition of “motor carriers.”
2. Code Section 12-37-2840 has been amended to provide that if a motor carrier fails to pay half the tax due, or the entire amount of tax due, by June 30th, the Department must issue a proposed assessment for the entire tax. If the motor carrier fails to pay any remaining tax due by December 31st, a proposed assessment will be issued. If the motor carrier fails to timely file a return, the Department will issue a proposed assessment that assumes that all mileage driven by the motor carrier is within South Carolina. A motor carrier may appeal any assessment by following the procedures established in Subarticle 1, Article 5, Chapter 60 of Title 12 (“The Revenue Procedures Act”). The motor carrier must file the appeal within 30 days of the issuance of the proposed assessment. This section no longer requires the Department of Public Safety to refuse renewal of a motor carrier’s license for a motor carrier that failed to file a return or pay any tax due.
3. Code Section 12-37-2842 has been added to provide that the Department of Motor Vehicles must notify a motor carrier of the registration and filing requirements and provide the necessary registration forms at the time of first registration. The motor carrier must register with the Department of Revenue within 30 days following the year the vehicle or bus was first registered for operation in South Carolina. A motor carrier must notify the Department of Revenue of a motor vehicle or bus that is disposed of before December 31st.
4. Code Section 12-37-2845 has been repealed. It addressed the failure to file returns or pay taxes of a motor carrier who was not required to register vehicles in South Carolina.

Effective Date: August 17, 2000

Senate Bill 575, Section 3.W.1. (Act No. A399)

Waiver, Dismissal, or Reduction of Penalty

Code Section 12-45-420 has been added to provide that a committee composed of the county auditor, county treasurer, and county assessor may waive, dismiss, or reduce a penalty levied against real or personal property in the case of an error by the county.

Effective Date: August 17, 2000

Senate Bill 575, Section 3.W.2. (Act No. A399)

Postponement of Implementation of Reassessment

Code Section 12-43-217(B) provides that a county may postpone for up to one year the implementation of revised values received as a result of a reassessment. Code Section 12-43-217(C) has been added to provide that if a county postpones the implementation of revised values pursuant to Code Section 12-43-217(B), then any requirement for submission of a reassessment program to the Department for approval is also postponed.

Effective Date: August 17, 2000

Senate Bill 575, Section 3.X.1. (Act No. A399)

Refund of Overpayment of Property Tax

Code Section 12-45-78 has been added to provide that any overpayment of property tax that results from the granting of a homestead exemption under Code Section 12-37-250 or from the property qualifying for the 4% assessment ratio for legal residences under Code Section 12-43-220(c) shall be refunded if either of these events occurs after payment of the property tax for that year. Any overpayment must be refunded to the owner of record at the time that the exemption is granted or the classification is made.

Effective Date: January 1, 2001

Senate Bill 575, Section 3.X.2. (Act No. A399)

Liability for Property Taxes

Code Section 12-37-610, addressing who is liable for property taxes, has been amended to provide that if a person owns real property as of December 31st of the year preceding the tax year, and owns such property in fee, for life, or as a trustee, as recorded in the public records for deeds of the county in which the property is located, or if the person has care of the property as guardian, executor, trustee, or committee, then that person is liable for the property taxes on the property for the current year.

Effective Date: January 1, 2001

Senate Bill 575, Sections 3.X.3. through 9. (Act No. A399)

Delinquent Tax Sale Procedures

The delinquent tax sale procedures in Chapter 51 of Title 12 have been amended. The changes are as follows:

1. Code Section 12-51-40, addressing notice of the tax sale and advertising of the sale, has been amended to allow the county officer charged with collecting the tax to levy against the defaulting taxpayer or if the defaulting taxpayer has transferred the property, against the property which generated all or part of the tax.
2. Code Section 12-51-40(a) has been amended to provide that notice must be sent to the defaulting taxpayer and to a grantee of the property, if the transferred property generated all or part of the tax. Notice is sent to the best address available, which is the address shown on the deed, the property address, or other corrected or forwarding address of which the county officer has actual knowledge. Previously, the notice was sent to the current owner.
3. Code Section 12-51-40(b) has been amended to clarify that the county officer must mail notice of delinquent property taxes attributable to real property to the defaulting taxpayer and any grantee of record of the property by sending the notice certified mail, return receipt requested - restricted delivery, pursuant to the Postal Service Domestic Mail Manual Section S912. Further, if the delinquent taxpayer is an entity, the notice is mailed to its last known post office address by certified mail, return receipt requested, as described in Section S912 of the Manual.
4. Code Section 12-51-40(f) has been added to provide that for purposes of collecting

property taxes when the true owner is unknown because of the death of the owner of record and the absence of a probate administration for the decedent's estate, the property must be advertised and sold in the name of the deceased owner of record.

5. Code Section 12-51-50, addressing the public auction of the land, has been amended to provide that if the delinquent taxpayer or the grantee of record of the property have more than one item to be sold, once sufficient funds had been recovered to pay all delinquent amounts, no further items can be sold. Previously, the statute referred only to the delinquent taxpayer.
6. Code Section 12-51-55, requiring the Forfeited Land Commission ("Commission") to submit a bid on real property auctioned for tax sale, does not require that the Commission bid on any land known or reasonably suspected of being contaminated. If the contamination becomes known after the bid or while the Commission holds title to the property, the title is voidable at the election of the Commission. Further, the statute has been amended to delete the requirement that the Commission notify the tax collector of the possible contamination before ordering a tax sale.
7. Code Section 12-51-60 has been amended to require the defaulting taxpayer and the owner of record immediately prior to the end of the redemption period to be notified of any excess amounts due once the tax deed has been issued. Previously, the statute required only the current owner of record be notified.
8. Code Section 12-51-120 has been amended to require that the notice that the redemption period is ending be mailed to the defaulting taxpayer and to a grantee, mortgagee, or lessee of the property of record. The notice must be mailed certified mail, return receipt requested-restricted delivery as provided in Code Section 12-51-40(b).
9. Code Section 12-51-130, addressing the issuance of tax title to the new purchaser, has been amended to also require the name of any grantee of the property on the tax title. Further, if there is any excess money resulting from the tax sale, the extra funds belong to the owner of record immediately before the end of the redemption period. The excess funds are payable 90 days after execution of the deed unless a judicial action is instituted during that time by another claimant. Previously, the excess was paid to the defaulting taxpayer.
10. Title 12, Chapter 49, (Enforced Collections of Taxes), Article 3, "Rights of Real Estate Mortgagees," has been repealed.

Note: These provisions are under the jurisdiction of the Comptroller General pursuant to Regulation 117-8. Questions concerning this matter should be directed to the

Comptroller General.

Effective Date: January 1, 2001

Senate Bill 1263, (Act No. A279)

Pharmaceutical Company - Alternate Value for “Big Fee”

Code Section 4-29-67(BB), concerning the “Big Fee,” has been added. It allows a pharmaceutical company investing more than \$400 million in one South Carolina county to value its fee in lieu property at the lesser of the fair market value determined under Code Section 4-29-67(D)(2)(a)(i) or (ii) or the value determined as follows by the county. For real property, the value is determined using the original South Carolina income tax basis without regard to depreciation, less any basis amounts attributable to cost overruns, including capitalized interest overruns. For personal property, the value is determined using the original South Carolina income tax basis less any basis amounts attributable to cost overruns, including capitalized interest overruns, and less depreciation allowable for property tax purposes, except that an investor is not entitled to any extraordinary obsolescence.

Effective Date: Property placed in service before January 1, 2000, and to fee payments due after June 30, 2000.

Senate Bill 1402, Section 3. (Act No. Unassigned)
(See also House Bill 3750, Section 2. (Act No. A346))

Index of Taxpaying Ability - Valuation Error Correction

This amendment allows the Department to amend the 2000 Index of Taxpaying Ability, as defined in Code Section 59-20-20(3), to adjust for a valuation error that occurred in Dorchester County School District 4.

Effective Date: June 15, 2000

House Bill 3699, Section 1. (Act No. Unassigned)

Homestead Exemption - Increased

The amount of the homestead exemption for the elderly, blind, or disabled allowed in Code Section 12-37-250 has been increased from \$20,000 to \$50,000 of the fair market value of the dwelling.

Note: These provisions are under the jurisdiction of the Comptroller General pursuant to Regulation 117-8. Questions concerning this matter should be directed to the Comptroller General.

Effective Date: Property tax year 2000 and thereafter.

House Bill 3750, Section 1. (Act No. A346)

Multiple Lot Discount

Code Section 12-43-225 has been added to allow a discounted value for property subdivided for sale. To be eligible for the additional discount, a conditional or final plat containing the subdivision lots must be filed after 2000 and it must contain at least 10 building lots.

If an owner makes proper application to have the discount apply, the value of each platted building lot is calculated as follows:

- Step 1: Divide the total number of platted building lots into the value of the entire parcel as undeveloped real property.
- Step 2: Subtract the value of such lots as provided in Code Section 12-43-224 from the quotient in Step 1 to arrive at the "difference."
- Step 3: Reduce the value of the lots as determined under Code Section 12-43-224 by 30% of the difference for lots in plats filed in 2001, by 60% of the difference for lots in plats filed in 2002, and by 100% of the difference for lots in plats filed in 2003 and thereafter.

The value of the lots determined under Code Section 12-43-224 is determined using a discount rate that includes the typical interest rate that would be charged to the purchaser of a lot and the effective tax rate for the taxing district in which the lot is located. The

discount rate is calculated by having the assessor determine a reasonable number of years for the developer to sell the lots, however, this time period may not exceed 7 years.

A taxpayer may receive the discount allowed under Code Section 12-43-225 by filing a written application with the assessor on or before May 1st of the year for which the discount is claimed. The discount remains in effect until the earliest of the following: (1) five property tax years elapse; (2) the lot is sold; (3) a certificate of occupancy is issued for an improvement on the lot; or (4) the improvement is occupied. When the discount allowed by this section no longer applies, the lots must be individually valued.

If a lot allowed the discount is sold to a residential homebuilder or general contractor, the discount continues through the first tax year which ends 12 months from the date of sale if the purchaser files a written application for the discount with the county assessor by March 1st of the year the applicant is claiming the discount.

The provisions of Code Section 12-43-225 added are not severable, and if a court of competent jurisdiction determines any part of the section to be unconstitutional or otherwise invalid, the entire section is invalid and the provisions of Code Section 12-43-224 remain operative to provide for multiple lot discounts.

Effective Date: Property tax years beginning after 1999.

House Bill 3750, Section 2. (Act No. A346)

(See also Senate Bill 1402, Section 3. (Act No. Unassigned))

2000 Index of Taxpaying Ability - May Be Amended

This amendment allows the Department to amend the 2000 Index of Taxpaying Ability, as defined in Code Section 59-20-20(3), up to July 1, 2000 for the purpose of calculating the 2000 Index of Taxpaying Ability.

Effective Date: Property tax years beginning after 1999.

House Bill 3782, Section 3. (Act No. A283) and
Senate Bill 575, Section 3.R. (Act No. A399)

Fee in Lieu Amendments

South Carolina has three fee in lieu of property tax statutes commonly referred to as the “Big Fee” (Code Section 4-29-67), the “Little Fee” (Chapter 12 of Title 4), and the “Simplified Fee” (Chapter 44 of Title 12). House Bill 3782 and Senate Bill 575 amended several fee in lieu provisions and appear to be in conflict in some instances. Below is a brief summary of the amendments made by each bill, the conflict between the bills, and the Code Commissioner’s proposed resolution of these conflicts.

House Bill 3782, Section 3. made the following changes to the “Little Fee”:

1. Code Section 4-12-10, providing definitions, has been amended to add subitems (3), (4), and (5) to define the terms “sponsor,” “sponsor affiliate,” and “title to the property,” respectively.

A “sponsor” means one or more entities which sign the fee agreement with the county and also includes a sponsor affiliate unless the context clearly requires otherwise. “Sponsor affiliate” means an entity that joins with or is an affiliate of a sponsor and that participates in the investment in, or financing of, a project.

“Title to the property” is defined to include either record title or a leasehold or other interest, including without limitation, a sponsor or sponsor affiliate’s interest in a nordic, synthetic, defeased tax benefit, or transfer lease.

2. Code Section 4-12-30 was amended to replace the term “investor” with “sponsor.”
3. Code Section 4-12-30(M)(2) was amended to provide that a sponsor may enter into any lending, financing, security, lease, or similar arrangement, or succession of such arrangements with any financing entity, concerning all or part of a project including, without limitation, any sale-leaseback arrangement, equipment lease, build-to-suit lease, synthetic lease, nordic lease, defeased tax benefit, or transfer lease concerning all or part of the project.
4. Code Section 4-12-30(B)(4)(a) has been amended to allow the combined investment of a sponsor and a sponsor affiliate to qualify for the fee if the combined investment equals or exceeds the minimum investment required under the statute. Also, the amendment allows a sponsor affiliate who was not part of the original fee to join in the fee with the approval of the county if the combined investment equals or exceeds

the minimum investment required under the statute.

5. Code Section 4-12-30(B)(4)(b) has been amended to eliminate the “controlled group” rules and to provide that the Department must be notified in writing of all affiliates which have investments subject to the fee within 90 days of the end of the calendar year during which the project, or the first phase of the project, was placed in service. Penalties are provided if the notification is not provided.

House Bill 3782, Section 3. made the following changes to the “Simplified Fee”:

1. Code Section 12-44-30(18), defining “sponsor,” was amended to define the term to mean one or more entities which sign the fee agreement with the county, subject to the provisions of Code Section 12-44-40. Previously, a “sponsor” had to be a single entity.
2. Code Section 12-44-30(3), defining “controlled group” and “controlled group of corporations,” was repealed.
3. Code Section 12-44-130 was amended to eliminate the requirement that each sponsor affiliate invest the minimum investment required in order to be eligible for the fee and to allow a sponsor affiliate who was not part of the original fee to join in the fee with the approval of the county even if the sponsor affiliate is not investing the minimum investment, provided that the combined investment by the sponsor and the sponsor affiliate meets the minimum investment requirements.

Senate Bill 575 made the following changes to the “Little Fee” and the “Simplified Fee”:

1. Code Sections 4-12-30(B)(4)(b) (the “Little Fee”) and 12-44-130(A) (the “Simplified Fee”) have been amended to provide that a controlled group members’ property (“Little Fee”) or a sponsor affiliates’ property (“Simplified Fee”) may qualify for a fee in lieu of property tax if each member or sponsor affiliate invests the statutorily required minimum investment. The required minimum investment is \$1 million or \$5 million depending on the county in which the project is located.
2. Code Section 4-12-30(O) (the “Little Fee”) has been amended to clarify that if the investment subject to the fee falls below the minimum level of investment required, the property is no longer subject to the fee.

The conflict between House Bill 3782 and Senate Bill 575

The conflict is whether each sponsor and sponsor affiliate is required to invest the minimum level of investment to be eligible for the fee. House Bill 3782, Section 3. allowed two or more entities to join in a single fee agreement and to allow investments by sponsors and sponsor affiliates to be pooled to meet the minimum investment requirements. Senate Bill 575, Section 3.R.1., however, appears to require that each sponsor or sponsor affiliate invest the minimum investment requirement to be eligible for the fee. House Bill 3782 was ratified May 16, 2000, and signed May 19, 2000. Senate Bill 575 was ratified June 22, 2000, and signed August 17, 2000. Senate Bill 575, Section 3.R.1. does not address the issue of whether two or more unrelated entities can join in a single fee agreement.

The Department's understanding of how the Code Commissioner plans to resolve this inconsistency

1. Code Section 12-44-130(A) will be written to allow the county to agree that investments by other sponsors and sponsor affiliates within the investment period qualify for the fee regardless of whether the sponsor or sponsor affiliate was part of the fee agreement. Each sponsor and sponsor affiliate must invest at least the minimum investment in the project. Any sponsor or sponsor affiliate that is not a party to the fee agreement must be approved specifically by the county, and must agree to be bound by agreements with the county relating to the exemption.
2. Code Section 4-12-30(B)(4)(b) will be read to replace the "controlled group" language which requires that the investment be made by a single entity or a controlled group of corporations with language that reflects that a sponsor and a sponsor affiliate may qualify for the fee if each sponsor and sponsor affiliate invests the minimum investment. Included within the changes is a repeal of the definitions of "controlled group" and "controlled group of corporations." The county and the sponsors who are part of the inducement agreement may agree that any investments by sponsor affiliates within the time periods provided in the statute will qualify for the fee whether or not the affiliate was part of the inducement agreement, however, the other sponsor affiliates must be specifically approved by the county and must agree to be bound by agreements relating to the fee.

The effect of reading these bills together is to allow multiple entities, including entities that are unrelated, to enter into a single fee agreement, however, each sponsor and

sponsor affiliate must invest the minimum investment. Under the prior law, only a single entity or a controlled group of corporations could enter into a fee agreement.

Effective Date: May 19, 2000 for House Bill 3782, Section 3. Senate Bill 575, Section 3.R. is effective for inducement agreements entered into after December 31, 2000.

House Bill 3782, Section 4. (Act No. A283)

Real Property Value Increases Can Be Limited

Code Section 12-37-223A has been added 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 countywide reassessment program conducted pursuant to Code Section 12-43-217. The cap increase does not apply to:

1. Property valued under the unit valuation method;
2. Value attributable to property or improvements that have not been previously taxed, such as new construction and renovations to existing structures; and
3. Property transferred after the most recent reassessment implemented pursuant to Code Section 12-43-217; provided, however, at the option of the governing body of a county which is in the process of first implementing a reassessment under Code Section 12-43-217, property transferred on or after January 1 of the year of implementation of the most recent reassessment.

Regardless of which option is chosen, the 15% cap applies to the following transfers of property that occur between reassessments:

- a. Transfers of property made pursuant to Internal Revenue Code Sections 102 (Gifts and Inheritances), 351 (Transfer to a Corporation Controlled by Transferor), 355 (Distribution by a Controlled Corporation), 368 (Corporate Reorganizations), 721 (Nonrecognition of Gain or Loss on a Contribution to a Partnership), 1031 (Like-Kind Exchanges), 1033 (Conversions - Fire and Insurance Proceeds to Rebuild), or 1041 (Transfers of Property Between Spouses or Incident to Divorce).

- b. Distributions of property from corporations, partnerships, and limited liability companies to the persons who originally contributed the property.
- c. Transfers of property among immediate family members (spouses, parents, children, brothers, sisters, grandparent, and grandchild.)

Once the cap is applicable to a specific piece of property, it remains in effect until the next reassessment. In subsequent years, the property value will not (unless one of the above exceptions apply) increase more than 15% between reassessments if the ordinance establishing the cap remains in effect. In order to receive the cap on a piece of property, the owner of the property must apply for the exemption. The time period for making application or for seeking a refund as a result of a subsequent eligibility is the same as provided for in Code Section 12-43-220(c) for applying for the 4% assessment ratio for legal residences. No further application is necessary from the owner who qualified for the exemption while the property continues to meet the eligibility requirements. If a change in ownership occurs, the owner who had qualified for the exemption shall notify the assessor within 6 months of the transfer of the title. Another application is required by the new owner to qualify for the exemption.

If property is transferred and is no longer eligible for the cap, it is subject to being taxed in the tax year following the transfer at its fair market value. A closing attorney involved in a real estate transfer that occurs in a county where there is an ordinance imposing the cap must provide the following notice to the buyers: "Real property transferred as a result of this transaction may be subject to property taxation during the next tax year at a value that reflects its fair market value." The new owner must apply to establish his eligibility for the exemption.

If the governing body of the county takes appropriate action, an ordinance enacting the cap may be given retroactive effect, but it may not affect taxes due prior to its enactment. If the governing body of a county repeals the ordinance establishing the cap, the repeal only applies to tax years subsequent to the repeal. Note, the assessed value of the property, not the capped value, is used for purposes of computing the bonded indebtedness limit for a political subdivision or school district.

Other related amendments include:

1. Code Section 12-37-223, enacted in 1999, authorizing a county to provide a 15% cap on real property value increases, has been repealed.

2. Code Section 12-60-2510(A)(1), requiring the county assessor to provide a taxpayer with an assessment notice in certain instances, has been amended to require an assessment notice to include the value of the property as limited by the 15% cap in addition to the fair market value of the property.

Effective Date: May 19, 2000

House Bill 3782, Section 5.H. (Act No. A283)

Research and Development Exemption

Code Section 12-37-220(B)(34), providing a 5 year exemption from county property taxes (the exemption does not apply to school or municipal taxes) for the facilities of all new enterprises and additions valued at \$50,000 or more to existing facilities of enterprises which are engaged in research and development activities, has been amended.

The changes are as follows:

1. Additions include machinery and equipment installed in an existing manufacturing or research and development facility.
2. Facilities of enterprises engaged in research and development activities must be devoted directly and primarily to research and development, in the experimental or laboratory sense, of new products, new uses for existing products, or improvement of existing products. Previously, the law required the facility be devoted directly and exclusively to research and development.
3. To be eligible for the exemption, the facility or its addition must be devoted primarily to research and development. Previously, the law required the facility to be a separate facility devoted exclusively to research and development.

Effective Date: Tax years beginning after June 30, 2001.

House Bill 4775, Part II, Section 52. (Act No. A387)

Property Held in Trust Under the War Between the States Heritage Trust Fund

Code Section 12-37-220(B)(42), concerning a property tax exemption for real property of charitable trusts and foundations held for historic preservation of forts and battlegrounds meeting certain requirements, has been amended to include property held in trust under the provisions of the War Between the States Heritage Trust Program in Chapter 18 of Title 51.

Effective Date: July 1, 2000

House Bill 4775, Part II, Section 99. (Act No. A387)
(See House Bill 4856, (Act No. Unassigned))

Local Sales and Use Tax in Lieu of Property Tax on Vehicles

Article 5, Chapter 10, Title 4, “The Personal Property Tax Exemption Sales Tax Act,” has been added to allow a county to implement a local sales and use tax in lieu of the personal property tax imposed on private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors. The summary of this Act is below in the “Miscellaneous Section.”

Effective Date: Upon ratification of an amendment to Section 3, Article X of the Constitution of this State authorizing the governing body of a county by ordinance to exempt private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors from property tax levied in the county pursuant to a referendum held in the county.

House Bill 4856, (Act No. Unassigned)
(See also House Bill 4775, Part II, Section 99. (Act No. A387))

Constitutional Amendment - Referendum on Personal Property Tax

This joint resolution proposes an amendment to Section 3, Article X of the State Constitution to allow the governing body of a county through ordinance to impose a local sales and use tax to exempt all or a portion of the value of private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors from property taxes levied in the county. The exemption (or the rescission of the exemption) is allowed

pursuant to a county referendum which must be submitted to the voters at the next general election of representatives.

Effective Date: July 13, 2000

Document Number 2474

Regulation 117-8 - Duties of Comptroller General and Department of Revenue

This regulation sets forth the respective duties of the Comptroller's General Office and the Department as they relate to issues involving ad valorem property taxes and fees in lieu of property taxes. The regulation clarifies the responsibilities of each of the agencies, establishes a set of agreed procedures for both agencies to follow in administering their respective areas of responsibility, and is designed to serve as a guide for county officials to use in interacting with these two agencies.

Effective Date: June 23, 2000

REMINDER

In 1999, the following joint resolution was proposed to amend South Carolina's Constitution to provide for a reduction in the property tax on personal motor vehicles. This proposal will appear on the ballot at the November 7, 2000 general election. It is summarized below for informational purposes.

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.

SALES AND USE TAXES

Senate Bill 575, Section 1. (Act No. A399)

Disposable Medical Supplies Dispensed by a Licensed Pharmacist

Code Section 12-36-2120(28) has been amended to add an exemption for disposable medical supplies such as bags, tubing, needles, and syringes, which are dispensed by a licensed pharmacist in accordance with an individual prescription written for the use of a human being by a licensed health care provider.

This exemption applies only if: (1) the supplies are used for the intravenous administration of a prescription drug or medicine, and come into direct contact with the prescription drug or medicine and (2) the supplies are used in the treatment of a patient outside of a hospital, skilled nursing facility, or ambulatory surgical treatment center.

Effective Date: August 17, 2000

Senate Bill 575, Section 3.B.8. (Act No. A399)

Machine Exemption - Noise Pollution Machines

Code Section 12-36-2120(17), exempting machines used in manufacturing, processing, recycling, compounding, mining, or quarrying tangible personal property for sale, has been amended to include machines, attachments, and replacements used, or manufactured for use, on or in the operation of the machine which are necessary to comply with the order of an agency of the United States or South Carolina for the prevention or abatement of pollution of air, water, or noise that is caused or threatened by any machine used as provided in this exemption.

Effective Date: August 17, 2000

Senate Bill 575, Section 3.C.1. (Act No. A399)

Material Handling Systems and Material Handling Equipment

Code Section 12-36-2120(51), exempting material handling systems and material handling equipment used in the operation of a distribution facility or a manufacturing facility that invests at least \$35 million in South Carolina over a 5 year period, has been amended. The statute has been expanded as follows:

1. The taxpayer is required to notify the Department in writing that the \$35 million investment requirement has been met or, after the expiration of the 5 years, that it has not been met.
2. The Department may assess any tax due on the equipment purchased tax-free but due the State as a result of the taxpayer's failure to meet the investment requirement. The running of the period of limitations for assessment of taxes provided in Code Section 12-54-85 is suspended for the time period beginning with notice to the Department before the taxpayer uses the exemption and ending with notice to the Department that the taxpayer either has or has not met the investment requirement.

Effective Date: Sales occurring after August 17, 2000.

Senate Bill 575, Section 3.F. (Act No. A399)

Retail Sales License Validity

Code Section 12-36-550, concerning the validity and display of the retail sales license, has been expanded to provide that it is presumed that a retailer is not continuing in the same business and must surrender the retail sales license if the retailer has no retail sales for 24 consecutive months. The retailer may, however, allow the license to remain valid by submitting an affidavit to the Department swearing that the business is continuing.

Effective Date: August 17, 2000

House Bill 3782, Section 2. (Act No. A283)

Audiovisual Masters - New Exemption

Code Section 12-36-2120(55) has been added to exempt from the sales and use tax audiovisual masters made or used by a production company in making visual and audio images for first generation reproduction. The term “audiovisual master” is defined as an audio or video film, tape, or disk, or another audio or video storage device from which all other copies are made. The term “production company” is defined as a person or entity engaged in the business of making motion picture, television, or radio images for theatrical, commercial, advertising, or education purposes.

Further, Code Section 12-36-130, defining the term sales price, has been amended to add a definition of the sales price of an audiovisual master. It is the total amount for which the audiovisual master is sold, including charges for any services that go into its fabrication, manufacture, or delivery that are a part of the sale valued in money whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller without any deduction from it on account of the cost of the property sold, the cost of materials used, labor or service costs, interest charged, losses, or any other expenses.

Effective Date: June 1, 2000. Notwithstanding any other provision of law, taxes, penalties, and interest otherwise due on underpayments of sales and use tax arising from the sale or use of audiovisual masters before June 1, 2000 are waived. No refund is due any taxpayer of sales and use tax on account of this exemption.

House Bill 3782, Section 5.G. (Act No. A283)

Research and Development Machinery - Full Exemption

Code Section 12-36-2110(D), providing a maximum sales or use tax of \$300 on the sale of machinery used directly and exclusively for research and development, has been repealed and replaced by Code Section 12-36-2120(58).

Code Section 12-36-2120(58) has been added to provide an exemption from sales or use tax for machines used in research and development. The term “machines used in research and development” is defined to mean machines used directly and primarily in research

and development, in the experimental or laboratory sense, of new products, new uses for existing products, or improvement of existing products.

The term “machines” includes machines and parts of machines, attachments, and replacements which are used or manufactured for use on or in the operation of the machines, which are necessary to the operation of the machines, and which are customarily used in that way.

Effective Date: Tax years beginning after June 30, 2001.

House Bill 4775, Part II, Section 4. (Act No. A387)

Sales Tax Holiday

Code Section 12-36-2120(56) has been added to provide for an annual “Sales Tax Holiday” beginning 12:01 a.m. on the first Friday in August and ending at midnight the following Sunday.

This sales tax exemption applies to sales of: (1) clothing, clothing accessories including, but not limited to, hats, scarves, hosiery, and handbags, (2) footwear, (3) school supplies including, but not limited to, pens, pencils, paper, binders, notebooks, books, bookbags, lunchboxes, and calculators, and (4) computers, printers and printer supplies, and computer software.

The sales tax exemption does not apply to: (1) sales of jewelry, cosmetics, eyewear, wallets, watches, and furniture, (2) a sale of an item placed on layaway or similar deferred payment and delivery plan however described, (3) rental of clothing or footwear, or (4) a sale or lease of an item for use in a trade or business.

Before July tenth of each year, the Department is required to publish and make available to the public and retailers a list of those articles qualifying for the exemption. For more information, see SC Revenue Advisory Bulletin #00-4 and SC Revenue Advisory Bulletin #00-5.

Effective Date: June 30, 2000

House Bill 4775, Part II, Section 63. (Act No. A387)

Direct Mail Promotional Advertising Materials - New Exemption

Code Section 12-36-2120(57) has been added to provide an exemption from the sales and use tax for cooperative direct mail promotional advertising materials delivered by means of interstate carrier, a mailing house, or a United States Post Office to South Carolina residents, from locations inside and outside South Carolina.

“Cooperative direct mail promotional advertising materials” is defined to mean discount coupons, advertising leaflets, and similar printed advertising, including any accompanying envelopes and labels which are distributed with promotional advertising materials of more than one business in a single package to potential customers, at no charge to the potential customer, of the businesses paying for the delivery of the material.

Effective Date: June 1, 2001

REMINDER

The following Act was enacted in 1999, but is only effective for debt incurred after 1999. It is summarized below for informational purposes.

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.

MISCELLANEOUS

ADMINISTRATIVE AND PROCEDURAL MATTERS (Summarized by Subject Matter)

Senate Bill 60, (Act No. A246)

South Carolina Legal Holidays

Code Section 53-5-10 has been amended to add Martin Luther King Day and Confederate Memorial Day as State holidays. These holidays will be observed the third Monday in January and May 10th, respectively. Further, the general election day in November is no longer a legal holiday.

See SC Revenue Procedural Bulletin #00-2 for more information concerning the return due date for dates falling on Saturday, Sunday, or a legal holiday.

Effective Date: May 1, 2000

Senate Bill 575, Section 3.D.1. (Act No. A399)

Signatures Required on Return - Clarification

Code Section 12-2-75, concerning signatures on returns, has been amended to clarify who must sign South Carolina tax returns. The clarifications include:

1. Partnership returns must be signed by its manager or an authorized general partner of the partnership.
2. Returns filed by taxpayers not otherwise listed must be signed by an authorized officer or owner.

3. In the instructions to a return, or otherwise, the Department may authorize the signature to be filed, or deposited with and kept, or forwarded by, a third party.

Effective Date: Tax years beginning after December 31, 2000.

Senate Bill 575, Section 3.D.2. (Act No. A399)

Payments by Credit Card

Code Section 12-4-780 has been added to provide that the Department may accept payments by credit cards. The Department has the authority to accept such payments on terms and conditions it establishes and includes authority to accept credit card payments only for certain classes of payments. The Department may withhold the actual cost of processing credit card payments from deposits of the payments and treat these as reimbursements of the expenditure. Further, the State Treasurer may enter into contracts on behalf of the Department by which the Department may accept credit card payments.

Effective Date: Tax years beginning after December 31, 2000.

Senate Bill 575, Section 3.E. (Act No. A399)

Rounding-Off To Dollar Amounts

Code Section 12-6-5095 has been added to provide that for purposes of an income tax return, the Department or taxpayer may round all amounts to the nearest whole dollar. An amount of fifty cents or more may be rounded to the next dollar and an amount of less than fifty cents may be eliminated.

Effective Date: Returns filed after December 31, 1999.

Time Limitation for Assessment of Taxes or Fees and Claim for Refunds

Code Section 12-54-85, the general statutory rule for time periods within which the Department may assess taxes and fees and within which taxpayers may file a claim for refund for all fees and taxes administered and collected by the Department, has been amended. The amendments include:

1. If a tax is not required to be remitted with a return or document, the amount of taxes must be assessed within 36 months after the later of: (1) the date the tax was due or (2) the first date on which any part of the tax was paid. Previously, the assessment had to be made within 36 months after the date any part of the tax was paid.
2. A penalty that is not associated with the tax assessment must be assessed within 36 months after the date of the violation giving rise to the penalty. Previously, this provision was not contained in the law.
3. Taxes due to an understatement of taxes resulting from Internal Revenue Service adjustments may be determined after the 36 month limitation as provided below:
 - a. Income (except as provided below), estate, and generation skipping transfer taxes. The taxes are assessed before 180 days after the Department receives notice from the taxpayer of an Internal Revenue Service final determination.
 - b. Individual income tax returns that do not include income, deductions, or credits from a trade or business, other than that of being an employee. The taxes are assessed before 180 days after the earlier of the date the Department receives notice from (1) the taxpayer or (2) the Internal Revenue Service. Previously, the statute did not contain this exception.
4. A person, including a pass through entity, who conducts a trade or business (other than that of being an employee) must notify the Department in writing within 180 days after a final determination of tax adjustment (*i.e.* the federal assessment date) is made by the Internal Revenue Service. Previously, the statute only required corporations to notify the Department of changes in taxable income by the Internal Revenue Service within 90 days after receipt of a final determination from the Internal Revenue Service.

5. Notwithstanding the time limitations on filing a claim for refund in Code Section 12-54-85(F), a person may file a claim for refund within 180 days after the federal assessment date for the overpayment of taxes due to changes in taxable income made by the Internal Revenue Service. Previously, this provision only applied to corporations who filed a claim for refund within 90 days from the date the Internal Revenue Service changed the taxable income.

Effective Date: August 17, 2000

Senate Bill 575, Section 3.J.1. (Act No. A399)

Interest on Refunds When No Return is Due

Code Section 12-54-25(C), concerning interest on tax refunds or credits, has been amended to clarify the amount of interest to be paid to a taxpayer when a return is not required to be filed with a payment. In such instances, any tax refund or credit must include interest from the later of: (1) the date the tax was paid or (2) the last day prescribed for paying the tax, to the date the credit was made, or the refund was sent, to the taxpayer. The amendment also clarifies that the Department does not pay interest on an overpayment that is refunded within 75 days after the last day prescribed for paying the tax if no return is required.

Effective Date: Taxable periods ending after December 31, 1999.

Senate Bill 575, Section 3.X.1. (Act No. A399)

Refund of Overpayment of Property Tax

Code Section 12-45-78 has been added to provide that any overpayment of property tax that results from the granting of a homestead exemption under Code Section 12-37-250 or from the property qualifying for the 4% assessment ratio for legal residences under Code Section 12-43-220(c) shall be refunded if either of these events occurs after the payment of the property tax for that year. Any overpayment must be refunded to the owner of record at the time that the exemption is granted or the classification is made.

Effective Date: January 1, 2001

Senate Bill 575, Section 3.J.2. (Act No. A399)

Failure to File Penalty

Code Section 12-54-43(C)(2), concerning a minimum failure to file penalty of the lesser of \$100 or 100% of the tax when the tax owed is more than \$100, has been deleted.

Code Section 12-54-43(C)(1) continues to impose a failure to file penalty of 5% of the tax amount for each month or fraction thereof, not to exceed 25%, in the case of a failure to file a return on or before the due date, determined with regard to any extension of time for filing.

Effective Date: Tax returns due after October 31, 2000, and does not affect an action or proceeding commenced or a right accrued before October 1, 2000.

Senate Bill 575, Section 3.W.1. (Act No. A399)

Waiver, Dismissal, or Reduction of a Property Tax Penalty

Code Section 12-45-420 has been added to provide that a committee composed of the county auditor, county treasurer, and county assessor may waive, dismiss, or reduce a penalty levied against real or personal property in the case of an error by the county.

Effective Date: August 17, 2000

Senate Bill 575, Sections 3.M.2. and 3. (Act No. A399)

Revenue Procedures Act - Clarification

Code Section 12-60-20 has been amended to clarify that the Revenue Procedures Act applies to any dispute with the Department. Previously, the statute referred to any disputed revenue liability.

Code Section 12-60-30(27), providing definitions of terms used in the Revenue Procedures Act, has been amended to include regulatory and other penalties, and civil fines in the definition of the term "tax" or "taxes."

Effective Date: August 17, 2000

Senate Bill 575, Section 3.M.1. (Act No. A399)

Bond Required Prior to Circuit Court Appeal

Code Section 12-60-3370 has been amended to provide that a taxpayer must pay, or post bond for, the amount of taxes (including interest) determined due by the Administrative Law Judge prior to appealing the decision to circuit court. The statute no longer requires payment or posting of bond for penalties or civil fines in such appeals.

Effective Date: August 17, 2000

Senate Bill 575, Section 3.J.3. (Act No. A399)

Examination or Investigation of Places of Business, Equipment, and Other Records

Code Section 12-54-100, concerning the Department's authority to examine the books, invoices, papers, records, memoranda, equipment, or licenses of a taxpayer, has been expanded to allow the Department to also examine or investigate the place of business, tangible personal property, facilities, computers, computer programs, electronic data, vouchers, and other documents of the taxpayer or other person that bear upon the matters required to be included on a return.

Further, Code Section 12-54-100 has been amended to allow the Director to employ proper and reasonable audit methods necessary to conduct the examination or investigation, including the use of sampling.

Effective Date: August 17, 2000

House Bill 4775, Part I.B., Section 64.15. (Act No. A387)

Federal Refund Offset Program

The Department may incur and pay the expense of the fee required by Internal Revenue Code Section 6402(e)(6) (Collection of Past-Due, Legally Enforceable State Income Tax Obligations,) as may be required to effectuate the Federal Refund Offset Program, and

this fee must be paid upon certificate of the Department by drawing upon funds from the same tax type set off.

Effective Date: July 1, 2000

Senate Bill 575, Section 3.K. (Act No. A399)

Collection Services

Code Section 12-54-227(B), allowing the Department to contract with an outside collection agency for the collection of delinquent taxes, has been amended to allow the Department to refund the fees for collection services to the collection agency, if all funds collected are remitted gross of fees.

Effective Date: August 17, 2000

Senate Bill 575, Section 3.L. (Act No. A399)

Disclosure of Accommodations and Admissions Tax Information

Code Section 12-54-240, concerning disclosure of records, reports, and returns filed with the Department, has been amended.

Code Sections 12-54-240(B)(21) and (22) have been added to permit the disclosure of the following:

1. Information, including statistics classified to prevent their identification to certain items on reports or returns, filed in a return pursuant to Chapter 36, Title 12, for accommodations taxes imposed pursuant to Code Section 12-36-920 and sales and use taxes collected by and reported to the Department of Parks, Recreation, and Tourism including, but not limited to, statistics reflecting tourism activity.
2. Information contained in a return filed pursuant to Article 17, Chapter 21, Title 12 (Admissions Tax), for the purpose of complying with the Tourism Infrastructure Admissions Tax Act.

Effective Date: August 17, 2000

Senate Bill 1361, (Act No. Unassigned)

Title 12 - Revised Volume Adopted

This joint resolution adopts revised South Carolina Code of Laws - Volume 5 (Title 12 - Taxation) as part of the code of laws. To the extent of its contents, it is the only general permanent statutory law of South Carolina as of January 1, 2000. This revision was necessary due to the cumulative supplement to Volume 5 being too bulky for convenient use.

Effective Date: May 30, 2000

Senate Bill 575, Section 3.S. (Act No. A399)

Local Option Use Tax Collected on Individual Income Tax Return

Code Section 4-10-67 has been added to require that local option use tax collected by the Department on individual income tax returns must be deposited to a local option supplemental revenue fund and distributed in accordance with Code Section 4-10-60 to those counties generating less than their minimum distribution.

Effective Date: August 17, 2000

REGULATORY MATTERS

Senate Bill 1012, (Act No. A391)

Temporary Permits to Sell Alcoholic Liquors

Code Section 61-6-2010, which allows Sunday sales of alcoholic liquors in minibottles, has been amended to require the Department to offer a 52 week temporary permit for a \$3,000 nonrefundable fee per year. This permit may not extend beyond the expiration date of the biennial license issued to the applicant. The fee for this temporary permit can be prorated under certain circumstances.

Effective Date: July 20, 2000

House Bill 3086, (Act No. A304)

Alcoholic Liquor License - Notices

Code Section 61-6-180, providing requirements for giving notice of an application for an alcoholic liquor license, has been amended. A person who intends to apply for an alcoholic liquor license must advertise this at least once a week for three consecutive weeks in a newspaper and must display a sign giving notice of the application for 15 days at the proposed business site. The amendments are:

1. The newspaper in which the notice must be published must meet two requirements. It must be a newspaper circulated nearest to the proposed location of the business and most likely to give notice to interested citizens of the county, city, and community in which the applicant proposes to engage in business. Previously, the notice was only required to be published in a newspaper most likely to give notice to interested citizens of the county, city, or community in which the applicant proposed to engage in business. The law continues to allow the notice to be published in a newspaper that is published in the county and has historically been the newspaper where the advertisements are published.
2. In determining which newspapers meet the requirements of this section, the Department must also look at the proposed business location. Previously, the Department made this determination based only on available circulation figures.

3. The notice must be in the legal notice section of the paper or in an equivalent section if the newspaper has no legal notice section. The law continues to require that the notice must be in large type, cover a space one column wide and not less than two inches deep, and state the type of license applied for, and the exact location at which the proposed business is to be operated. The law also continues to allow an applicant for a beer or wine permit and an alcoholic liquor license to use the same advertisement for both if the advertisement is approved by the Department.
4. The space a sign displayed at the site of the proposed business must cover has increased in size from 11 inches wide and 8 ½ inches high to 12 inches wide and 18 inches high. The other requirements for the sign remain the same.

Effective Date: Applies to applications filed on or after May 30, 2000.

OTHER ITEMS (Summarized by Subject Matter)

House Bill 3808, Section 1. (Act No. A395)

Deed Recording Fee - Exemption

Code Section 12-24-40(14) has been added to exempt from the deed recording fee deeds transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase and for the purpose of purchasing the realty.

Effective Date: For deeds recorded on or after July 20, 2000.

Senate Bill 575, Section 3.P. (Act No. A399)

Motor Fuel Changes

The following amendments have been made to the motor fuel law:

1. Code Section 12-28-1910(A) has been amended to allow the Department and its appointees to conduct inspections and remove samples of fuel from a vehicle, tank, or other container to determine the coloration of the diesel fuel.
2. Chapter 27 (Gasoline Taxes) and Chapter 29 (Tax on Motor Fuels Other Than Gasoline) of Title 12 have been repealed. These provisions have been replaced by Chapter 28 (Tax on Motor Fuels) of Title 12.

Effective Date: August 17, 2000

House Bill 4775, Part II, Section 99. (Act No. A387)
(See House Bill 4856, (Act No. Unassigned))

Local Sales and Use Tax in Lieu of Property Tax on Vehicles

Article 5, Chapter 10, Title 4, “The Personal Property Tax Exemption Sales Tax Act,” has been added to allow a county to implement a local sales and use tax (hereafter “vehicle sales tax”) in lieu of the personal property tax imposed on private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors (hereafter “vehicles”).

The county council may by ordinance impose the vehicle sales tax in increments of one-tenth of 1%, not to exceed the lesser of 2% or the amount necessary to replace the property tax on vehicles in the most recently completed fiscal year, subject to a referendum. The referendum must be held at the same time as the general election. A notice of the referendum must be published in a newspaper two weeks prior to the referendum by the election commission.

The county council must obtain from the Board of Economic Advisors an estimate of the rate of vehicle sales tax necessary in the county to equal the property tax on vehicles in the latest completed fiscal year. The lesser of this rate or 2% is the rate of vehicle sales tax appearing on the referendum. If the revenue of a 2% vehicle sales tax does not at least equal the tax revenue that would have been collected from the property tax, then for the first year that the vehicle sales tax is implemented, the shortfall must be made up by a

distribution to the county from the State funded Trust Fund for Tax Relief. In future years, the amount distributed from the Fund will be adjusted by the Consumer Price Index in the most recently completed calendar year, but the distribution must not result in a reimbursement to the county that exceeds the personal property tax revenue not collected because of the exemption.

If the referendum is approved, the local vehicle sales tax is imposed on the first of July following the date of the referendum. Vehicles are exempt from property taxes levied by the county beginning for motor vehicle tax years beginning on or after the imposition of the vehicle sales tax and all other property tax years beginning after the year in which the referendum is held.

Similar referendum procedures are provided for rescinding the vehicle sales tax. A referendum for rescission of the vehicle sales tax may not be held before two years after the date the tax has been imposed. If the rescission referendum is passed, then the vehicle sales tax is rescinded effective July 1 following the referendum and property taxes apply to all vehicles for motor vehicle tax years beginning after June 30 following the referendum and other property tax years after the year in which the referendum is held. Additionally, certain provisions are provided to modify the vehicle sales tax rate in the event that the assessment ratio applicable to the vehicles is reduced. The new rate is effective beginning with the month the assessment ratio changes and continues to apply while that assessment ratio applies or until the vehicle sales tax is rescinded.

The vehicle sales tax applies to the gross proceeds of sales subject to the sales and use tax imposed by Chapter 36 of Title 12 and the enforcement provisions of Chapter 54 of Title 12. If property is subject to a maximum sales tax, it is not subject to the vehicle sales tax.

Taxpayers who are required to remit the vehicle sales 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 the 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 report separately the gross proceeds from business done in each county. Sales of tangible personal property delivered after the imposition date of the vehicle sales tax, either under the terms of a construction contract executed before the imposition date, or a written bid submitted before the imposition date, culminating in a construction contract entered into before or after the imposition date, are exempt from the vehicle sales tax provided a verified copy of the construction contract is filed with the Department within 6 months of the imposition of the vehicle sales tax. Services that are billed regularly on a monthly basis are subject to the vehicle sales tax beginning on the first day of the billing period beginning on or after the date that the vehicle sales tax is imposed.

The Department administers and collects the vehicle sales tax. The revenue generated by the vehicle sales tax must be remitted to the Department and credited by the State Treasurer to a fund separate and apart from the general fund. After the deduction of refunds and administration costs, the State Treasurer distributes the revenue quarterly to the county treasurer of the county in which the vehicle sales tax is imposed. Revenue from the vehicle sales tax must be distributed to the general funds of property taxing entities in the county in the proportion that each entity collects of all property taxes levied in the county.

Effective Date: Upon ratification of an amendment to Section 3, Article X of the Constitution of this State authorizing the governing body of a county by ordinance to exempt private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors from property tax levied in the county pursuant to a referendum held in the county.

House Bill 4856, (Act No. Unassigned)

(See also House Bill 4775, Part II, Section 99. (Act No. A387))

Constitutional Amendment - Referendum on Personal Property Tax

This joint resolution proposes an amendment to Section 3, Article X of the State Constitution to allow the governing body of a county through ordinance to impose a local sales and use tax to exempt all or a portion of the value of private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors from property taxes levied in the county. The exemption (or the rescission of the exemption) is allowed pursuant to a county referendum which must be submitted to the voters at the next general election of representatives.

Effective Date: July 13, 2000

Chesterfield County 1% Sales & Use Tax

The Chesterfield County School District School Bond - Property Tax Relief Act has been enacted. The Act allows the governing body of the Chesterfield County School District to impose, by referendum, a sales and use tax not exceeding 1% within Chesterfield County for a specific purpose and for a specified period of time, not to exceed 25 years. 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”), or to pay directly costs of acquisition or construction of any improvements identified in the resolution providing for the imposition of the tax.

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

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 county.

Sales of tangible personal property delivered after the imposition date of the tax, either under the terms of a construction contract executed before the imposition date, or a written bid culminating in a construction contract entered into before or after the imposition date, are exempt from 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 district for the purpose of calculating distributions and estimating revenues.

NOTE: The imposition of the 1% sales and use tax was approved in a referendum held on May 27, 2000, and the required declaration of results have been filed with the Department. The tax will be imposed on September 1, 2000, and will terminate on August 31, 2030, or if earlier, upon payment of the final maturing installments of principal of the bonds to which the application of the tax is authorized (\$60,000,000), or upon payment of the final maturing installments of principal of general obligation bonds issued to refund the bonds.

Effective Date: May 1, 2000

House Bill 3993, (Act No. A368)

Local Transportation Sales and Use Tax - Amended

Code Section 4-37-30, concerning the financing of local transportation facilities, has been amended to provide that the sales and use tax that the governing body of a county may impose by ordinance may not exceed 1%. Previously, the local transportation sales and use tax, if imposed, had to be 1%.

Other amendments include:

1. Code Section 4-37-30(A)(1)(a)(i) has been amended to provide that the proceeds of the local transportation sales and use tax may be used for mass transit systems and greenbelt projects.
2. The provision concerning the holding of a referendum on the question of imposing an optional sales and use tax before January 1, 1998, has been deleted.
3. Several other provisions have been added with respect to the referendum.

4. Code Section 4-37-40 was amended to provide that no portion of a county may be subject to more than a 1% sales tax levied pursuant to Title 4, Chapter 37, or Title 4, Chapter 10, Article 3, or pursuant to any local legislation enacted by the General Assembly.

Effective Date: June 14, 2000

Senate Bill 1310, (Act No. Unassigned)

Berkeley County School District Bond - Amended

The Berkeley County School District School Bond - Property Tax Relief Act, enacted pursuant to Act No. 178 of 1999, allowing the governing body of the Berkeley County School District to impose, by referendum, a 1% sales and use tax within Berkeley County, has been amended. Section 9 of Act No. 178 of 1999, establishing the date for the referendum and the wording of the referendum question to be placed on the ballot, has been repealed. Note, this tax is not currently imposed.

Effective Date: May 1, 2000

House Bill 4543, (Act No. A269)

Confidentiality of Taxpayer Information by Local Government

Code Section 6-1-120, concerning confidentiality of county or municipal taxpayer information, has been amended to clarify that a county or municipal employee cannot divulge financial information or other information indicative of units of goods or services sold that is contained in a report, tax return, or application required by an ordinance imposing certain taxes or fees. This amendment also makes it clear that this section does not prohibit the sharing of data between public officials or employees in the performance of their duties.

Effective Date: May 1, 2000

Municipal Improvements Act and Related Statutes

The Municipal Improvements Act of 1999 has been amended. The Act allows a municipality to fund improvements such as parks, recreation facilities, and roads by levy of additional assessments against property that will benefit from the improvements or through the issuance of bonds. The amendments to the Act and related statutes are as follows:

1. Code Section 5-37-20(2), containing a definition of “improvements” that may be funded through the bonds or additional assessments, has been amended to include services or functions which a municipality may provide.
2. Code Section 5-37-35 has been added to provide that the monies necessary to fund the improvements cannot be imposed or derived from a tax or assessment on property not located in the improvement district. This restriction does not apply to projects or undertakings designated by a municipal governing body as a “system” under Code Section 6-21-40 (The Revenue Bond Act for Utilities).
3. Code Section 6-21-55 has been added to provide that debt service on bonds issued to finance improvements under the Municipal Improvements Act of 1999 cannot be derived, in whole or in part, from a tax or assessment not located in the improvement district. This restriction does not apply to projects or undertakings designated by a municipal governing body as a “system” under Code Section 6-21-40.
4. Code Section 5-7-36 has been added to Chapter 7 of Title 5 (which addresses the organization, duties, and functions of municipalities) to provide that no assessment for an Improvement District may be made on residential property for additional police, fire, and garbage services if the services are part of the plan, and that no assessment may be made against a historic fort that qualifies for an exemption from property taxes.

Effective Date: July 16, 2000

House Bill 4775, Part II, Section 69. (Act No. A387)

Tobacco Settlement Revenue Management Authority Act

Chapter 49 of Title 11 has been added to enact the “Tobacco Settlement Revenue Management Authority Act.” This Act provides for the establishment of a state instrumentality to receive payments from tobacco product manufacturers under the Master Settlement Agreement between South Carolina and tobacco product manufacturers. The Act provides for the membership, powers, and duties of this instrumentality relating to the receipt, allocation, securitization, and disposition of payments under the Master Settlement Agreement.

Also, the Act creates in the State Treasury the Healthcare Tobacco Settlement Fund, the Tobacco Community Trust Fund, the Tobacco Settlement Economic Development Fund, and the Tobacco Settlement Local Government Fund. Payments under the Master Settlement Agreement will be credited to these funds in stated percentages.

Proceeds from these various funds will be used for health programs, loss reimbursements to tobacco growers, quota owners, and warehousemen, revitalization of tobacco communities, and economic development.

Effective Date: Except where otherwise stated in the Act, June 30, 2000.

Senate Bill 1129, (Act No. A357)

Atlantic Interstate Low-Level Radioactive Waste Compact Implementation Act

Title 48 has been amended to add Chapter 46, the “Atlantic Interstate Low-Level Radioactive Waste Compact Implementation Act.” This Act provides the statutory basis for South Carolina’s membership in the Atlantic Low-Level Radioactive Waste Compact, the conditions for South Carolina’s membership, and the procedures and policies necessary to achieve state objectives with respect to the compact. These procedures and policies include state approval of disposal rates and for identifying allowable operating costs so as to determine revenues due to the state for low-level radioactive waste disposal.

Title 48, Chapter 48 will be repealed effective upon the date of South Carolina’s membership in the Atlantic Compact, except that Code Section 48-48-140(F) is repealed effective July 1, 2000. The contingent annual license tax for fiscal year 1999-2000 under

Code Section 48-48-140(F) shall remain due and payable as described in that section for that fiscal year.

In the event that South Carolina does not become a member of the Atlantic Compact by October 1, 2000, then Code Section 48-48-140(F) will be reinstated as of October 1, 2000, except that the tax for fiscal year 2000-2001 shall be \$18 million. In the fiscal year that the site operator ceases to accept waste for disposal in preparation for permanent closure, the contingent annual license tax under Code Section 48-48-140(F) will be paid to the State on a pro rata basis for each quarter that the site is accepting waste for disposal. The tax does not apply when the site is in a closure mode.

In the event that South Carolina does become a member of the Atlantic Compact, the operator of a regional disposal facility must submit, within 30 days following the end of the fiscal year, a payment to the Department in an amount that is equal to the total revenues received for waste disposed in that fiscal year (with interest accrued on cash flows in accordance with instructions from the State Treasurer) minus allowable costs, operating margin, and any payments already made from such revenues for reimbursement of administrative costs to state agencies and the compact commission. The Department shall deposit the payment with the State Treasurer.

Effective Date: June 6, 2000

REMINDER

In 1999, the automatic repeal of the following Act was to be changed from July 30, 1999 to July 30, 2000, unless the General Assembly extended it by act or resolution. The General Assembly did not extend the section and it is repealed. It is summarized below for informational purposes.

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

State and County Athletic Commission - 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.

Effective Date: This section is repealed July 30, 2000.

WARNING: THE GOVERNOR HAS NOT SIGNED OR VETOED HOUSE BILL 3358, HOUSE BILL 3393, OR HOUSE BILL 3649, THEREFORE, THESE BILLS ARE NOT IN EFFECT. THESE BILLS HAVE BEEN SUMMARIZED BY TAX TYPE FOR YOUR REFERENCE ONLY. SEE EXPLANATORY NOTE IN THE INTRODUCTION OF THIS INFORMATIONAL BULLETIN.

INCOME TAX

House Bill 3358, Sections 5. and 6.

Nonprofit Corporations Providing Water and Sewage Services

Code Section 12-6-550(4), exempting from income tax certain nonprofit corporations that provide water and sewage disposal services, has been amended to correct a cross reference. Chapter 35 of Title 33 has been repealed and replaced with Chapter 36 of Title 33. Chapter 36 addresses the formation, operation, and dissolution of nonprofit corporations financed in whole or in part by certain federal loans and loans made under the State Revolving Fund for Water or Sewer.

PROPERTY TAX

House Bill 3358, Sections 5. and 6.

Nonprofit Corporations Providing Water and Sewage Services

Section 12-37-220(B)(4), exempting property of certain nonprofit corporations that provide water and sewage disposal services from ad valorem property taxes, has been amended to correct a cross reference. Chapter 35 of Title 33 has been repealed and replaced with Chapter 36 of Title 33. Chapter 36 addresses the formation, operation, and dissolution of nonprofit corporations financed in whole or in part by certain federal loans and loans made under the State Revolving Fund for Water or Sewer.

House Bill 3393

Transfer of Title to Watercraft

Code Section 50-23-295 has been added to provide that a certificate of title to watercraft or an outboard motor may not be transferred if the Department of Public Safety has notice that the taxes have not been paid on the property by the current owner within the past three years. The bill of sale or title to watercraft or an outboard motor requires certification that the property taxes have been paid by the current owner as of the date of sale. If the transfer of title is denied by the Department of Public Safety, the owner may present a tax receipt as proof of payment. At least annually, the county treasurer or other appropriate public official will transfer a list of delinquent taxes due on watercraft and outboard motors to the Department of Public Safety.

SALES TAX

House Bill 3358, Sections 5. and 6.

Nonprofit Corporations Providing Water and Sewage Services

Code Section 12-36-2120(12), providing a sales tax exemption for the sale of water by certain nonprofit corporations that provide water and sewage disposal services, has been amended to correct a cross reference. Chapter 35 of Title 33 has been repealed and replaced with Chapter 36 of Title 33. Chapter 36 addresses the formation, operation, and dissolution of nonprofit corporations financed in whole or in part by certain federal loans and loans made under the State Revolving Fund for Water or Sewer.

House Bill 3649, Part I.B., Section 1, Item 32.

Food Sales - Reduction in Sales Tax Rate

Provided the funds are authorized for the applicable fiscal year, this provision allows a reduction in the sales tax rate imposed pursuant to Chapter 36 of Title 12 on the gross proceeds of sales, or the sale price of food items eligible for purchase with United States Department of Agriculture food coupons. The reduction in sales tax rate is as follows:

DATE OF SALE	SALES TAX RATE
January 1, 2001 through December 31, 2001	4%
January 1, 2002 through December 31, 2002	3%
January 1, 2003 through December 31, 2003	2%
January 1, 2004 through December 31, 2004	1%
January 1, 2005 and thereafter	0%