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

SC REVENUE INFORMATIONAL BULLETIN #01-16

SUBJECT: Tax Legislative Update for 2001

DATE: October 19, 2001

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2000)

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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The law changes are summarized by subject matter. There are several instances where more than one bill with related subject matters were enacted. In such case, these summaries are cross referenced. Further, some laws have not been assigned act numbers as of the date of this publication and this is indicated in the summary.

INCOME TAXES, CORPORATE LICENSE FEES, AND WITHHOLDING

House Bill 3885, Section 6 (Act No. 89)

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, 2000, and includes its effective date provisions.

In addition, Code Section 12-6-40(A)(2) has been added to clarify that references to certain terms used in Internal Revenue Code sections adopted by the Department are deemed to have a similar meaning necessary for South Carolina to administer the provisions in Title 12 of the South Carolina Code. These include:

1. The terms "Secretary," "Secretary of Treasury," or "Commissioner" used in the Internal Revenue Code are deemed to mean the Director of the Department of Revenue.
2. The term "Internal Revenue Service" used in the Internal Revenue Code is deemed to mean the Department of Revenue.
3. The term "return" used in the Internal Revenue Code means the appropriate state return.
4. The term "income" as used in the Internal Revenue Code includes for South Carolina purposes the modifications required by Article 9 of Chapter 6 (the Income Tax Act) and allocation and apportionment provisions in Article 17 of Chapter 6.

Other terms in the Internal Revenue Code must be given the meanings necessary to effectuate this provision.

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

House Bill 3885, Section 7 (Act No. 89)

Internal Revenue Code Sections 941 through 943 Adopted

In 2000, Congress enacted new provisions to replace the foreign sales corporation provisions. Internal Revenue Code Section 114 allows an exclusion from gross income

for “extraterritorial income” that is “qualifying foreign trade income” as provided in Internal Revenue Code Sections 941 through 943.

Code Section 12-6-50, listing Internal Revenue Code sections not adopted, has been amended to provide that Internal Revenue Code Sections 931 through 940 and 944 through 989, relating to the taxation of foreign income are not adopted. As a result, South Carolina has adopted Internal Revenue Code Sections 941 through 943 and follows the exclusion for extraterritorial income in Internal Revenue Code Section 114.

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

House Bill 3529, Sections 4 and 5 (Act No. 72)

Contributions to South Carolina Tuition Prepayment Program – Now Deductible

Code Section 12-6-1140, providing deductions in computing the South Carolina taxable income of an individual, has been amended to add a deduction for a contribution to the South Carolina Tuition Prepayment Program as provided in Code Section 59-4-100.

The South Carolina Tuition Prepayment Program was added to Chapter 4 of Title 59 in 1997. The program allows South Carolina residents to pay tuition in advance at a fixed and guaranteed level for an individual to attend a South Carolina public or independent college or university. The program is under the direction of the Office of the State Treasurer. Code Section 59-4-100, concerning tax liability, has been amended to provide that contributions to the fund allow the contributor a deduction for South Carolina income tax purposes.

Code Section 59-4-100 continues to provide that the contributions are not taxable to the beneficiary or anyone required to support the beneficiary; and earnings on the account, tuition waivers, credits or payments for tuition are not included in South Carolina gross income to the extent payments are used for tuition during the same calendar year in which received.

Effective Date: July 20, 2001

House Bill 3529, Section 3 (Act No. 72)

South Carolina College Investment Program

The South Carolina College Investment Program has been added in Chapter 2 of Title 59. This program allows South Carolina residents to participate in an investment trust fund whereby contributions and investment earnings are used to pay for qualified higher education expenses of designated beneficiaries at eligible educational institutions, as

defined in Internal Revenue Code Section 529. The program is under the direction of the Office of the State Treasurer.

Code Section 59-2-80 provides for the income tax treatment of fund contributions and earnings as follows:

1. Contributions are deductible from South Carolina income tax in the year of contribution up to the limit of maximum contributions allowed under Internal Revenue Code Section 529.
2. Funds transferred from another qualified college investment account are deductible in the year transferred if the funds were not previously allowed a state income tax deduction.
3. Any interest, dividends, gains, or income accruing are not included in South Carolina income of the account owner, contributor, or beneficiary if they remain in the fund or are withdrawn as a qualified withdrawal.
4. Earnings withdrawn that are not qualified withdrawals are included in South Carolina income of the resident recipient in the year of withdrawal.

Effective Date: January 1, 2002

House Bill 3885, Section 9 (Act No. 89)

Two Wage Earner Credit - Clarified

Code Section 12-6-3330 allows a credit to taxpayers filing a joint individual income tax return if both have South Carolina earned income (*i.e.*, income that is earned income within Internal Revenue Code Section 911(d)(2) which defines earned income, or 401(c)(2) which provides rules relating to self employed individuals, and is taxable in South Carolina.)

Code Section 12-6-3330(C)(2) has been amended to update a cross reference to Internal Revenue Code Section 3121(b) defining employment. This amendment clarifies that South Carolina earned income does not include amounts received for services performed by an individual employed by his spouse within the meaning of Internal Revenue Code Section 3121(b)(3)(B) of the current Internal Revenue Code.

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

House Bill 3885, Section 11 (Act No. 89)

Retirement Contribution Credit for Tax Paid to Another State - Clarified

Code Section 12-6-3500, providing a credit over a taxpayer's lifetime for taxes paid on qualified retirement income contributions while a nonresident of South Carolina, has been clarified to delete the reference to a retirement income deduction "election" made pursuant to Code Section 12-6-1170. Code Section 12-6-1170 allows an individual to deduct up to \$3,000 of retirement income annually at any age or deduct up to \$10,000 of retirement income annually beginning in the year the taxpayer reaches age 65. In 1998, Code Section 12-6-1170 was amended to delete the irrevocable election for the \$10,000 retirement income tax deduction, however, Code Section 12-6-3500 was not amended to reflect this. As of result of this amendment, the Department will prescribe the amount of the annual credit based on the taxpayer's life expectancy at the time the taxpayer first claims the retirement income deduction pursuant to Code Section 12-6-1170; it is no longer based on the taxpayer's life expectancy at the time of the "election."

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

House Bill 3885, Section 8 (Act No. 89)

Entire Business Conducted in South Carolina - Clarified

Code Section 12-6-2210(A), concerning the allocation and apportionment of income, has been amended to clarify that the entire business of a taxpayer is transacted or conducted in South Carolina if the taxpayer (1) is not subject to a net income tax or franchise tax measured by net income in another state, United States territory, or foreign country, and (2) would not be subject to net income in another jurisdiction if it adopted South Carolina's income tax laws.

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

House Bill 3885, Section 5 (Act No. 89)

QSSS - A Disregarded Entity for All Taxes

Code Section 12-2-25(B), providing definitions pertaining to limited liability companies, has been expanded to provide that a qualified subchapter S subsidiary (QSSS) is not regarded as an entity separate from the S corporation that owns the stock of the QSSS for all purposes of South Carolina Code Title 12 (Taxation). Prior to this amendment, South Carolina had adopted Internal Revenue Code Section 1361(b)(3) that allows an electing parent and QSSS to be treated as one entity for income tax purposes. The QSSS, however, was treated as a separate corporation for all other South Carolina tax purposes, including license fees, sales and use taxes, and property taxes.

This statute continues to provide that a single member limited liability company that is not taxed as a corporation is not regarded as a separate entity from its owner, and a grantor trust, to the extent it is a grantor trust, is not regarded as an entity separate from its grantor.

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

House Bill 3885, Sections 17 and 18 (Act No. 89)

Savings and Loan Income Tax

Code Section 12-13-20, imposing an income tax on savings and loan associations, has been amended to revise cross references to the Internal Revenue Code as defined in Code Section 12-6-40. Prior to this amendment, references were to the Internal Revenue Code and regulations as amended through December 31, 1986.

Code Section 12-13-60, providing that the applicable provisions of the income tax laws apply for savings and loan income taxes for the purpose of administration, enforcement, collection, liens, penalties, and similar provisions, was amended to correct a cross reference from Chapter 7 to Chapter 6. Chapter 7 of Title 12 was recodified in 1995 and renumbered as Chapter 6.

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

House Bill 3885, Section 66 (Act No. 89)

Job Tax Credit – County Ranking

Code Section 12-6-3360(B)(5), concerning the ranking of counties for job tax credit purposes, has been amended to add a provision that allows an increase in the county ranking by one category for a job created in a county that is not traversed by an interstate highway. This new ranking does not apply to a job created in a county that is eligible for a higher county ranking pursuant to another job tax credit provision.

Effective Date: July 20, 2001

House Bill 3885, Section 10 (Act No. 89)

Corporate Headquarters Credit – Information Technology Added

Code Section 12-6-3410(J)(1), defining “corporate headquarters,” and Code Section 12-6-3410(J)(4), defining “headquarters related functions and services,” have been amended to include “information technology” in the definitions. “Corporate headquarters” is now

defined as a “facility or portion of the facility where the majority of the company’s financial, legal, planning, information technology or other headquarters related functions are handled on either a regional or national basis.” “Headquarters functions” are those functions involving financial, personnel, administrative, legal, planning, information technology, or similar business functions.”

Effective Date: July 1, 2001

House Bill 3885, Section 3 (Act No. 89)

Corporate Headquarters Credit – Electric Facility Limited Liability Company Qualifies

Code Section 12-6-3410(J)(9) has been added to provide that a limited liability company subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) formed to operate or to take functional control of electric transmission assets is a “corporation” for purposes of the corporate headquarters credit, regardless of whether the limited liability company is treated as a corporation or a partnership.

If taxed as a partnership, the credit is passed through to its members in proportion to their interest in the limited liability company and is allowed against either income tax under Code Section 12-6-530 or license fees under Code Section 12-20-50. Each member may carryforward the credit 10 or 15 years, as appropriate under the statute. The limited liability company cannot carryforward any credit that it passes through to its members. The credit is nonrefundable.

Effective Date: Taxable years beginning after December 31, 2000, however, the headquarters credit for the cost of tangible personal property may be taken for taxable years beginning after December 31, 2002.

House Bill 3885, Section 12 (Act No. 89)

Habitat Management Credit - Clarified for Limited Liability Companies

Code Section 12-6-3520, providing an income tax credit equal to 50% of the costs incurred for habitat management or construction and maintenance of improvements on real property that are made to land described in Code Section 50-15-55(A) and which meet the requirements of regulations promulgated by the Department of Natural Resources, has been amended to clarify that a limited liability company taxed as a partnership qualifies for the credit and may pass through the credit earned to each member of the limited liability company. The credit continues to be allowed to an S corporation or partnership and may be passed through to each shareholder or partner for

use against an income tax liability under Code Sections 12-6-510 (individuals) or 12-6-530 (corporations).

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

House Bill 3885, Section 52 (Act No. 89)

Community Development Tax Credit – Technical Correction

Code Section 12-6-3530, providing an income tax credit for taxpayers who invest in community development corporations and community development financial institutions, has been amended to provide that the total amount of community development credits claimed may not exceed in the aggregate \$5 million for all taxpayers for all calendar years, and \$1 million for all taxpayers in one calendar year. Further, a single community development corporation or community development financial institution may not receive more than 25% of the total authorized tax credits in any one calendar year. Previously, these provisions referred to “taxable” rather than “calendar” years.

The South Carolina Community Economic Development Act was added to Chapter 43 of Title 34 in 2000. It was effective for 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.

Effective Date: July 20, 2001

House Bill 3885, Section 20 (Act No. 89)

License Fee and Annual Report - Inapplicable to Homeowners Associations

Code Section 12-20-110, providing a list of entities that do not have to file an annual report or pay a license fee to the Department, has been amended to add homeowners associations, as defined in Internal Revenue Code Section 528(c)(1), to the list of entities not required to file an annual report or pay a license fee.

Effective Date: July 20, 2001

House Bill 3885, Section 19 (Act No. 89)

License Fee for Insurance Holding Companies - Technical Correction

Code Section 12-20-90, providing for the measure of the license fee for a bank holding company, insurance holding company system, and savings and loan holding company, has been corrected to add the word “insurer” that was erroneously omitted in recodification in 1995.

Effective Date: July 20, 2001

House Bill 3885, Section 49 (Act No. 89)

Limited Liability Company – Secretary of State Annual Report Date Change

Code Section 33-44-211(c), concerning the due date of a limited liability company annual report to the Secretary of State, has been amended. The first annual report continues to be due to the Secretary of State between January 1st and April 1st following the calendar year of organization. Subsequent annual reports are due to the Secretary of State on or before the 15th day of the fourth month following the tax year end. Previously, the subsequent reports were due on or before the 15th day of the third month following the tax year end.

Note: This provision is under the jurisdiction of the Secretary of State. A limited liability company taxed as a corporation has additional annual report requirements with the Department pursuant to Chapter 20 of Title 12.

Effective Date: July 20, 2001

House Bill 3885, Sections 4, 13, 14, 15, and 16 (Act No. 89)

Job Development and Job Retraining Credits (Refunds of Wage Withholding)

Under Chapter 10 of Title 12, a job development credit allows a qualifying new or expanding business making an investment and creating new jobs in South Carolina to obtain a refund of employee withholding to use for, or to reimburse, expenses for purposes approved by the South Carolina Coordinating Council for Economic Development at the Department of Commerce (“Council”). Further, Chapter 10 of Title 12 allows a qualifying business to obtain a refund of employee withholding to use for, or to reimburse the cost of, retraining processing or technology employees.

Below is a summary of the amendments made to the job development and job retraining credits.

Job Development Credit and Job Retraining Credit - Definitions

The definitions in Code Section 12-10-30 has been amended by Section 13 as follows:

1. An “employee” is an employee of the qualifying business who works full time at the project. Previously, the employee had to work within an enterprise zone.
2. “Qualifying business” means a business that meets the requirements of Code Section 12-10-50 and other applicable requirements of Chapter 10, Title 12. The requirement that the business enter into a revitalization agreement has been deleted since it is contained in Code Section 12-10-50.
3. A “technology employee” is an employee at a technology intensive facility as defined in Code Section 12-6-3360(M)(14) who is directly engaged in technology intensive activities at that facility. The requirement that the job qualify for the job tax credit has been deleted.

The following definitions have been added to Code Section 12-10-30:

1. A “production employee” is one directly engaged in manufacturing or processing at a manufacturing or processing facility as defined in Code Section 12-6-3360(M).
2. A “retraining agreement” is an agreement entered into between a business and the Council in which a qualifying business is entitled to the retraining credit allowed under Code Section 12-10-95.
3. A “retraining credit” is the amount a business may claim as a credit against withholding under Code Section 12-10-95 and the retraining agreement.
4. “Technology intensive activities” is the design, development, and introduction of new products or innovative manufacturing processes, or both, through the systematic application of scientific and technical knowledge at a technology intensive facility as defined in Code Section 12-6-3360(M).

Job Development Credit - Clarifications

Sections 15 and 16 made the following amendments, including codifying several of the existing Council guidelines, to the job development credit provisions:

1. A business must certify to the Council that it has met the minimum capital investment and minimum job requirement provided in the revitalization agreement prior to claiming the job development credit. Previously, the section did not require that the business certify its minimum capital and job requirements. Code Section 12-10-80(A).

2. A qualifying business that is not current as to all taxes due and owing to the State as of the date of the return on which the credit would be claimed, without regard to extensions, is barred from claiming the job development credit that would otherwise be allowed for the quarter. Code Section 12-10-80(A)(2).
3. The Department will impose a penalty pursuant to Code Section 12-54-210 if a qualifying business files its audited report or other required report that itemizes the sources and uses of funds with the Council and the Department after June 30th or the approved extension date, whichever is later. Code Section 12-10-80(A)(9) and (10).
4. The gross wage figures for determining the maximum job development credit are adjusted annually for inflation by a factor determined by the Budget and Control Board. Code Section 12-10-80(B)(1). The new figures are:

| Gross Wages Per Hour of New Employee for 2001 | Percentage Based on Wages |
|--|----------------------------------|
| \$ 6.95 to \$9.26 | 2% |
| \$ 9.27 to \$11.57 | 3% |
| \$11.58 to \$17.37 | 4% |
| \$17.38 or more | 5% |

5. Expenditures incurred during the term of the revitalization agreement, including a preliminary revitalization agreement, or within 60 days before the Council's receipt of an application for job development credit benefits, will be considered eligible for reimbursements provided they are authorized by the revitalization agreement and used for purposes provided in the statute. Previously, qualifying expenses had to be incurred within 60 days of the execution of a revitalization agreement or preliminary revitalization agreement. Code Section 12-10-80(C).
6. The amount of job development credit that may be actually claimed by a qualifying business is limited to 55%, 70%, 85%, or 100% of the maximum job development credit by the designation of the county in which the project is located as developed, moderately developed, underdeveloped, or least developed, respectively, and by the revitalization agreement. The Council may approve a waiver of 95% of these limits for a qualifying business making a significant capital investment under Code Sections 12-44-30(8) (the Enhanced Fee provisions in the Simplified Fee), 4-12-30(D)(4) (the Super Fee provisions in the Little Fee), or 4-29-67(D)(4) (the Super Fee provisions in the Big Fee). Previously, Code Section 12-44-30(8) was not included in this provision. Code Section 12-10-80(D)(2).
7. Code Section 12-10-80(F), suspending the statute of limitations for 5 years from the effective date of a revitalization agreement, has been repealed.
8. Code Section 12-10-81, concerning job development credits for tire manufacturers, has been amended to incorporate the changes described in items 2, 3, 4 and 7 above.

Item 1 was adopted but only requires the tire manufacturer to certify to the Council if it was not certified prior to July 1, 2001. The change made by item 5 had previously been made and the change described in item 6 was unnecessary since it is not contained in Code Section 12-10-81.

Job Retraining Credit – Recodified and Clarified

Sections 4, 14, and 15 made the following amendments to the job retraining credit:

1. The job retraining credit provisions contained in Code Section 12-10-80(D) were deleted by Section 15 of this Act. Section 4 of this Act enacts the provisions as Code Section 12-10-95.
2. A business must submit a retraining program to a technical college under the jurisdiction of the State Board for Technical and Comprehensive Education. Code Section 12-10-95(C).
3. Travel expenses, lodging expenses, and wages for retraining participants are not reimbursable through the retraining credit. Code Section 12-10-95(D).
4. A business claiming the job retraining credit continues to be subject to the reporting and auditing requirements in Code Section 12-10-80(A). Code Section 12-10-95(F).
5. The retraining credit may not be claimed for temporary or contract employees and employees who are subject to a final or preliminary revitalization agreement. Code Section 12-10-95(G).
6. Code Section 12-10-50, listing the qualifications a business must meet to be eligible for the job development credit benefits, has been amended to codify existing Council guidelines for claiming the job retraining credit. In order to be eligible for the job retraining credit, a business must: (a) be engaged in manufacturing or processing operations or technology intensive activities at a manufacturing, processing, or technology intensive facility as defined in Code Section 12-6-3360(M), (b) provide a benefits package, including health care, to employees being retrained, and (c) enter into a retraining agreement with the Council.

Effective Date: July 1, 2001

House Bill 3687, Part IB, Section 27, Proviso 27.20 (Act No. 66)

Job Development Credit – Fees

This proviso allows the Council to increase the application fee for qualification for the Enterprise Zone Program from \$2,000 to \$4,000, \$500 of which must be shared with the Department. The Council is also authorized to establish an annual renewal fee of \$500

for qualifying businesses receiving job development credits which is to be shared equally with the Department for the purposes of meeting administrative, data collection, credit analysis, cost benefit analysis, reporting and other statutory obligations.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2001 through June 30, 2002. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2002.

House Bill 3885, Sections 30 and 31 (Act No. 89)

Withholding Tax Penalty Moved

Code Section 12-54-43, providing for civil penalties, has been amended to add the penalty imposed on a withholding agent for failure to deposit or pay taxes deducted and withheld pursuant to Article 5 of Chapter 8 (income tax withholding) or for failure to comply with the electronic fund transfer provisions in Code Section 12-54-250. Prior to this amendment, this provision was contained in Code Section 12-54-44(C), a criminal penalty section.

Effective Date: July 20, 2001

REGULATIONS

Document No. 2563

“Facility” Defined for Income Taxes

Regulation 117-80.5 has been added to define “facility” for purposes of Chapter 6, Title 12. A facility is generally a single physical location where a taxpayer’s business is conducted or where its services or industrial operations are performed. If, however, two or more distinct and separate economic activities are performed at a single location, each separate activity will be treated as a separate facility if: (1) each activity has its own separate and dedicated personnel; (2) separate reports can be prepared of the numbers of employees, their wages and salaries, sales or receipts and expenses; and (3) employment and output are significant as to the activity.

Effective Date: June 22, 2001

REMINDERS

The following provisions were enacted in 2000, but are effective in 2001. They are summarized below for informational purposes.

Act No. 387, Part II, Section 40

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 year beginning after 2000.

Act No. 283, Section 5.A. and 5.B.

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 | Facility |
|--------|--|
| 51114 | Database and Directory publishers |
| 5112 | Software publishers |
| 54151 | Computer systems design and related services |
| 541511 | Custom computer programming services |
| 541512 | Computer systems design services |
| 541710 | Scientific research and development services |
| 9271 | Space research and technology |

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

Act No. 283, Section 5.C.

Research and Development Credit

Code Section 12-6-3415 was 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, the taxpayer must claim a federal income tax credit pursuant to Internal Revenue Code Section 41 for increasing research activities for the taxable year.

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

Act No. 283, Section 1

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.

PROPERTY TAXES AND FEES IN LIEU OF PROPERTY TAXES

Senate Bill 199, (Act No. 10)

Personal Motor Vehicle Relief - Approved

An amendment to Section 1(8), Article X of the State Constitution to establish a separate class of property for property tax purposes consisting of personal motor vehicles (limited to passenger motor vehicles and pick-up trucks) which must be titled by a state or federal agency, has been approved by the voters and ratified by the General Assembly. As a result, this property will be assessed at a rate of 9.75% of fair market value in the first year and declines in equal reductions of .75% to a permanent assessment ratio of 6% in the sixth year and thereafter.

| Year | Assessment Ratio |
|---------------------|-------------------------|
| 2002 | 9.75% |
| 2003 | 9.00% |
| 2004 | 8.25% |
| 2005 | 7.50% |
| 2006 | 6.75% |
| 2007 and thereafter | 6.00% |

Effective Date: Property tax years beginning after 2001.

Senate Bill 198, (Act No. 9)

Local Sales Tax in Lieu of Personal Property Tax

The legislature has ratified the amendment to Section 3, Article X of the State Constitution which was adopted by the voters in the November 2000 election. The amendment allows 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 its rescission is allowed pursuant to a county referendum. Enabling legislation is contained in Article 5, Chapter 10 of Title 4.

Effective Date: March 6, 2001

House Bill 3117, (Act No. 101)

License and Registration Suspended for Nonpayment of Personal Property Taxes

Code Section 12-37-2740 has been added to provide that the Department of Public Safety may suspend the driver's license and vehicle registration of a person who fails to pay personal property tax on a vehicle. Prior to such suspension, the county treasurer must notify the delinquent taxpayer of the suspension by a letter which must advise the person of the pending suspension and the steps necessary to prevent the suspension from being entered on the person's driving and registration records. Each county must allow 30 days for the payment of the taxes before the county notifies the Department of Public Safety to suspend the person's license and registration. A person may have his license and registration reinstated by paying the tax to the county and paying a \$50 fee to the Department of Public Safety.

Effective Date: October 1, 2001

Senate Bill 143, (Act No. 24)

County Taxes - Electronic Payments Accepted

Code Section 12-45-90, addressing acceptable types of payment for county taxes, has been expanded to provide for electronic collection through a third party administrator if there is no cost to the county. Further, other media of payment may be accepted upon approval of the county governing body providing approval for any costs that are incurred by the county in the acceptance of a payment media is obtained from the governing body. The county governing body may impose a uniform surcharge as a condition of acceptance of a certain type of payment not to exceed the cost of accepting charge cards, debit cards, or electronic forms of payment including discount or merchant fees.

Effective Date: May 29, 2001

House Bill 3227, Section 2 (Act No. 18)

Homestead Exemption – Technical Correction

Code Section 12-37-250, allowing a homestead exemption for taxpayers 65 and over or those totally and permanently disabled or legally blind, has been amended to reflect the legislative change last year that increased this exemption from \$20,000 to \$50,000 of the fair market value of the dwelling. In 2000, Code Section 12-37-245 was added to provide for the homestead exemption increase, but a corresponding amendment to Code Section 12-37-250 was omitted.

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 years beginning after 2000.

House Bill 3227, Section 1 (Act No. 18)

Medal of Honor Winner or Prisoner of War – New Exemption

Code Section 12-37-220(B) has been amended to add a property tax exemption for the dwelling home and a lot not to exceed one acre owned in fee or for life or jointly with a spouse by a resident of this State who is a recipient of the Medal of Honor or who was a prisoner of war in World War I, World War II, the Korean Conflict, or the Vietnam Conflict. The exemption is allowed to a surviving spouse under the same terms and conditions governing the exemption for the surviving spouse pursuant to Code Section 12-37-220(B)(1). A person applying for this exemption must provide evidence of eligibility the Department requires.

Effective Date: Property tax years beginning after 2001.

House Bill 3885, Section 29 (Act No. 89)

Property Tax Abatement – Transfer of Facilities

Code Section 12-37-220(C), providing a 5 year exemption from county property taxes, has been extended to an unrelated purchaser of a research and development facility qualifying under Code Section 12-37-220(B)(34), if the purchaser acquires the facility in an arm's length transaction and preserves the existing facility and number of jobs. This exemption applies for the purchaser for 5 years if the purchaser otherwise meets the exemption requirements.

Effective Date: July 20, 2001

Senate Bill 356, (Act No. 51)

Portion of the Black River Designated as a “Scenic River”

Code Section 49-29-230(6) has been added to designate that portion of the Black River located between the Clarendon County Road No. 40 bridge crossing of the Black River and downstream to the Pea House Landing at the end of Georgetown County Road No. 38 as a “scenic river.” After a perpetual easement under the South Carolina Scenic Rivers Act is granted, the property is exempt from ad valorem property taxes under Code

Section 49-29-100. The taxpayer may deduct from South Carolina income taxes the fair market value of the easement granted pursuant to Code Section 49-29-100.

Effective Date: May 29, 2001

House Bill 3885, Section 57 (Act No. 89)

Multiple Lot Discount

Code Section 12-43-225, allowing a discounted value for property subdivided for sale, has been amended as follows:

1. The provision applies to subdivision lots in a plat recorded on or after January 1, 2001. Previously, it applied to conditional or final plats filed after 2000.
2. If a lot allowed the discount is sold to a residential homebuilder or general contractor, the purchaser must file a written application with the county assessor by May 1st of the year the applicant is claiming the discount in order for the discount to continue through the first tax year which ends 12 months from the date of sale. Previously, the application had to be filed by March 1st.

Effective Date: July 20, 2001

House Bill 3885, Section 48 (Act No. 89)

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 provide that a lump sum amount of interest is due on the whole amount of the delinquent tax sale based on the month during the redemption period the property is redeemed and that rate relates back to the beginning of the redemption period according to the following schedule:

| Month of Redemption Period | Amount of Interest Imposed |
|----------------------------|----------------------------|
| Months 1, 2, and 3 | 3% of the bid amount |
| Months 4, 5 and 6 | 6% of the bid amount |
| Months 7, 8, and 9 | 9% of the bid amount |
| Months 10, 11, and 12 | 12% of the bid amount |

Previously, the statute did not specify that the amount of interest imposed was based on the bid amount and that the rate relates back to the beginning 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: July 20, 2001

House Bill 3885, Section 46 (Act No. 89)

Excessive Millage Rate

Code Section 12-43-285 has been added to require the governing body of a political subdivision to certify in writing to the county auditor that the millage rate levied on its behalf is in compliance with laws limiting the millage rate imposed by that political subdivision.

In addition, to the extent the millage rate is in excess of that authorized by law, the county treasurer will issue refunds or transfer the excess to a separate, segregated fund which must be credited to taxpayers in the following year as provided by the governing body of the political subdivision on whose behalf the millage was levied.

Effective Date: Property tax years beginning after December 31, 1999.

House Bill 4062, (Act No. unassigned)

Dillon County – Additional Millage

This joint resolution provides that the taxes imposed in Dillon County for school purposes in fiscal year 2000 –2001 are reimposed for fiscal year 2001 – 2002 and there is added an additional millage for school purposes of 5.5 mills for the general fund and 1 mill for teachers bonuses.

Effective Date: September 11, 2001

House Bill 3885, Section 47 (Act No. 89)

Multicounty Park - Revenue Misallocations

Under Section 13, Article VIII of the South Carolina Constitution and Code Section 4-1-170, counties may join together to create multicounty parks. Each county and political subdivision that is part of the multicounty park receives a portion of the revenues of the park in accordance with a multicounty park agreement establishing the percentage of revenues that each taxing entity in the park is to receive.

Code Section 4-1-170(B), addressing revenues from the park and how they are to be treated for purposes of bonded indebtedness and computation of the index of taxpaying ability, has been amended. For the purposes of bonded indebtedness and the index of taxpaying ability, this section continues to provide that allocation of the assessed value of property within the park to each taxing entity (including the counties) must be identical to the allocation of revenue received and retained by each of the taxing entities. However, under the amendment, if revenues are misallocated, the misallocations may be corrected by adjusting later distributions, but these adjustments must be made in the same fiscal year as the misallocations.

Effective Date: July 20, 2001

House Bill 3885, Sections 51, 58, 59, 61, 64, and 65 (Act No. 89)

Fee In Lieu of Property Taxes

South Carolina has three fee in lieu statutes commonly referred to as the “Little Fee” (Chapter 12 of Title 4), the “Big Fee” (Code Section 4-29-67), and the “Simplified Fee” (Chapter 4 of Title 12.) Special fee in lieu provisions exist for very large investments and are known as the “Super Fee” with respect to the Little Fee and Big Fee, and the “Enhanced Investment Fee” with respect to the Simplified Fee.

The Fee statutes permit an investor (sometimes referred to as a sponsor) to negotiate to pay a Fee instead of paying property taxes. The 10.5% assessment ratio can be, an often is, negotiated to 6% (4% for very large investments under the Super Fee or Enhanced Fee). In addition, the company and a county can agree to freeze the millage rate applicable to the property at the current millage rate, or adjust the millage rate every 5 years, for the period the Fee is in effect. During the period of the Fee, the value of the real property remains constant and the value of the personal property is deemed to decrease each year by the depreciation allowable for property tax purposes subject to a floor on the value.

Below is a summary of amendments made to the Fee provisions.

House Bill 3885, Section 51.B. (Act No. 89)

Little Fee - Millage Rate Revised

Code Section 4-12-30(G), addressing the millage rate for “Little Fee” transactions, has been amended as follows:

1. A millage rate agreement may be executed at any time, but not later than the date of the initial lease agreement. Previously, the millage rate agreement had to have been executed at the time of, or after, the inducement agreement but before the initial lease agreement.

2. The millage rate used must be a cumulative property tax millage rate legally levied by or on behalf of all taxing entities within which the subject property is to be located that is applicable during the period beginning on June 30th preceding the calendar year in which the millage rate agreement is executed and ending on the date the initial lease agreement is executed. If a timely millage rate agreement is not executed, the millage rate is considered to be the cumulative property tax millage rate applicable on June 30th preceding the calendar year in which the initial lease agreement is executed. Previously, the millage rate could be no lower than the cumulative property tax millage rate legally levied by or on behalf of all taxing entities on June 30th preceding the calendar year in which the millage rate agreement was executed.
3. If at the time of execution of the millage rate agreement, a municipality agrees to de-annex the property on which the project is located, the municipality's millage will not be included in the millage rate for the project. The de-annexation must occur prior to the initial lease being executed.

Effective Date: Fee in lieu of property tax agreements in which an initial lease agreement is executed on or after December 31, 1999.

House Bill 3885, Section 51.A. (Act No. 89)

Super Fee With Respect to the Little Fee – New Qualifying Sponsor

Code Section 4-12-30(D)(4)(a) has been expanded to allow a sponsor and a sponsor affiliate who invest at least \$400 million and create at least 200 new full time jobs at a site to qualify for the “Super Fee” if: (1) the investment by the sponsor affiliate is considered necessary and suitable for the operation of the sponsor's facility, (2) the sponsor affiliate is located contiguous to the sponsor's project, (3) 100% of the output of the sponsor affiliate is provided to the sponsor for the project, and (4) the sponsor affiliate is not considered a supplier of manufactured parts or of any value added output of the sponsor.

Effective Date: July 20, 2001

House Bill 3885, Section 51.D. (Act No. 89)

Big Fee - New Definitions

Code Section 4-29-10 has been amended to add the following definitions in subitems (9), (10), and (11), respectively:

1. “Investor” is one or more entities that sign the inducement agreement with the county and includes an investor affiliate unless the context clearly indicates otherwise.

2. "Investor affiliate" is an entity that joins with, or is an affiliate of, an investor and that participates in the investment in, or financing of, a project.
3. "Business" is a single entity or two or more entities if they meet the qualifications of the Little Fee.

These definitions allow several entities to invest together in a single project and have it qualify for the Fee. Previously, under the Big Fee the investment had to be made by a single entity or a controlled group of corporations, or in limited situations by a controlled partnership and its corporate partner.

Effective Date: July 20, 2001

House Bill 3885, Section 51.C. (Act No. 89)

Big Fee - "Project" Definition Clarified

Code Section 4-29-10(3) has been amended to clarify the definition of "project." A project is any land, building, and other improvements on the land, including without limitation, water, sewage and pollution control improvements, and all other machinery, apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, and useful by the following investors: (1) any enterprise engaged in manufacturing, processing, or assembling agricultural or manufactured products, (2) commercial enterprises engaged in warehousing, distributing, transporting, or selling products or engaged in providing laundry services to hospitals or similar facilities, (3) enterprises engaged in research and development, and (4) any enterprise engaged in wholesale or retail and mixed use developments of 2,500 acres or more, office buildings, computer centers, tourism, sports, and recreation facilities, convention and trade show facilities, and public lodging or restaurants if they serve another facility qualifying under this section. Also, expansions of any of the facilities described in items 1 through 4 qualify.

A project does not include facilities for most enterprises that would be distributing electricity, gas, or telephone services to the public, but may include enterprises engaged in water and wastewater treatment.

The amendment clarified that the land, buildings, equipment and other items mentioned must be considered necessary, suitable, or useful to one or more investors listed in items 1 through 4.

Effective Date: July 20, 2001

Big Fee – Conforming Amendments to Incorporate New Definitions

1. Code Section 4-29-67(B)(4) has been amended to provide that the required investment may be made by a business or a combination of businesses, provided that each business invests at least \$5 million in the project. This change broadens the types of entities that may invest together in a single fee in lieu project and allows unrelated entities to join together to invest in a project and have it subject to the “Big Fee.” This section continues to provide that if at any time the investment at the project falls below \$45 million the project no longer qualifies for the Fee, and if at any time, a business no longer has a minimum investment of \$5 million at the project, without regard to depreciation, the investor or investor affiliate no longer qualify for the Fee.
2. Code Section 4-29-67(D)(4)(a)(v) has been added to provide that if an investor and investor affiliate together make investments totaling at least \$400 million and create at least 200 new full time jobs at a site qualifying for the Fee, they may qualify for an assessment ratio of no lower than 4% if: (1) the investment by the investor affiliate is considered necessary and suitable for the operation of the sponsor’s facility, (2) the investor affiliate is located contiguous to the investor’s project, (3) 100% of the output of the investor affiliate is provided to the investor for the project, and (4) the investor affiliate is not considered a supplier of manufactured parts or of any value added output of the investor.
3. Code Section 4-29-67(G)(2) has been amended to provide that the millage rate established must be a cumulative property tax millage rate legally levied by or on behalf of all taxing entities within which the subject property is to be located that is applicable during the period beginning on June 30th preceding the calendar year in which the millage rate agreement is executed and ending on the date the initial lease agreement is executed. If a timely millage rate agreement is not executed, the millage rate is considered to be the cumulative property tax millage rate applicable on June 30th preceding the calendar year in which the initial lease agreement is executed by the parties. Previously, the millage rate could be no lower than the cumulative property tax millage rate legally levied by or on behalf of all taxing entities on June 30th preceding the calendar year in which the millage rate agreement was executed.
4. Code Section 4-29-67(R), concerning transfers and amount of qualified investment, and Code Section 4-29-67(U)(2), addressing a decrease below the \$45 million minimum investment, have been repealed. Subsection (U)(2) has been recodified in Code Section 4-29-67(B)(4)(b)(iv), and subsection (R) was no longer necessary as the subsections to which it referred have been repealed.

Effective Date: July 20, 2001, except the amendment to Code Section 4-29-67(G) applies to fee in lieu of property tax agreements in which an initial lease agreement is executed on or after December 31, 1999.

House Bill 3885, Section 58 (Act No. 89)

Big Fee - Additional Investment Time

Code Section 4-29-67(C)(2), establishing the time period to meet the minimum investment requirement and complete a project for a business qualifying under the “Super Fee,” has been amended to provide that businesses qualifying under Code Section 4-29-67(D)(4) that have more than \$500 million in capital invested in this State and employ more than 1,000 people in this State have 10 years to meet the minimum investment requirement and 15 years to complete the project. Other companies that otherwise qualify for the “Super Fee” still have 8 years to meet their minimum investment requirement and 10 years to complete the project.

Effective Date: July 20, 2001

House Bill 3885, Sections 59 and 64 (Act No.89)

Big Fee - Time Property Subject to the Fee Extended

Code Section 4-29-67(C)(3) has been amended to extend the period that property can be subject to the Fee from 37 years to 40 years for those businesses qualifying under Code Section 4-29-67(D)(4). The property of a business having more than \$500 million in capital invested in this State and employing more than 1,000 people in this State may be subject to the Fee for a maximum of 45 years.

Effective Date: July 20, 2001

House Bill 3885, Section 51.F. (Act No. 89)

Simplified Fee – Millage Rate Revised

Code Section 12-44-50(A)(1)(b)(i) has been amended to provide that the millage rate must be a cumulative property tax millage rate legally levied by or on behalf of all millage levying entities within which the project is to be located that is applicable during the period beginning on June 30th preceding the calendar year in which the Fee agreement is executed and ending on the date the initial lease agreement is executed.

Previously, the millage rate could be no lower than the cumulative property tax millage rate legally levied by or on behalf of all millage levying entities on June 30th preceding the calendar year in which the millage rate agreement was executed or if no timely

millage agreement was executed, the cumulative property tax millage rate applicable on June 30th preceding the calendar year in which the initial lease agreement was executed.

Effective Date: Fee in lieu of property tax agreements in which an initial lease agreement is executed on or after December 31, 1999.

House Bill 3885, Section 51.G. (Act No. 89)

All Fees - Millage Rate May Change by Agreement

An uncodified provision has been added to provide that notwithstanding the provisions relating to amendments of agreements in Code Sections 4-12-30(H)(2), 4-29-67(H)(2), and 12-44-40(L)(2), the parties may agree to change the millage rate under an existing inducement agreement or millage rate agreement for an investment that exceeds \$200 million to a cumulative property tax millage rate legally levied by or on behalf of all taxing entities within which the subject property is to be located that is applicable during the period beginning on June 30th preceding the calendar year in which the millage rate agreement is executed and ending on the date the initial lease agreement is executed. A change in millage rate pursuant to this section is prospective only.

Effective Date: July 20, 2001. This provision is repealed effective December 31, 2001.

House Bill 3885, Section 65 (Act No. 89)

All Fees - Super Fee and Enhanced Fee for Power Facility

Code Sections 4-12-30(D)(4)(a) and 4-29-67(D)(4)(a) have been amended to provide that a business, including a corporation, its subsidiaries, and its limited liability company members, that builds a gas-fired combined-cycle power facility, and invests at least \$400 million and creates at least 25 full time jobs as defined in Code Section 12-6-3360(M) at the facility, and invests an additional \$500 million in this State, is entitled to benefits of the Super Fee. Further, Code Section 12-44-30(8) has been amended to provide that a sponsor that meets these requirements qualifies for the “Enhanced Fee.”

Effective Date: July 20, 2001

House Bill 3885, Section 61 (Act No. 89)

All Fees - Misallocation Corrections

Code Sections 12-44-80, 4-12-30(K), and 4-29-67(L), dealing with distribution of fee payments, have been amended to provide that misallocations of the distribution of

payments may be corrected by adjusting later distributions, but these adjustments must be made in the same fiscal year as the misallocations.

Effective Date: July 20, 2001

REGULATIONS

Document No. 2561

“Facility” Defined for Property Taxes

Regulation 117-124.22 has been added to define “facility” for purposes of Chapter 37, Title 12. A facility is generally a single physical location where a taxpayer’s business is conducted or where its services or industrial operations are performed. If, however, two or more distinct and separate economic activities are performed at a single location, each separate activity will be treated as a separate facility if: (1) each activity has its own separate and dedicated personnel; (2) separate reports can be prepared of the numbers of employees, their wages and salaries, sales or receipts and expenses; and (3) employment and output are significant as to the activity.

Effective Date: June 22, 2001

REMINDERS

The following provision was enacted in 2000, but was effective in 2001. It is summarized below for informational purposes.

Act No. 283, Section 5.H.

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.

SALES AND USE TAXES

House Bill 3885, Sections 23 and 24 (Act No. 89)

Bad Debts Not Subject to Sales or Use Taxes - Clarified

Code Section 12-36-90(2)(h), excluding from sales tax sales which are actually charged off as bad debts or uncollectible accounts for state income tax purposes, has been amended to clarify that a taxpayer may take a “deduction” for the sales price charged off as a bad debt or uncollectible account within one year of the month the amount was determined to be a bad debt or uncollectible account. Prior to this amendment, the statute did not contain a one year time period.

Further, Code Section 12-36-130, defining the term “sales price,” has been amended to exclude the sales price, not including tax, of property on sales, which are actually charged off as bad debts or uncollectible accounts for state income tax purposes. This amendment allows out of state retailers collecting “use tax” a deduction for amounts charged off as bad debts and uncollectible accounts. Previously, the deduction was available only for “sales tax.”

Effective Date: September 1, 2001

House Bill 3885, Section 27 (Act No. 89)

Sales Tax Amounts – Clarified for Local Taxes

Code Section 12-36-940(A) establishes for the 5% State sales tax the amount the retailer may add to the sales price of an item for the tax. Code Section 12-36-940(C) has been added to clarify that retailers, for counties imposing local sales taxes, may add to the sales price of an item the total State and local sales tax rate (and applicable accommodations tax) times the sales price. In calculating the tax due, retailers may round a fraction of more than one-half of a cent to the next whole cent and a fraction of a cent of one-half or less must be eliminated. This subsection further states that the amount added to the sales price as sales tax may not be less than the amounts established in subsection (A).

Effective Date: July 20, 2001

House Bill 3885, Sections 50.A., B., and C. (Act No. 89)

85 Years or Older – Sales Tax Reduction Clarified

Code Sections 12-36-2620(2), 12-36-2630(2), and 12-36-2640(2), providing a 1% reduction in the State sales and use tax rate and the casual excise tax for sales to persons 85 or older on items purchased for their own personal use, have been amended to clarify that the 1% reduction is allowed if the person requests the reduction at the time of the sale and provides the retailer with proof of age. Sales to qualifying persons 85 years of age or older are taxed at a State rate of 4% (6% for sales of accommodations). Local option taxes, where applicable, remain due.

Effective Date: July 1, 2001

House Bill 3885, Section 50.D. (Act No. 89)

85 Years or Older – Retailer Notice Requirements

Code Section 12-36-2646 has been added to require retailers to post a sign at each entrance or cash register advising persons of the 1% tax reduction. A retailer failing to post the required signs is subject to a penalty of up to \$100 for each month the signs are not posted or revocation of the retailer's retail license.

Effective Date: August 15, 2001

House Bill 3687, Part IB, Section 72, Proviso 72.106 (Act No. 66)

Private Schools – “Use Tax” Exemption

Purchases of tangible personal property for use in private primary and secondary schools, including kindergarten and early childhood education programs, are exempt from the use tax if the school is exempt from income taxes under Internal Revenue Code Section 501(c)(3). This exemption does not apply to purchases subject to sales tax.

This use tax exemption is also applicable to purchases occurring after 1995; however, no refund is due any taxpayer on purchases exempted by this provision.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2001 through June 30, 2002. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2002.

House Bill 3900, Section 1 (Act No. 77)

Meals or Foodstuffs for Congregate or In-Home Service - New Exemption

Code Section 12-36-2120(10) has been amended to add a sales tax exemption for meals or foodstuffs prepared or packaged that are sold to public or nonprofit organizations for congregate or in-home service to the homeless or needy or disabled adults over 18 years of age or individuals over 60 years of age. This exemption only applies to meals and foodstuffs eligible for purchase under the USDA food stamp program.

Effective Date: July 20, 2001

House Bill 3885, Section 63 (Act No. 89)
(See also House Bill 3900, Section 2 (Act No. 77))

Late Fees Charged by Utilities – Not Subject to Sales Tax

Code Section 12-36-90(2) has been amended to provide that interest, fees, or charges imposed on a customer for late payment of an electricity or natural gas bill are not subject to sales tax, whether or not tax is required to be paid on the electricity or natural gas.

Effective Date: This provision became effective July 20, 2001, and applies with respect to retail sales occurring on or after that date and sales before that date for all periods remaining open for the assessment of taxes by agreement or by operation of law. However, a refund is not due a taxpayer of sales and use tax paid on interest, fees, or charges, however described, imposed on a customer for late payment of a bill for electricity and/or natural gas before July 20, 2001.

House Bill 3885, Section 2 (Act No. 89)

Certain Electric Facilities – New Exemption

Code Section 12-36-2120(59) has been added to provide an exemption from the sales and use tax for a facility transmitting electricity that is transferred, sold, or exchanged by an electrical utility, municipality, electric cooperative, or political subdivision to a limited liability company subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

Effective Date: Sales after July 20, 2001.

House Bill 3885, Sections 25 and 28 (Act No. 89)

Mobile Telecommunications Sourcing

Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3), imposing the sales and use taxes on charges for the ways and means for the transmission of the voice or messages, have been amended to provide that charges for mobile telecommunications services subject to tax, such as charges for use of a cellular telephone, must be sourced in accordance the Mobile Telecommunications Sourcing Act provided in Title 4 of the U.S. Code (4 U.S. C.A. Sections 116 through 126).

Effective Date: September 1, 2001; the effective date of the Telecommunications Sourcing Act is August 1, 2002.

House Bill 3885, Section 26 (Act No. 89)

Prepaid Wireless Calling Arrangements

Code Section 12-36-910(B)(5) has been added to impose sales tax on the gross proceeds accruing or proceeding from the sale or recharge at retail for prepaid wireless calling arrangements. A prepaid wireless calling arrangement is a communication service that: (1) is used exclusively to purchase wireless telecommunications, (2) is purchased in advance, (3) allows the purchaser to originate telephone calls by using an access number, an authorization code or other means entered manually or electronically, and (4) is sold in units or dollars that decline with use in a known amount.

The sale of prepaid wireless calling arrangements must be sourced to: (1) the location in this State where the over-the-counter sale took place, (2) the shipping address if the sale did not take place at the seller's location and an item is shipped, or (3) either the billing address or location associated with the mobile telephone number if the sale did not take place at the seller's location and no item is shipped.

Effective Date: September 1, 2001

House Bill 3885, Section 32 (Act No. 89)

Penalty for Taxes Collected but Not Remitted

Code Section 12-54-195 has been added to allow a "responsible person" to be held liable, individually and personally, for a penalty of 100% of any sales or use tax collected by a retailer from customers but not remitted to the Department. The Department may not collect the tax from the retailer to the extent this penalty is collected from a "responsible person." The term "responsible person" includes any officer, partner, or employee of the

taxpayer who has a duty to pay to the Department the sales tax due by the taxpayer or the use tax required or authorized to be collected by the retailer.

Effective Date: July 20, 2001

REGULATIONS

Document No. 2523

Prescription Medicines, Prosthetic Devices, and Hearing Aids

Regulation 117-174.257, concerning the sales and use tax exemptions for certain prescription medicines and prosthetic devices, has been amended to make it consistent with substantial changes in Code Section 12-36-2120(28) over the years. The amendment clarifies that the following are exempt from sales and use taxes:

1. Sales of hearing aids,
2. Sales of dental prosthetic devices, whether or not sold by prescription, and
3. Sales of prescription medicines used to treat cancer and related diseases, including prescription medicines used to relieve the effects of such treatment.

Effective Date: June 22, 2001, however, the exemptions were available in accordance with legislative changes prior to June 22, 2001.

Document No. 2562

“Facility” Defined for Sales and Use Taxes

Regulation 117-160.5 has been added to define “facility” for purposes of Chapter 36, Title 12. A facility is generally a single physical location where a taxpayer’s business is conducted or where its services or industrial operations are performed. If, however, two or more distinct and separate economic activities are performed at a single location, each separate activity will be treated as a separate facility if: (1) each activity has its own separate and dedicated personnel; (2) separate reports can be prepared of the numbers of employees, their wages and salaries, sales or receipts and expenses; and (3) employment and output are significant as to the activity.

Effective Date: June 22, 2001

REMINDERS

The following provisions were enacted in 2000, but are effective in 2001. They are summarized below for informational purposes.

Act No. 283, Section 5.G

Research and Development Machinery – Full Exemption

Code Section 12-36-2110(D), providing a maximum sales and use tax of \$300 on the sales of machinery used directly and exclusively for research and development, has been repealed and replaced by Code Section 12-36-2120(56).

Code Section 12-36-2120(56) has been added to provide an exemption from sales and use tax for machines used directly and primarily in research and development, in the experimental and laboratory sense, of new products, new uses for existing products, or improvements of existing products.

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

Act No. 387, Part II, Section 63

Cooperative Direct Mail Promotional Advertising Materials – New Exemption

Code Section 12-36-2120(58) 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 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

MISCELLANEOUS

ADMINISTRATIVE AND PROCEDURAL MATTERS

House Bill 3885, Sections 33 and 34 (Act No. 89)

Time Limitation for Filing Refund Claims

Code Section 12-54-85(F), providing the general rule for time periods for filing a refund claim, has been amended to change the general time period rule and to add a provision to suspend the time period for a financially disabled individual. The amendments are:

1. A claim for refund must be filed within three years from the time the return was filed or two years from the date the tax was paid, whichever is later. If no return was filed, a claim for refund must be filed within two years from the date the tax was paid. A refund may not be made after the expiration of the above time period unless the claim is filed by the taxpayer or determined to be due by the Department within that period. Previously, if the return was filed late, then the claim for refund had to be filed within two years from the date of payment to be considered timely. Note the limitations on the amount of the refunds in Code Sections 12-54-85(F)(2), (3), and (4).
2. The running of the time period to file a refund claim is suspended for a period an individual is financially disabled. An individual is considered “financially disabled” if he is unable to manage his financial affairs by reason of a medically determinable physical or mental impairment that: (1) is expected to result in death or (2) has lasted or is expected to last for a continuous period of 12 months or more. An individual is not “financially disabled” during the period his spouse or another person is authorized to act on his behalf in financial matters.

To qualify, the taxpayer must provide certain information about the impairment and ability to manage his financial affairs. A qualified physician must provide the name and description of the impairment, his medical opinion that the impairment prevented the taxpayer from managing his financial affairs, his medical opinion whether the impairment resulted in death, is expected to result in death, or has lasted or expected to last 12 months or longer, and the specific time period the taxpayer was prevented by the impairment from managing his financial affairs.

The taxpayer or person signing the refund claim must provide a written statement that the person, including the taxpayer’s spouse, was not authorized to act on his behalf in financial matters during the period he was unable to manage his own affairs or a statement containing the dates in time the person was authorized to act on the taxpayer’s behalf in financial matters. The Department may require other information.

3. The Department may adopt a determination made by the Internal Revenue Service and may follow Internal Revenue Code Section 6511(h) rules concerning the suspension of the running of periods of limitations while the taxpayer is unable to manage his financial affairs due to disability.

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

House Bill 3885, Section 39 (Act No. 89)

Installment Payments and Extension of Payment Time if Undue Hardship Exists

Code Section 12-58-185(A) of the Taxpayers' Bill of Rights, providing for an extension of time to pay an amount due if payment of the date originally due will result in undue hardship for the taxpayer, has been amended as follows:

1. The Department, in its discretion, may accept installment payments for amounts due for a period up to one year from the date the payment was originally due. Interest will accrue during the installment period pursuant to Code Section 12-54-25.
2. The provision allowing the period of extension for up to 18 months from the date fixed for payment, and in exceptional cases for an additional 12 months, has been deleted. The statute now provides that, in addition, the Department may extend the time for payment of an amount due if it is shown that timely payment would result in undue hardship on the taxpayer.

Effective Date: July 20, 2001

House Bill 3687, Part IB, Section 64, Proviso 64.12 (Act No. 66)

Fees Charged for Certificate of Compliance Letter and Infrastructure Credit Comfort Letter

This proviso allows the Department to impose a \$35 fee for the issuance of each certificate of compliance. A certificate of compliance is prima facie evidence that the tax has been paid, the return has been filed, or information has been supplied as required. Requests are often made by parties applying for a bank loan, issuing stock, purchasing a business, real estate, or assets of a business, or contracting to perform work in South Carolina.

In addition, this provision allows the Department to impose a \$35 fee for each informal, nonbinding, letter concerning eligibility for the infrastructure credit under Code Section 12-20-105. A qualifying company subject to the license tax imposed on South Carolina property and gross receipts, such as a power company, gas company, or telephone

company, may claim an infrastructure credit for 100% of the amount paid in cash, up to \$300,000 a year, for qualifying infrastructure for an eligible project.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2001 through June 30, 2002. Unless reenacted by the General Assembly in the next legislative session, the fees provided by this Act expire on June 30, 2002.

House Bill 3885, Section 40 (Act No. 89)

Representation During an Administrative Tax Process

Code Section 12-60-90(C), concerning who may represent a taxpayer during a South Carolina administrative tax process, has been amended to revise the cross references to United States Treasury Department Circular No. 230. Circular No. 230 contains rules governing who may represent taxpayers before the Internal Revenue Service.

Effective Date: July 20, 2001

House Bill 3885, Section 44 (Act No. 89)

Outstanding Debts Collected by the Department

Code Section 12-4-580(D)(1), concerning the Department's authority to collect any outstanding liabilities owed a governmental entity, has been amended to clarify the definition of "governmental entity" to mean the State and any state agency, board, committee, department, private or public institution of higher learning; all political subdivisions of the State; and all federal agencies, boards, and departments.

Effective Date: July 20, 2001

House Bill 3885, Section 37 (Act No. 89)

Disclosure of Deficiency Assessment

Code Section 12-54-240, concerning disclosure of information on a report or return, has been amended to add that the Department can disclose a deficiency assessment to an attorney conducting a closing. Previously, this information was disclosed only to the probate court.

Effective Date: July 20, 2001

House Bill 3885, Section 35 (Act No. 89)

Separate Account for Taxes

Code Section 12-54-200, allowing the Department to require the posting of a cash or surety bond if a person fails to file a timely return or pay a tax for two or more tax filing periods in 12 months, has been amended to also allow the Department to require the person to deposit and maintain taxes due in a separate bank account and to provide restrictions on the operation of that account.

Effective Date: July 20, 2001

House Bill 3885, Section 36 (Act No. 89)

Delinquent Tax Claim

Code Section 12-54-227, concerning contracts with a collection agency to collect delinquent taxes, has been amended to revise the definition of “delinquent tax claim” to mean a tax liability that is due and owing for a period longer than six months and for which the taxpayer has been given at least three notices requesting payment and for any subsequent tax debts issued, one notice of which includes a statement that the taxpayer’s delinquency may be referred to a collection agency. The amendments delete the provision that one notice be sent by certified or registered mail and the provision that the referring collection agency be located in the taxpayer’s home state.

Effective Date: July 20, 2001

House Bill 3885, Section 38 (Act No. 89)

(See also House Bill 3687, Part IB, Section 64, Proviso 64.13 (Act No. 66) and Senate Bill 220, (Act No. unassigned))

Debt Setoff Notice and Appeal Procedure - Internal Revenue Service Exempt

Code Section 12-56-120, concerning the Setoff Debt Collection Act notice and appeal procedures, has been amended to include the Internal Revenue Service as a claimant agency exempt from the Setoff Debt Collection Act notice and appeal procedures. The appeal procedure in connection with a liability to the Internal Revenue Service is governed by Title 26 of the United States Code. The sole and exclusive appeal procedure for a debt owed to the Department is governed by the provision of Chapter 60 of Title 12.

Effective Date: Applies to the 2001 filing period and thereafter.

House Bill 3885, Section 60 (Act No. 89)

Debt Setoff Collection Act - Definition of “Delinquent Debt” Expanded

Code Section 12-56-20(4), providing a definition of “delinquent debt” for purposes of the Setoff Debt Collection Act, has been amended to add that the term also includes any fine, penalty, cost, fee, assessment, surcharge, service charge, restitution, or other amount imposed by a court or as a direct consequence of a final court order which is received by or payable to the clerk of the appropriate court or treasurer of the entity where the court is located. The term continues to mean any sum due and owing any claimant agency, including collection costs, court costs, fines, penalties, and interest which have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made.

Effective Date: July 20, 2001

MISCELLANEOUS TAXES

Senate Bill 349, Section 1 (Act No. 74)

NASCAR Pit Passes – Exempt from Admissions Tax

Code Section 12-21-2420 has been amended to exempt from admissions tax charges for entry into the pit area of NASCAR sanctioned motor speedways or racetracks for drivers, crew members, or car owners where a participation fee is charged these persons by NASCAR, or by the speedway or racetrack, and where the charge to these persons is made on a per event basis for entry into the pit area, or where a combination of annual and per event charges to these persons is made for entry into the pit area.

Effective Date: July 18, 2001

Senate Bill 349, Section 4 (Act No. 74)

State Physical Fitness Centers – Exempt from Admissions Tax

Code Section 12-21-2420(14), exempting from the admissions tax admissions to a physical fitness center subject to the provisions of Chapter 79 of Title 44 that provides only certain activities and facilities, has now been expanded to exempt admissions to physical fitness centers operated by the State of South Carolina or any of its political subdivisions if the facility provides only aerobics or calisthenics; weightlifting

equipment; exercise equipment; running tracks; racquetball; swimming pools for aerobics and lap swimming; and other similar items approved by the Department.

Effective Date: July 18, 2001

House Bill 3687, Part IB, Section 19, Proviso 19.11 (Act No. 66)

State Museum - Exempt from Admissions Tax

This proviso exempts the State Museum from remitting admissions tax to the Department. The museum must earmark an amount equivalent to the tax in its budget for the purpose of promoting and marketing the museum.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2001 through June 30, 2002. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2002.

Senate Bill 115, (Act No. 8)

Coin-Operated Amusement Device – New Eight Month License

Code Section 12-21-2734 has been amended to provide for an eight month license for the operation of coin-operated amusement devices as an alternative to the current two year or six month licenses. The eight month license begins March 1st and expires October 30th following the date of issuance. The license fee is one-third the biennial license fee, may not be prorated, and is nonrefundable.

Effective Date: February 20, 2001

House Bill 3885, Section 1 (Act No. 89)

Deed Recording Fee – New Exemption for Electric Facilities

Code Section 12-24-40(15) has been added to exempt from the deed recording fee deeds transferring title to facilities for transmitting electricity that are transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to limited liability companies subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

Effective Date: Deeds made or recorded after July 20, 2001.

House Bill 3451, (Act No. 37)

Rental Surcharge – Expanded to “Rental Vehicles”

Chapter 31 of Title 56, imposing a 5% rental surcharge on the rental of private passenger motor vehicles for periods of 31 days or less, has been amended to also impose the rental surcharge on the rental of “rental vehicles.” A “rental vehicle” is defined as a:

1. Truck under 26,001 pounds gross vehicle weight that is used in the transportation of personal property and rented without a driver and is not used by the customer for business purposes, and
2. Trailer with a gross weight of not more than 6,000 pounds.

Effective Date: For rental contracts executed on or after May 29, 2001.

House Bill 3687, Part IB, Section 8, Proviso 8.49 (Act No. 66)

Hospital Tax Revenue

Code Section 12-23-810 imposes a tax on every hospital licensed as a general hospital by the Department of Health and Environmental Control. This proviso requires that the total annual revenues from this tax must equal \$39.5 million, rather than the \$29.5 million provided for by Code Section 12-23-810(C).

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2001 through June 30, 2002. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2002.

House Bill 3885, Section 21 (Act No. 89)

Fuel Vendor License

Code Section 12-28-1135(A) has been amended to clarify that any person, not just a dealer, who purchases taxable motor fuel for resale within South Carolina from a licensed terminal operator supplier must first obtain a fuel vendor license.

Effective Date: July 20, 2001

House Bill 3885, Section 22 (Act No. 89)

Penalties for Failure to File Schedules with Motor Fuel Tax Return

Code Section 12-28-1730(E), imposing a civil penalty against a terminal operator for willfully failing to meet the shipping paper issuance requirements of Code Sections 12-28-920, 12-28-1500, and 12-28-1575, has been expanded to impose a civil penalty (5% of the tax for each month or fraction of a month up to 25%) for willfully filing a return without the supporting schedules as required by the Department pursuant to Code Sections 12-28-1330 and 12-28-1340.

Further, Code Section 12-28-1730(H) has been added to provide that 5% of the tax for each month or fraction of a month up to 25% (the amount stated in Code Section 12-54-43(C)(1)) is added to the tax when a person willfully fails to provide all information required by the Department.

Effective Date: September 1, 2001

OTHER ITEMS

Senate Bill 496, Sections 2 and 7 (Act No. 59)

Lottery – Provisions Applicable to Department

Chapter 150 of Title 59, the “South Carolina Education Lottery Act,” establishes a lottery in South Carolina and contains certain tax related provisions. These include:

1. Lottery prizes are subject to South Carolina income tax. Any resident and nonresident who receives a lottery prize in excess of \$500 is subject to mandatory South Carolina income tax withholding based on the total prize value; the payment of withholding is adjusted according to the payment schedule for the prize. The State, a county, municipality, or other political subdivision may not impose a tax on the sale of a lottery ticket or on the payment of a prize, and a county, municipality, or other political or public subdivision may not assess an ad valorem tax against a lottery ticket. Code Sections 59-150-230(A) and 59-150-230(C)(2)(b).
2. The Department shall provide information to the Lottery Commission to ensure that all lottery retailer applicants are current in filing all applicable tax returns with the State and current in payment of all taxes, interest, and penalties owed the State, excluding items under appeal. Code Section 59-150-150(B)(1).
3. Section 7 of the Act provides that sales of lottery tickets pursuant to Chapter 150 of Title 59 are exempt from sales tax under a new subsection added to Code Section 12-36-2120.

4. The Department shall provide data to the Lottery Commission concerning a lottery retailer's gross revenue to assist them in verifying that a lottery retailer does not have a business where selling of lottery tickets or shares account for more than 60% annually of its gross revenues. Code Section 59-150-150(B)(2)(g).
5. The Department is among the claimant agencies that may submit to the Lottery Commission a list of names of persons owing debts over \$100 to the State for set off against lottery prizes of \$5000 or more. Code Section 59-150-330.

Effective Date: June 13, 2001

Senate Bill 519, (Act No. unassigned)

Jasper County School District Sales and Use Tax

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

The tax terminates on the final day of the maximum time specified in the imposition (but not more than 25 years) 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 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 maximum tax are exempt from this tax.

Those persons required to pay the 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 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.

Effective Date: August 10, 2001

House Bill 3885, Sections 41, 42, and 43 (Act No. 89)

Local Tax – Distribution and Misallocation

Certain provisions of the Local Transportation Tax (Code Section 4-37-30(A)(15)), the Cherokee County School District 1 School Bond – Property Tax Relief Act (Section 6(A) of Act 588 of 1994), and the Chesterfield County School District School Bond – Property Tax Relief Act Tax (Section 7A of Act 441 of 2000) concern the correction by the State Treasurer of a misallocation of funds. The statute requires that the correction be done by adjusting subsequent distribution of funds in the same fiscal year as the misallocation. The Cherokee and Chesterfield School Bond Acts have been amended to read like the Local Transportation Tax and require that misallocations made as a result of city or county code errors be corrected prospectively.

The Cherokee County School District 1 School Bond – Property Tax Relief Act (Section 6 of Act 588 of 1994), and the Chesterfield County School District School Bond – Property Tax Relief Act Tax (Section 7 of Act 441 of 2000) have also been amended to require that funds collected by the Department which are not identified as to the governmental unit due the tax be transferred to the State Treasurer after a reasonable effort to determine the source of collection. The State Treasurer must distribute these funds to the county treasurer in the county area in which the tax is imposed to be used only for the purposes stated in the imposition resolution. The State Treasurer must calculate this supplemental distribution on a proportional basis based on the current fiscal year's county area revenue collections.

Effective Date: July 20, 2001

Tourism Expenditure Review Committee

Chapter 4, Title 6 provides a procedure that qualifying counties and municipalities must follow in spending accommodations tax funds that are distributed back to the county or municipality. The first \$25,000 of funds goes into the general fund of the county or municipality. Of the remaining balance, 5% goes to the general fund to be spent as the county or municipality determines, 30% goes to a nonprofit corporation specifically for the advertising and promotion of tourism, and 65% of the balance may be used for tourism-related expenditures. Tourism-related expenditures are accommodations tax funds that must be spent on activities that promote and provide for tourism and may include such items as additional advertising, promotion of festivals, support and maintenance of visitor centers, and in certain instances, additional public services.

Code Section 6-4-5, providing definitions for purposes of Chapter 4, Title 6, has been amended by adding a definition of “tourist.” “Tourist” means a person traveling to and staying in places outside his usual environment for one night or more of leisure, business, or any other purpose. A person meeting this definition may be staying in places of public accommodations such as hotels, motels, inns, bed and breakfasts, campgrounds, or the residences of family and friends.

Further, Code Section 6-4-35 has been added to establish the Tourism Expenditure Review Committee to serve as the oversight authority on all questionable tourism-related expenditures. All reports filed by local governments pursuant to Code Section 6-4-25(D)(3) must be forwarded to the Committee for review. If an expenditure is questioned by the Committee, the county or municipality is notified and may submit supporting information to the Committee. If the Committee determines that a municipality or county has failed to file the reports required by Code Section 6-4-25(D)(3), it may impose a fee of \$500 for each month, or part of the month, in which the report is late, however, the total fee cannot exceed \$5,000. The Committee shall certify noncompliance or penalty amounts to the State Treasurer, who will withhold the amounts from future distributions of accommodations tax revenues due the county or municipality. Any appeal of the Committee’s decisions is made to the Administrative Law Judge Division.

Effective Date: July 18, 2001

REGULATORY MATTERS

Senate Bill 321, Section 7 (Act No. 76)

Check Cashing Services at Retail Liquor Stores

Code Section 61-6-1505 has been added to provide that a person operating a retail liquor store may be licensed under Chapter 41 of Title 34 to engage in check cashing services in the retail liquor store.

Effective Date: July 19, 2001

House Bill 3885, Sections 55 and 56 (Act No. 89)

Alcoholic Beverage Licenses - Legal Notices

Code Sections 61-4-520 and 61-6-1820, concerning the requirements for issuance of a beer and wine permit or a liquor license in a newspaper most likely to give notice to interested citizens of the county, city, or community in which the applicant proposes to engage in business, have been amended to require that the notice of application placed in the newspaper must:

1. Be in the legal notices section of the newspaper or an equivalent section if the newspaper has no legal notices section;
2. Be in large type, covering a space of one column wide and at least two inches deep; and
3. State the type license applied for and the exact location of the proposed business.

Effective Date: July 20, 2001

House Bill 3885, Section 69 (Act No. 89)

Code Section Repealed

Code Section 12-21-1080, providing that the beer and wine taxes were in lieu of all other taxes and licenses on beer and wine, has been repealed.

Effective Date: July 20, 2001

Senate Bill 321, Sections 1 and 4 (Act No. 76)

Alcoholic Content of Wine

Code Section 61-4-720 has been amended to increase from 14% to 16% the alcoholic content of wine produced by a domestic winery that may be sold on the winery premises and delivered or shipped to consumer homes.

Code Section 61-4-770 has been amended to state that only a licensed alcoholic liquor store or an establishment licensed to sell and permit consumption of alcoholic liquors in minibottles may sell wine with an alcoholic content of wine of more than 16%. Previously, these locations were the only ones allowed to sell wine with an alcoholic content of wine of more than 14%. The effect of this amendment is to allow other locations to also sell wine with an alcoholic content of up to 16%.

Effective Date: July 19, 2001

Senate Bill 321, Section 2 (Act No. 76)

Wine Tastings Conducted by Wholesalers for Retailers

Code Section 61-4-735(C), concerning equipment and services a wine wholesaler may provide to a wine retailer, has been amended to limit the number of wine tastings a wholesaler may conduct for a wine retailer to two.

Effective Date: July 19, 2001

Senate Bill 321, Section 3 (Act No. 76)

Wine Tastings Conducted by Retailers Whose Primary Product is Wine, Beer, or Distilled Spirits

Code Section 61-4-737 has been added to provide that the holder of a retail wine permit for off-premises consumption whose primary product is beer, wine, or distilled spirits may conduct, in accordance with Department rulings or regulations, not more than 24 wine tastings at the retail location in a calendar year.

Effective Date: July 19, 2001

House Bill 3885, Sections 53 and 54 (Act No. 89)

Brewpubs

Code Section 12-21-1035 has been added to clarify that beer produced at brewpubs is taxed on the total gallons of beer produced at a brewpub licensed under Article 17, Chapter 4 of Title 61 at the same rate other beer is taxed under the law. The tax is due on or before the 20th of the month following the month in which the tax accrues.

Effective Date: July 20, 2001

Senate Bill 321, Section 5 (Act No. 76)

Importer is Deemed Agent of Foreign Brewer of Beer

Code Section 61-4-1115 has been added to provide that, for purposes of Article 11 of Chapter 4 of Title 61 (“Beer Wholesaler Franchise”), when a registered producer is an importer of beer produced by a brewer located outside of the United States, the importer is deemed the agent of the foreign brewer and any agreement subject to the provisions of that article between a wholesaler and the importer is binding on any successor importer of beer produced by that foreign brewer.

Effective Date: July 19, 2001

Senate Bill 321, Section 6 (Act No. 76)

Importer’s Interest in a Limited Partnership Providing Financial Assistance to a General Partner Wholesaler

Code Section 33-42-75 has been added to the Uniform Limited Partnership Act to provide that any manufacturer, brewer, or importer of beer as referenced in Code Section 61-4-1115, or its affiliate, may hold an interest in a limited partnership providing financial assistance to a general partner wholesaler, but may only exercise that control of the limited partnership business as is permitted by the South Carolina Uniform Limited Partnership Act. However, in no event may the limited partner, directly or indirectly, have any managerial control or decision-making authority including personnel decisions, with respect to the day-to-day operations of the limited partnership, and upon a default by the general partner wholesaler, the limited partner is not entitled, directly or indirectly, to any additional control, ownership, or financial interest in the general partner wholesaler, nor may the limited partner become the general partner in the limited partnership. No manufacturer, brewer, or importer of beer or its affiliate licensed in this State, directly or indirectly, may have any financial or ownership interest in the general partner wholesaler. Code Section 33-42-75 further states that it is an unfair trade practice for any manufacturer, brewer, or importer of beer or its affiliate holding an interest in a limited

partnership providing financial assistance to a general partner wholesaler to have directly or indirectly any managerial control or decision-making authority, including personnel decisions, with respect to the day-to-day operations of the limited partnership.

The only financial assistance that may be provided under the provisions of Code Section 33-42-75 is the initial financial assistance to the limited partnership to acquire a licensed beer wholesaler. In this arrangement for financial assistance, the federal basic permit and the wholesaler's license issued by the Department must be issued in the name of the general partner wholesaler on behalf of the limited partnership, and not in the name of the limited partnership nor in the name of the manufacturer, brewer, or importer or its affiliate.

The limited partnership may not exist for more than ten years from the date of its creation and may not be recreated, renewed, or extended beyond that date. The limited partnership shall not be considered as amending or otherwise altering Title 61 except for the limited purposes permitted in Code Section 33-42-75 in connection with a manufacturer, brewer, or importer of beer or its affiliate who is licensed in this State providing the financial assistance. A manufacturer, brewer, or importer or its affiliate shall not mandate, directly or indirectly, that a wholesaler use the financial assistance as described in this section.

Effective Date: July 19, 2001

REMINDERS

The following provision was enacted in 1995, but is effective in 2001. It is summarized below for informational purposes.

Act No. 145, Part II, Section 48A

Soft Drink Tax Repealed

In 1995, the General Assembly enacted legislation to phase out the excise tax imposed on soft drinks. Effective July 1, 2001, the soft drink tax was repealed.