
State of South Carolina
Department of Revenue
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SC INFORMATION LETTER #07-16

SUBJECT: Tax Legislative Update for 2007

DATE: August 31, 2007

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 2000)
S.C. Code Ann. Section 1-23-10(4) (Supp. 2000)
SC Revenue Procedure #05-2

SCOPE: An Information Letter is a written statement issued to the public to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value.

Attached is a brief summary of most of the significant changes in tax and regulatory laws and regulations enacted during the past legislative session. The summary is divided into four categories, by subject matter, as indicated below.

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There are several instances where more than one bill with related subject matters was ratified by the General Assembly. In such cases, these summaries are cross referenced. In addition, there are several instances of apparent inconsistencies in some legislation which will be considered and may be resolved by the Code Commissioner.

DISCLAIMER:

This is intended to be a summary of the main points of the legislation; it is not an interpretation by the Department. It does not include minor points, such as legislation that allows a taxpayer to retain certain documentation when filing an electronic return. Please refer to the full text of the legislation for specific details and requirements.

There are several instances where some tax or incentive related legislation briefly summarized is under the jurisdiction of another state agency or political subdivision, and not the Department of Revenue. In such cases, questions concerning these provisions should be made directly to the agency or political subdivision having primary responsibility for the administration of these acts.

TEXT OF LEGISLATION:

A complete copy of the legislation discussed in this publication can be obtained from the South Carolina Legislative Council’s website at <http://www.scstatehouse.net/html-pages/legpage.html>.

INCOME TAXES, CORPORATE LICENSE FEES, AND WITHHOLDING

Senate Bill 408, Section 2 (Act No. 9)

(See also Senate Bill 91, Section 37 (Act No. 110) and House Bill 3749, Section 43 (Act No. 116))

Internal Revenue Code Conformity

Code Section 12-6-40(A)(1)(a) has been amended, except as otherwise provided, to update South Carolina's income tax laws to conform to the Internal Revenue Code of 1986, as amended through December 31, 2006, and includes the effective date provisions contained therein.

Effective Date: April 11, 2007

Senate Bill 91, Section 38 (Act No. 110)

(See also House Bill 3749, Section 44 (Act No. 116))

Internal Revenue Code Sections Not Adopted

Code Section 12-6-50(2) has been amended to include Internal Revenue Code Section 54, Credit to Holders of Clean Renewable Energy Bonds, as a section that has not been adopted by South Carolina.

Effective Date: Tax years beginning after December 31, 2005.

Senate Bill 91, Section 49 (Act No. 110)

(See also House Bill 3749, Section 54 (Act No. 116))

Federal Changes to Corporate Estimated Tax Payments - No SC Penalty

Section 401 of the Federal Tax Increase Prevention and Reconciliation Act (Act) changes the amount and timing of certain estimated tax payments for corporations with assets of at least \$1 billion that are due in 2006, 2012, and 2013. Payments due in July, August, and September 2006 are increased to 105% of the estimated payment amount required pursuant to IRC Section 6655; payments due in July, August, and September 2012 are increased to 106.25%; and payments due in July, August, and September 2013 are increased to 100.75%. The amount of the next required installment after an installment due in the months described above is reduced to reflect the amount of the increase in the earlier installment.

The Act also delays a portion of estimated tax payments of all corporations with estimated tax payments due in September of 2010 and 2011 (corporations using a calendar year or a fiscal year ending March 30, May 30, or September 30) until October 1. For any estimated payments otherwise due in September of 2010, 20.5% of the amount of that installment is not due until October 1, 2010. For any estimated tax payments due in September of 2011, 27.5% of the amount of that installment is not due until October 1, 2011.

Pursuant to Code Sections 12-6-50(16) and 12-6-3910 (South Carolina estimated tax payments provision), South Carolina generally adopts IRC Section 6655 for purposes of calculating South Carolina estimated tax payments for corporate taxpayers. Since, however, Section 401 of the Act is not part of the Internal Revenue Code, South Carolina did not adopt Section 401 of the Act.

Under this amendment, South Carolina corporate taxpayers following the provisions of Section 401 of the Act will not be subject to South Carolina penalties for failure to pay estimated taxes as provided in Code Section 12-6-3910.

Effective Date: June 21, 2007

Senate Bill 656, Section 5 (Act No. 115)

Income Tax Bracket Eliminated

This amendment provides that notwithstanding any other provision of law, the rate of tax imposed pursuant to Code Section 12-6-510(A) on the lowest bracket of South Carolina taxable income is reduced from 2.5% to 0%.

Effective Date: Taxable years beginning after 2006.

Senate Bill 91, Section 10 (Act No. 110)

(See also House Bill 3749, Section 16 (Act No. 116))

Active Trade or Business Income from a Pass Through Business Optional Rate – Safe Harbor Provision Amended

Code Section 12-6-545 permits individuals, estates, or trusts to use an “optional” income tax rate to compute the tax on active trade or business income received from a pass through business in lieu of the “standard” income tax rate under Code Section 12-6-510. The reduced income tax rate applicable to active trade or business income is 6% for tax years beginning in 2007. See SC Revenue Ruling #06-12 for a question and answer advisory opinion addressing common questions on the tax rate reduction on active trade or business income from a pass through business.

Active trade or business income or loss does not include, in part, amounts reasonably related to personal services. A taxpayer has the option of determining the amount of additional personal service income using the “actual method” or the “safe harbor method,” if certain dollar limitations are met. A taxpayer using the safe harbor method can elect to treat 50% of his active trade or business income as not related to personal services.

This amendment revises the safe harbor dollar limitations to provide that the safe harbor option is available to a taxpayer who owns an interest in one or more pass through businesses and the taxpayer’s total South Carolina taxable income from pass through businesses for which he performs personal services is \$100,000 or less, excluding capital gains or losses. Prior to this amendment, the safe harbor applied if the total South Carolina gross income of all pass through businesses of the taxpayer were less than \$1 million and the total South Carolina taxable income of all pass through businesses of the taxpayer were less than \$100,000.

Effective Date: Tax years beginning after December 31, 2005.

Senate Bill 91, Sections 18 and 27 (Act No. 110)

(See also House Bill 3749, Sections 24 and 33 (Act No. 116))

Extensions of Time to File - Clarified

Code Section 12-6-4980, allowing an extension of time to file returns under Chapter 6 of Title 12 or the annual report under Chapter 20 of Title 12, has been amended. Subsection (A) has been amended to permit the Department to allow an extension of time for up to 6 months from the original due date of the return without requiring that the taxpayer provide good cause. Subsection (C) has been added to provide that an extension may not be granted to a taxpayer who has been granted an extension for a previous period and has not fulfilled the requirements of the previous period.

Code Section 12-54-70, providing for extensions of time for filing returns required under the provisions of law administered by the Department, has also been amended. Subsection (a) has been amended to permit the Department to allow an extension of time for up to 6 months from the original due date of the return, except as otherwise provided in this section, without the taxpayer providing good cause.

Effective Date: June 21, 2007

House Bill 3317 (Act No. 92)

Contribution Check Off - Name Changed

Article 13, Chapter 43, Title 44 has been amended, in part, to rename the Gift of Life Trust Fund as Donate Life South Carolina. South Carolina's individual income tax form allows a taxpayer to make a contribution to this fund pursuant to Code Section 12-6-5060.

Effective Date: June 14, 2007

House Bill 3749, Section 65 (Act No. 116)

Credit for Shareholders of S Corporation Banks

Code Section 12-6-590(B) has been amended to provide a credit against income taxes for shareholders of banks, as defined in Internal Revenue Code Section 581, having a valid Subchapter S federal election that pay the bank tax imposed in Code Section 12-11-30. The shareholder is allowed a tax credit equal to the difference between (1) the tax computed under Chapter 6 of Title 12 (South Carolina Income Tax Act), including all credits other than the credit allowed under this section; and (2) the tax computed under Chapter 6 of Title 12, including all credits other than the credit allowed under this section, but excluding the taxpayer's prorata share of the net items of income and expense of the bank. The credit is limited to the taxpayer's prorata share of the tax imposed on the bank pursuant to Code Section 12-11-30.

In calculating the shareholder's income tax liability, Code Sections 12-6-590 and 12-6-545 should be used, notwithstanding the exception contained in Code Section 12-6-545(A)(1).

Effective Date: Calendar years beginning January 1, 2007.

Senate Bill 91, Sections 50 through 55 (Act No. 110)

(See also House Bill 3749, Sections 55 through 60 (Act No. 116))

Single Factor Apportionment

Effective for tax years beginning after 2006, Act No. 384 of 2006 amended Code Section 12-6-2250 to enact a single factor apportionment factor for businesses dealing in tangible personal property using the three factor (with double weighted sales) apportionment method. The single factor apportionment factor is being phased in and will replace the three factor (with double weighted sales) apportionment method for tax years beginning in 2011. This amendment reenacted the original three factor apportionment method in Code Section 12-6-2250 as it existed prior to its amendment in 2006 to be used during the

phase in period, added new Code Section 12-6-2252 providing for the single sales factor apportionment method, reorganized related apportionment factor provisions, and made technical amendments necessary when the single sales factor apportionment method is fully phased in and replaces the three factor apportionment method. Below is a brief summary of the amendments.

Code Section 12-6-2250 – Original Three Factor (with double weighted sales) Apportionment Method (sometimes referred to as a “Four Factor” Method)

Code Section 12-6-2250 has been amended as follows:

1. Code Section 12-6-2250 has been reenacted as Code Section 12-6-2250(A) as it existed prior to its amendment by Act No. 384 Section 3.A. of 2006 that enacted the single sales factor apportionment method.

Code Section 12-6-2250(A) – As Reenacted. Code Section 12-6-2250(A) provides that a taxpayer whose principal business in South Carolina is (a) manufacturing or a form of collecting, buying, assembling, or processing goods and materials within South Carolina or (b) selling, distributing, or dealing in tangible personal property within South Carolina apportions its income by multiplying its income remaining after allocation pursuant to Code Sections 12-6-2220 and 12-6-2230 by a fraction, the numerator is the property ratio, plus the payroll ratio, plus twice the sales ratio, and the denominator is four. If the sales ratio does not exist, the denominator of the fraction is the number of existing ratios. If the sales ratio exists but the payroll ratio or the property ratio does not exist, the denominator of the fraction is the number of existing ratios plus one. The property, payroll, and sales ratios must be determined in accordance with Code Sections 12-6-2260, 12-6-2270, and 12-6-2280, respectively.

2. Code Section 12-6-2250(B) has been added to codify the single factor phase in percentage rate reductions allowed in Act No. 384 Section 3.B of 2006, but uncodified, for use during the phase in period.

Phase-In of Single Sales Factor – New Code Section 12-6-2250(B). For taxable years beginning in 2007 through 2010 only, a taxpayer apportioning income pursuant to Code Section 12-6-2250 shall apportion income by using the method provided in Code Section 12-6-2250 and, if applicable, the method provided in Code Section 12-6-2252 (new single sales factor apportionment method.) If the calculation permitted in Code Section 12-6-2252 results in a reduction in income apportioned to South Carolina, the reduction is allowed as follows:

Taxable Year beginning in	Percentage of reduction allowed
2007	20%
2008	40%
2009	60%
2010	80%

3. Code Section 12-6-2250(C) has been added to clarify that the single factor phase in percentage reductions apply to the corporate license fee in Code Section 12-20-50.

License Fee Apportionment Ratio – New Code Section 12-6-2250(C). For purposes of the calculation of the license fee pursuant to Code Section 12-20-60 for multistate corporations, the percentage reduction is applied in the same manner as in Code Section 12-6-2250(B).

Code Section 12-6-2252 – Single Sales Factor Apportionment Method – New Statute

Code Section 12-6-2252 has been added to provide that a taxpayer whose principal business in South Carolina is (a) manufacturing or a form of collecting, buying, assembling, or processing goods and materials within South Carolina, or (b) selling, distributing, or dealing in tangible personal property within South Carolina shall apportion its income to South Carolina by multiplying the net income remaining after allocation pursuant to Sections 12-6-2220 and 12-6-2230 by the sales factor defined in Section 12-6-2280. If the sales factor does not exist, the remaining net income is apportioned to the business's principal place of business.

Code Section 12-6-2280 - Sales Factor Definition - Amended

Code Section 12-6-2280, defining the sales factor, has been amended. The sales factor is a fraction in which the numerator is the total sales of the taxpayer in South Carolina during the taxable year and the denominator is the total sales of the taxpayer everywhere during the taxable year. The amendments to Code Section 12-6-2280 include:

1. Code Sections 12-6-2280(B) and (C) were amended to exclude sales to the United States Government from both the numerator and the denominator of the sales factor.

Code Section 12-6-2280(B) – As Amended. The term “sales in this State” includes sales of goods, merchandise, or property received by a purchaser in this State. The phrase “other than the United States Government” was deleted from the end of the sentence.

Code Section 12-6-2280(C) – As Amended. The following provision was added: Sales of tangible personal property to the United States Government are not included in the numerator or the denominator of the sales factor. Only sales for which the United States Government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States Government.

2. Code Section 12-6-2280(D) was added to cross reference new Code Section 12-6-2295. For purposes of Code Section 12-6-2280, items included in sales are as provided in Section 12-6-2295.

Code Section 12-6-2295 – Examples of “Sales” and “Gross Receipts” – New Statute

Code Section 12-6-2295 was added to provide examples of items that the terms “sales” and “gross receipts” do and do not include. The amendments are explained below.

Examples of Items Included in Sales or Gross Receipts - Code Section 12-6-2295(A) -
Code Section 12-6-2295(A) provides that the terms “sales” as used in Section 12-6-2280 and “gross receipts” as used in Section 12-6-2290 include, but are not limited to, the following items if they have not been separately allocated:

1. receipts from the sale or rental of property maintained for sale or rental to customers in the ordinary course of the taxpayer’s trade or business including inventory;
2. receipts from the sale of accounts receivable acquired in the ordinary course of trade or business for services rendered or from the sale or rental of property maintained for sale or rental to customers in the ordinary course of the taxpayer’s trade or business if the accounts receivable were created by the taxpayer or a related party. For purposes of this item, a related person includes a person that bears a relationship to the taxpayer as described in Section 267 of the Internal Revenue Code;
3. receipts from the use of intangible property in this State including, but not limited to, royalties from patents, copyrights, trademarks, and trade names;
4. net gain from the sale of property used in the trade or business. For purposes of this subsection, property used in the trade or business means property subject to the allowance for depreciation, real property used in the trade or business, and intangible property used in the trade or business which is:
 - a. not property of a kind that properly would be includible in inventory of the business if on hand at the close of the taxable year; or
 - b. held by the business primarily for sale to customers in the ordinary course of the trade or business;
5. receipts from services if the entire income-producing activity is within this State. If the income-producing activity is performed partly within and partly without this State, sales are attributable to this State to the extent the income-producing activity is performed within this State;
6. receipts from the sale of intangible property which are unable to be attributed to any particular state or states are excluded from the numerator and denominator of the factor.

Examples of Items Not Included in Sales or Gross Receipts - Code Section 12-6-2295(B) - Code Section 12-6-2295(B) provides that the terms “sales” as used in Section 12-6-2280 and “gross receipts” as used in Section 12-6-2290 do not include:

1. repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of deposit or similar marketable instrument;
2. the principal amount received under a repurchase agreement or other transaction properly characterized as a loan;
3. proceeds from the issuance of the taxpayer’s stock or from sale of treasury stock;
4. damages and other amounts received as the result of litigation;
5. property acquired by an agent on behalf of another;
6. tax refunds and other tax benefit recoveries;
7. pension reversions;
8. contributions to capital, except for sales of securities by securities dealers;
9. income from forgiveness of indebtedness; or
10. amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code.

Code Section 12-6-2290 – Gross Receipts Apportionment Method – Amended

Code Section 12-6-2290 provides a gross receipts apportionment method for taxpayers not dealing in tangible personal property. It was amended to add a cross reference to Code Section 12-6-2295 (see above) which provides examples of items that the term “gross receipts” does and does not include.

Code Section 12-6-2290 now provides: If the principal profits or income of a taxpayer are derived from sources other than those described in Section 12-6-2250 or Section 12-6-2310, the taxpayer shall apportion its remaining net income using a fraction in which the numerator is gross receipts from within this State during the taxable year and the denominator is total gross receipts from everywhere during the taxable year. For purposes of this section, items included in gross receipts are as provided in Section 12-6-2295.

Related Amendments Effective Upon Final Phase in of Single Sales Factor Apportionment Method

The following amendments, effective for tax years beginning after 2010, update cross references from Code Section 12-6-2250 (the three factor apportionment method with double weighted sales and phase in provisions of the single sales factor) to Code Section 12-6-2252 (the single sales factor apportionment method) for the following code sections:

1. Code Section 12-6-1130(6) dealing with computation of the depletion deduction;
2. Code Section 12-6-2240 dealing with apportionment of income; and
3. Code Section 12-6-2290 dealing with gross receipts factor.

The following code sections will be repealed once the sales factor is fully phased in effective for tax years beginning after 2010:

1. Code Section 12-6-2250 (the three factor apportionment method with double weighted sales and phase in provisions of the single sales factor);
2. Code Section 12-6-2260 (three factor apportionment method property factor definition); and
3. Code Section 12-6-2270 (three factor apportionment method payroll factor definition).

Effective Date: Tax years beginning after 2006, except where otherwise indicated for tax years beginning after 2010.

House Bill 3820, Section 2 (Act No. 78)

Catastrophe Savings Accounts – New Deduction

Overview. Article 11, Chapter 6 of Title 12, has been added to allow individuals an income tax deduction for certain contributions to a Catastrophe Savings Account. Code Section 12-6-1620(B)(1) provides that a Catastrophe Savings Account is a regular savings account or money market account established by (1) an insurance policyholder for residential property to cover an insurance deductible under an insurance policy for the taxpayer's legal residence in South Carolina that covers hurricane, rising floodwaters, or other catastrophic windstorm event damage or (2) an individual to cover self-insured losses for the taxpayer's legal residence from a hurricane, rising floodwaters, or other catastrophic windstorm event. A taxpayer can only establish one Catastrophe Savings Account and must specify that the purpose of the account is to cover the amount of insurance deductibles and other uninsured portions of risks of loss from hurricane, rising floodwater, or other catastrophic windstorm event. A taxpayer's legal residence is determined pursuant to Code Section 12-43-220(c).

In addition to a deduction for contributions to a Catastrophe Savings Account, interest income earned on a Catastrophe Savings Account is exempt from South Carolina income tax.

Contribution Amounts. Code Section 12-6-1620(B)(3) provides that the total amount that may be contributed to a Catastrophe Savings Account must not exceed:

1. \$2,000 for an individual whose qualified deductible is \$1,000 or less;
2. the lesser of \$15,000 or twice the amount of the taxpayer's qualified deductible for an individual whose qualified deductible is greater than \$1,000; or

3. the lesser of \$250,000 or the value of the individual taxpayer's legal residence for a self-insured individual who chooses not to obtain insurance on his legal residence.

If a taxpayer contributes in excess of the limits, the taxpayer must withdraw the excess contributions and include that amount in South Carolina income in the year of withdrawal.

Distributions from the Account. Code Section 12-6-1630 provides that if the taxpayer takes a distribution from a Catastrophe Savings Account to cover qualified catastrophe expenses, the amount of distribution is not included in South Carolina income. If the distributions exceed the qualified catastrophe expenses, the excess must be included in South Carolina income. Qualified catastrophe expenses are defined as expenses paid or incurred by reason of a major disaster that has been declared by the Governor to be an emergency by executive order.

The tax rate for excess distributions is increased by 2.5% over the regular income tax rate. This increased tax rate does not apply to an excess distribution if:

1. the taxpayer no longer owns a legal residence qualifying under Code Section 12-43-220(C);
2. the distribution is from a self-insured account and the taxpayer is at least age 70 at the time of distribution; or
3. the distribution occurs on death of the taxpayer or the surviving spouse.

No amount is included in South Carolina taxable income if the distribution is from an account established to pay a deductible (rather than a self-insured account) and if at the time of distribution, the taxpayer is at least age 70. If a taxpayer receives a nontaxable distribution because of age, the taxpayer cannot make further contributions to any Catastrophe Savings Account.

Death of Owner of the Account. If the owner of a Catastrophe Savings Account dies, his account is included in the income of the person who receives the account, unless that person is the surviving spouse of the taxpayer. If the surviving spouse receives the account, the account is included in the income of the person who receives the account at the death of the surviving spouse.

Account Legally Protected. A Catastrophe Savings Account is not subject to attachment, levy, garnishment, or legal process in South Carolina.

Effective Date: Tax years beginning after December 31, 2006.

Omnibus Coastal Property Insurance Reform Act of 2007 – Three New Credits

Overview. Article 25, Chapter 6 of Title 12 has been amended to add three new income tax credits for individual taxpayers. Two of the credits are for a taxpayer who retrofits his legal residence to make it more resistant to loss due to hurricane, rising floodwater, or other catastrophic windstorm event. The third income tax credit is for premiums paid for property and casualty insurance on a legal residence in excess of 5% of the taxpayer's adjusted gross income. A taxpayer's legal residence is determined pursuant to Code Section 12-43-220(c). Each of the credits is summarized below.

Credit for Costs to Retrofit Legal Residence

Code Section 12-6-3660 provides an income tax credit for costs to retrofit a taxpayer's legal residence pursuant to Code Section 12-43-220(c) to make it more resistant to loss due to hurricane, rising floodwater, or other catastrophic windstorm event.

The costs must increase the residence's resistance to hurricane, rising floodwater, or catastrophic windstorm event damage and must be associated with fortification measures promulgated in a regulation by the Department of Insurance. The costs do not include ordinary repair or replacement of existing items. The cost of items that would otherwise qualify for the credit that are purchased with grant funds awarded pursuant to Code Section 38-75-485 are not eligible for this credit if the grant funds were not included in the income of the taxpayer.

The amount of credit for any taxable year must not exceed the lesser of:

1. 25% of the cost incurred; or
2. \$1,000.

As of this date, no regulations have been promulgated by the Department of Insurance; however, notice of a drafting period pursuant to Code Section 1-23-110 was in the June 2007 State Register.

Credit for Sales or Use Tax Paid on Purchases to Retrofit Legal Residence

Code Section 12-6-3665 provides an income tax credit to individuals for state sales or use taxes paid on purchases of tangible personal property used to retrofit the individual's legal residence under Code Section 12-6-3660. The cost of items purchased with grant funds awarded under Code Section 38-75-485 are not eligible for this credit if the grant funds were not included in the income of the taxpayer. The credit is 6% of the purchase price of tangible personal property for which the individual may claim the income tax credit in Code Section 12-6-3660. The maximum credit allowed is \$1,500.

Credit for Certain Property and Casualty Insurance Premium Payments

Code Section 12-6-3670 provides an income tax credit for an individual's property and casualty insurance premiums paid during the tax year in excess of 5% of the taxpayer's adjusted gross income. Property and casualty insurance is defined in Articles 1, 3, and 5 of Chapter 75 of Title 38 and must be for the taxpayer's legal residence pursuant to Code Section 12-43-220(c). The credit allowed for any taxable year cannot exceed \$1,250. Any unused credit may be carried forward for 5 tax years.

Effective Date: Tax years beginning after December 31, 2006.

Senate Bill 243, Section 11 (Act No. 83)

Credit for Purchase or Lease of Plug-in Hybrid Vehicle

Code Section 12-6-3376 has been added to allow an income tax credit to a taxpayer that makes an in-state purchase or lease of a plug-in hybrid vehicle in South Carolina. A plug-in hybrid vehicle is a vehicle that shares the same benefits as an internal combustion and electric engine with an all-electric range of 9 miles or more. The credit is \$2,000 and is nonrefundable. Any unused credit may be carried forward for 5 years. The amount of credit is capped and the total claims for all taxpayers for a fiscal year may not exceed \$200,000. To the extent that the total claims exceed \$200,000 the credit must be allocated proportionately among all taxpayers.

Effective Date: Tax years beginning after 2007 and before 2011.

Senate Bill 243, Sections 2 and 3 (Act No. 83)

Tax Credit for Qualified Contribution to Hydrogen Fund

Chapter 46, Title 11, the "South Carolina Hydrogen Infrastructure Development Act" ("Hydrogen Act"), has been enacted effective June 19, 2007 to encourage and nurture the development of hydrogen and fuel cell technology and businesses within South Carolina. The Hydrogen Act creates the South Carolina Hydrogen Infrastructure Development Fund ("Hydrogen Fund"). The Hydrogen Fund may receive donations, grants, and any other funding as provided by law. The revenues of the Fund are distributed in the form of grants by the South Carolina Research Authority ("Authority"). Code Section 11-46-30 provides that a taxpayer making a contribution to the Hydrogen Fund is allowed a tax credit pursuant to Code Section 12-6-3630.

Code Section 12-6-3630 has been added to allow a taxpayer a credit against income taxes under Chapter 6 or 11, Title 12; license fees under Chapter 20, Title 12; insurance premium taxes under Chapter 7 of Title 38; or any combination of these taxes or fees, for qualified contributions made to the Hydrogen Fund. The credit is equal to 25% of a

qualified contribution made by the taxpayer to the Hydrogen Fund and may be used against the applicable taxes or fees after the application of all other applicable credits. The credit is nonrefundable; unused credits can be carried forward for 10 years from the tax year in which the qualifying contribution is made.

A taxpayer who claims the credit for a qualified contribution may not also claim a deduction for the same qualified contribution. A contribution is not a qualified contribution if there are conditions or limitations on the use of the credit and the taxpayer must attach a copy of a form provided by the Authority identifying the taxpayer's qualified contribution. The Department may require additional information from the taxpayer identifying the taxpayer's qualified contribution as it considers appropriate.

Effective Date: Tax years beginning after 2007 and before 2012.

Senate Bill 243, Section 12 (Act No. 83)

Credit for Qualified Ethanol and Biodiesel Research and Development

Code Section 12-6-3631 has been added to allow taxpayers an income tax credit equal to 25% of the taxpayer's "qualified expenditures for research and development." The statute defines the terms "qualified expenditures for research and development" and "cellulosic ethanol" as follows: Qualified expenditures for research and development include expenditures to develop feedstocks and processes for cellulosic ethanol and for algae-derived biodiesel. Cellulosic ethanol means fuel from ligno-cellulosic materials, including wood chips, corn stover, and switchgrass.

The amount of the credit must be invested by the taxpayer in demonstration projects on or research and development of: (1) enzymes and catalysts; (2) best and most cost efficient feedstocks for South Carolina; and, (3) product development.

A taxpayer's total credit in all years may not exceed \$100,000. Further, all claims for all taxpayers pursuant to this section for a fiscal year may not exceed \$100,000. To the extent the claims for all taxpayers exceed \$100,000, the credit must be allocated proportionately among all taxpayers. Any unused credit may be carried forward for 5 years from the date the qualified expenditure is made.

To claim the credit, the "qualified expenditures for research and development" and the investments made by the taxpayer must be certified by the State Energy Office, in consultation with the Department of Agriculture and the South Carolina Institute for Energy Studies.

Effective Date: Tax years beginning after 2007 and before 2012.

House Bill 3526 (Act No. 94)

Apprenticeship Income Tax Credit

Code Section 12-6-3477 has been added to provide an employer a \$1,000 income tax credit for each apprentice employed pursuant to an apprentice agreement registered with the Office of Apprenticeship of the Employment and Training Administration of the United States Department of Labor. The apprentice must be employed by the taxpayer for at least 7 full months of the tax year to qualify. A credit is not allowed for an individual for more than 4 tax years.

Effective Date: Employees beginning apprenticeships after 2007.

Senate Bill 91, Section 40 (Act No. 110)

(See also House Bill 3749, Section 46 (Act No. 116))

Job Tax Credit for Small Business – “Alternative” Method Amended

South Carolina Code Title 12, Chapter 6 contains 3 job tax credit provisions. The provisions are in Code Section 12-6-3360(C)(1), the “traditional” annual job tax credit, Code Section 12-6-3360(C)(2), the “annual” small business job tax credit, and Code Section 12-6-3362, the “alternative” small business job tax credit.

Act No. 157 of 2005, effective for tax years beginning on or after January 1, 2006, amended Code Section 12-6-3360 to expand the “traditional” job tax credit to make it available to certain types of businesses (*i.e.*, a certain type of business with 99 or fewer total employees worldwide) by lowering the monthly average increase of jobs required to be created from 10 to 2 for most taxpayers. The “annual” small business job tax credit amount depends, in part, on the amount of gross wages paid to each employee. The “traditional” and “annual” small business job tax credit in Code Sections 12-6-3360(C)(1) or (C)(2) is claimed on the taxpayer’s tax return for 5 years (Years 2 through Years 6) beginning in the year following the year of the credit of the new jobs (Year 1), provided the jobs are maintained.

Code Section 12-6-3362 was added in 2006 to allow a small business qualifying for the “annual” small business job tax credit in Code Section 12-6-3360(C)(2), an “election” to accelerate the use of the credit for tax years beginning on or after January 1, 2006. Effective for tax years beginning after December 31, 2005, Code Section 12-6-3360(B) has been amended to provide that beginning with the year the new full time jobs are created, the taxpayer is allowed a job tax credit in an amount equal to the credit amount calculated pursuant to Code Section 12-6-3360(C)(2) for not more than 5 consecutive years. Prior to this amendment, Code Section 12-6-3360(B) provided, in part, that the accelerated credit was computed on a monthly basis and claimed in the year the jobs were created beginning with the first full month wages were paid for the new full time jobs.

Code Section 12-6-3362 continues to provide that a credit is not allowed for a year in which the new full time job increase falls below the minimum level of 2; a taxpayer eligible for the job tax credit in 12-6-3360(C)(2) may elect to claim the applicable credit as provided in (B) or as provided in (C)(2); and except where altered by (B), the provisions of Section 12-6-3360 are incorporated into this section.

Effective Date: Tax years beginning after December 31, 2005

Senate Bill 91, Section 12 (Act No. 110)
(See also House Bill 3749, Section 18 (Act No. 116))

Job Tax Credit - Suspended During Tax Moratorium Period

Code Section 12-6-3360(H), providing a 15 year job tax credit carryforward, has been amended to provide that a taxpayer who is eligible for the corporate income tax or insurance premium tax moratorium in Code Section 12-6-3367 and the job tax credit may claim the job tax credit and carry forward the unused job tax credits after the moratorium period expires.

Effective Date: Tax years beginning after 2005.

Senate Bill 91, Section 14 (Act No. 110)
(See also House Bill 3749, Section 20 (Act No. 116))

Job Tax Credit – General Contractor Qualification Clarified

Code Section 12-6-3360(M)(10) defining the term “corporate office facility” for purposes of providing the types of taxpayers that may qualify for the job tax credit means a corporate headquarters that meets the definition of a “corporate headquarters” in Code Section 12-6-3410(J)(1). Subsection (M)(10) has been amended to add that the corporate headquarters of a general contractor licensed by the South Carolina Department of Labor, Licensing, and Regulation qualifies even if it is not a regional or national headquarters as those terms are defined in Section 12-6-3410(J)(1). This amendment clarifies an amendment made to Code Section 12-6-3360(A) in 2006.

Effective Date: Tax years beginning after December 31, 2005.

House Bill 3749, Section 8 (Act No. 116)

Job Tax Credit – Retail Facilities and Service Related Industries – Expanded

To qualify for the job tax credit in Code Section 12-6-3360 or Code Section 12-6-3362, a business must be a certain type of business (*e.g.*, be engaged in manufacturing, processing, etc.). A retail facility or service related industry located in a distressed county may also qualify for the credit. Code Section 12-6-3360(A) has been amended to add that a retail facility or service related facility in a county that is underdeveloped and not traversed by an interstate highway may also qualify for the job tax credit.

Effective Date: Tax years beginning after 2007.

Senate Bill 408, Section 1 (Act No. 9)

Job Tax Credit – County Ranking Rules Amended

For job tax credit purposes, South Carolina’s counties are ranked in tiers as “distressed,” “least developed,” “under developed,” “moderately developed,” or “developed.” Rankings are done annually with equal weight given to unemployment and per capita income and then adjusted in accordance with special rules in Code Section 12-6-3360(B)(5) and 12-6-3360(L), as applicable. Code Section 12-6-3360(B) has been amended to add that a county’s designation may not be lowered in credit amount more than one tier in the following calendar year.

Effective Date: Applies to county designations beginning in 2007.

Senate Bill 91, Section 39 (Act No. 110)

(See also House Bill 3749, Section 45 (Act No. 116))

Job Tax Credit – Special County Ranking Clarified

Code Section 12-6-3360(B)(5)(f), effective for tax years beginning after December 31, 2004, allowing the job tax credit county designation to be increased to allow a one tier higher credit amount for a 3 year period beginning immediately following the year during which one employer lost at least 1,500 jobs in a calendar year, has been amended to clarify that the increased designation is allowed for 5 taxable years for jobs created in 2006, 2007, and 2008.

Code Section 12-6-3360(B)(5)(h), added in 2006, allowing the job tax credit county designation to be increased to allow a 3 tier higher credit amount for a 2 year period for a county in which one employer lost at least 1,500 jobs in calendar year 2006

for taxable years beginning in 2007 and 2008, has been amended to clarify that the increased designation is allowed for five taxable years for jobs created in 2007 and 2008.

Effective Date: June 21, 2007

Senate Bill 91, Sections 1 and 58 (Act No. 110)
(See also House Bill 3749, Section 5 (Act No. 116))

Research and Development Credit - Amended

Code Section 12-6-3415, allowing a credit for qualified research expenses made in South Carolina for a taxpayer that claims a federal income tax credit pursuant to Internal Revenue Code §41 for increasing research activities, has been amended to allow the use of the credit against any tax due under Chapter 6 (income tax) or under Code Section 12-20-50 (license fee based on capital stock and paid in surplus). Previously, the statute provided the credit was used against corporate income taxes under Code Section 12-6-530 or corporate license fees under Code Section 12-20-50.

Note: The federal income tax credit was extended through December 31, 2007.

Effective Date: Tax years beginning after 2006.

Senate Bill 91, Section 7 (Act No. 110)
(See also House Bill 3749, Section 13 (Act No. 116))

Retail Facilities Revitalization Act – Technical Correction

The Retail Facilities Revitalization Act in Title 6 of Chapter 34 provides either an income tax or property tax incentive for the renovation, improvement, and redevelopment of abandoned retail facility sites in South Carolina. Code Section 6-34-40(C)(3), allowing for the pass through of the income tax credit earned by a general partnership, limited partnership, or any other entity taxed as a partnership to its partners in any manner agreed to by the partners, has been amended to clarify that the allocation must be consistent with Subchapter K of the Internal Revenue Code.

Effective Date: Applies for rehabilitation expenses for eligible sites placed in service after June 30, 2006.

House Bill 3749, Section 21 (Act No. 116)
(See also Senate Bill 91, Section 15 (Act No. 110))

Credit for Rehabilitation of Certified Historic Structures

Code Section 12-6-3535, providing two similar income tax credits to taxpayers making historic rehabilitation expenditures in South Carolina, has been amended. Code Section 12-6-3535(A), a credit for rehabilitation of a certified historic structure, is available to taxpayers that qualify for the federal rehabilitation credit in Internal Revenue Code Section 47. Code Section 12-6-3535(B), a credit for rehabilitation of a certified historic residential structure, is available to individual taxpayers that do not qualify for the federal rehabilitation credit.

The amendment to Code Section 12-6-3535(A) provides that the credit may now be used against income taxes and license fees imposed by Title 12. Previously, the credit could be used against income taxes imposed by Code Sections 12-6-510 and 12-6-530, and license fees imposed by Chapter 20 of Title 12.

The credit in Code Section 12-6-3535(B) continues to be claimed against taxes imposed by Chapter 6. The amendment to Code Section 12-6-3535(B) provides that a taxpayer filing an electronic return should keep a copy of the certification obtained from the State Historic Preservation Officer for his records.

Effective Date: Tax years beginning after 2007.

Senate Bill 243, Section 13 (Act No. 83) and Senate Bill 91, Section 17 (Act No. 110)
(See also House Bill 3749, Section 23 (Act No. 116))

Credit for Installation of Solar Energy Systems - Amended

Code Section 12-6-3587, allowing a taxpayer an income tax credit equal to 25% of the costs incurred in the installation of a solar energy heating and/or cooling system in a building owned by the taxpayer, has been amended during this legislative session by several bills. Below is a brief summary of the amendments.

Amendment 1. Senate Bill 91 and House Bill 3749 added the words “in South Carolina” to clarify that the installation of a solar energy heating or cooling system must be in a building in South Carolina owned by the taxpayer.

Amendment 2. Senate Bill 243 made more substantial amendments that include:

- A. Amended the statute to allow the credit for the purchase and installation of a solar energy system for heating water, space heating, air cooling, or the generation of electricity in or on a facility in South Carolina and owned by the taxpayer. The amount of the credit may not exceed \$3,500 for each facility or 50% of the taxpayer’s

tax liability for that taxable year, whichever is less. If the amount of the credit exceeds \$3,500 for each facility, the taxpayer may carry forward the excess for up to 10 years.

- B. Deleted the requirement that the credit must be claimed for the year that the costs are incurred. The statute continues to provide that installation of the system must be completed before the taxpayer can claim the credit.
- C. Amended subsection (B), defining the term “system,” to provide that system includes all controls, tanks, pumps, heat exchangers, and other equipment used directly and exclusively for the solar energy system, but does not include any land or structural elements of the building such as walls and roofs or other equipment ordinarily contained in the structure. The amendment also added that no credit is allowed for a solar system unless it is certified for performance by the nonprofit Solar Rating and Certification Corporation or a comparable entity endorsed by the State Energy Office.

Effective Date: Amendment 1 applies to installation costs incurred after December 31, 2005. Amendment 2 is effective June 19, 2007.

Senate Bill 243, Section 14 (Act No. 83)

Ethanol or Biodiesel Production Credits - Amended

Code Section 12-6-3600, providing income tax credits to taxpayers that produce ethanol or biodiesel at a facility in South Carolina, has been amended. The credits available to a producer of ethanol or biodiesel are briefly discussed below.

1. Credit for Production of Corn-based Ethanol or Soy-based Biodiesel. Code Section 12-6-3600(A) provides a tax credit of 20¢ per gallon for each gallon of corn-based ethanol or soy-based biodiesel produced by a corn-based ethanol or soy-based biodiesel facility if the facility is in production at the rate of at least 25% of its name plate design capacity for the production of corn-based ethanol or soy-based biodiesel, before denaturing, on or before December 31, 2009. The credit can only be claimed if the facility maintains an average production rate of at least 25% of its name plate design capacity for at least 6 months after the first month it is eligible to receive the credit. The credit is allowed for 60 months, beginning with the first month the facility is eligible to receive the credit and ending no later than December 31, 2014. Previously, the statute did not reference corn-based ethanol and soy-based biodiesel.
2. Credit for Production of Ethanol or Biodiesel from Other Materials. Code Section 12-6-3600(B) has been amended to provide a new tax credit of 30¢ per gallon for each gallon of noncorn ethanol or nonsoy biodiesel produced by a facility using a feed stock other than corn to produce ethanol or a using a feedstock other than soy oil to produce biodiesel if the facility is in production at the minimum rates provided in this subsection of its name plate design capacity for the production of ethanol or

biodiesel, before denaturing, on or before December 31, 2009. The credit is continued only if the facility maintains the average production rates provided pursuant to this subsection of its name plate design capacity for at least 6 months after the first month it is eligible to receive the credit. The credit is allowed for 60 months, beginning with the first month the facility is eligible to receive the credit and ending no later than December 31, 2014. Previously, the statute did not provide an increased credit amount for using feedstocks other than corn and soy oil to produce ethanol or biodiesel.

Section (C) has been amended and now contains definitions applicable to the credits. "Name plate design capacity" means the original designed capacity of an ethanol or biodiesel facility. Capacity may be specified as bushels of grain ground or gallons of ethanol or biodiesel produced a year. An "ethanol facility" is defined as a plant or facility primarily engaged in the production of ethanol or ethyl alcohol derived from renewable and sustainable bioproducts used as a substitute for gasoline fuel. "Biodiesel facility" is defined as a plant or facility primarily engaged in the production of plant-or animal-based fuels used as a substitute for diesel fuel. Previously, subsection (C) contained an additional credit for expanding a facility.

All limitations that previously existed with respect to these credits continue to apply. Additionally, the total claims for all taxpayers for a fiscal year may not exceed \$800,000. To the extent that the claims exceed \$800,000, the credits must be allocated proportionately among all taxpayers.

Effective Date: Tax years beginning after 2006 and before 2014.

Note: The credit for increased production in 2006 Act No. 386 that enacted Code Section 12-6-3600(D) remains available for ethanol and biodiesel facilities for new production after January 1, 2014.

Senate Bill 243, Section 15 (Act No. 83)

Credit for Cost of Constructing and Installing Facilities for Distribution, Dispensing, or Processing Renewable Fuels - Amended

Code Section 12-6-3610, which provides income tax credits for taxpayers that place in service facilities or property for distributing, dispensing or processing renewable fuels, has been amended. The credits as amended are briefly discussed below.

1. Credit for Distribution or Dispensing Facility. Code Section 12-6-3610(B) provides an income tax credit to a taxpayer that purchases or constructs and installs property that is placed in service in South Carolina that is used for distributing or dispensing renewable fuel. For purposes of this credit, "renewable fuel" is defined as E70 or greater ethanol fuel dispensed at the retail level for use in motor vehicles and pure ethanol or biodiesel fuel dispensed by a distributor or facility that blends these

nonpetroleum liquids with gasoline fuel or diesel fuel for use in motor vehicles. The credit is equal to 25% of the cost of purchasing, constructing and installing the property. Previously, the credit did not apply to purchases and it did not apply to existing facilities. Eligible property includes pumps, storage tanks, and related equipment that is used directly and exclusively for distributing, dispensing or storing renewable fuel and that is labeled for this purpose and clearly identified as associated with renewable fuel. The credit must be taken in 3 equal annual installments beginning with the taxable year the property is placed in service. Any unused credit can be carried forward for 10 years. However, if, in one of the years in which the installment of a credit accrues, the property that is directly and exclusively used for distributing, dispensing, or storing renewable fuel is disposed of or taken out of service, the credit expires and the taxpayer may not take any remaining installment of the credit.

2. Credit for Processing Facility. Code Section 12-6-3610(C) provides an income tax credit to a taxpayer that constructs and places in service in South Carolina a commercial facility for the production of renewable fuel. The amendment clarifies that production of renewable fuel includes intermediate steps such as milling, crushing, and handling of feedstock and the distillation and manufacturing of the final product. For purposes of the statute, “renewable fuel” means liquid nonpetroleum based fuels that can be placed in motor vehicle fuel tanks and used as a fuel in highway vehicles. It includes all forms of fuel commonly or commercially known or sold as biodiesel and ethanol. The credit is equal to 25% of the cost of constructing or renovating the building and equipping the facility. Previously, the credit did not apply to renovations to an existing facility. The credit must be taken in 7 equal annual installments beginning with the taxable year in which the facility is placed in service. Any unused credit can be carried forward for 10 years. However, if, in one of the years in which the installment of a credit accrues, the facility with respect to which the credit was claimed is disposed of or taken out of service, the credit expires and the taxpayer may not take any remaining installment of the credit. A taxpayer’s total credit under Code Section 12-6-3610(C) cannot exceed \$1 million.

A taxpayer that claims a credit under any other credit provision of Article 25, Chapter 6, Title 12 with respect to the costs of constructing and installing a facility, is not allowed the credits provided above with respect to the same costs. The total claims for all taxpayers for both credits for a fiscal year may not exceed \$150,000. To the extent that the claims exceed \$150,000, the credits must be allocated proportionately among all taxpayers.

Effective Date: January 1, 2008

Note: The credit in 2006 Act No. 386 for a distribution or dispensing facility and the credit for a processing facility contained in Code Section 12-6-3610 are in effect for 2007.

Credit for Using Methane Gas - Amended

Code Section 12-6-3620 (enacted in 2006 and effective for tax years beginning after 2006), providing a corporation a credit for 25% of the costs incurred for the use of methane gas taken from a landfill to provide power for a manufacturing facility, was amended twice during this legislative session. Both of the amendments are discussed below.

Amendment 1. Senate Bill 91, Section 57 replaced the term “power” with the term “energy.” The credit now reads, in part: For taxable years beginning after 2006, there is allowed a tax credit against the tax imposed pursuant to Code Section 12-6-530 for 25% of the costs incurred by a taxpayer for the use of methane gas from a landfill to provide “energy” for a manufacturing facility.

Amendment 2. Senate Bill 243, Section 16, made substantial amendments for taxable years beginning after 2007, and are summarized as follows. Code Section 12-6-3620, as substantially amended for tax years beginning after 2007, provides a credit against income taxes under Code Section 12-6-530 or license fees under Section 12-20-50, or both, for 25% of the costs incurred by a taxpayer for the purchase and installation of equipment used to create power, heat, steam, electricity, or another form of energy for commercial use from a fuel consisting of 90% or more biomass resource. For purposes of the credit, “biomass resource” means wood, wood waste, agricultural waste, animal waste, sewage, landfill gas, and other organic materials. “Commercial use” means a use intended for the purpose of generating a profit.

In order to claim the credit, the costs must be certified by the State Energy Office, in consultation with the Department of Agriculture and the South Carolina Institute for Energy Studies. A taxpayer may not use more than \$650,000 in credit in any one year. Unused credits may be carried forward for 15 years. If a facility stops using biomass resources as its primary fuel source before the entire credit is used, it is ineligible to use any remaining credit until it resumes using biomass resources as at least 90% of its fuel source. The 15 year carryforward is not extended due to noncompliance.

The total claims for all taxpayers for a fiscal year may not exceed \$650,000. To the extent that the claims exceed \$650,000, the credit must be allocated proportionately among all taxpayers.

Effective Date: Tax years beginning after 2006 for Amendment 1 and tax years beginning after 2007 for Amendment 2.

Senate Bill 243, Section 5 (Act No. 83)

(See also Senate Bill 91, Section 2 (Act No.110) and House Bill 3749, Section 63 (Act No. 116))

Certain Credits of Large Manufacturers – Withholding Tax

Code Section 12-14-80 has been added to allow an economic impact zone tax credit pursuant to Code Section 12-14-60 for qualifying investments made by a manufacturer that: (1) is engaged in this State in at least one economic impact zone, as defined in Code Section 12-14-30(1), in an activity or activities listed under the North American Industry Classification System Manual (NAICS) Section 326 (Plastics and Rubber Products Manufacturing); (2) is employing 5,000 or more full-time workers in South Carolina and has a total capital investment in South Carolina of not less than \$2 billion; and (3) has invested \$500 million in capital investment in South Carolina between January 1, 2006 and July 1, 2011.

A taxpayer that qualifies for the tax credit may claim the credit earned pursuant to Code Section 12-14-80 and job tax credits earned pursuant to Code Section 12-6-3360 in the manner provided in Code Sections 12-6-3360 and 12-14-60, or as a credit in an amount equal to not more than 50% of the employee's withholding on the taxpayer's quarterly withholding tax returns. The taxpayer must elect to take the credit either as an income tax or a withholding tax credit but not both. A taxpayer must first take the credits as an income tax credit in a year in which the taxpayer has a corporate income tax liability. The withholding tax credit may be taken only when the taxpayer has used the maximum investment tax credit allowed against the corporate income tax for that year. To claim the credit against the employee's withholding, the taxpayer must be in compliance with its withholding tax and other taxes due to the State.

Note that the withholding credit may only be taken for qualifying investments made or placed in service after July 1, 2007 and for the period July 1, 2007 to June 30, 2008, the taxpayer may not reduce its state withholding tax to less than the withholding tax remitted for the period June 30, 2006 to July 1, 2007, if it claims the withholding tax option.

Effective Date: July 1, 2007 and the credit applies for capital investments placed in service outside of an economic impact zone after June 30, 2007 and for quarterly withholding tax returns due on or after June 30, 2007.

House Bill 3749, Section 22.A (Act No. 116)
(See also Senate Bill 91, Sections 16 and 41 (Act No. 110))

Industry Partnership Fund Tax Credit - Amended

Code Section 12-6-3585, which provides a tax credit to a taxpayer that makes a contribution to the Industry Partnership Fund at the South Carolina Research Authority, has been amended several times during this legislative session. It is our understanding that the Code Commissioner intends to recommend that House Bill 3749, the last ratified Act, be used in determining the legislative intent. The amendments include:

1. The tax credit may now be applied to bank taxes imposed under Chapter 11, Title 12 in addition to income taxes under Chapter 6, Title 12, license fees under Chapter 20, Title 12 and insurance premium taxes under Chapter 7, Title 38.
2. A clarification that the maximum credit provisions apply for a single taxpayer and not for an individual taxpayer.
3. The taxpayer will now retain the form provided by the South Carolina Research Authority identifying the year and amount of credit for which the taxpayer qualifies. The Department may require a copy of the form be attached to the taxpayer's income tax return or may require the form to otherwise be provided. The previous requirement that the form be attached to the return has been deleted.

Effective Date: Tax years beginning after December 31, 2005.

Senate Bill 243, Sections 8.C and 8.E (Act No. 83) and Senate Bill 91, Section 48 (Act No. 110)

(See also Senate Bill 91, Sections 4.C and 4.E (Act No. 110) and House Bill 3749, Sections 2.C, 2.E, and 53 (Act No. 116))

Venture Capital Tax Credit Certificates - Revised

The Venture Capital Investment Act of South Carolina, Chapter 45, Title 11 ("Act") authorizes the South Carolina Venture Capital Authority ("Authority") within the South Carolina Department of Commerce to issue tax credit certificates to Lenders that make loans for venture capital purposes in accordance with the Act. The tax credits represented by the certificates may be transferred, carried forward or used to offset income taxes under Chapter 6, Title 12; bank taxes under Chapter 11, Title 12; savings and loan net income tax liability under Chapter 13, Title 12; insurance premium taxes under Chapter 7, Title 38, or other tax liability under Title 38. The Authority, in conjunction with the Department of Revenue, is required to develop a system of registration for the tax credits.

Code Section 11-45-55(B) has been amended to provide that the tax credit certificates must describe procedures for the issuance, transfer and redemption of the certificates and related tax credits. The form of the tax credit certificate must be approved by the State Budget and Control Board. The amendment deleted references to regulations promulgated by the Authority and makes issuance of guidelines discretionary. New Code Section 11-45-105 provides that any guideline issued by the Authority must be approved by the State Budget and Control Board.

Code Section 11-45-55(I), which provides for development of a tax credit registration system, has been amended to provide that the Authority, the Department of Commerce, the Department of Revenue and the Department of Insurance may exchange information for the purpose of registering and verifying the existence, possession, transfer and use of the tax credits, notwithstanding the nondisclosure provisions of Code Section 12-54-240(A).

Effective Date: June 19, 2007, except the amendment to Code Section 11-45-55(I) is effective June 21, 2007.

Senate Bill 91, Section 59 (Act No. 110)
(See also House Bill 3749, Section 6 (Act No. 116))

Credit against License Tax for Providing Infrastructure to an Eligible Project - Amended

Code Section 12-20-105, which provides a credit against the license tax imposed by Code Section 12-20-100 for amounts paid in cash by taxpayers for qualifying infrastructure to an eligible project, has been amended.

Subsection (B)(2) has been amended to provide that if the project consists of an office, business, commercial, or industrial park that is owned or constructed by a county or a political subdivision of the State when the qualifying improvements are paid for, the project does not have to qualify for income tax credits under Chapter 6 or 14, Title 12, withholding tax credits under Chapter 10, Title 12, or a fee in lieu of taxes under Chapter 12, Title 4, Chapter 29, Title 4, or Chapter 44, Title 12. Previously, the statute did not contain the phrase “when the qualifying improvements are paid for.”

Subsection (C)(4) provides that qualifying infrastructure improvements include industrial shell buildings or the purchase of land for an office, business, commercial, or industrial park owned or constructed by the county or a political subdivision of the State. This amendment provides that nothing in this section prohibits the county or political subdivision from selling the industrial shell building or industrial park after the company has paid in cash to provide the infrastructure for the eligible project.

Effective Date: Tax years beginning after 2003.

Senate Bill 91, Section 19 (Act No. 110)
(See also House Bill 3749, Section 25 (Act No. 116))

Withholding on Sales of Real Property by Nonresidents - Amended

Code Section 12-8-580, requiring a person who purchases real property, or real property and associated tangible personal property, from a nonresident seller to withhold South Carolina income taxes from the seller, has been amended. Subsection (D)(2), providing the buyer is liable for the collection and payment of the amount, has been amended to provide that a lending institution, real estate agent, or closing attorney that has in fact withheld taxes is required timely to remit the amount withheld within the timeframe provided in this subsection.

Effective Date: June 21, 2007

Senate Bill 91, Section 21 (Act No. 110)
(See also House Bill 3749, Section 27 (Act No. 116))

Refund of Withholding – Amended

Code Section 12-8-2020(B), providing for the refund or credit to a withholding agent of tax withheld in error, has been amended to clarify that a withholding agent may only receive a refund if he has refunded or unconditionally credited the amount erroneously withheld to the taxpayer before the issuance of the original W-2.

Code Section 12-8-2020(C), providing that a withholding agent or taxpayer may apply for a refund or credit within 3 years from the deemed date of the overpayment (*i.e.*, the original due date of the return in which the withholding is credited against tax imposed by Chapter 6 of Title 12) has been deleted. The time limitations provisions in Code Section 12-54-85 apply to the filing for a refund or credit.

Effective Date: June 21, 2007

House Bill 3749, Section 1 (Act No. 116)

Job Development Credit Amended – Adjacent County Multicounty Park

Code Section 12-10-80, which provides a job development credit to taxpayers meeting certain requirements, has been amended. Under the amendment, a taxpayer that qualifies for a job development credit that is located in a multicounty business or industrial park is allowed a job development credit based on the designation of the county that has the lowest development status of the counties contained in the park if the park is located on

the geographical boundary of adjacent counties and the multicounty park agreement requires revenues from the park to be allocated to each county equally.

Effective Date: Taxable years beginning after 2007.

INCOME TAX REGULATIONS

Regulation Document No. 3047

Milk Producer Tax Credit

Code Section 12-6-3590 provides a refundable income tax credit to a person engaged in producing milk in South Carolina for sale based on the amount of milk produced and sold. SC Regulations 5-610 through 5-613 have been promulgated to address the administrative process for qualifying for the milk production credit, and to provide procedures for determining production price, annual certification of milk production and sales, and a dispute resolution process. These regulations are:

5-610 Definitions

- a. Class I Price of fluid milk means the Uniform Milk price in South Carolina published by the USDA.
- b. Producer means any individual, farm, corporation or other legal entity that produces and sells milk produced from his own cows.
- c. Department means the S.C. Department of Agriculture.
- d. Commissioner means the S.C. Commissioner of Agriculture.
- e. Cost of Production means the average cost of production in South Carolina. If such information is not readily available, then the Department may use the next best information available, which may include the cost of production in other Southern states.

5-611 Production Price

- a. The average production price shall be posted on the Department's website and will be available in the Commissioner's Office at least annually when all information needed to compute the average production price becomes available. This average production price shall be used by the S.C. Department of Revenue in its determination of tax credit qualification.
- b. The Production Price is equal to the Cost of Production in South Carolina, plus the difference between the average uniform price of milk in the top 5 markets where milk is imported, including transportation costs, and the uniform price of milk in the Appalachian Order.

5-612 Annual Milk Production Certification

The Department shall provide a form to be filled out and signed by all dairy producers filing for the Milk Producer Tax Credit. This form shall certify the amount of milk produced and sold by a specific producer for the entire taxable year in which the credit is

being applied for. This form shall be a sworn statement by the producer regarding the accuracy of the information listed on the form. The S.C. Department of Revenue will use this information regarding producer qualification for the tax credit.

5-613 Disputes Regarding Milk Producer Tax Credit Qualification

All disputes regarding the credit or refund under the Milk Producer Tax Credit program shall be in accordance with the regulations and policies of the S.C. Department of Revenue.

Effective Date: February 23, 2007

REENACTED TEMPORARY PROVISOS

The following temporary provisos were enacted in prior legislative sessions and were reenacted by the General Assembly in 2007. Temporary provisos are effective for the State fiscal year July 1, 2007 through June 30, 2008, and will expire June 30, 2008, unless reenacted by the General Assembly in the next legislative session.

House Bill 3620, Part IB, Section 36, Proviso 36.14 (Act No. 117)

Subsistence Allowance for Law Enforcement, Firefighting, and Emergency Medical Service Personnel – Amount Increased

Code Section 12-6-1140(6) provides a subsistence allowance deduction to federal, state, and local law enforcement officers paid by a political subdivision or the government of South Carolina or the federal government, and to full time firefighters and emergency medical service personnel for each regular work day in the taxable year. This temporary proviso increases the subsistence deduction allowed under Code Section 12-6-1140(6) to \$8.00 for each regular work day.

House Bill 3620, Part IB, Section 1A, Proviso 1A.33 (Act No. 117)

Teacher Supplies - Reimbursement Amount Not Taxable

This temporary proviso allows for a \$250 reimbursement designed to offset expenses for teaching supplies and materials incurred by all certified public school teachers, certified special school classroom teachers, certified media specialists, and certified guidance counselors who are employed by a school district or a charter school as of November 30 of the current fiscal year. This reimbursement is not considered taxable income by South Carolina.

House Bill 3620, Part IB, Section 64, Proviso 64.12 (Act No. 117)

Military Estimated Tax Payment Relief

This temporary proviso provides that no interest, penalties, or other sanctions may be imposed on the active duty income of members of the National Guard and Reserves activated as a result of the conflict in Iraq and the war on terrorism with respect to payment of South Carolina estimated quarterly individual income tax payments of the active duty income if the federal government is unable to properly withhold South Carolina income taxes on their active duty pay.

House Bill 3620, Part IB, Section 64, Proviso 64.7 (Act No. 117)

Fee Charged for Infrastructure Credit Comfort Letter

This temporary proviso 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 the value of 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.

House Bill 3620, Part IB, Section 27, Proviso 27.13 (Act No. 117)

Job Development Credit – Fees

This temporary proviso allows the Coordinating Council for Economic Development at the Department of Commerce (“Council”) to increase the application fee for qualification for job development credit benefits from \$2,000 to \$4,000, \$500 of which must be shared with the Department of Revenue. The Council is also authorized to establish an annual renewal fee of \$500 for qualifying businesses receiving job development credits and \$500 for qualifying businesses receiving job retraining credits, each of 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.

PROPERTY TAXES AND FEES IN LIEU OF PROPERTY TAXES

Senate Bill 153 (Act No. 12)

Constitutional Amendments Necessary for Property Tax Relief - Ratified

Two amendments to the State Constitution regarding the valuation of real property have been approved by the voters and ratified. Both were necessary to effect the South Carolina Real Property Valuation Reform Act of 2006, Article 25, Chapter 37, Title 12.

Section 29, Article III of the State Constitution has been amended to provide that taxes on real property must be determined by the methods provided by the General Assembly by general law as prescribed in Article X of the State Constitution. The amendment removed the requirement that taxes on real property be based on the actual value of the property, but left in place the same requirement for valuing personal property.

Section 6, Article X of the State Constitution, which provides for the assessment and collection of property taxes, has been amended to add the following new provisions:

1. For the tax year beginning 2007, each parcel of real property in the State will have a maximum value for property tax purposes that does not exceed its fair market value.
2. The General Assembly is authorized to define "fair market value," to define when property has been improved or when losses have occurred to change the value of the property, and to provide the method of assessment of real property by each political subdivision by enactment of general law and not by local legislation.
3. Each political subdivision is required to value real property by a method in which the value of each parcel, adjusted for improvements and losses, does not increase more than 15% every 5 years unless an assessable transfer of interest, as defined by the General Assembly, occurs.
4. Notwithstanding any other provision of law, for purposes of calculating the limit on bonded indebtedness for political subdivisions and school districts in Sections 14 and 15 of Article X, the assessed value of all taxable property for such entity shall not be lower than the assessed values for tax year 2006.

Effective Date: April 26, 2007

Senate Bill 367, Section 7.A (Act No. 57)

Assessable Transfer of Interest in Real Property and Conveyance – Definitions Revised

Code Section 12-37-3130 provides definitions of terms used in the South Carolina Real Property Valuation Reform Act. Code Section 12-37-3130(4), which defines “assessable transfer of interest” as the transfer of an existing interest in real property that subjects the real property to appraisal, previously provided that an existing interest in real property included life estate interests and the “beneficial use” of property (“beneficial use” was previously defined in Code Section 12-37-3130(5)). Code Section 12-37-3130(4) and (5) have been amended to omit references to “beneficial use”.

Code Section 12-37-3130(7) has been amended to provide (1) that “conveyance” is defined as the date of the transfer of an assessable transfer of interest in real property and (2) that failure to record legal instruments of transfer gives rise to no inference as to whether an assessable transfer of interest has occurred. Previously, conveyance was defined as the date the instrument of record was recorded by the clerk of court or register of deeds.

Effective Date: Property tax years beginning after 2006.

Senate Bill 367, Section 7.C.1 (Act No. 57)

Assessable Transfer of Interest in Real Property – Not Dependent on Recording of Legal Instruments

Code Section 12-37-3150(A), which contains a non-exhaustive list of transactions that constitute an assessable transfer of interest and thus requires a new appraisal, has been amended to provide that an assessable transfer of interest occurs at the time of execution of the instruments directly resulting in the transfer of interest, without regard to the recording of such instruments. The fact that such instruments are not recorded gives rise to no inference as to whether an assessable transfer of interest has occurred.

Effective Date: Property tax years beginning after 2006.

Senate Bill 367, Section 7.C.2 (Act No. 57)

Assessable Transfers of Interest in Real Property – Excludes Timeshare Unit Transfers

Code Section 12-37-3150(B) has been amended to add item (9) providing that a transfer of an interest in a timeshare unit by deed or lease does not constitute an assessable transfer of interest and thus does not require a new appraisal.

Effective Date: Property tax years beginning after 2006.

Senate Bill 367, Section 7.B (Act No. 57)

Fair Market Value of Real Property – Revised

Code Section 12-37-3140(A)(1), which defines the fair market value of real property as its fair market value applicable as of the latest of four dates or events, of which an assessable transfer of interest is one, has been amended to clarify that fair market value is determined as of December 31st of the year in which an assessable transfer of interest occurred, rather than the date of the actual transfer.

Under new subsection (D), real property valued by the unit valuation concept is excluded from the 15% cap on increases in fair market value in a 5 year period attributable to a countywide appraisal and equalization program.

New subsection (E) clarifies that changes in value resulting from assessable transfers of interest occurring in a property tax year are first subject to property tax in the following tax year. New subsection (E) also provides that value attributable to additions and improvements completed in a property tax year is first subject to property tax in the following tax year, unless the county has elected to accelerate the listing and assessment of improvements as provided in Code Section 12-37-670(B). See the summary of Senate Bill 367, Section 6 (Act No. 57) below for more information.

Effective Date: Property tax years beginning after 2006.

Senate Bill 367, Sections 6 and 7.B (Act No. 57)

Taxation of Improvements - Revised

Code Sections 12-37-670 and 12-37-3140(E) concern taxation of improvements to real property. As amended, Code Section 12-37-670(A) provides that no new structure must be listed or assessed for property taxation until it is completed and fit for the use for which it is intended. The amendment deleted the affirmative requirement that an owner

of such a structure list it with the county auditor on or before the first day of March following completion.

Code Section 12-37-670(B) has been amended to provide that a county's governing body may, by ordinance, require that previously untaxed improvements to real property be listed for taxation by the first day of the next calendar quarter after a certificate of occupancy is issued or the structure is actually occupied if no certificate is issued. Previously, the statute did not address listing of improvements where there was no certificate of occupancy issued. Also, the amendment provides that the new structure must be listed with the county assessor, rather than with the county auditor, as previously provided.

As amended, Code Section 12-37-670(B) further provides a new rule for accrual and payment of additional property tax attributable to improvements if the county elects to accelerate listing and assessment: Additional property tax accrues beginning on the listing date and is due and payable when taxes are due for the property for that property tax year, without regard to any tax receipt issued for the parcel for the tax year that does not reflect the value of the improvements.

The county ordinance described in Code Section 12-37-670(B) accelerates the taxation process with respect to improvements. Otherwise, under newly amended Code Section 12-37-3140(E), value attributable to additions and improvements completed in a tax year is not subject to property tax until the following tax year. See the summary of Senate Bill 367, Section 7.B (Act No. 57) above for more information.

If a county elects to impose the listing provisions of Code Section 12-37-670(B), the election is binding on all municipalities within the county.

Effective Date: June 6, 2007 for amendments to Code Section 12-37-670. The amendment to Code Section 12-37-3140(E) applies for property tax years after 2006.

Senate Bill 367, Section 9 (Act No. 57)

Appeals of Real Property Tax in Non-reassessment Years – Amended

Code Section 12-60-2510(A)(4), providing time periods and procedures for a taxpayer to appeal the fair market value, the special use value, the assessment ratio, and the property tax assessment of a parcel in years when there is no notice of property tax assessment (*i.e.*, non-reassessment years), has been amended. Under the amendment, a taxpayer may appeal at any time by submitting a written appeal to the county assessor. However, an appeal will apply to a previous tax year only if it is submitted before the first penalty date (*i.e.*, January 15th following the end of the previous property tax year on December 31st).

An appeal submitted on or after the first penalty date applies for the succeeding property tax year.

Effective Date: June 6, 2007

Senate Bill 367, Section 8 (Act No. 57)

Written Certification of Real Property Ownership – New Rules

Code Section 12-37-3160(B), which provides for written certification of the details of ownership of real property to be signed and returned by the owner subject to penalty for falsification, has been amended to require the county assessor to send such certificates annually to the owner of record, the owner’s agent of record, at the address of record, unless the owner is a natural person. If the owner is a natural person, the annual certificate requirement does not apply, but the assessor may periodically send certificates to natural persons subject to the same requirements as certificates sent to taxpayers that are not natural persons. Language requiring the certificates to be contained in each property tax notice has been deleted.

New subsection (C) defines a “natural person” as an individual or group of individuals who directly owns real property outside of any legal entity, including but not limited to a corporation, partnership, limited liability company, unincorporated association or trust. A natural person does not include a trustee, agent, officer or member of a legal entity that has an ownership interest in real property.

Effective Date: June 6, 2007

Senate Bill 367, Section 3 (Act No. 57)

(See also Senate Bill 91, Section 34 (Act No. 110) and House Bill 3749, Section 40 (Act No. 116))

Millage Increase Limit - Clarified

Code Section 6-1-320(A), which allows a local governing body to increase millage imposed for general operating purposes to the extent of any increase in the consumer price index and any population increase in years in which no reassessment program is implemented, has been amended. Under the amendment, if the average of the 12 most recent monthly consumer price indices for the period January through December of the prior calendar year yields a negative percentage change (*i.e.*, consumer prices have fallen), the average is deemed to be zero. Likewise, if the taxing entity experiences a reduction in population, the percentage change is deemed to be zero.

Code Section 6-1-320(E) has been amended to provide that, notwithstanding any provision in Article 3, Chapter 1, Title 6, which concerns the authority of local

governments to assess taxes and fees, Article 3 does not amend or repeal (1) the rights of a legislative delegation to set or restrict school district millage or (2) any caps on school millage provided by current law or statute or limitation on the fiscal autonomy of a school district that are more restrictive than the limit provided pursuant to Code Section 6-1-320(A).

Effective Date: June 6, 2007

House Bill 3749, Section 10 (Act No. 116)

Delayed Implementation of Reassessment

This uncodified provision authorizes a county council to enact an ordinance delaying implementation of values in a countywide assessment and equalization plan scheduled for the current tax year until property tax year 2008. This provision does not alter the index of taxpaying ability as defined in Code Section 59-20-20(3).

Effective Date: In discussions with the Code Commissioner, it is our understanding that there is no effective date provided for Section 10 of House Bill 3749 (Act No. 116); therefore, in accordance with Code Section 2-7-10, the effective date is July 18, 2007.

House Bill 3568 (Act No. 76)

Agricultural Real Property - Agritourism Uses

Code Section 12-43-233 has been added to provide that real property classified as agricultural real property by virtue of its use for agriculture, grazing, horticulture, forestry, dairying, and mariculture, may also be used for agritourism, provided agritourism is not the primary reason for classification as agricultural real property but is supplemental and incidental to the primary agricultural use described above.

Code Section 12-43-233 further provides that agritourism uses include, but are not limited to, wineries, educational tours, education barns, on-farm historical reenactments, farm schools, farm stores, living history farms, on-farm heirloom plants and animals, roadside stands, agricultural processing demonstrations, on-farm collections of old farm machinery, agricultural festivals, on-farm theme playgrounds for children, on-farm fee fishing and hunting, pick your own, farm vacations, on-farm pumpkin patches, farm tours, horseback riding, horseback sporting events and training for horseback sporting events, cross-country trails, on-farm food sales, agricultural regional themes, hayrides, mazes, crop art, harvest theme productions, native ecology preservations, on-farm picnic grounds, dude ranches, trail rides, Indian mounds, earthworks art, farm animal exhibits, bird-watching, stargazing, nature-based attractions, and ecological-based attractions.

The Department may promulgate regulations further defining the uses that qualify as agritourism and defining “supplemental and incidental” as used in this section.

Effective Date: June 13, 2007

Senate Bill 367, Section 1 (Act No. 57)

Attorney’s Fees for Unreasonable Removal of Agricultural Real Property Classification

Subarticle 9, Article 9 of the Revenue Procedures Act, Chapter 60, Title 12, governs appeals, protests, and refunds for property valued by county assessors. Code Section 12-60-2545 has been added to provide that, notwithstanding the general provision that costs are not allowed to either party in contested case hearings under Code Section 12-60-3350, if a taxpayer appeals a county assessor’s decision to remove the agricultural real property classification from real property, the county is required to pay reasonable attorney’s fees provided the taxpayer prevails in the contested case hearing and the administrative law judge makes a finding that the county assessor’s decision was not reasonable.

Effective Date: June 6, 2007

Senate Bill 139 (Act No. 66)

Treatment of Certain Motor Homes, Boats, and Camping Trailers as Real Property

As previously amended, Code Section 12-37-224 allowed certain motor homes and, by county ordinance, boats to be treated as real property for purposes of ad valorem taxation. Under the current amendment, Code Section 12-37-224 provides that, if it qualifies for deduction of the interest expense on a qualified primary or secondary residence pursuant to the Internal Revenue Code, a motor home, boat or watercraft, or trailer used for camping and recreational travel that is pulled by a motor vehicle is also a primary or secondary residence for property tax purposes statewide. Requirements for the interest expense deduction under the Internal Revenue Code include on-board sleeping, cooking and toilet facilities.

In addition, Code Section 12-37-224 now provides that the fair market value of such qualifying personal property must be determined in the manner that motor vehicles are valued for property tax purposes (*i.e.*, by reference annually to nationally recognized publications except that the value may not exceed 95% of the previous year’s value).

The previous requirement that such property be considered as real property rather than personal property for property tax purposes has been deleted. In Property Opinion

#2007-02, the Department's Property Division has expressed its non-binding view that classification of such property as a primary or secondary residence determines the applicable assessment ratio (*i.e.*, 4% or 6%, respectively) only; for other purposes, such as determination of the locality in which the property is taxed, the property retains its character as personal property.

Effective Date: June 7, 2007 and applicable to travel trailer or boat or watercraft property tax years beginning after 2006.

House Bill 3749, Section 66 (Act No. 116)

Boats In-State Repair Time

Code Section 12-37-714 provides that, with respect to boats, and boat motors if separately taxed, time in-state is used (1) to apportion the ad valorem taxation of certain boats and boat motors that are used in interstate commerce and (2) to determine whether boats and motors not used exclusively in interstate commerce are subject to South Carolina property taxes. This section has been amended to provide that the time a boat, or boat motor if separately taxed, is located in a South Carolina marine repair facility pursuant to a written contract for repairs does not count toward the number of days the boat or motor is present in this State.

Effective Date: Tax years beginning after 2007.

House Bill 3749, Section 64 (Act No. 116)

County Option to Exempt a Portion of Value of Watercraft and Motors

Code Section 12-37-220(B)(38), which exempts from property tax watercraft and motors assessed at \$50 or less, has been amended to provide that the governing body of a county by ordinance may exempt from property tax 42.75% of the fair market value of a watercraft and its motor, regardless of whether the motor is located in, attached to, or detached from the watercraft.

Effective Date: June 28, 2007 and applies to tax years beginning after 2007.

House Bill 3749, Section 9 (Act No. 116)

Property Leased by the State or a Political Subdivision to Another Exempt Entity

Code Section 12-37-220 has been amended by adding a property tax exemption for real property not subject to property tax, leased by a state entity or political subdivision to an entity that would not be subject to property tax if the entity owned the property.

Effective Date: Tax years beginning after 2007.

House Bill 3456, Sections 1 and 2 (Act No. 45)

Derelict Mobile Homes – Removal from Property Tax Duplicate

Code Section 6-1-150 has been added to provide a procedure for the removal and destruction of a derelict mobile home. The procedure, which involves inspection, notice and a magistrate's approval, can be initiated either by the owner of the real property on which a derelict mobile home is located or by the office or agency that is responsible for inspecting or zoning property in a county or municipality. If the magistrate determines that the mobile home is "derelict," as defined in Code Section 6-1-150(A)(1), and is to be removed and destroyed, the landowner or the local official must send proof of the removal and destruction to the county auditor.

Code Section 12-49-85 provides a procedure for removing uncollectible property taxes, assessments or penalties from the county auditor's duplicate list. Under new subsection (D), when the county auditor receives satisfactory proof that a derelict mobile home has been removed and disposed of in accordance with Code Section 6-1-150, the county auditor is required to remove the derelict mobile home permanently from the duplicate list. Once the derelict mobile home is removed from the duplicate list, any unpaid taxes, uniform service charges, assessments, penalties, costs of collection or other amounts billed on the tax notice are waived. All costs of removal and disposal are the responsibility of the mobile home owner and may be waived only (1) by order of a magistrate or (2) if a local governing body has a program that covers removal and disposal costs.

Effective Date: June 4, 2007

Senate Bill 367, Sections 4 and 5 (Act No. 57)

Homestead Exemption Fund - Revised

In 2006 the General Assembly created the Homestead Exemption Fund as a mechanism for channeling revenues raised by the State as a result of a 1% increase in sales, use, and casual excise tax, as provided in Article 11, Chapter 36, Title 12, to school districts to

replace property tax revenues lost as a result of enactment of the South Carolina Real Property Valuation Reform Act of 2006, Article 25, Chapter 37, Title 12. Deposits to the Homestead Exemption Fund include an additional yearly amount, as provided in Code Section 11-11-155(B), equal to the total reimbursements for fiscal year 2006-2007 from two other sources: (1) the reimbursement to counties for revenue lost due to the \$100,000 exemption for school operating millage for owner-occupied residential property under Code Section 12-37-251 and (2) the school operating millage portion of the reimbursement to counties for revenue lost due to the homestead exemption for taxpayers 65 and older, legally blind, or totally and permanently disabled under Code Section 12-37-270.

Code Section 11-11-156 has been amended to restructure the overall system for reimbursements beginning with fiscal year 2007-2008 and to provide for administration of reimbursements by the Department of Revenue. A technical correction to Code Section 11-11-155(C) reconciles that provision with the provision for funds remaining at the end of a fiscal year under Code Section 11-11-156(C).

Effective Date: June 6, 2007

House Bill 3233, Sections 2, 3, 4 and 5 (Act No. 91)

Transfer of Title to Watercraft – Unpaid Property Tax Provisions

Code Section 50-23-295, which prohibits transfer of a certificate of title to watercraft or an outboard motor if the Department of Natural Resources has notice of unpaid property taxes on the watercraft or motor, has been amended to provide that the prohibition on title transfer applies only for property taxes due for property tax years beginning after 1999. The bill of sale or title to watercraft or an outboard motor must require certification that such property taxes have been paid and are current as of the date of sale. Under a new penalty provision in subsection (B), a person who falsely signs such a certification is subject to a \$500 fee in addition to any applicable criminal penalties, and any title issued in the applicant's name by the Department of Natural Resources is subject to suspension, to be reinstated on proof of payment of all taxes due and payment of the \$500 fee.

Uncodified provisions provide (1) that used watercraft and outboard motors obtained from a licensed dealer on or after October 3, 2000 are free and clear of property tax liens for property tax years before 2000; (2) that property taxes paid on watercraft and outboard motors for property tax years before 2000 are not refundable pursuant to any provision of this legislation; and (3) that Act 451 (House Bill 1288) of 2002, which contained similar uncodified provisions applicable only to Lexington County property taxes, has been repealed.

Effective Date: June 14, 2007, except the penalty provision in Code Section 50-23-295(B) takes effect on June 14, 2010.

Fee in Lieu Provisions Amended

Code Sections 4-12-30, 4-29-67 and Chapter 44 of Title 12 allow a property owner to negotiate with the county to obtain a fee in lieu of property taxes for property located at a qualifying project if the property owner meets certain statutory requirements and the county consents to the fee. Code Section 4-12-30 is commonly referred to as the “little fee,” while Code Section 4-29-67 is referred to as the “big fee” and Chapter 44, Title 12 is known as the “simplified fee”. All three of the fee provisions allow the property owner (referred to as a “sponsor” in the statutes) to: (1) obtain a lower assessment ratio for property subject to the fee; (2) fix the millage rate for either a five year period or for the life of the fee; and, (3) value its real property at cost for the life of the fee, while allowing its personal property to depreciate in accordance with law. For larger property investments, an owner may be able to obtain additional benefits. Property owners that obtain these additional benefits are said to have a “super fee” or, for the “simplified fee,” an “enhanced investment fee.” The changes made to the different fee provisions are as follows:

Little Fee, Including a Super Fee under the Little Fee Provisions – Code Section 4-12-30

1. Subsection (C)(2), which allows an extension of time to complete a project that is subject to the little fee, has been amended. Under the amendment, if a project has received an extension of less than 5 years, the sponsor can apply to the county before the end of any existing extension period for additional time to complete the project provided that the aggregate extension to complete the project cannot exceed 5 years. Unless it was approved as part of the original lease documents, the county council can approve the additional extension by resolution. A copy of the resolution must be delivered to the Department within 30 days of the resolution being adopted.
2. Subsection (C)(4), which provides for the period of time that property may be subject to the little fee, has been amended. Under the fee provisions, the fee is available for 20 years for a single piece of property and the fee is applicable for a total of 30 years for the entire project. Under the amendment, a sponsor may apply to a county prior to the end of the 20 year period for an extension of the fee period of up to 10 years. The county council may approve any extension by resolution upon a finding of substantial public benefit. A copy of the resolution has to be sent to the Department within 30 days of adoption of the resolution. A further amendment allows the aggregate fee period to be extended to 40 years, when previously, the aggregate fee period could not exceed 30 years. Additionally, the aggregate time period for a little fee super fee project has been extended to allow an aggregate fee period of 43 years.
3. Subsection (D)(4), which provides investment and job requirements for a super fee under the little fee, has been amended. Under the amendment, the super fee is available to: (1) a single sponsor investing at least \$150 million and creating at least 125 jobs in the State; (2) a single sponsor investing at least \$400 million at a project;

and, (3) a project that satisfies the requirements of Code Section 11-41-30(2)(a) and for which the Secretary of Commerce has delivered a certification pursuant to Code Section 11-41-70(2)(a). Previously, this subsection contained different investment requirements.

4. Subsection (H), which provides for amendments to agreements associated with the little fee, has been amended to provide that an inducement agreement or a millage rate agreement may be amended to extend the time period that property can be subject to the fee in accordance with the amendments made to subsections (C)(2) and (C)(4) discussed above. Previously, an agreement could not be amended to extend the time for the fee.
5. Subsection (K)(3), which allows a county to provide a credit against the fee payment, has been amended to allow a payment derived from the fee, as well as a credit against the fee, and to eliminate any requirement that there be no direct payment of cash to a sponsor.

Big Fee, Including a Super Fee under the Big Fee Provisions – Code Section 4-29-67

1. Subsection (C)(2), which allows an extension of time to complete a project that is subject to the big fee, has been amended. Under the amendment, if a project has received an extension of less than 5 years, the sponsor can apply to the county before the end of any existing extension period for additional time to complete the project provided that the aggregate extension to complete the project cannot exceed 5 years. Unless it was approved as part of the original lease documents, the county council can approve the additional extension by resolution. A copy of the resolution must be delivered to the Department within 30 days of the resolution being adopted.
2. Subsection (C)(3), which provides for the period of time that property may be subject to the big fee, has been amended. Under the fee provisions, the fee is available for 20 years for a single piece of property and the fee is applicable for a total of 30 years for the entire project. Under the amendment, a sponsor may apply to a county prior to the end of the 20 year period for an extension of the fee period of up to 10 years. The county council may approve any extension by resolution upon a finding of substantial public benefit. A copy of the resolution has to be sent to the Department within 30 days of adoption of the resolution. A further amendment allowed the aggregate fee period to be extended to 40 years, when previously, the aggregate fee period could not exceed 30 years. Additionally, the aggregate time period for a super fee under the big fee has been extended to allow an aggregate fee period of 43 years.
3. Subsection (D)(4), which provides investment and job requirements for a super fee under the big fee, has been amended to provide that the super fee is available to: (1) a single sponsor investing at least \$150 million and creating at least 125 jobs at the project; (2) a single sponsor investing at least \$400 million in this State; and (3) a project that satisfies the requirements of Code Section 11-41-30(2)(a) and for which

the Secretary of Commerce has delivered a certification pursuant to Code Section 11-41-70(2)(a). Previously, this subsection contained different investment requirements. This subsection was also amended to provide that the new full-time jobs requirement of this item does not apply in the case of a business that paid more than 50% of all property taxes actually collected in the county for more than 25 years ending on the date of the lease agreement. Previously, this paragraph referred to the inducement agreement and not the lease agreement.

4. Subsection (H), which provides for amendments to agreements associated with the fee, has been amended to provide that an inducement agreement or a millage rate agreement may be amended to extend the time period that property can be subject to the fee in accordance with the amendments made to subsections (C)(2) and (C)(4) as discussed above. Previously, an agreement could not be amended to extend the time for the fee.
5. Subsection (L)(3), which allows a county to provide a credit against the fee payment, has been amended to allow a payment derived from the fee, as well as a credit against the fee, and to eliminate any requirement that there be no direct payment of cash to a sponsor.

Simplified Fee, Including an Enhanced Investment Fee under the Simplified Fee Provisions – Chapter 44, Title 12

1. Code Section 12-44-30(7), which provides a definition of an “enhanced investment,” has been amended. Under the amendment, the enhanced investment fee is available to a project which results in a total investment at the project by: (1) a single sponsor investing at least \$150 million and creating at least 125 jobs; however, the new full-time jobs requirement does not apply to a taxpayer who paid more than 50% of all property taxes actually collected in the county for more than 25 years ending on the date of the fee agreement; (2) a single sponsor investing at least \$400 million; or (3) a project that satisfies the requirements of Code Section 11-41-30(2)(a) and for which the Secretary of Commerce has delivered a certification pursuant to Code Section 11-41-70(2)(a). Previously, this subsection contained different investment requirements.
2. Code Section 12-44-30(13), which provides a definition of “investment period” for the purpose of determining the time period for making investments that may be subject to the simplified fee and the time period for meeting any minimum investment requirements, has been amended. Under the amendment, if a project has received an extension of less than 5 years, the sponsor can apply to the county before the end of any existing extension period for an additional period of time to complete the project provided that the aggregate extension cannot exceed 5 years. Unless it was approved as part of the original fee documents, the county council can approve the extension by resolution. A copy of the resolution must be delivered to the Department within 30 days of the resolution being adopted.

3. Code Section 12-44-30(14), which provides a definition of “minimum investment,” has been amended to provide for an investment in a project of at least \$2.5 million within the investment period. Previously, the amount of investment was \$5 million.
4. Code Section 12-44-30(20), which provides a definition of “termination date” for purposes of determining how long property can be subject to the fee, has been amended. Under the amendment, a sponsor can seek an extension to have property at the project subject to the fee for up to an additional 10 years. The county council may approve any extension by resolution upon a finding of substantial public benefit. A copy of the resolution has to be sent to the Department within 30 days of adoption.
5. Code Section 12-44-40(E), which addresses time periods for certain agreements to be executed in order for property to continue to be subject to the fee, has been amended. Under the amendment, a fee agreement has to be executed within 5 years after action by the county identifying or reflecting the project; otherwise, any property previously purchased for the project will not qualify for the fee. The county action includes an inducement resolution adopted by the county. The statute previously provided that adoption of the inducement resolution was the sole trigger for the 5 year period.
6. Code Section 12-44-40(J) (2), which provides for amendments to agreements associated with the fee, has been amended to provide that a fee agreement may be amended to extend the time period that property can be subject to the fee in accordance with the amendments made to the definitions of “termination date” and “investment period” as discussed above.
7. Code Section 12-44-70, which allows the county, municipality, or special purpose district to provide a sponsor a credit against the fee payment, has been amended. Under the amendment, a local entity that receives revenues from the fee may use a portion of those revenues for the purposes provided in Code Section 4-29-68, without having to issue special source revenue bonds or complying with Code Section 4-29-68(A)(4) by providing a credit against, or payment derived from, the fee due from the sponsor. Previously, the statute imposed additional conditions on the issuance of such credits.

Effective Date: June 21, 2007

House Bill 3749, Section 7.A (Act No. 116)

Multicounty Park Fee – Bond Provision Amended

Code Section 4-1-175, which allows a county, municipality, or special purpose district to issue bonds for certain purposes payable out of fee in lieu of tax revenues from property located in the multicounty park established under Section 13, Article VIII of the South Carolina Constitution, has been amended. Previously, Code Section 4-1-175 provided that the local entity could either issue special source revenue bonds or could use the fee

revenues for the purposes provided in Code Section 4-29-68 without the requirement of issuing special source bonds or meeting the requirements of Code Section 4-29-68(A)(4), but the statute did not provide a mechanism for accomplishing the latter. The statute has been clarified to provide that the local entity, in lieu of issuing the bonds, can provide a credit against the fee payment or a payment derived from the fee payment to the property owner.

Effective Date: June 21, 2007

House Bill 3749, Section 67 (Act No. 116)

Special Source Revenue Bond Provision – Additional Qualifying Expenses

Code Section 4-29-68(A)(2), which provides for special revenue bonds to be issued to help pay the cost of certain infrastructure and real estate costs associated with certain projects, has been amended. The statute has been clarified that the special purpose revenue bonds may be issued for the purpose of paying the cost of designing, acquiring, constructing, improving, or expanding infrastructure serving either the issuer or the project. Previously, the statute only allowed issuance of the bonds to pay the cost of infrastructure serving the issuer. Additionally, under the amendment, the bonds may be issued to pay the costs of aircraft which qualifies as a project pursuant to Code Section 12-44-30(16). The statute has also been clarified so that the determination of whether the property enhances the economic development of the issuer is to be determined by the issuer and to make it clear that the costs of the issuance of the bonds may also be paid from bond proceeds.

Effective Date: Tax years beginning after 2007.

REENACTED TEMPORARY PROVISOS

The following temporary provisos were enacted in prior legislative sessions and were reenacted by the General Assembly in 2007. Temporary provisos are effective for the State fiscal year July 1, 2007 through June 30, 2008, and will expire June 30, 2008, unless reenacted by the General Assembly in the next legislative session.

House Bill 3620, Part IB, Section 72, Proviso 72.53 (Act No. 117)

Personal Property Tax Relief Fund Not Funded

This temporary proviso provides that the Personal Property Tax Relief Fund established under Code Section 12-37-2735 to help counties fund the reduction of ad valorem taxes on personal motor vehicles is suspended.

This proviso continues to provide that if a county imposes a personal property tax exemption sales tax in an effort to reduce ad valorem taxes on personal motor vehicles and the 2% sales tax rate on gross proceeds of sales is insufficient to offset the property tax not collected, sufficient amounts must be credited to the Trust Fund for Tax Relief established under Code Section 11-11-150 to provide reimbursement to offset the shortfall in the manner provided in Code Section 4-10-540(A).

House Bill 3620, Part IB, Section 36A, Proviso 36A.7 (Act No. 117)

Vehicle License Tax Year – Multiple Tag Transfers

This temporary proviso provides that the Department of Motor Vehicles must implement changes to its computer system that ensures that after the transfer of a license tag to a vehicle, before any subsequent transfer of a license tag to that same vehicle is processed, it requires a paid tax receipt, based upon the value of the vehicle to which the license tag is being transferred, for the remaining months of the tax year of the license tag being transferred.

This requirement only applies if the owner requesting the transfer has previously transferred a tag to the same vehicle. Should the vehicle from which the tag was transferred be re-registered, the registration cycle for that vehicle shall begin in the month that the new tag is issued.

REMINDER

The following provisions were enacted in 2006, but are effective in 2007. They are summarized below for informational purposes.

House Bill 4449, Part I, Section 3 (Act No. 388)

Owner-Occupied Residential Property – Exemption from School Operating Millage

Code Section 12-37-220(B)(47) has been added to create a new exemption for owner-occupied residential property. For property tax years beginning after 2006, and to the extent not already exempt pursuant to Code Section 12-37-250 (the homestead exemption for taxpayers 65 and older, legally blind, or totally and permanently disabled), 100% of the fair market value of owner-occupied residential property that qualifies under Code Section 12-43-220(c) for the 4% assessment ratio is exempt from the school operating portion of millage. The exemption does not apply to millage imposed for general obligation debt.

Property exempt pursuant to this new exemption is considered taxable property for purposes of bonded indebtedness under Section 15, Article X of the South Carolina Constitution.

Effective Date: For property tax years beginning after 2006.

House Bill 4449, Part II, Section 2 (Act No. 388)

Millage Limitation Revised

Code Section 6-1-320 only allows a local governing body to increase millage under certain circumstances. This code section has been amended to provide that in addition to increasing millage to reflect the average yearly increase in the consumer price index (“CPI”), beginning in 2007, a local governing body may increase millage by the percentage increase in the population of the entity for the previous year. (The procedure for determining changes in the millage rate has been clarified in Senate Bill 367, Section 3 (Act No. 57) and is summarized above.) Consistent with the law prior to amendment, in a year of reassessment, the rollback millage as determined under Code Section 12-37-251(E) must be used in lieu of the previous year’s millage rate.

Effective Date: January 1, 2007

Payment of Property Taxes Under Installment Method Revised

Code Section 12-45-75, which allows taxpayers to pay ad valorem property taxes on their property on an installment basis if allowed by the county, has been substantially modified.

Code Section 12-45-75 has been amended to provide that the governing body of a county, through ordinance, may allow a taxpayer to pay property tax due on an installment basis. Taxes paid through an escrow account may not be paid on an installment basis. A taxpayer who wants to pay on an installment basis, or who wishes to elect out of installment payments, must notify the county treasurer of the county in which the property is located in writing by January 15th of the tax year for which the installment payments are applicable. The notification can be made no earlier than December 1st of the preceding tax year. If a timely notification is not received by the county treasurer, the taxpayer must pay ad valorem taxes in the same manner as the previous taxable year.

Once notice is received from the taxpayer, the county treasurer has to notify the county auditor and assessor of each taxpayer electing the installment payment option, or electing out of the installment payment option. If the assessor determines that the property has diminished in value, an estimated property tax obligation must be adjusted and sent to the taxpayer to reflect the reduced value and the estimated property tax payments must be adjusted accordingly.

If the taxpayer elects the installment payment method, then the tax notice must contain a calculation of any estimated property tax due and a payment schedule and return envelopes for these payments. An installment payment is based on the total property tax due for the previous year after applying all applicable credits and adjustments. For taxpayers paying on the installment method, an amount equal to 16 and two-thirds of the estimated property tax obligations must be paid in 5 installments. The 5 installments are due on or before February 15, April 15, June 15, August 15, October 15, of the year respectively. The county treasurer is required to notify the county auditor between October 15 and November 15 of the amount of the property owner's payments received. A notice of the remaining tax due and any other charges must be mailed to the property tax owner and the balance of the tax due must be paid on or before January 15th of the following tax year. If the taxpayer fails to make timely installment payments, the county may refuse to accept all other installment payments and the remaining balance will be due on the normal due date for such payment under Code Section 12-45-70 (between September 30th and January 15th).

All installment payments must be credited against the property tax due by the taxpayer and the installment payments must be deposited in an interest bearing account with any interest accumulating on the funds being used to offset the administrative expenses of the county in administering the installment payments. Any overpayment must be refunded to the taxpayer together with the actual interest earned as a result of the taxpayer's

payments, the interest running from the later of: (1) the due date of the installment resulting in an overpayment or (2) the actual date the overpayment was received by the county treasurer, to the date the refund is issued. However, if the refund is issued to taxpayer within 45 days of the installment payment, no interest has to be paid to the taxpayer.

Once final payment is made, but no later than January 15th of the following tax year, the installment payments must be credited to the accounts of property taxing entities in the county in the same proportion that millage was imposed by such entities in the previous tax year with the necessary adjustments made to reflect current tax year millage impositions when taxes for the current year are paid. Each county treasurer is required to report certain information to the General Assembly on the impact and implementation of the installment payment provision.

This section in no way alters the due date, penalty schedule and enforced collections of property taxes as provided by law.

Effective Date: For property tax years beginning after 2006.

SALES AND USE TAXES

Senate Bill 656, Section 3 (Act No. 115)

Unprepared Food – New Exemption

Code Section 12-36-910(D), which imposes a 3% State sales and use tax on sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons, has been deleted effective November 1, 2007.

When the 3% State sales and use tax on sales of unprepared food is deleted, a new exemption (Code Section 12-36-2120(75)) will become effective that will exempt from the State sales and use tax unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons.

As such, the same unprepared food that is presently subject to the 3% State sales and use tax rate will be exempt from the State sales and use tax effective November 1, 2007. Local sales and use taxes that are administered and collected by the Department on behalf of the counties and other jurisdictions apply to sales of unprepared food, unless the local tax law specifically exempts the sales of such food.

Effective Date: November 1, 2007

Senate Bill 310, Section 1 (Act No. 99)

Durable Medical Equipment and Related Supplies – New Exemption

Code Section 12-36-2120(74) has been added to provide an exemption for durable medical equipment and related supplies as defined under federal and state Medicaid and Medicare laws. In order for the purchase of the durable medical equipment and related supplies to be exempt, the following conditions must be met:

1. The purchase must be paid directly by funds of South Carolina or the United States under the Medicaid or Medicare programs.
2. State or federal law or regulation authorizing the payment must prohibit the payment of the sale or use tax.
3. The durable medical equipment and related supplies must be sold by a provider who holds a South Carolina retail sales license and whose principal place of business is located in South Carolina.

An uncodified provision of the legislation provides that the exemption will be phased in by reducing the rate of tax.

For sales made on or after July 1, 2007, the tax rate is 5.5%. Subsequent tax rate reductions are dependent on a forecast by the Board of Economic Advisors (“BEA”) that the annual general fund growth for the next fiscal year (July 1 through June 30) equals at least 5%. This determination will be made each February 15th and if a 5% or more annual general fund growth is forecast, then the tax rate will be reduced further as follows:

4% for sales made on or after July 1st of next State fiscal year (July 1 through June 30) following the next February 15th forecast by the BEA meeting the 5% growth requirement,

3% for sales made on or after July 1st of next State fiscal year (July 1 through June 30) following the next February 15th forecast by the BEA meeting the 5% growth requirement,

2% for sales made on or after July 1st of next State fiscal year (July 1 through June 30) following the next February 15th forecast by the BEA meeting the 5% growth requirement, and

1% for sales made on or after July 1st of next State fiscal year (July 1 through June 30) following the next February 15th forecast by the BEA meeting the 5% growth requirement.

Sales on or after July 1st of the next State fiscal year following the next February 15th forecast by the BEA meeting the 5% growth requirement will be fully exempt without regard to subsequent BEA forecasts.

Effective Date: July 1, 2007

Senate Bill 310, Section 2 (Act No. 99)

Prescription Drugs Dispensed to Nursing Home Medicare Part A Patients - Amended

Code Section 12-36-2128(28), concerning various exemptions for prescription and other medicines, diabetic supplies, and other medical supplies, has been amended to add an exemption for prescription drugs dispensed to Medicare Part A patients residing in a nursing home. The exemption provides that these sales are not considered sales to the nursing home in which the Medicare Part A patients resides.

Effective Date: July 1, 2007

House Bill 3289 (Act No. 34)

Coins, Currency and Gold, Silver and Platinum Bullion – New Exemption

Code Section 12-36-2120(70) has been added to provide an exemption for (1) gold, silver, or platinum bullion, or any combination of this bullion; (2) coins that are or have been legal tender in the United States or other jurisdiction; and (3) currency. The Department must prescribe documentation that must be maintained by retailers claiming the exemption and the documentation must be sufficient to identify each individual sale for which the exemption is claimed.

Effective Date: July 1, 2007

Senate Bill 243, Section 4 (Act No. 83)

Hydrogen or Fuel Cell Devices, Equipment or Machinery – New Exemption

Code Section 12-36-2120(71) has been added to provide an exemption for:

1. any device, equipment, or machinery operated by hydrogen or fuel cells,
2. any device, equipment, or machinery used to generate, produce, or distribute hydrogen and designated specifically for hydrogen applications or for fuel cell applications, and
3. any device, equipment, or machinery used predominantly for the manufacturing of, or research and development involving hydrogen or fuel cell technologies.

For purposes of this exemption, a “fuel cell” is a device that directly or indirectly creates electricity using hydrogen (or hydrocarbon-rich fuel) and oxygen through an electro-chemical process, and “research and development” means laboratory, scientific, or experimental testing and development of hydrogen or fuel cell technologies and does not include efficiency surveys, management studies, consumer surveys, economic surveys, advertising, or promotion, or research in connection with literary, historical, or similar projects.

Effective Date: October 1, 2007

Senate Bill 243, Section 4 (Act No. 83)

Research District Building Material and Machinery or Equipment – New Exemption

Code Section 12-36-2120(72) has been added to provide an exemption for (1) building material used to construct a new or renovated building in a research district, and (2) machinery or equipment located in a research district. The amount of sales tax that would be assessed without the exemption must be invested by the taxpayer in hydrogen or fuel cell machinery or equipment located in the same research district. The investment must occur within 24 months of the purchase of the exempt item.

For purposes of this exemption, “research district” means land owned by the State, a county, or other public entity that is designated as a research district by the University of South Carolina, Clemson University, the Medical University of South Carolina, South Carolina State University, or the Savannah River National Laboratory.

Effective Date: October 1, 2007

Senate Bill 243, Section 6 (Act No. 83)

(See also Senate Bill 91, Section 3 (Act No. 110) and House Bill 3749, Section 62 (Act No. 116))

Amusement Park Rides, Machinery and Equipment – New Exemption

Code Section 12-36-2120(73) has been added to provide an exemption for amusement park rides and any parts, machinery, and equipment used to assemble, operate, and make up amusement park rides located in a qualifying amusement park or theme park. The exemption also applies to performance venue facilities and any related or required machinery, equipment, and fixtures, located in the park.

For purposes of this exemption, a “performance venue facility” means “a facility for a live performance, nonlive performance, including any animatronics and computer-generated performance, and firework, laser, or other pyrotechnic show,” and “related or required machinery, equipment, and fixtures” means “an ancillary apparatus used for or in conjunction with an amusement park ride or performance venue facility, or both, including, but not limited to, any foundation, safety fencing and equipment, ticketing, monitoring device, computer equipment, lighting, music equipment, stage, queue area, housing for a ride, electrical equipment, power transformers, and signage.”

In order to qualify for the exemption, however, the taxpayer must make a capital investment of at least \$250 million at a single site and create at least 250 full-time jobs and 500 part-time or seasonal jobs over a 5 year period beginning on the date of the taxpayer’s first use of this exemption. The taxpayer must also notify the Department of

its intent to qualify and use this exemption. The Department, upon receipt of the notification, will issue the appropriate exemption certificate to the taxpayer.

The taxpayer, within six months after the fifth anniversary of the first use of this exemption, must send written notification to the Department that it has or has not met the investment and job requirements of the exemption. If the taxpayer fails to meet the investment and job requirements, the taxpayer must pay to the State the amount of the tax that would have been paid but for this exemption. The running of the periods of limitations for assessment of taxes provided in Code Section 12-54-85 is suspended for this time period beginning with the taxpayer's first use of this exemption and ending with notice to the Department that the taxpayer has or has not met the investment and job requirements.

This exemption applies to a single taxpayer or, collectively, a group of one or more affiliated taxpayers. An "affiliated taxpayer" means a "person or entity related to the taxpayer that is subject to common operating control and that is operated as part of the same system or enterprise. The taxpayer is not required to own a majority of the voting stock of the affiliate."

Effective Date: July 1, 2007

Senate Bill 91, Section 42 (Act No. 110)

(See also House Bill 3749, Section 47 (Act No. 116))

Construction Material Used to Construct a Single Manufacturing or Distribution Facility – Exemption Amended

Code Section 12-36-2120(67), exempting construction materials used in the construction of a single manufacturing and distribution facility with a capital investment of at least \$100 million in real and personal property in the State over an 18 month period, has been amended to apply to a new or expanded single manufacturing or distribution facility, or one that serves both purposes, and to require that the \$100 million investment be at a single site in the State.

An uncodified provision of the legislation provides that this exemption will continue to be phased in over several years beginning July 1, 2007, and the sale of qualifying construction material will not be fully exempt until July 1, 2011. The exemption will be phased in by reducing the tax rate as follows:

4% for sales from July 1, 2007, through June 30, 2008,

3% for sales from July 1, 2008, through June 30, 2009,

2% for sales from July 1, 2009, through June 30, 2010, and

1% for sales from July 1, 2010, through June 30, 2011.

The taxpayer must still notify the Department in writing before the first month it uses the exemption and must notify the Department in writing that it has met the \$100 million investment requirement or, after the expiration of the 18 month period, that it has not met the \$100 million investment requirement.

Effective Date: July 1, 2007

Senate Bill 91, Section 24 (Act No. 110)
(See also House Bill 3749, Section 30 (Act No. 116))

Technology Intensive Facility - Exemption for Electricity, Equipment and Raw Materials Amended

Code Section 12-36-2120(66), which exempts electricity, equipment and raw materials used by a qualifying technology intensive facility as defined in Code Section 12-6-3360(M)(14)(b), has been amended to clarify that the running of the periods of limitation within which the Department may assess taxes under Code Section 12-54-85 is suspended beginning with the taxpayer's first use of this exemption and ending with the later of the fifth anniversary of first use or the required written notice by the taxpayer to the Department that the taxpayer either has met or has not met the investment and job requirements of the exemption.

Effective Date: June 6, 2006

Senate Bill 243, Section 10 (Act No. 83)

Alternative Fuel Vehicles - Sales Tax Rebate

The Energy Freedom and Rural Development Act was enacted and codified in Chapter 63 of Title 12. Under Code Section 12-63-20(A), purchasers or lessees of certain alternative fuel or fuel efficient vehicles are eligible for a sales tax rebate of up to \$300.

To qualify, the vehicle purchased must be one of the following types of alternative fuel or fuel efficient vehicles:

1. Flex-Fuel Vehicles capable of operating on E85 motor fuel. Eligible vehicles for each model year are those models identified by the manufacturer as being flexible-fuel vehicles capable of operating on E85 motor fuel. E85 motor fuel is a fuel comprised of 85% ethanol fuel and 15% gasoline fuel.

2. Hydrogen-fueled vehicles and advanced lean-burn vehicles. A hydrogen fueled vehicle and advanced lean-burn vehicle is a vehicle classified by the United States Department of Energy as a hydrogen-fueled vehicle or lean-burn vehicle.
3. Hybrid vehicles, electric vehicles, or plug-in hybrid vehicles. A hybrid vehicle is defined as a hybrid gasoline-electric vehicle that is partially powered by a large on-board battery. An electric vehicle is defined as having at least 3 wheels, uses a large on-board battery or electric storage device, and is rated for more than 35 miles per hour and approved for use by the United States Department of Transportation for use on United States highways (excludes neighborhood electric vehicles.) A plug-in hybrid vehicle is a vehicle classified by the United States Department of Energy as a hybrid vehicle capable of being propelled by both a gasoline-fueled internal combustion engine and an electric motor powered by a battery that can be recharged by being plugged into an external source of electricity.
4. High fuel-economy vehicles with a city fuel-economy rating by the United States Environmental Protection Agency (EPA) of 30 miles a gallon or higher.

In order to obtain this rebate, the following requirements must be met:

1. The vehicle must be purchased or leased after June 30, 2008 and before July 1, 2013.
2. The purchase or lease must be an in-state purchase or lease of the vehicle.
3. The rebate request must be submitted to the Department on a form created by the Department.

The rebates for these alternative fuel or fuel efficient vehicles will be phased in as follows:

A rebate of up to \$60 for purchases from July 1, 2008, through June 30, 2009,

A rebate of up to \$120 for purchases from July 1, 2009, through June 30, 2010,

A rebate of up to \$180 for purchases from July 1, 2010, through June 30, 2011,

A rebate of up to \$240 for purchases from July 1, 2011, through June 30, 2012, and

A rebate of up to \$300 for purchases from July 1, 2012, through June 30, 2013.

In addition to the rebate for in-state purchases and leases of the above alternative fuel or fuel-efficient automobiles, a rebate of not more than \$500 is available for persons who purchase equipment used in the conversion of a conventional hybrid electric vehicle to a plug-in hybrid electric vehicle or for the in-state purchase of EPA-certified equipment for the conversion of conventional vehicles to operate on propane, compressed natural gas,

liquefied natural gas, hydrogen or E85 (85% ethanol and 15% gasoline). The rebate for conversion equipment will be phased in as follows:

A rebate of up to \$100 for conversions occurring from July 1, 2008, through June 30, 2009,

A rebate of up to \$200 for conversions occurring from July 1, 2009, through June 30, 2010,

A rebate of up to \$300 for conversions occurring from July 1, 2010, through June 30, 2011,

A rebate of up to \$400 for conversions occurring from July 1, 2011, through June 30, 2012, and

A rebate of up to \$500 for conversions occurring from July 1, 2012, through June 30, 2013.

However, under Code Section 12-63-20(E) the total of all rebates paid for each State fiscal year (July 1 through June 30) is limited as follows:

For purchases of Flex-Fuel Vehicles (which are capable of operating on E85 motor fuel), the total of all rebates is limited to \$2,050,000 for all eligible claimants and must apply proportionally to all eligible claimants.

For purchases of hydrogen fueled vehicles, advanced lean-burn vehicles, hybrid vehicles, electric vehicles, plug-in hybrid vehicles, high fuel-economy vehicles, and qualified conversion equipment, the total of all rebates is limited to \$2,100,000 for all eligible claimants and must apply proportionally to all eligible claimants.

The form for requesting either of these rebates from the Department of Revenue will be available to automobile dealers and the Department of Motor Vehicles as well as the public.

Note Expiration: The rebates enacted in this legislation expire on July 1, 2013 and therefore will not apply to purchases or conversions occurring on or after that date.

Effective Date: July 1, 2008

Senate Bill 243, Section 10 (Act No. 83)

Alternative Fuel and Biomass Energy Incentives

The Energy Freedom and Rural Development Act was enacted and codified in Chapter 63 of Title 12. Under Code Section 12-63-20(B), retailers of certain alternative fuels are entitled to the following incentive payments from the general fund (excluding revenue derived from the sales and use tax) for alternative fuel sales occurring after June 30, 2009 and before July 1, 2012:

1. A 5¢ incentive payment to the retailer for each gallon of E70 fuel or greater sold, provided the ethanol-based fuel is subject to the South Carolina motor fuel tax.
2. A 25¢ incentive payment to the retailer for each gallon of pure biodiesel fuel sold so that the biodiesel in the blend is at least 2% B2 or greater, provided that the qualified biodiesel content fuel is subject to the South Carolina motor fuel user fee.
3. A 25¢ incentive payment to the retailer or wholesaler for each gallon of pure biodiesel fuel sold as dyed diesel fuel for “off-road” uses, so that the biodiesel in the blend is at least 2% B2 or greater.

For purposes of these incentives, biodiesel fuel is a fuel for motor vehicle diesel engines comprised of vegetable oils or animal fats and meeting the specifications of the American Society of Testing and Materials D6751. The payment of these incentives must be made to the retailer upon compliance with verification procedures set forth by the Department of Agriculture.

Under Code Section 12-63-20(C), producers of electricity or methane gas fuel generated from biomass resources are entitled to incentive payments beginning after June 30, 2008, and ending before July 1, 2018, as follows:

1. A payment of 1¢ per kilowatt-hour for electricity produced from biomass resources in a facility not using biomass resources before June 30, 2008, or facilities which produce at least 25% more electricity from biomass resources than the greatest 3 year average before June 30, 2008. The maximum incentive payment is \$100,000 per year per taxpayer for 5 years.
2. A payment of 9¢ per therm for methane gas fuel produced from biomass resources in a facility not using biomass resources before June 30, 2008, or facilities which produce at least 25% more methane gas from biomass resources than the greatest 3 year average before June 30, 2008. The maximum incentive payment is \$100,000 per year per taxpayer for 5 years.

For purposes of this incentive, “biomass resource” means “wood, wood waste, agricultural waste, animal waste, sewage, landfill gas, and other organic materials.”

The incentive payments under Code Section 12-63-20(C) are applicable to energy from a qualifying facility placed in service and first producing energy on or after July 1, 2008, and extends for 5 years, ending on July 1, 2013. However, if a qualifying facility is placed in service and first producing energy after July 1, 2008, the incentive payment is applicable for 5 years from the date the facility was placed in service and first produced electricity, but in no case does the incentive payment apply after June 30, 2018.

However, under Code Section 12-63-20(E)(3) the total of all incentives paid for alternative fuel sales and the production of electricity or methane gas fuel generated from biomass resources is limited to \$2,100,000 for each State fiscal year (July 1 through June 30) and must apply proportionally to all eligible claimants.

Note Expiration: The incentive payments enacted in this legislation for alternative fuels expire on July 1, 2012 and therefore will not apply to purchases occurring on or after that date. The incentive payments for producers of electricity and methane gas fuels expire on July 1, 2013 and therefore will not apply to energy produced on or after that date; however, if a qualifying facility is placed in service and first producing energy after July 1, 2008, the incentive payment is applicable for 5 years from the date the facility was placed in service and first produced electricity, but in no case does the incentive payment apply to energy produced after June 30, 2018.

Effective Date: July 1, 2008

Senate Bill 91, Section 25 (Act No. 110)
(See also House Bill 3749, Section 31 (Act No. 116))

Exemption Certificates and Retailer's Relief of Liability – Technical Correction

Code Section 12-36-2510, authorizing the Department to issue exemption certificates and providing the retailer relief of the liability for the tax, has been amended to make a grammatical correction with respect to the provision that provides the retailer may be held liable for the tax if the retailer fraudulently failed to collect or remit the tax or solicited the purchaser to participate in an unlawful claim for exemption.

Effective Date: June 21, 2007

SALES AND USE TAX REGULATION

Regulation Document No. 3057

Retail Licenses and Partnerships

SC Regulation 117-300.6, concerning retail licenses and partnerships, has been amended. The regulation was out of date since it referenced an annual license and the retail license is no longer issued on an annual basis. The regulation was amended to address this issue as well as other issues affecting the retail license when a partnership terminates or is converted to a limited liability partnership (“LLP”) or limited liability company (“LLC”).

Under the amended regulation, a partnership engaged in the business of selling tangible personal property at retail must obtain a new retail license, or retail licenses if the partnership has multiple retail locations, if (1) the partnership incorporates, (2) a single partner takes over the business and operates it as a sole proprietorship, (3) the partnership is terminated (no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership) and a new partnership is begun, or (4) the partnership is otherwise required to obtain a new Taxpayer Identification Number (“TIN”).

A new retail license, or retail licenses if the partnership has multiple retail locations, is not required if (1) the partnership merely changes its name or (2) the partnership has a change in ownership but is not required to obtain a new TIN.

The regulation also provides that:

1. the conversion of a partnership to a registered LLP pursuant to Article 13 of Chapter 41 of Title 33 is a partnership-to-partnership conversion and the organization is still considered to be the same entity for South Carolina tax purposes and is not required to obtain a new retail license; and,
2. the conversion of a partnership to an LLC taxed as a partnership pursuant to Code Section 33-44-902 is treated as a partnership-to-partnership conversion and the organization is still considered to be the same entity for South Carolina tax purposes and is not required to obtain a new retail license.

The provisions of this regulation apply to the retail licensing requirements under the sales and use tax law (Chapter 36 of Title 12) and do not apply to the alcoholic beverage licensing provisions of Title 61.

Effective Date: February 23, 2007

REENACTED TEMPORARY PROVISOS

The following temporary provisos were enacted in prior legislative sessions and were reenacted by the General Assembly in 2007. Temporary provisos are effective for the State fiscal year July 1, 2007 through June 30, 2008, and will expire June 30, 2008, unless reenacted by the General Assembly in the next legislative session.

House Bill 3620, Part IB, Section 72, Proviso 72.97 (Act No. 117)

Viscosupplementation Therapies - Sales and Use Tax Suspended

For the period July 1, 2007 through June 30, 2008, the sales and use taxes on viscosupplementation therapies is suspended. No refund or forgiveness of tax may be claimed as a result of this provision.

House Bill 3620, Part IB, Section 72, Proviso 72.86 (Act No. 117)

Respiratory Syncytial Virus Medicines Exemption - Effective Date Changed

Act 69, Section 3.PP, of 2003 amended Code Section 12-36-2120(28)(a) to add a sales and use tax exemption for prescription medicines used to prevent respiratory syncytial virus; it was effective for sales on or after June 18, 2003.

This temporary proviso changes the effective date of this exemption to January 1, 1999 and provides that no refund of sales and use taxes may be claimed as a result of this change in the effective date.

House Bill 3620, Part IB, Section 72, Proviso 72.51 (Act No. 117)

Private Schools - "Use Tax" Exemption

This temporary proviso exempts purchases of tangible personal property for use in private primary and secondary schools, including kindergarten and early childhood education programs, 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.

MISCELLANEOUS

ADMINISTRATIVE and PROCEDURAL MATTERS (Summarized by Subject Matter)

Senate Bill 91, Section 8 (Act No. 110)

(See also House Bill 3749, Section 14 (Act No. 116))

Definition of Individual

Code Section 12-2-20, defining the term “person,” has been amended to clarify that an “individual” means a human being unless required otherwise by the context of the statute.

Effective Date: June 21, 2007

Senate Bill 91, Section 36 (Act No. 110)

(See also House Bill 3749, Section 42 (Act No. 116))

Installment Agreements

Code Section 12-4-320 has been amended to provide that the Department can enter into installment payment agreements with taxpayers.

Effective Date: June 21, 2007

Senate Bill 91, Sections 18 and 27 (Act No. 110)

(See also House Bill 3749, Sections 24 and 33 (Act No. 116))

Extensions of Time to File - Clarified

Code Section 12-54-70, providing for extensions of time for filing returns required under the provisions of law administered by the Department, has been amended. Subsection (a) has been amended to permit the Department to allow an extension of time for up to 6 months from the original due date of the return, except as otherwise provided in this section, without the taxpayer providing good cause.

Code Section 12-6-4980, allowing an extension of time to file returns under Chapter 6 of Title 12 or the annual report under Chapter 20 of Title 12, has also been amended. Subsection (A) has been amended to permit the Department to allow an extension of time for up to 6 months from the original due date of the return without requiring that the taxpayer provide good cause. Subsection (C) has been added to provide that an extension

may not be granted to a taxpayer who has been granted an extension for a previous period and has not fulfilled the requirements of the previous period.

Effective Date: June 21, 2007

Senate Bill 91, Sections 43 and 45 (Act No. 110)

(See also House Bill 3749, Sections 48 and 50 (Act No. 116))

Payment in Immediately Available Funds - Amended

Code Section 12-54-250(A), which allows the Department to require payment of tax liabilities of \$15,000 or more in immediately available funds, has been amended to provide that “immediately available funds” are (1) payment by cash to the main office of the Department before 5:00 p.m. or (2) electronic transfer funds that are settled in the State’s account on or before the banking day following the due date of the tax. Initiation of the transfer of funds must occur on or before the due date of the tax. If payment is made by means other than cash and settlement to the State’s account does not occur on or before the banking day following the due date of the tax, payment is deemed to occur on the date settlement occurs.

Code Section 12-54-200 provides the Department with means of assuring that funds are available to satisfy tax liabilities. Code Section 12-54-200(C) has been amended to allow the Department to require payment of a tax liability in immediately available funds pursuant to Code Section 12-54-250 if the amount due is \$15,000 or more. Previously the amount was \$20,000. The change to \$15,000 conforms this section with Code Section 12-54-250(A).

Effective Date: June 21, 2007

Senate Bill 91, Section 28 (Act No. 110)
(See also House Bill 3749, Section 34 (Act No. 116))

Assessment Time Limitations – 20% Understatement of Tax and Use Taxes

Code Section 12-54-85(C), concerning the Department’s authority to determine and assess taxes after the standard 36 month limitation, has been amended as follows:

1. The provision that allows the determination and assessment of taxes beyond the standard 36 month limitation if there is a 20% understatement of the taxes required to shown on the return has been amended to clarify that there must be a 20% understatement of the “total of all taxes” required to be shown on the return and to define the “total of all taxes required to be shown on the return” as “the total of all taxes required to be shown on the return before any reduction for estimated payments, withholding payments, other prepayments, or discount allowed for timely filing of the return and payment of the tax due, but that amount must be reduced by another credit that may be claimed on the return.”
2. A provision has been added to allow the assessment of the State use tax, or a local use tax administered and collected by the Department on behalf of a local jurisdiction, beyond the standard 36 month limitation when it is “the result of information received from, or as a result of exchange agreements with, other state or local taxing authorities, regional or national tax administration organizations, or the federal government. The use taxes in this case may be assessed at any time within 12 months after the department receives the information, but no later than 72 months after the last day the use tax may be paid without penalty.”

Effective Date: Applies to all assessments issued after June 21, 2007.

Senate Bill 91, Section 46 (Act No. 110)
(See also House Bill 3749, Section 51 (Act No. 116))

Estimation of Tax Liability for Frivolous Returns

Code Section 12-60-430 has been amended to provide that if the Department determines that a return or report filed by a taxpayer is frivolous, the Department may estimate the tax liability based on the best information available and issue a proposed assessment for taxes, including penalties and interest.

Effective Date: June 21, 2007

Senate Bill 91, Section 29 (Act No. 110)
(See also House Bill 3749, Section 35 (Act No. 116))

**Penalty for Underpayment Related to Substantial Valuation Misstatement –
Technical Correction**

Code Section 12-54-155, concerning a penalty for underpayment of taxes based on a substantial understatement of tax or a substantial valuation misstatement, has been amended to make a technical correction with respect to the penalty for a substantial valuation misstatement.

The statute provides for a substantial valuation misstatement if the:

1. Value of property or the adjusted basis of property claimed on a return of tax imposed in Title 12 is 200% or more of the amount determined to be the correct amount of the valuation or adjusted basis; or
2. Price for property or services for use of property claimed on the return in connection with a transaction between persons described in Internal Revenue Code Section 482 is 200% or more, or 50% or less, of the amount determined pursuant to Section 482 to be the correct amount of the price; or net Internal Revenue Code Section 482 transfer price adjustment for the taxable year exceeds the lesser of \$5 million or 10% of the taxpayer's South Carolina gross receipts.

A good faith/reasonable cause exception, similar to Internal Revenue Code Section 6664(c), can be found in Code Section 12-54-155(D). This provides that a penalty will not be imposed with respect to a portion of an underpayment if it is shown that there was a reasonable cause for the portion and that the taxpayer acted in good faith with respect to the portion. The words “reasonable cause” and “good faith” are to be interpreted in accordance with Treasury Regulation 1.6664-4.

The technical correction clarifies that in the case of any underpayment attributable to a substantial valuation misstatement with respect to charitable deduction property, the good faith/reasonable cause exception in Code Section 12-54-155(D)(1) will not apply unless the claimed value of the property was based on a qualified appraisal made by a qualified appraiser, and the taxpayer made a good faith investigation of the value of the contributed property.

Effective Date: Applies for tax periods beginning after December 31, 2006.

Senate Bill 91, Sections 30, 31, and 44 (Act No. 110)

(See also House Bill 3749, Sections 36, 37, and 49 (Act No. 116) and House Bill 3620, Part IB, Section 60, Proviso 60.12 (Act No. 117))

Disclosure by the Department

Code Section 12-54-240(B), providing exceptions to nondisclosure of certain tax information, has been amended as follows:

1. Code Section 12-54-240(B)(12)(a) has been amended to allow the Department to disclose a taxpayer's address as shown on a return to a state agency, county auditor, or county assessor.
2. An item has been added to allow disclosure by the Department of information to the State Treasurer necessary for the administration and enforcement of the Uniform Unclaimed Property Act.
3. An item has been added to allow the exchange of information between the Department of Revenue, the Department of Commerce, the Venture Capital Authority, and the Department of Insurance for the purpose of administering tax credits provided under the Venture Capital Investment Act of South Carolina, Chapter 45 of Title 11.
4. Code Section 12-54-240(B)(26) has been added to allow disclosure of information provided in Code Section 12-60-3312 (Administrative Law Court proceedings and records of matters covered by the South Carolina Revenue Procedures Act are open to the public).

Effective Date: June 21, 2007, except the amendment to Code Section 12-54-240(B)(26) applies to all tax decisions and associated information filed with the Administrative Law Court whether the decision was issued before or after June 21, 2007.

Senate Bill 91, Section 6 (Act No. 110)
(See also House Bill 3749, Section 12 (Act No. 116))

Administrative Law Court Proceedings and Records Open to Public

Code Section 12-60-3312 provides that unless otherwise provided by law or proper judicial order, all Administrative Law Court proceedings and records of matters covered by the South Carolina Revenue Procedures Act are open to the public.

Effective Date: Applies to all tax decisions and associated information filed of record whether or not the decision in the contested case hearing was issued before, on, or after June 21, 2007.

Senate Bill 91, Section 32 (Act No. 110)
(See also House Bill 3749, Section 38 (Act No. 116))

South Carolina Revenue Procedures Act – Property Tax Disputes

Code Section 12-60-20 has been amended to clarify that the South Carolina Revenue Procedures Act applies to disputes concerning property taxes.

Effective Date: June 21, 2007

Senate Bill 367, Section 9 (Act No. 57)

Appeals of Real Property Tax in Non-reassessment Years – Amended

Code Section 12-60-2510(A)(4), providing time periods and procedures for a taxpayer to appeal the fair market value, the special use value, the assessment ratio, and the property tax assessment of a parcel in years when there is no notice of property tax assessment (*i.e.*, non-reassessment years), has been amended. Under the amendment, a taxpayer may appeal at any time by submitting a written appeal to the county assessor. However, an appeal will apply to a previous tax year only if it is submitted before the first penalty date (*i.e.*, January 15th following the end of the previous property tax year on December 31st). An appeal submitted on or after the first penalty date applies for the succeeding property tax year.

Effective Date: June 6, 2007

Senate Bill 367, Section 1 (Act No. 57)

Attorney's Fees for Unreasonable Removal of Agricultural Real Property Classification

The Revenue Procedures Act in Chapter 60 of Title 12 contains property tax protest, appeal, and refund procedures. Code Section 12-60-2545 has been added to provide that, notwithstanding the general provision that costs are not allowed to either party in contested case hearings under Code Section 12-60-3350, if a taxpayer appeals a county assessor's decision to remove the agricultural real property classification from real property, the county is required to pay reasonable attorney's fees provided the taxpayer prevails in the contested case hearing and the administrative law judge makes a finding that the county assessor's decision was not reasonable.

Effective Date: June 6, 2007

Senate Bill 91, Section 35 (Act No. 110)

(See also House Bill 3749, Section 41 (Act No. 116))

Department Determinations for County Officials Relating to Property Taxes

Code Section 12-4-535 has been amended to provide that the Department may issue a Department Determination directing county officials to comply with state law relating to the valuation, assessment, or taxation of property. Within 30 days of the date a Department Determination is mailed or hand-delivered, the county must agree or disagree with the determination in writing. If the county disagrees or fails to respond, the Department or the county governing body may request a contested case hearing before the Administrative Law Court within 30 days after the date the county disagreement notice was, or should have been, mailed or hand-delivered.

The county governing body may also request a Department Determination on any state law regarding the valuation, assessment, or taxation of property. Within 30 days of the request, the Department may, in its discretion, issue the determination.

Effective Date: June 21, 2007

House Bill 3457, Section 1 (Act No. 107)

(See also Senate Bill 213, Section 22 (Act No. 103))

Beer and Wine Permits – Additional Requirements for Revocation or Suspension

Under the Administrative Procedures Act, the Department is required to give a license holder notice and an opportunity to be heard before seeking to revoke or suspend a license. Code Section 61-4-590, which authorizes the Department to revoke or suspend a

permit to sell beer and wine, has been amended to provide two additional requirements before revocation or suspension: (1) the State Law Enforcement Division must complete an investigation; and (2) the Department must issue a Department Determination that the permit should be revoked or suspended, from which the license holder may request a contested case hearing before the Administrative Law Court.

Effective Date: June 18, 2007

MISCELLANEOUS TAXES

Senate Bill 91, Section 23 (Act No. 110)

(See also House Bill 3749, Section 29 (Act No. 116))

Technology Intensive Facility Electric Power Tax Exemption for Electricity - Amended

Code Section 12-23-20(9), which exempts from the electric power tax electricity used by a qualifying technology intensive facility as defined in Code Section 12-6-3360(M)(14)(b), has been amended to clarify that the running of the periods of limitation within which the Department may assess taxes under Code Section 12-54-85 is suspended beginning with the taxpayer's first use of this exemption and ending with the later of the fifth anniversary of first use or the required written notice by the taxpayer to the Department that the taxpayer either has met or has not met the investment and job requirements of the exemption.

Effective Date: June 6, 2006

Senate Bill 243, Section 17 (Act No. 83)

Biodiesel Definition

Code Section 12-28-110(70), concerning the definition of "biodiesel" for purposes of the State's 16¢ a gallon motor fuel tax, has been amended to state that "biodiesel" means "a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the United States Environmental Protection Agency pursuant to Section 211 of the Clean Air Act (42 U.S.C. 7545) and that meets the American Society for Testing and Materials D6751-02a Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels." This is in addition to the provisions of the definition that defines "biodiesel" to mean "a fuel composed of mono-alkyl esters of long chain fatty acids generally derived from vegetable oils or animal fats, commonly known as B100, that is commonly and commercially known or sold as a fuel that is suitable for use in a highway vehicle. The fuel meets this requirement if, without further processing or blending, the fuel is a fluid and has practical and commercial fitness for use in the propulsion of a highway vehicle."

Effective Date: June 19, 2007

OTHER ITEMS (Including Local Taxes)

House Bill 4111 (Act No. 137)

Dillon County School Districts Tax

The General Assembly has enacted legislation to provide that, upon resolution of Dillon County Board of Education and each of the boards of trustees of the three school districts in Dillon County (collectively the "Board"), a sales and use tax not to exceed two percent may be imposed within Dillon County. The imposition of the sales and use tax must be presented to, and approved by, the voters of Dillon County in a referendum held on a date to be determined by the Board. The revenue from this sales and use tax is used to defray the cost for acquisition, construction, renovation, repair, furnishing, and equipping of various school facilities as approved by the Board and described in the referendum question.

If the tax is approved in a referendum, the tax must be imposed beginning on the first day of the month following the termination of the capital project sales tax imposed in the county as of the effective date of this act or, if later, the first day of the fourth full month following the date of the referendum.

The tax terminates upon the earlier of the

1. receipt of revenues sufficient to pay amounts owed pursuant to the aggregate amount of acquisition agreements approved by the referendum;
2. final day of the maximum time specified for the imposition;
3. the final day of the first full month following the later of:
 - a. the failure by the Board to appropriate payments to be made with respect to any acquisition agreement entered into by the Board pursuant to this act; and
 - b. at any time that the failure is not subject to cure under the applicable acquisition agreement; or
4. the payment of the final installment of interest of any acquisition agreement undertaken by the Board.

Effective Date: June 8, 2006

Senate Bill 273 (Act No. 123)

Certification Date for 2006 Sales Tax Referendums Changed

The Local Option Transportation Tax authorized under Chapter 37 of Title 6 requires that the results of the referendum be certified to the local governing body and the Department by November 30th following the date of the referendum in order for the local tax to be imposed by the following May 1st. If the certification is not received timely, then the imposition of the tax is delayed for 12 months.

A joint resolution was enacted to provide that if the result of any referendum conducted in the 2006 General Election was certified to the appropriate governing body and to the Department by December 10, 2006, then the certification requirements were satisfied. As a result, any Local Option Transportation Tax approved by referendum conducted in the 2006 General Election was imposed effective May 1, 2007.

Effective Date: February 19, 2007, and applies to all referendums conducted in the 2006 General Election

House Bill 3749, Sections 3 and 4 (Act No. 116)

Tourism Infrastructure – Extraordinary Retail Establishment Provisions Amended

Article 27, Chapter 21 of Title 12 contains the Tourism Infrastructure Admissions Tax Act (“Act”). The Act provides that 25% of the admissions tax collected at certain tourism or recreational facilities is to be remitted back to the county in which the facility is located and an additional 25% of the admissions tax is to be remitted to a fund that is available to certain counties that are located within 5 miles of the facility which generated the admissions tax. All funds are to be used for additional infrastructure improvements. Additional infrastructure improvements include such items as roads, transportation facilities and other types of infrastructure that will benefit the tourism or recreational facility. Last year, the Act was amended to provide benefits to an aquarium or natural history exhibit or museum located within, or directly contiguous to, an extraordinary retail establishment including allowing sales tax at such tourism or recreational facilities to be subject to the Act instead of admissions tax.

Further changes have been made to the “extraordinary retail establishment” provisions. An “extraordinary retail establishment” is now defined as a single store located in South Carolina which: (1) is within 2 miles of an interstate highway or is located in a county with at least 3.5 million visitors a year; (2) attracts at least 2 million visitors a year with at least 35% of those visitors traveling at least 50 miles to the establishment; (3) has a capital investment of at least \$25 million including land, buildings and site preparation costs; and (4) has one or more hotels built to service the establishment within 3 years of occupancy. Previously, the statute did not include a facility located within 2 miles of an

interstate highway within its scope. Minor clarifying amendments were also made within the definition.

Code Section 12-21-6590 has been amended to provide that prior to the completion of the “extraordinary retail establishment,” the entity operating the establishment may request a county or municipality to provide an application for conditional certification to the Department of Parks, Recreation and Tourism (“PRT”). PRT may grant conditional certification based on reasonable projections that the facility will meet the requirements of a “tourism and recreational facility” including the definition of “extraordinary retail establishment” within 3 years of the issuance of a certificate of occupancy for the establishment.

An applicant who obtains a conditional certification and satisfies the requirements of conditional certification by dates specified therein, is deemed to satisfy all the requirements of the Act pertaining to the qualification as an “extraordinary retail establishment” for the entire 15 year benefit period provided in the Act. The entity shall be deemed to constitute a “major tourism and recreation facility” under Code Section 12-21-6520(12) of the Act and will be entitled to all benefits provided for in the Act without any further certification requirements. However, an applicant cannot receive benefits prior to satisfying the requirements of the conditional certification and the provisions contained in the definition of a “tourism or recreational facility.” PRT shall develop application forms and guidelines governing the conditional certification process.

If an applicant obtains conditional certification and complies with both the conditional certification and the provisions of Code Section 12-21-6520(14) (the definition of tourism or recreational facility,) then 50% the sales tax collected by the facility will be remitted to the county in which the establishment is located and no amounts are remitted to the fund.

Effective Date: Tax years beginning after 2007.

REGULATORY

House Bill 3783, Section 2 (Act No. 96)

(See also House Bill 3620, Part IB, Section 56DD, Proviso 56DD.34 (Act No. 117))

Class Two Coin-Operated Devices – License Fee Codified

Code Section 12-21-2720, providing for biennial license taxes on certain coin-operated devices or machines, has been amended to codify the provision authorizing the Department to assess an additional fee of \$50 on each Class 2 coin-operated machine license. This provision had been a temporary proviso in the budget bill. These funds will

be sent to the State Law Enforcement Division to offset the cost of video gaming enforcement.

Effective Date: June 15, 2007

House Bill 3783, Section 1 (Act No. 96)

Biennial License Tax for Manufacturers of Beer, Wine and Alcoholic Liquors - Reduced

Code Section 12-33-210 sets out the biennial license taxes for alcoholic beverage licenses under Title 61 for manufacturers, wholesalers, retail dealers, and special food manufacturers. This section has been amended to reduce the biennial taxes on a manufacturer's license from \$50,000 to \$1,000.

Effective Date: June 15, 2007

House Bill 3783, Section 3 (Act No. 96)

(See also House Bill 3620, Part IB, Section 56DD, Proviso 56DD.32 (Act No. 117))

Liquor, Beer and Wine Licenses and Permits (Including Local Option Permits) – Fee Codified

Code Section 61-2-105 has been added to codify the increase in all initial alcoholic liquor and beer and wine license application fees by \$100, all biennial alcoholic liquor and beer and wine beverage fees and licenses by \$200, and all local option permit fees by \$50. This provision had been a temporary proviso in the budget bill. The additional funds are allocated to the State Law Enforcement Division to offset the costs of inspections, investigations, and enforcement.

Effective Date: June 15, 2007

House Bill 3457, Section 3 (Act No. 107)

(See also House Bill 3749, Section 11 (Act No. 116))

Increase in Number of Wine Tastings Allowed

Code Section 61-4-737 allows the holder of a retail wine permit for off-premises consumption whose primary product is beer, wine, or distilled spirits to conduct wine tastings at the retail location. This section has been amended to increase the maximum number of wine tastings from 24 in one year to 24 in a calendar quarter.

Effective Date: June 18, 2007

House Bill 3457, Section 1 (Act No. 107)
(See also Senate Bill 213, Section 22 (Act No. 103))

Beer and Wine Permits – Additional Requirements for Revocation or Suspension

Under the Administrative Procedures Act, the Department is required to give a license holder notice and an opportunity to be heard before seeking to revoke or suspend a license. Code Section 61-4-590, which authorizes the Department to revoke or suspend a permit to sell beer and wine, has been amended to provide two additional requirements before revocation or suspension: (1) the State Law Enforcement Division must complete an investigation; and (2) the Department must issue a Department Determination that the permit should be revoked or suspended, from which the license holder may request a contested case hearing before the Administrative Law Court.

Effective Date: June 18, 2007

Senate Bill 213, Section 3 (Act No. 103)

New Registration and Tagging Requirement for Sale of Beer Kegs

Article 19 has been added to Title 61, Chapter 4 to impose new registration and tagging requirements for the sale of beer kegs by a holder of a retail beer or wine license (“retail licensee”). For purposes of Article 19, a keg is a container with a capacity of 5.16 gallons or more that is designed to dispense beer directly from the container in an off-premises location.

Code Section 61-4-1920 contains the following provisions:

Requirements Before Sale. Before selling a keg of beer, a retail licensee is required to (1) record the date of sale, the keg identification number and the purchaser’s name, address, birth date and driver’s license or identity card number; (2) obtain a signed statement from the purchaser; and (3) attach an identification tag to the keg.

1. **Purchaser’s Statement.** By signing the statement, the purchaser attests to the accuracy of the purchaser’s information, acknowledges that, unless otherwise permitted by law, it is unlawful to transfer beer to a person under age 21, and states that, unless otherwise permitted by law, the beer in the keg will not be consumed by a person under age 21.
2. **Identification Tag.** The identification tag must consist of paper, plastic, metal or other durable material and must be attached with a nylon tie or cording, wire tie or other metal attachment device, or other durable means of tying or attaching the tag to the keg. The tag must show the retail licensee’s name, address and license number, and the keg identification number.

3. Forms and Identification Tags Provided by the Department. The purchaser's statement and the keg identification information are to be contained on a form prescribed and provided to retail licensees by the Department. Likewise, the identification tag and the manner for attachment are to be prescribed by the Department, which will provide the identification tags to retail licensees.
4. Retention and Inspection of Forms. The retail licensee is required to maintain all keg identification and purchaser statement forms for at least 90 days from date of purchase and make them available for inspection by the Department and appropriate law enforcement agencies.

Requirements After Sale. The retail licensee is required to accept all returned kegs but has discretion not to refund the deposit for a keg that has an altered identification number. The retail licensee is further required to (1) record the date of return of a keg on the proper keg identification form; (2) remove the identification tag from the keg; and (3) provide a receipt to the purchaser stating that the tag was appropriately affixed. However, if there is no tag affixed to the keg or the identification number is not legible, the retail licensee shall indicate this on the proper keg identification form.

Penalties. A retail licensee who violates the above provisions of Code Section 61-4-1920 is subject to suspension or revocation of his beer or wine license or monetary penalties as follows: for a first offense, a fine of not less than \$200 and not more than \$300; for a second or subsequent offense, a fine of not less than \$400 and not more than \$500.

Code Section 61-4-1930 provides that a person may not knowingly possess a keg that does not have the proper label with all information accurately recorded, unless the person can demonstrate by a preponderance of the evidence that the keg was not correctly tagged by the seller in accordance with Code Section 61-4-1920. Code Section 61-4-1930 does not apply to any manufacturer, shipper, wholesaler, or licensee. A person who violates the provisions of Code Section 61-4-1930 is guilty of a misdemeanor and subject to a fine of not more than \$500 or imprisonment for not more than 30 days or both.

Code Section 61-4-1940 provides that a person may not purposefully remove, alter, obliterate, or allow to be removed, altered, or obliterated, a keg tag or other information recorded on the tag. Code Section 61-4-1940 does not apply to any manufacturer, shipper, wholesaler, licensee, the Department, or other appropriate law enforcement agency. A person who violates the provisions of Code Section 61-4-1940 is guilty of a misdemeanor and subject to a fine of not more than \$500 or imprisonment for not more than 30 days or both.

Note: Article 19, Chapter 4, Title 61 was enacted as a provision of the "Prevention of Underage Drinking and Access Act of 2007," Senate Bill 213 (Act No. 103) (the "Act"). The purpose of the Act is to promote responsible consumption of alcohol and combat illegal underage drinking. See Sections 4 through 23 of the Act for criminal penalties and

other legislation aimed at promoting responsible consumption and combating illegal underage drinking.

Effective Date: January 1, 2008

House Bill 3457, Section 2 (Act No. 107) and House Bill 3218, Section 1 (Act No. 14)

Nonalcoholic Beverages Definition – Amended

Code Section 61-4-10, which defines beverages that are considered to be nonalcoholic and nonintoxicating, has been amended to include additional beverages. In addition to beers, ales, porters, and other similar malt or fermented beverages containing not in excess of 5% alcohol by weight and all wines containing not in excess of 21% alcohol by volume, the definition of nonalcoholic and nonintoxicating beverages now includes all beers, ales, porters, and other similar malt of fermented beverages containing more than 5% but less than 14% of alcohol by weight that are manufactured, distributed, or sold in containers of 6.5 ounces or more or the metric equivalent.

Effective Date: Code Section 61-4-10 was amended by House Bill 3218 effective May 2, 2007 and was subsequently amended by House Bill 3457, Section 2, effective June 18, 2007. This subsequent amendment reduced the size of the container for beers, ales, porters, and other similar malt of fermented beverages containing more than 5% but less than 14% of alcohol by weight from 10 ounces as set forth in House Bill 3218 to six and one-half ounces as set forth in House Bill 3457, Section 2. Therefore, beers, ales, porters, and other similar malt of fermented beverages containing more than 5% but less than 14% of alcohol by weight were required to be sold in containers in 10 ounces or more from May 2, 2007 to June 17, 2007 and in containers of 6.5 ounces or more on or after June 18, 2007.

House Bill 3218, Section 2 (Act No. 14)

Beer Agreements – Application to Domestic Brands of Beer

Code Section 61-4-1115, which concerns agreements between beer producers and wholesalers and how they are binding on successors and assignees, has been amended to apply to domestic brands of beer. Under the amendment, “when a producer, as defined in Section 61-4-300, or the primary American source of supply, as defined in Section 61-4-340, who is registered to sell beer to wholesalers in this State, transfers, conveys, or assigns a brand of beer to another producer or primary American source of supply, the assignment of territory of that brand to a wholesaler, required pursuant to Section 61-4-1300, is binding on the successor producer or primary American source of supply. The successor producer or primary American source of supply and the existing wholesaler

shall, in good faith, enter into a new distribution agreement that is not inconsistent with the laws of [South Carolina].”

Effective Date: May 2, 2007

REENACTED TEMPORARY PROVISOS

The following temporary provisos were enacted in prior legislative sessions and were reenacted by the General Assembly in 2007. Temporary provisos are effective for the State fiscal year July 1, 2007 through June 30, 2008, and will expire June 30, 2008, unless reenacted by the General Assembly in the next legislative session.

ADMINISTRATIVE and PROCEDURAL MATTERS

House Bill 3620, Part IB, Section 56DD, Proviso 56DD.38 (Act No. 117)

Reduction on Interest Rate on Tax Refunds

This temporary proviso decreases by 2% the interest rates for tax refunds paid during fiscal year July 1, 2007 through June 30, 2008. The revenue resulting from this reduction must be used for operations of the State’s Guardian ad Litem Program.

House Bill 3620, Part IB, Section 64, Proviso 64.7 (Act No. 117)

Fee Charged for Certificate of Compliance

This temporary proviso allows the Department to impose a \$60 fee for the issuance of a 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 for transactions involving bank loans; issuing stock; and purchasing a business, real estate, or assets of a business.

House Bill 3620, Part IB, Section 64, Proviso 64.8 (Act No. 117)

Fee Charged for Installment Agreement

This temporary proviso allows the Department to impose a \$45 fee for entering into installment agreements for the payment of tax liabilities.

MISCELLANEOUS TAXES

House Bill 3620, Part IB, Section 1, Proviso 1.17 (Act No. 117)

Local Government School Buses - Motor Fuel Tax Exemption

This temporary proviso provides that motor fuel used in school buses operated by school districts, other governmental agencies, and “head start” agencies is exempt from the state motor fuel tax. Note: Motor fuel used in school buses owned by the state is exempt from the state motor fuel tax under Code Section 12-28-710(12).

House Bill 3620, Part IB, Section 8, Proviso 8.21 (Act No. 117)

Nursing Home Bed Franchise Fees – Suspension

This temporary proviso reenacts the suspension of the nursing home bed franchise fee imposed on February 1, 2002, but subsequently suspended July 1, 2002.

REGULATORY MATTERS

House Bill 3620, Part IB, Section 64, Proviso 64.10 (Act No. 117)

Local Option Permits - Municipalities

Code Section 61-6-2010 authorizes counties and municipalities to conduct referendums that, if approved, allow Sunday sales of beer, wine, and liquor. Businesses that hold an on-premise consumption license and are located within these counties and municipalities may purchase a local option permit for each Sunday they wish to be open and sell beer, wine and liquor.

If the voters in a county approve the Sunday sale of beer, wine, and liquor via a local option permit, then such sales may be made anywhere in the county, including the portion of any municipality within the county.

This temporary proviso states that local option permits “may be issued in all parts of a municipality when any part of the municipality has been approved for issuance of such permits.” Essentially, if a municipality is located in more than one county, then local option permits may be issued for any part of the municipality as long as one of the counties in which the municipality is located has approved the referendum for Sunday sales.

Under the legislation enacted in 2002 (Act No. 353 of 2002), Code Section 61-6-2010 was amended to allow a municipality located in more than one county to order a referendum on the question of the issuance of local option permits in all parts of a

municipality when as a result of a favorable vote in a county referendum permits may be issued in only the parts of the municipality located in that county. This allows the citizens of a municipality to determine, through a referendum, if they want to continue to allow local option permits to be issued for all parts of the municipality.

This referendum is in addition to the referendum method already provided in the statute and an unfavorable vote in the municipal referendum would not affect the authority to issue local option permits in the part of the municipality located in a county where these permits may be issued as a result of the county referendum.

REMINDER

The following provisions were enacted in 2006 or before, but are effective in 2007. They are summarized below for informational purposes.

ADMINISTRATIVE and PROCEDURAL MATTERS

House Bill 3767, Section 20 (Act No. 161)

Tax Return Preparer - Electronic Filing or 2D Barcode Required

Code Section 12-54-250(F) has been added to require a tax return preparer who prepares 100 or more returns for a tax period for the same tax year to submit all returns by electronic means where available. If electronic means are not available, the preparer must use 2D barcode, if available. For purposes of this section, a “tax return preparer” means the business entity and not the individual location or individual completing the return.

Exceptions to the above electronic and 2D barcode requirements are:

1. If a taxpayer checks a box on his return indicating a preference that his return is to be filed by another means, the preparer may submit that return by another means.
2. A tax return preparer may apply in writing to the Department to be exempted if compliance is a substantial financial hardship. The Department may grant an exemption for no more than one year at a time.

A person who fails to comply with these provisions may be penalized \$50 for each return.

Effective Date: Tax years beginning on or after January 1, 2007.

OTHER ITEMS (Including Local Taxes)

House Bill 4449, Part III (Act No. 388)

Local Option Sales and Use Tax for Property Tax Credits

Code Sections 4-10-720 through 4-10-810, the Local Option Sales and Use Tax for Local Property Tax Credits, have been enacted to provide a credit against property tax imposed by a political subdivision for all classes of property subject to the property tax. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax law.

The governing body of the county by a county council ordinance or by an initiated ordinance submitted to the governing body of the county by a petition signed by at least 7% of the qualified electors of the county, may impose a sales and use tax in increments of one-tenth of one percent, not to exceed 1%, subject to referendum approval.

The tax must be administered and collected by the Department in the same manner that other sales and use taxes are collected and is in addition to all other local sales and use tax. The tax does not apply to:

1. amounts taxed pursuant to Code Section 12-36-920(A), the tax on accommodations for transients;
2. items subject to a maximum sales and use tax pursuant to Code Section 12-36-2110; and
3. unprepared food that may be lawfully purchased with United States Department of Agriculture food coupons.

Effective Date: January 1, 2007