
State of South Carolina
Department of Revenue
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SC INFORMATION LETTER #08-17

SUBJECT: Tax Legislative Update for 2008

DATE: August 29, 2008

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.

DISCLAIMER:

This is intended to be a summary of the main points of the legislation; it is not an interpretation by the Department. 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. 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

House Bill 4876, Section 54 (Act No. 311)

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, 2007, and includes the effective date provisions contained therein.

Effective Date: June 4, 2008

Senate Bill 530, Section 2, Part 12, Subpart C (Act No. 353)

Subsistence Allowance for Law Enforcement, Firefighting, and Emergency Medical Service Personnel – Prior Proviso Codified

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. In past years, a temporary proviso in the budget bill increased the subsistence allowance amount to \$8 for each regular work day. Code Section 12-6-1140(6) has been amended to codify the \$8 subsistence allowance amount.

Effective Date: July 1, 2008

Senate Bill 530, Section 2, Part 21, Subpart G (Act No. 353) and House Bill 4800, Part IB, Section 81, Proviso 81.12 (Act No. 310)

Military Estimated Tax Payment Relief – Prior Proviso Codified

Code Section 12-6-3930 was added to codify 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 the underpayment of South Carolina estimated income taxes on active duty income if the federal government is unable to properly withhold South Carolina income taxes on

their active duty pay. This provision had been a temporary proviso in the budget bill in past years.

Effective Date: July 1, 2008

House Bill 4400, Section 7 (Act No. 280)

SC Illegal Immigration Reform Act – Deduction for Services May be Disallowed

The “South Carolina Illegal Immigration Reform Act” has been enacted. This legislation impacts taxes and licenses administered by the Department primarily in three areas: (1) eliminating the income tax deduction for payments made to certain individuals, (2) requiring withholding on certain individuals, and (3) issuing certain regulatory licenses and permits. The following briefly summarizes the income tax applicability of the Act. See below for discussions of the applicability of the Act to withholding laws and regulatory laws administered by the Department.

Code Section 12-6-1175 has been added to provide that, on or after January 1, 2009, wages or remuneration for labor services of \$600 or more per year may not be claimed and allowed as a deductible business expense for state income tax purposes if paid to an individual who is an unauthorized alien. This prohibition applies whether or not an Internal Revenue Service Form 1099 is issued in conjunction with the wages or remuneration.

Code Section 12-6-1175 does not apply to:

1. A business domiciled in South Carolina that is exempt from compliance with federal employment verification procedures under federal law;
2. An individual hired by the taxpayer prior to January 1, 2009;
3. A taxpayer where the individual being paid is not directly compensated or employed by the taxpayer; or,
4. Wages or remuneration paid for labor services to any individual whose employment authorization status was verified in accordance with Code Section 41-8-20.

If, based on a reasonable investigation of the individual, a taxpayer did not know or should not have known that the individual was an unauthorized alien, the taxpayer must not be held liable for failing to comply with this section. A taxpayer shall be deemed to have conducted a reasonable investigation if the individual’s employment authorization status was verified in accordance with the provisions of Code Section 41-8-20 and the information provided by the individual to the taxpayer was facially correct.

Note: For questions about the above income tax provision, e-mail TaxTech@sctax.org or call the Department at 803-898-5709. For questions about unauthorized aliens and the documentation needed to substantiate a person's status, please contact your attorney, the federal Department of Immigration and Naturalization, or the South Carolina Department of Labor, Licensing, and Regulation.

Effective Date: January 1, 2009

House Bill 4470, Section 2 (Act No. 357)

Fire Sprinkler System Tax Credit

Code Section 12-6-3622 has been added to provide a taxpayer who installs a fire sprinkler system in a commercial or residential structure that is not required by law, regulation, or code a property tax credit and an income tax credit in a year the local taxing entity consents.

The credit is 25% of the direct expenses, not including any fee charged by the utility, against real property taxes levied by a local taxing entity. The taxpayer may also claim an income tax credit equal to the amount of the property tax credit. The credit against real property taxes will be claimed by submitting a form developed by the Department with payment of the real property taxes to the local taxing entity. The income tax credit is claimed by submitting the form with the taxpayer's income tax return.

The credit earned by an S corporation owing corporate level tax must first be used at the entity level. Any remaining credit passes to each shareholder based on their percentage of stock ownership. The credit earned by a general partnership, limited partnership, limited liability company, or any other entity taxed as a partnership is allocated among any of its partners, including an allocation of the entire credit to one partner, in a manner agreed by the partners that is consistent with Subchapter K of the Internal Revenue Code.

The owner of the structure may transfer, devise, or distribute any unused credit to the tenant of the eligible site. To be effectual, the local taxing entity must receive written notification.

Fire sprinkler system has the same meaning as in Code Section 40-10-20. Code Section 40-10-20(8) defines fire sprinkler system as:

a system of overhead or underground piping, or both, to protect the interior or exterior of a building or structure from fire where the primary extinguishing agent is water and designed in accordance with fire protection engineering standards. The system includes the overhead and underground fire water mains, fire hydrants and hydrant mains, standpipes, and hose connection to sprinkler systems, supplied from a reliable, constant, and sufficient water supply, such as a gravity tank, fire pump, reservoir, or pressure tank, or connection by underground piping to a city

main but does not include dual or multi-purpose water lines supplying fire systems or equipment, potable water, or process water, or both. The system is a network of specially sized or hydraulically designed piping installed in a building, structure, or area, generally overhead, and to which sprinklers are connected in a systematic pattern. The system includes a controlling valve and a device for actuating an alarm when the system is in operation. The system is usually activated by heat from a fire and discharges water over the fire area. Fire protection sprinkler systems include the following types: water based or wet-pipe systems, water foam systems, dry-pipe systems, preaction systems, residential systems, deluge systems, combined dry-pipe and preaction systems, non-freeze systems, and circulating closed loop systems.

Effective Date: Taxable years beginning after 2007.

Senate Bill 1141, Section 2 (Act No. 354)

Energy Efficient Manufactured Home Incentive Program Credit

Code Section 48-52-870 has been added to provide a \$750 income tax credit to any person who purchases a manufactured home from a retail dealership licensed by the South Carolina Manufactured Housing Board for use in South Carolina which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency's energy saving efficiency requirements or requirements under each agency's ENERGY STAR program.

The South Carolina Energy Office shall adopt rules to develop credit applications and administer the issuance of the credit and must track and report on the fiscal and energy impact of the program.

Note Expiration: The credit may be claimed beginning July 1, 2009, and no later than July 1 2019.

Effective Date: July 1, 2009

House Bill 4774 (Act No. 229)

Donated Deer Processing Tax Credit

Code Section 12-6-3750 has been added to provide a meat packer, butcher, or processing plant licensed or permitted by South Carolina or the United States Department of Agriculture an income tax credit of \$50 for each carcass processed and donated to a qualifying charitable organization. The credit is claimed in the year earned. There is no credit carry forward.

Other requirements of the credit include:

1. The taxpayer must have a valid contract with a nonprofit organization to process deer for donation to any charitable organization engaged in distributing food to the needy.
2. The processing must take place in a licensed or permitted establishment.
3. No portion of the donated deer can be used by a commercial enterprise.

The term “process” is defined as to skin, cut, bone, grind, package, or perform any butchering tasks necessary to prepare the meat for distribution and consumption.

Effective Date: Beginning with the year 2008.

Senate Bill 1141, Section 3 (Act No. 354)

Credit for Installation of Solar Energy Systems – Amended to Include Small Hydropower Systems

Code Section 12-6-3587 allows a taxpayer an income tax credit equal to 25% of the costs incurred in the purchase and installation of a solar energy system in or on a facility in South Carolina 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. This section has been expanded to include costs incurred in the purchase and installation of a small hydropower system for heating water, space heating, air cooling, energy-efficient daylighting, heat reclamation, energy-efficient demand response, or the generation of electricity in or on a facility in South Carolina owned by the taxpayer.

A small hydropower system is defined to mean new generation capacity on a nonimpoundment or on an existing impoundment that (1) meets licensing standards as defined by the Federal Energy Regulatory Commission, (2) is a run-of-the-river facility with a capacity not to exceed 5MW, or (3) consists of a turbine in a pipeline or in an irrigation canal.

Effective Date: July 1, 2009

Senate Bill 1171, Section 3 (Act No. 313)

SC Textiles Communities Revitalization Act - Repealed and Reenacted

The “South Carolina Textiles Communities Revitalization Act” was enacted to create an incentive for the rehabilitation, renovation, and redevelopment of abandoned textile mill sites in South Carolina. In 2004, the Act was enacted in Chapter 32 of Title 6. The original Act has been repealed and reenacted as Chapter 65 of Title 12.

The new Act provides that a taxpayer who rehabilitates an abandoned textile mill site may choose one of the following tax credits:

1. An “income/license tax credit” provided in Code Section 12-65-30(C) equal to 25% of the eligible rehabilitation expenses made at the site; or
2. A “property tax credit” provided in Code Section 12-65-30(B) against real property taxes equal to 25% of the eligible rehabilitation expenses made at the site multiplied by the local taxing entity ratio for each local taxing entity that has consented to the credit. (See the “Property Taxes and Fees in Lieu of Property Taxes” section below for a brief summary of the property tax credit.)

Income/License Tax Credit – Code Section 12-65-30(C). The income/license tax credit is allowed against income taxes under Chapter 6 and 11, Title 12; license taxes under Chapter 20, Title 12; or both. If the taxpayer chooses the income/license tax credit and acquires the site after December 31, 2007, the taxpayer must file a “Notice of Intent to Rehabilitate” (“Notice”) with the Department before incurring its first rehabilitation expenses at the site. The Notice is a letter submitted by the taxpayer indicating the taxpayer’s intent to rehabilitate the site and must include the location of the site, the amount of acreage involved, and the estimated expenses to be incurred. The Notice also must indicate which buildings on the site the taxpayer intends to renovate and which buildings it intends to demolish and whether new construction will be involved at the site. If the Notice is not provided as stated, only rehabilitation expenses incurred after the filing of the Notice qualify for the credit. A taxpayer is not eligible for the credit if it owned the site immediately prior to its abandonment and the site was operational.

If the taxpayer chooses the income/license tax credit, the credit is determined as follows:

1. If the actual rehabilitation expenses made at the site are between 80% and 125% of the estimated expenses set forth in the Notice, the credit is equal to 25% of the actual expenses.
2. If the actual expenses exceed 125% of the estimated expenses, the credit is equal to 25% of 125% of the estimated expenses.
3. If the expenses are below 80% of the estimated expenses, no credit may be claimed.

The credit is earned in the taxable year in which the applicable phase or portion of the site is placed in service but the credit must be taken equally over a 5 year period beginning with the year it is placed in service. The credit is limited to 50% of the taxpayer’s income and license tax. Any unused credit may be carried forward to the succeeding 5 years. If a taxpayer is eligible to claim the state historic tax credit under Code Section 12-6-3535, the taxpayer may claim both the historic credit and the textile credit.

If the taxpayer leases or sells the site or a portion of the site, it may transfer any remaining credit associated with the rehabilitation expenses incurred with the leased or sold portion of the site to the lessee or the purchaser, respectively, if it notifies the Department of the transfer. If the taxpayer is a partnership or limited liability company taxed as a partnership, the credit may be passed through to the partner or members and may be allocated in any manner chosen by the entity including an allocation of the entire credit to one partner or member.

Definitions. Code Section 12-65-20 provides a list of definitions that are used in the statute. Some of the relevant terms are defined as follows:

1. A “textile mill” is a facility or facilities that were last used for textile manufacturing, dyeing, or finishing operations and for ancillary uses to those operations.
2. A “textile mill site” is the “textile mill together with land and other improvements on it which were used directly for textile manufacturing operations or ancillary uses. However, the area of the site is limited to the land located within the boundaries where the textile manufacturing, dyeing, or finishing facility structure is located and does not include land located outside the boundaries of the structure or devoted to ancillary uses. Notwithstanding the provisions of this item, with respect to any site acquired by a taxpayer before January 1, 2008, or a site located on the Catawba River near Interstate 77, the textile mill site includes the textile mill structure, together with all land and improvements which were used directly for textile manufacturing or ancillary uses, or were located on the same parcel within one thousand feet of any textile mill structure or ancillary uses.”
3. “Ancillary uses” means “uses related to the textile manufacturing, dyeing, or finishing operations on a textile mill site consisting of sales, distribution, storage, water runoff, wastewater treatment and detention, pollution control, landfill, personnel offices, security offices, employee parking, dining and recreation areas, and internal roadways or driveways directly associated with such uses.”
4. “Abandoned” means that at least 80% of the textile mill has been continuously closed to business or otherwise nonoperational as a textile mill for at least one year immediately preceding the date the taxpayer files a “Notice of Intent to Rehabilitate.” A textile mill that qualifies as abandoned may be subdivided into separate parcels, and those parcels may be owned by the same taxpayer or different taxpayers, and each parcel is deemed to be a textile mill site for purposes of determining whether it has been abandoned.
5. “Rehabilitation expenses” are the expenses or capital expenditures incurred in the rehabilitation, renovation, or redevelopment of the textile mill site, including demolition costs, environmental remediation, site improvements, and new construction costs, but excluding the cost of acquiring the eligible site or the cost of personal property maintained at the site. For expenses to qualify for the credit, the textile mill and buildings on the site must be either renovated or demolished.

6. “Placed in service” means the date upon which the textile mill site is completed and ready for its intended use. If the site is completed and ready for use in phases or portions, each phase or portion is considered placed in service when it is completed and ready for its intended use.

Effective Date: The new Act is effective June 12, 2008, and applies to taxpayers acquiring a textile mill site after December 31, 2007, except as otherwise provided.

House Bill 3880, Section 2 (Act No. 342)

Brownfields Voluntary Cleanup Credit – Expanded

Code Section 12-6-3550, allowing a credit for costs of voluntary cleanup activity by a nonresponsible party pursuant to the Brownfields Voluntary Cleanup Program in Title 44, Chapter 56, Article 7, has been amended to allow the use of the credit against any taxes due. Previously, the statute provided the credit was used against corporate income taxes under Code Section 12-6-530.

Effective Date: Applies to party voluntary cleanup contracts entered into pursuant to Code Section 44-56-750 on or after June 11, 2008.

House Bill 3649, Section 3.A (Act No. 261)

Ethanol/Biodiesel Fuel 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 amended credits are briefly discussed below.

1. Credit for Production of Corn-based Ethanol or Soy-based Biodiesel. For taxable years beginning after 2006 and before 2017, Code Section 12-6-3600(A)(1) provides an income 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, 2011. Under prior law, this requirement had to be met by December 31, 2009. The statute has been clarified to provide that the taxpayer is eligible to claim this credit after the facility has 6 months of operation at an average production rate of at least 25% of its name plate design capacity. In the first taxable year that a taxpayer is eligible to claim the credit, the taxpayer can claim the credit for the first 6 months it met the requirements and for all qualifying production during that taxable year. The credit is allowed for up to 60 months, beginning with the first month the facility is eligible to receive the credit; however, no credit can be claimed after December 31, 2016. Previously, the credit ended as of December 31, 2014.

2. Credit for Production of Ethanol or Biodiesel from Other Materials. For taxable years beginning after 2006 and before 2017, Code Section 12-6-3600(A)(2) provides an income tax credit of 30¢ per gallon for each gallon of noncorn ethanol or nonsoy biodiesel produced by a facility using a feedstock other than corn to produce ethanol or using a feedstock other than soy oil to produce biodiesel if the facility is in production at the rate of at least 25% of its name plate design capacity before denaturing, on or before December 31, 2011. Under prior law, this requirement had to be met by December 31, 2009. The statute has been clarified to provide that the taxpayer is eligible to claim the credit after the facility has 6 months of operation at an average production rate of at least 25% of its name plate design capacity. In the first taxable year that a taxpayer is eligible to claim the credit, the taxpayer can claim the credit for the first 6 months it met the requirements and for all qualifying production during that taxable year. The credit is allowed for 60 months, beginning with the first month the facility is eligible to receive the credit; however, no credit is allowed after December 31, 2016. Previously, the credit ended as of December 31, 2014.
3. Subsequent Credit for New Production. Beginning January 1, 2017, Code Section 12-6-3600(C) allows a qualifying facility an income tax credit of 7.5¢ per gallon for up to 36 months for each gallon of ethanol or biodiesel produced that qualifies as “new production.” “New production” is production which results from a new facility, a facility which did not receive credits before 2017, or an expansion of capacity of at least 2 million gallons if the expansion is placed in service after 2016 and the design engineer certifies to the State Energy Office that the expansion is at least a 2 million gallon capacity expansion. A taxpayer receiving the 20¢ or 30¢ per gallon credit may not receive a credit for expanding production until its eligibility for those credits has expired.

For an expansion of capacity at an existing facility, annual production must exceed 12 times the monthly average of the three highest months of production during the 24 months immediately preceding certification of the facility to qualify as “new production.” However, the credit is not allowed until production exceeds 12 times the 3 month average amount during any 12-consecutive month period commencing on or after January 1, 2017. The taxpayer’s amount of credit based on new production must be approved by the State Energy Office.

General Provisions. General provisions relating to amendments of the above credits are briefly summarized below.

1. Code Section 12-6-3600(B) now contains definitions. “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.

2. Any unused credits under Code Section 12-6-3600 may be carried forward for 10 years. All limitations relating to total amount or credit that can be claimed and number of gallons of biodiesel or ethanol that can be subject to the credit continue to apply.
3. To obtain the maximum amount of credit available to a taxpayer under Code Section 12-6-3600, each taxpayer must submit a request for credit to the State Energy Office by January 31 for qualifying gallons for the previous year. By March 1, the State Energy Office will notify the taxpayer that it qualifies for the credit and the amount of credit it may claim. A taxpayer may claim the credit for the taxable which contains December 31 of the previous calendar year. For the state's fiscal year 2008-2009, total claims for credits cannot exceed \$800,000. To the extent claims exceed this amount, the credits must be allocated proportionately among all taxpayers. Special rules are provided for the allocation of credits from July 1, 2008 and December 31, 2009.

Effective Date: Tax years beginning after 2006 and before 2017 for the credits in Code Section 12-6-3600(A). January 1, 2017 for the credit for increased production in Code Section 12-6-3600(C).

House Bill 3649, Section 3.B (Act No. 261)

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

Code Section 12-6-3610, providing an income tax credit for taxpayers that place in service facilities or property for distributing renewable fuels and an income tax credit for producing renewable fuels, has been amended. The two credits, as amended, are briefly discussed below.

1. Credit for Distribution or Dispensing Facility. For taxpayers placing qualifying property in service prior to January 1, 2020, Code Section 12-6-3610(A) provides an income tax credit for a taxpayer that purchases or constructs and installs property that is used for distributing or dispensing renewable fuel, if that property is placed in service at a new or existing commercial fuel distribution or dispensing facility in this State. "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. 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 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 Producing Facility. For taxpayers placing in service qualifying facilities prior to January 1, 2020, Code Section 12-6-3610(B) provides an income tax credit to a taxpayer that constructs a commercial facility in this State for the production of renewable fuel. 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 this subsection, “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. 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 that claims any other credits under Article 25, Chapter 6, Title 12 for the costs of constructing and installing a facility may not take this credit allowed under Code Section 12-6-3610(B) for those same costs.

To obtain the maximum amount of credit available to a taxpayer under either of the credits in Code Section 12-6-3610, a taxpayer must submit a request for credit to the State Energy Office by January 31 for all qualifying property or a qualifying facility that was placed in service in the previous calendar year. By March 1, the State Energy Office will notify the taxpayer that it qualifies for the credit and the amount of credit it may claim. A taxpayer may claim the credit for its taxable year which contains December 31 of the previous calendar year. Special rules are provided for the allocation of credits from July 1, 2008 and December 31, 2009.

Effective Date: May 29, 2008

House Bill 3649, Section 3.C (Act No. 261)

Credit for Biomass Energy - Amended

Code Section 12-6-3620, which was enacted in 2006 to allow a credit for methane gas taken from a landfill, was substantially amended in 2007. The revised statute has been amended again. The revised statute is summarized below.

A taxpayer is allowed a credit for 25% of the costs incurred 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. "Biomass resource" means non-commercial wood, by-products of wood processing, demolition debris containing wood, agricultural waste, animal waste, sewage, landfill gas, and other organic materials, not including fossil fuels. "Commercial use" means a use intended for the purpose of generating a profit. Qualifying costs incurred by the taxpayer must be certified by the State Energy Office.

The credit may be claimed in the year in which the equipment is placed in service for all expenses incurred for the purchase and installation of the equipment. A taxpayer can claim up to \$650,000 of certified credit each taxable year. It may be claimed against corporate income taxes under Code Section 12-6-530, corporate license taxes under Code Section 12-20-50, or both. Any unused credits may be carried forward for 15 years. If the equipment stops using biomass resources as its primary fuel source before the entire credit is used, the taxpayer cannot 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.

To obtain the maximum amount of credit available to a taxpayer under Code Section 12-6-3620, each taxpayer must submit a request for credit to the State Energy Office by January 31 for all qualifying equipment placed in service in the previous calendar year. By March 1, the State Energy Office will notify the taxpayer that it qualifies for the credit and the amount of credit it may claim. A taxpayer may claim the credit for the taxable year which contains December 31 of the previous calendar year. Special rules are provided for the allocation of credits from July 1, 2008 and December 31, 2009.

Effective Date: Tax years beginning after 2007 and ending before tax year 2020.

House Bill 3649, Section 3.D (Act No. 261)

Credit for Qualified Ethanol and Biodiesel Research and Development - Amended

Code Section 12-6-3631 (enacted in 2006 and effective January 1, 2008) has been amended. A taxpayer is allowed an income tax credit equal to 25% of the taxpayer's "qualified expenditures for research and development." "Qualified expenditures for research and development" are expenditures to develop feedstocks and processes for

cellulosic ethanol and for algae-derived biodiesel, including: (1) enzymes and catalysts involving cellulosic ethanol and algae-derived biodiesel; (2) best and most cost efficient feedstocks for South Carolina; or (3) product and development, including cellulosic ethanol or algae-derived products. "Cellulosic ethanol" means fuel from ligno-cellulosic materials, including wood chips derived from noncommercial sources, corn stover, and switchgrass.

A taxpayer's total credit for all years cannot exceed \$100,000. Unused credits may be carried forward for 5 years after the qualified expenditure is made. To claim the credit, the qualified expenditures for research and development must be certified by the State Energy Office. To obtain the maximum amount of credit available, a taxpayer must submit a request for credit to the State Energy Office by January 31 for all qualifying research expenses incurred in the previous calendar year. By March 1, the State Energy Office will notify the taxpayer that it qualifies for the credit and the amount of credit it may claim. A taxpayer may claim the credit for its taxable year which contains December 31 of the previous calendar year. Special rules are provided for the allocation of credits from July 1, 2008 and December 31, 2009.

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

Senate Bill 1171, Section 2.A (Act No. 313)
(See also House Bill 3008, Section 2.A (Act No. 352))

Use of Credits Generated by a Limited Liability Company

Code Section 12-6-3310, which provides for the use of tax credits by pass through entities, has been amended to add subsection (C) to address the use of tax credits allowed in Article 25, Chapter 6 of Title 12 by limited liability companies.

Code Section 12-6-3310(C) provides that a limited liability company not organized as a legal entity which is expressly specified as qualifying for the credits allowed in Article 25 will nonetheless qualify for such credits in a manner consistent with Code Section 12-2-25 as follows:

1. Limited liability companies taxed for South Carolina income tax purposes as partnerships will apply the credits based on the member's interest in the limited liability company for the taxable year multiplied by the amount of the credit earned by the entity and available for pass through. Limitations on the use of credits because of income tax liability are computed based on the member's tax liability. If a member is an individual, the limited liability company may earn and pass through any credits allowed by Article 25 to be used against individual income taxes imposed pursuant to Code Section 12-6-510. If a member is a corporation, the limited liability company may earn and pass through any credits allowed by Article 25 to be used against corporate income taxes imposed pursuant to Code Section 12-6-530.

2. Limited liability companies taxed as corporations for South Carolina income tax purposes are entitled to all credits otherwise applicable to corporations.
3. With respect to single member limited liability companies which are not regarded as a separate entity from its owner, an individual member may claim any credits allowed in Article 25, Chapter 6 of Title 12 against individual income taxes and corporate members may claim any credits allowed by Article 25 against corporate income taxes.
4. For limited liability companies owned by limited liability companies or other pass through entities, subsections (1) through (3) are applied at each successive stage of ownership until the credit is applied against individual income taxes imposed pursuant to Code Section 12-6-510 or corporate income taxes imposed pursuant to Code Section 12-6-530.

Effective Date: Tax years beginning on or after January 1, 2008.

Senate Bill 1171, Section 2.B (Act No. 313)
(See also House Bill 3008, Section 2.B (Act No. 352))

Corporate Headquarters Credit - Amended

Code Section 12-6-3410, containing the corporate headquarters credit, has been amended as follows:

1. Code Section 12-6-3410(D)(2) has been amended to increase the average cash compensation level for headquarters jobs associated with the personal property costs part of the corporate headquarters credit. The amendment provides that the 75 required jobs must have an average cash compensative level of more than twice the per capita income of the State based on the most recent per capita income data available as of the end of the taxpayer's taxable year in which the jobs are filled. Previously, the average cash compensation level requirement was more than 1.5 times the per capita income. Also, Code Section 12-6-3410(D)(2) has been amended to delete the cash compensation level requirement related to all South Carolina employees of the taxpayer relating to the personal property costs part of the corporate headquarters credit.
2. Code Section 12-6-3410(J)(9), dealing with the use of the corporate headquarters credit by certain limited liability companies, was deleted. This provision was no longer needed as a result of the amendment to Code Section 12-6-3310 that applies to the use of all credits in Article 25, Chapter 6 of Title 12 by pass through entities. See Code Section 12-6-3310 and the summary above of Senate Bill 1171, Section 2.A (Act No. 313).

Effective Date: Tax years beginning on or after January 1, 2008.

Senate Bill 1171, Section 2.C (Act No. 313)
(See also House Bill 3008, Section 2.C (Act No. 352))

Use of Habitat Management Credits by Pass Through Entities - Amended

Code Section 12-6-3520(E), concerning the use by pass through entities of the habitat management income tax credit, has been deleted. This provision was no longer needed as a result of the amendment to Code Section 12-6-3310 that applies to the use of all credits in Article 25, Chapter 6 of Title 12 by pass through entities. See Code Section 12-6-3310 and the summary above of Senate Bill 1171, Section 2.A (Act No. 313).

Effective Date: Tax years beginning on or after January 1, 2008.

Senate Bill 1171, Section 2.I.2 (Act No. 313)

License Tax Credit for Providing Infrastructure for Eligible Projects - Amended

Code Section 12-20-105, which provides a credit against the license tax under Code Section 12-20-100 for amounts paid in cash for qualifying infrastructure for an eligible project, has been amended. The amendments are as follows:

1. Subsection (B)(2), which allows an office, business, commercial, or industrial park to be considered an eligible project for purposes of the credit, has been amended to allow a combination of these parks to qualify and also to provide that the park, or combination of parks, must be used exclusively for economic development.
2. Subsection (C) has been expanded to include in the definition of infrastructure improvements for wastewater or hydrogen fuel made to a building or land if the improvement is necessary, suitable, or useful to the eligible project.
3. Subsection (C)(4) has been amended to: (a) clarify that a shell building in a qualifying park does not have to be industrial in nature in order to qualify as eligible infrastructure, and (b) provide that a county or political subdivision may sell all or a portion of a qualifying park, or a shell building located in a qualifying park, after the company has paid in cash for qualifying infrastructure improvements in the park.
4. Subsection (C)(5) has been added to allow due diligence expenditures relating to environmental conditions in a qualifying industrial park to qualify as infrastructure improvements if those expenses are incurred by a county or political subdivision after the county or political subdivision has acquired contractual rights to the park. Due diligence expenditures include Phase I and II studies and environmental or archeological studies required by state or federal statutes, guidelines, or similar lender requirements. Contractual rights include options to purchase real property or other

similar contractual rights acquired before the county or political subdivision files the deed to the property.

Effective Date: Tax years beginning on or after January 1, 2008.

Senate Bill 530, Section 2, Part 21, Subpart A (Act No. 353) and House Bill 4800, Part IB, Section 81, Proviso 81.7 (Act No. 310)

Fee Charged for Infrastructure Credit Comfort Letter – Prior Proviso Codified

Code Section 12-4-388(C) was codified to allow the Department to impose a \$35 fee for each informal, nonbinding letter concerning eligibility for the infrastructure credit under Code Section 12-20-105. The infrastructure credit is available to a qualifying taxpayer, such as a power company, gas company, or telephone company, subject to the license fee in Code Section 12-20-100 imposed on the value of South Carolina property and gross receipts. The credit amount is 100% of the amount paid in cash for qualifying infrastructure for an eligible project of another taxpayer, up to \$300,000 a year. This provision had been a temporary proviso in the budget bill in past years.

Effective Date: July 1, 2008

Senate Bill 1171, Section 2.K (Act No. 313)
(See also Senate Bill 1141, Section 4 (Act No. 354))

Investment Tax Credit for Large Manufacturers - Amended

Code Section 12-14-80, which allows a qualifying taxpayer to qualify for an investment tax credit if it places in service “qualified manufacturing and productive equipment,” has been amended. A qualifying taxpayer must: (1) engage in this State in at least one economic impact zone in an activity listed under North American Industry Classification System Section 326 (Plastic and Rubber Products Manufacturing); (2) employ 5,000 or more full-time workers in the State; (3) have total capital investment of \$2 billion or more in the State; and (4) commit to invest \$500 million in the State between January 1, 2006 and July 1, 2011. “Qualifying manufacturing and productive equipment property” is property that meets the requirements of Code Section 12-14-60(B)(1)(a),(b), and (c).

Some of the main points concerning the investment tax credit are:

1. The amount of credit is determined pursuant to Code Section 12-14-60(A)(2)(the economic impact zone investment tax credit).
2. A qualifying taxpayer must first use this credit against income tax. If a taxpayer has unused investment tax credits under Code Section 12-14-80 or unused job tax credits under Code Section 12-6-3360 after applying those credits against income tax, the

unused credits can be claimed against its withholding tax; however, those credits may not exceed 50% of the withholding tax shown on the return before the application of other credits including job development credits under Code Sections 12-10-80 or 12-10-81. Any amount of credit claimed against withholding tax must reduce the amount of credit that can be used against income tax. Any unused credit under Code Section 12-14-80 can be carried forward indefinitely; however, for the first 10 years of any credit carryforward, the credit cannot reduce the taxpayer's income tax liability by more than 50%, and for a subsequent year the credit carryforward cannot reduce the taxpayer's income tax liability by more than 25%.

3. Special rules exist concerning notifying the Department about credit eligibility, waiver of the applicable statute of limitations, recapture of the credit, and basis reduction.
4. A taxpayer may not take a credit under Code Section 12-14-80 for capital investments outside of an economic impact zone until certain investment requirements and certain other statutory requirements have been met.
5. For the period July 1, 2007 to June 30, 2008, a taxpayer may not use the credits to reduce its state withholding tax to less than the withholding tax remitted for the period June 30, 2006 to July 1, 2007.

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.

Senate Bill 1171, Sections 2.D and 2.E (Act No. 313)
(See also House Bill 3008, Sections 2.D and 2.E (Act No. 352))

Job Development Credit – Significant Business/Related Party Provisions

Chapter 10 of Title 12, containing the job development credit provisions, has been amended as follows:

1. Code Section 12-10-30(18) has been added to define a “significant business” as a qualifying business making a significant capital investment as defined in Code Section 12-44-30(7) (the enhanced investment fee in lieu of property tax).
2. Code Section 12-10-80(D)(2), which limits the amount of job development credit a qualifying business may retain, has been expanded to allow a related person to retain 95% of its job development credit if the related person is located at the project site of the significant business and the related person qualifies for a job development credit. Previously, the provision applied only to the significant business.

A “related person” is defined to include any entity or person that is related to the significant business under Internal Revenue Code Section 267 and includes a limited liability company where more than 50% of the capital interest or profits is owned, directly or indirectly, by the significant business or by a person or entity, or group of persons or entities, which owns more than 50% of the capital interest or profits in the significant business.

Effective Date: For tax years beginning on or after January 1, 2008.

Senate Bill 1171, Section 2.I.1a (Act No. 313)

Job Development Credit – Qualifying Relocation Expenditures

Code Section 12-10-80(C)(3)(f), concerning eligible relocation expenditures for job development credit purposes, has been expanded as follows:

1. Employee relocation expenses associated with a new or expanded qualified service-related facility, as defined in Code Section 12-6-3360(M)(13), have been added as eligible expenditures.
2. The requirement that the conditions of the personal property portion of the headquarters credit in Code Section 12-6-3410(D) must be met for the relocation expenses of a headquarters to qualify as an eligible expenditure has been deleted.

Effective Date: Tax years beginning on or after January 1, 2008.

Senate Bill 1171, Section 2.I.1b (Act No. 313)

Job Development Credit – Qualifying Service Related Facility Job Requirement

Code Section 12-10-80(J), concerning the job development credit, has been added to provide that a “qualifying service-related facility,” as defined in Code Section 12-6-3360(M)(13), may determine the number of new jobs for job development credit purposes by counting jobs created within 5 years of the effective date of the revitalization agreement, without regard to monthly or other averaging.

Effective Date: Tax years beginning on or after January 1, 2008.

SC Illegal Immigration Reform Act – Withholding Requirements

The “South Carolina Illegal Immigration Reform Act” has been enacted. This legislation impacts taxes and licenses administered by the Department primarily in three areas: (1) requiring withholding on certain individuals, (2) eliminating the income tax deduction for payments made to certain individuals, and (3) issuing certain regulatory licenses and permits. The following briefly summarizes the withholding tax applicability of the Act.

Code Section 12-8-595 has been added to require a withholding agent, as defined in Code Section 12-8-10, to withhold state income tax at the rate of 7% of the amount of compensation that is paid to an individual and reported on Form 1099 if the individual has:

1. Failed to provide a taxpayer identification number or social security number;
2. Failed to provide a correct taxpayer identification number or social security number;
or
3. Provided an Internal Revenue Service issued taxpayer identification number issued for nonresident aliens.

If a withholding agent fails to comply with this withholding requirement, the withholding agent will be liable for the taxes required to have been withheld unless the withholding agent is exempt from federal withholding with respect to the individual pursuant to a properly filed Internal Revenue Service Form 8233 (Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual) and has provided a copy of the form to the Internal Revenue Service Commissioner.

A withholding agent is not considered to have violated this withholding requirement if the individual provided a false or incorrect social security number or taxpayer identification number that was facially correct and the withholding agent does not know or should not have known based on a reasonable investigation that the number provided was false or incorrect.

Note: For questions about the above withholding tax provision, e-mail TaxTech@sctax.org or call the Department at 803-898-5709. For questions about unauthorized aliens and the documentation needed to substantiate a person’s status, please direct your inquiry to your attorney, the federal Department of Immigration and Naturalization, or the South Carolina Department of Labor, Licensing, and Regulation.

Effective Date: June 4, 2008

REENACTED TEMPORARY PROVISIO

The following temporary proviso was enacted in prior legislative sessions and was reenacted by the General Assembly in 2008. Temporary provisos are effective for the State fiscal year July 1, 2008 through June 30, 2009, and will expire June 30, 2009, unless reenacted by the General Assembly in the next legislative session.

House Bill 4800, Part IB, Section 1A, Proviso 1A.33 (Act No. 310)

Teacher Supplies - Reimbursement Amount Not Taxable

This temporary proviso allows for a \$275 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.

CODIFIED TEMPORARY PROVISOS

The following temporary provisos were enacted in prior legislative sessions and were permanently codified by the General Assembly in 2008 and also reenacted or repealed as a temporary proviso by the General Assembly in 2008. In either instance, the permanent provisions are summarized above in the “Income Taxes, Corporate License Fees, and Withholding” section.

Senate Bill 530, Section 2, Part 12, Subpart C (Act No. 353)

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

Senate Bill 530, Section 2, Part 21, Subpart G (Act No. 353) and House Bill 4800, Part IB, Section 81, Proviso 81.12 (Act No. 310)

Military Estimated Tax Payment Relief

Senate Bill 530, Section 2, Part 21, Subpart A (Act No. 353) and House Bill 4800, Part IB, Section 81, Proviso 81.7 (Act No. 310)

Fee Charged for Infrastructure Credit Comfort Letter

REMINDER

The following provisions were enacted in 2007, but are effective in 2008 or thereafter. They are summarized below for informational purposes.

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

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 3 factor (with double weighted sales) apportionment method. The single factor apportionment factor is being phased in and will replace the 3 factor (with double weighted sales) apportionment method for tax years beginning in 2011.

The following amendments, effective for tax years beginning after 2010, update cross references from Code Section 12-6-2250 (the 3 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 3 factor apportionment method with double weighted sales and phase in provisions of the single sales factor);
2. Code Section 12-6-2260 (3 factor apportionment method property factor definition);
and
3. Code Section 12-6-2270 (3 factor apportionment method payroll factor definition).

Effective Date: Tax years beginning after 2010.

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.

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.

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.

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.

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 qualifying taxpayer 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: Tax years beginning after 2007.

PROPERTY TAXES AND FEES IN LIEU OF PROPERTY TAXES

Senate Bill 1171, Section 3 (Act No. 313)

SC Textiles Communities Revitalization Act - Repealed and Reenacted

The “South Carolina Textiles Communities Revitalization Act” was enacted to create an incentive for the rehabilitation, renovation, and redevelopment of abandoned textile mill sites in South Carolina. In 2004, the Act was enacted in Chapter 32 of Title 6. The original Act has been repealed and reenacted as Chapter 65 of Title 12.

The new Act provides that a taxpayer who rehabilitates an abandoned textile mill site may choose one of the following tax credits:

1. A “property tax credit” provided in Code Section 12-65-30(B) against real property taxes equal to 25% of the eligible rehabilitation expenses made at the site multiplied by the local taxing entity ratio for each local taxing entity that has consented to the credit; or
2. An “income/license tax credit” as provided in Code Section 12-65-30(C) equal to 25% of the eligible rehabilitation expenses made at the site. (See the “Income Taxes, Corporate License Fees, and Withholding” section above for a brief summary of the income tax credit.)

Property Tax Credit - Code Section 12-65-30(B). The taxpayer must choose whether to claim the income/license tax credit or property tax credit. If the taxpayer chooses the property tax credit and acquires the site after December 31, 2007, it must file a “Notice of Intent to Rehabilitate” (“Notice”) with the appropriate county or municipality before incurring its first rehabilitation expenses at the site. The Notice is a letter submitted by the taxpayer indicating the taxpayer’s intent to rehabilitate the site and must include the location of the site, the amount of acreage involved, and the estimated expenses to be incurred. The Notice also must indicate which buildings on the site the taxpayer intends to renovate and which buildings it intends to demolish and whether new construction will be involved at the site. If the Notice is not provided as stated, only rehabilitation expenses incurred after the filing of the Notice qualify for the credit. A taxpayer is not eligible for the credit if it owned the site immediately prior to its abandonment and the site was operational.

If the taxpayer chooses the property tax credit, the municipality or the county (if the site is located in an unincorporated area) by resolution shall determine the eligibility of the site and the proposed rehabilitation expenses for the credit. A proposed rehabilitation must be approved by a positive majority vote, as that term is defined in Code Section 6-1-

300(5), of the local governing body. If the governing body approves the site and the expenses for the credit, there must be a public hearing and the site must be approved for the credit by ordinance. Before determining the eligibility of the site, the municipality or county must find that the credit will not violate any covenant, representation, or warranty in any of its tax increment financing transactions or a general obligation bond issued by the county or municipality.

At least 45 days before holding the public hearing, the governing body of the municipality or county shall give notice to all affected local taxing entities where the site is located of its intention to grant a credit against real property taxes for the site and the amount of estimated credit proposed to be granted based on the estimated rehabilitation expenses. If a local taxing entity does not file an objection to the tax credit on or before the date of the public hearing, the local taxing entity is considered to have consented to the credit.

If the taxpayer chooses the property tax credit, the credit is determined as follows:

1. If the actual rehabilitation expenses made at the site are between 80% and 125% of the estimated expenses set forth in the Notice, the credit is equal to 25% of the actual expenses.
2. If the actual expenses exceed 125% of the estimated expenses, the credit is equal to 25% of 125% the estimated expenses.
3. If the expenses are below 80% of the estimated expenses, no credit may be claimed.

The amount of allowable expenses is multiplied by the local taxing entity ratio of each local taxing entity that has consented to the credit to get the amount of credit that may offset property taxes. The ordinance shall allow the credit to be taken against up to 75% of the real property taxes due on the site each year for up to 8 years. The credit may be claimed for each applicable phase or portion of the site beginning with the property tax year in which the applicable phase or portion is first placed in service.

Definitions. Code Section 12-65-20 provides a list of definitions of terms that are used in the statute. Some of the relevant terms are defined as follows:

1. A “textile mill” is a facility or facilities that were last used for textile manufacturing, dying, or finishing operations and for ancillary uses to those operations.
2. A “textile mill site” is the “textile mill together with land and other improvements on it which were used directly for textile manufacturing operations or ancillary uses. However, the area of the site is limited to the land located within the boundaries where the textile manufacturing, dying, or finishing facility structure is located and does not include land located outside the boundaries of the structure or devoted to ancillary uses. Notwithstanding the provisions of this item, with respect to any site acquired by a taxpayer before January 1, 2008, or a site located on the Catawba River

near Interstate 77, the textile mill site includes the textile mill structure, together with all land and improvements which were used directly for textile manufacturing or ancillary uses, or were located on the same parcel within one thousand feet of any textile mill structure or ancillary uses.”

3. “Ancillary uses” means “uses related to the textile manufacturing, dying, or finishing operations on a textile mill site consisting of sales, distribution, storage, water runoff, wastewater treatment and detention, pollution control, landfill, personnel offices, security offices, employee parking, dining and recreation areas, and internal roadways or driveways directly associated with such uses.”
4. “Abandoned” means that at least 80% of the textile mill has been continuously closed to business or otherwise nonoperational as a textile mill for at least one year immediately preceding the date the taxpayer files a “Notice of Intent to Rehabilitate.” A textile mill that qualifies as abandoned may be subdivided into separate parcels, and those parcels may be owned by the same taxpayer or different taxpayers, and each parcel is deemed to be a textile mill site for purposes of determining whether it has been abandoned.
5. “Rehabilitation expenses” are the expenses or capital expenditures incurred in the rehabilitation, renovation, or redevelopment of the textile mill site, including demolition costs, environmental remediation, site improvements, and new construction costs, but excluding the cost of acquiring the eligible site or the cost of personal property maintained at the site. For expenses to qualify for the credit, the textile mill and buildings on the site must be either renovated or demolished.
6. “Placed in service” means the date upon which the textile mill site is completed and ready for its intended use. If the site is completed and ready for use in phases or portions, each phase or portion is considered placed in service when it is completed and ready for its intended use.
7. A “local taxing entity” is a county, municipality, school district, special purpose district, or other entity or district with the power to levy ad valorem property taxes against the site.
8. The “local taxing entity ratio” is the percentage computed by dividing the millage rate of each local taxing entity by the total millage rate for the site.

Effective Date: The new Act is effective June 12, 2008, except as otherwise provided.

Fire Sprinkler System – New Credit

Code Section 12-6-3622 has been added to provide a taxpayer who installs a fire sprinkler system in a commercial or residential structure that is not required by law, regulation, or code a property tax credit and an income tax credit in a year the local taxing entity consents.

The credit is 25% of the direct expenses, not including any fee charged by the utility, against real property taxes levied by a local taxing entity. The credit against real property taxes is claimed by submitting a form developed by the Department with payment of the real property taxes to the local taxing entity. The taxpayer may also claim an income tax credit equal to the amount of the property tax credit by submitting the form with the taxpayer's income tax return. (See the "Income Taxes, Corporate License Fees, and Withholding" section above for a brief summary of the income tax credit.) The owner of the structure may transfer, devise, or distribute any unused credit to the tenant of the eligible site. To be effectual, the local taxing entity must receive written notification.

Fire sprinkler system has the same meaning as in Code Section 40-10-20. Code Section 40-10-20(8) defines fire sprinkler system as:

a system of overhead or underground piping, or both, to protect the interior or exterior of a building or structure from fire where the primary extinguishing agent is water and designed in accordance with fire protection engineering standards. The system includes the overhead and underground fire water mains, fire hydrants and hydrant mains, standpipes, and hose connection to sprinkler systems, supplied from a reliable, constant, and sufficient water supply, such as a gravity tank, fire pump, reservoir, or pressure tank, or connection by underground piping to a city main but does not include dual or multi-purpose water lines supplying fire systems or equipment, potable water, or process water, or both. The system is a network of specially sized or hydraulically designed piping installed in a building, structure, or area, generally overhead, and to which sprinklers are connected in a systematic pattern. The system includes a controlling valve and a device for actuating an alarm when the system is in operation. The system is usually activated by heat from a fire and discharges water over the fire area. Fire protection sprinkler systems include the following types: water based or wet-pipe systems, water foam systems, dry-pipe systems, preaction systems, residential systems, deluge systems, combined dry-pipe and preaction systems, non-freeze systems, and circulating closed loop systems.

Effective Date: Taxable years beginning after 2007.

House Bill 4470, Section 3 (Act No. 357)

Fire Sprinkler System – Not an Addition or Improvement

Code Section 12-37-3130(1), which defines additions or improvements, has been amended to provide that the installation of a fire sprinkler system in a commercial or residential structure is not an addition or improvement when the installation is not required by law, regulation, or code and the utility and function of the structure remain the same.

Effective Date: Taxable years beginning after 2007.

House Bill 4470, Section 5 (Act No. 357)

Fire Sprinkler System Equipment - New Exemption

Code Section 12-37-220(B) has been amended by adding a property tax exemption applicable to all fire sprinkler system equipment that is installed in a commercial or residential structure when the installation is not required by law, regulation, or code. The value of such equipment is exempt until there is an assessable transfer of interest as determined by Code Section 12-37-3150.

Effective Date: Taxable years beginning after 2007.

House Bill 3008, Section 1 (Act No. 352)

Exemption for Real Property of Certain Tax Exempt Organizations Expanded

Code Section 12-37-220(B)(16)(a) provides an exemption for the property of any religious, charitable, eleemosynary, educational, or literary society, corporation or other association (“organization”) when the property is used by the organization primarily for the holding of its meetings and the conduct of the business of the organization and no profit or benefit therefrom inures to the benefit of any private stockholder or individual.

Code Section 12-37-220(B)(16)(c) has been added to exempt real property owned by an organization described in subitem (a) above and which qualifies as a tax exempt organization pursuant to Internal Revenue Code Section 501(c)(3), when the real property is held for a future use by the organization that would qualify for the exemption allowed under subitem (a) above or held for investment by the organization in sole pursuit of the organization’s exempt purposes. The real property must not be rented or leased for a purpose unrelated to the exempt purposes of the organization and the use of the real property must not inure to the benefit of any private stockholder or individual.

In the case of donated real property, the new exemption is available for no more than 3 consecutive tax years. In the case of real property purchased by the qualifying organization that receives the new exemption but is sold without ever having been put to the exempt use, a recapture provision applies. The exemption is deemed to terminate as of December 31 of the year preceding the year of the sale, so that the property is subject to property tax for the year of the sale. To that property tax amount must be added a recapture amount equal to the property tax that would have been due on the real property for not more than 4 of the preceding years that the property received the exemption in question. The recapture amount is deemed property tax for all purposes for payment and collection.

Effective Date: June 12, 2008

Senate Bill 1158 (Act No. 302) and Senate Bill 1210 (Act No. 315)

Scenic River Designations for Catawba and Lynches Rivers

Under the Scenic Rivers Program, if a landowner donates a perpetual easement to the State as provided in Code Section 49-29-100, the property is exempt from all property taxes and the landowner may take a deduction from South Carolina income taxes equal to the fair market value of the easement granted.

Code Section 49-29-230, which designates portions of certain rivers as scenic rivers under the South Carolina Scenic Rivers Act, has been amended as follows:

1. Subsection (4), which designates a portion of the Lynches River as a scenic river, has been amended to include that portion located between the eastern boundary of the Lynches River County Park and the confluence with the Great Pee Dee River. See Senate Bill 1210 (Act No. 315).
2. Subsection (9) has been added to designate that portion of the Catawba River located between the Lake Wylie Dam and the South Carolina Highway 9 bridge crossing of the Catawba River as a scenic river. See Senate Bill 1158 (Act No. 302).

Effective Date: June 11, 2008

Senate Bill 652 (Act No. 184)

Homestead Exemption – Application Methods Expanded

Code Section 12-37-250 provides a homestead exemption for certain persons over age 65 and certain disabled or legally blind persons. Code Section 12-37-250(A)(4) has been amended to allow the exemption application to be made in person at the auditor's office; by mail, when accompanied by a copy of documentation of age or disability or legal

blindness; or by internet in those instances where the auditor has access to official records documenting the appropriate eligibility standard. The Department will assist auditors with compliance, approve application forms and ensure uniform application procedures.

Effective Date: Applies to homestead exemption applications filed after 2007.

Senate Bill 1171, Section 1 (Act No. 313)

Manufacturers' Personal Property – No Return Required for Certain Non-Operational Property

Code Section 12-37-900, requiring returns for real and personal property, has been amended to exclude the personal property of a manufacturer not under a Fee agreement if the property remains in this State at a manufacturing facility that has not been operational for one fiscal year and the personal property has not been used in operations for one fiscal year. No return is required for such personal property until it becomes operational in a manufacturing process or until the property has not been returned for ad valorem tax purposes for 4 years, which is earlier. The manufacturer must continue to list the personal property annually with a designation that the personal property is not subject to tax pursuant to this section.

Effective Date: Tax years beginning on or after January 1, 2008.

Senate Bill 1171, Section 2.J (Act No. 313)

Change in Assessment Ratio for Certain Real Property Owned by or Leased to Manufacturers

Code Section 12-43-220(a), which concerns the classification and assessment ratio applicable to real and personal property owned by or leased to manufacturers and utilities, has been amended to provide that real property owned by or leased to a manufacturer and used exclusively for warehousing and wholesale distribution is not subject to the 10.5% assessment ratio that applies generally to property of manufacturers that is used in the conduct of their business. Previously, this exclusion was available only for property used primarily for warehousing and wholesale distribution of clothing and wearing apparel that was not located on the premises of or contiguous to the manufacturing site of the manufacturer.

Taxpayers who are paying a 10.5% assessment ratio on existing warehouses in 2008 and who are eligible for an assessment ratio reduction as a result of this amendment must notify the county in writing by July 1, 2009. Under an uncodified provision, warehouses

must continue to be assessed at 10.5% of fair market value until such written notification is given.

Effective Date: Applies in each county in the year after the next countywide reassessment is implemented.

Senate Bill 1171, Section 8 (Act No. 313)

Tax Bills for Real Property – Standard Information Clarified

Code Section 12-43-350, which standardizes information on tax bills, has been amended to clarify that the following information must appear on all tax bills for real property issued by political subdivisions:

1. If applicable, the \$50,000 state homestead exemption for certain persons over age 65 and certain disabled or legally blind persons pursuant to Code Section 12-37-250; and
2. The state homestead exemption from taxes for school operations applicable to all owner-occupied residential property pursuant to Code Section 12-37-220(B)(47), including the estimated value of the exemption and the amount of any credit against the property tax liability for county operations on owner-occupied residential property attributable to an excess balance in the Homestead Exemption Fund.

Effective Date: Property tax years beginning after 2007.

Senate Bill 1171, Section 9 (Act No. 313)

Boats – Local Option for In-State Situs

Code Section 12-37-714(2) provides that boats and boat motors that are not currently taxed in South Carolina and that are not used exclusively in interstate commerce are subject to South Carolina property taxes if present within the State for 60 consecutive days or for 90 days in the aggregate in a property tax year. This section has been amended to provide that a local governing body may, by ordinance, extend to 180 the aggregate number of days a boat can be present without being subject to tax.

Effective Date: Tax years beginning on or after January 1, 2008.

House Bill 3812 (Act No. 410)

Millage Increase Allowed

Code Section 6-1-320(B), which allows a local governing body to suspend the millage rate limitations imposed in Code Section 6-1-320(A) and increase millage rate for certain purposes, has been amended. Upon a two thirds vote of the membership of the local governing body, the millage rate may be increased for the following additional purposes:

1. To allow the local governing body to purchase undeveloped real property or the residential development rights in such property near an operating United States military base, if the property has been identified as suitable for residential development, but such development would constitute an undesirable residential encroachment on the military base. The purchase must be authorized by an ordinance that includes certain findings specified in the statute.

Each tax bill must separately state the millage rate increases relating to the purchase and provide other specific information about the purchase. The millage rate increase must reasonably relate to the purchase price and must be rescinded after 5 years or when the amount specified to be collected is collected, whichever occurs first.

2. To purchase capital equipment and make related expenditures in a county having a population of less than 100,000 persons and having at least 40,000 acres of state forest land. A definition of “capital equipment” is provided.

Effective Date: June 25, 2008

House Bill 3975 (Act No. 367)

Delayed Implementation of Reassessment

This uncodified provision authorizes a county by ordinance to delay for one additional year a countywide tax equalization and reassessment program otherwise scheduled for implementation in property tax year 2008.

Effective Date: June 11, 2008

House Bill 4982 (Act No. 377)

Dillon County Millage and Distribution of Funds

Beginning with fiscal year 2008-2009, the property tax millage for school purposes in Dillon County will be 162 mills, of which 143.75 mills must be used by the Dillon County Board of Education for school operations. Of the remainder, 17.25 mills must be

allocated to Dillon County Applied Technology Education Center and 1 mill to Northeastern Technical College. This levy does not include millage for debt service, which is levied by the Dillon County Auditor pursuant to existing law.

Increases in this levy in each subsequent fiscal year are limited to the percentage increase in the average of the 12 most recent monthly consumer price indices for the period January through December of the prior calendar year, plus the percentage increase in the population of the entity in the previous year, as determined by the Office of Research and Statistics of the State Budget and Control Board. However, in a year in which a reassessment program is implemented, rollback millage calculated pursuant to Code Section 12-37-251(E) must be used in lieu of the previous year's millage rate. The increased millage must be allocated to the general operations of the Dillon County Board of Education, the Dillon County Applied Technology Education Center and Northeastern Technical College.

Effective Date: June 25, 2008

House Bill 4816 (Act No. 382)

Lexington County School District Property Tax Credit

This uncodified provision amends 2004 Act No. 378, the Lexington County School District Property Tax Relief Act (the Act), by amending Section 7(C)(1) and adding new Section 7(E). The Act provides a nonrefundable credit against school property tax liability funded by a 1% sales and use tax within Lexington County. The Act provides a method for determining the amount of credit a property owner will receive.

Under Section 7(C)(1), as amended, the credit applies first against debt service for schools, then against other methods of financing school capital projects, then against school building lease-purchase obligations, and finally against school operations if applicable.

Section 7(D) of the Act provides that the credit may be applied against other property tax liability if there is no school property tax liability remaining after applying the credit along with any ad valorem school tax reductions provided by the Trust Fund for Tax Relief.

Under new Section 7(E), before the provisions of Section 7(D) apply, a credit is to be applied proportionally against all nonschool-related property tax otherwise due on an owner-occupied residence in an amount equal to the credit that would apply against the property tax liability for school operations imposed on such residence but for the exemption from such liability allowed under Code Section 12-37-220(B)(47).

Effective Date: Property tax years beginning after 2007.

Senate Bill 639, Sections 1 and 3 (Act No. 387)

Sumter County School District Consolidation

This uncodified provision abolishes the present School Districts 7 and 17 in Sumter County effective July 1, 2011. From that date there will be one school district in Sumter County known as the Sumter School District, with a governing board of trustees. The Sumter School District will have budget authority, except that a millage increase must be approved by a majority vote of the Sumter County council. A public hearing with at least 15 days notice must be held before the board gives final approval to a budget.

To determine the previous year's millage for Sumter School District at its inception on July 1, 2011, the Department will make the calculation based on the 2010 levy of Districts 2 and 17 and the value of a mill in each district. Beginning in 2011, the millage levy of Sumter School District will be subject to millage limitations as provided by general law and local law. Beginning in 2011, any increase over the previous year's millage must be approved by majority vote of the governing body of Sumter County.

Effective Date: February 4, 2008

Senate Bill 1171, Sections 2.F, 2.G, and 2.H (Act No. 313)

(See also House Bill 3008, Sections 2.F, 2.G, and 2.H (Act No. 352))

Super Fee and Enhanced Fee Changes - Investments by Financing Parties

Code Sections 12-44-30(7), 4-29-67(D)(4)(a), and 4-12-30(D)(4)(a), concerning investment requirements for an "Enhanced Fee" or "Super Fee," have been amended. Under the amendments, if a single sponsor enters into a financing arrangement as described in the appropriate statute, the investment or financing by the developer, lessor, financing entity or any other third person in accordance with this arrangement is considered to be an investment that is made by the sponsor for purposes of meeting the investment requirements for an "Enhanced Fee" or "Super Fee." Further, investments by a "related person" as described in Code Section 12-10-80(D)(2) are considered to be an investment that is made by the sponsor. (See Senate Bill 1171, Section 2.E (Act No. 313) in the "Income Taxes, Corporate License Fees, and Withholding" Section above for a summary of the amendment to Code Section 12-10-80(D)(2) concerning a related person.)

Effective Date: Tax years beginning on or after January 1, 2008.

Fee in Lieu Changes – Big Fee, Little Fee, and Simplified Fee

Minor amendments have been made to the Simplified Fee (Chapter 44, Title 12), the Little Fee (Code Sections 4-12-10 through 4-12-30), and the Big Fee provisions (Code Section 4-29-67). The changes are as follows:

1. Code Sections 12-44-30(16), 4-12-10(2), and 4-29-67(A)(1)(c), containing a definition of “project,” have been amended. For purposes of the appropriate Fee provision, a project may now consist of, or include, an aircraft hangared or utilized at an airport in a county in South Carolina if the county agrees to the inclusion of the aircraft in the Fee. Aircraft previously subject to tax in South Carolina can qualify under this amendment.
2. Code Sections 12-44-120(D), 4-12-30(M)(4), and 4-29-67(O)(4) allow for the transfer of agreements and assets associated with the Fee if a sponsor obtains the prior approval or subsequent ratification of the transfer by the county. These provisions have been amended to direct how approval or ratification can occur. Prior approval or subsequent ratification can occur by a letter or other writing executed by an authorized county representative as designated in the respective Fee agreement; a resolution passed by the county council; or an ordinance passed by the county council following three readings and a public hearing. The county has sole discretion as to which method it chooses to use to approve or ratify the transfer. Approval of the county is still not required for transfers from or to a sponsor affiliates or for financing related transfers.

Effective Date: Applies for property tax years beginning after 2007.

PROPERTY TAX REGULATION

Document No. 3109

Department and Comptroller General Responsibilities – Repealed

SC Regulation 117-1720.1, concerning the responsibilities of the Department and the Comptroller General with respect to property taxation and Fees in lieu of property taxes, has been repealed. This regulation was unnecessary since the responsibilities of the Comptroller General discussed in this regulation were moved to the Department pursuant to Act 386, Section 55, of 2006.

Effective Date: February 22, 2008

REENACTED TEMPORARY PROVISOS

The following temporary provisos were enacted in prior legislative sessions and were reenacted by the General Assembly in 2008. Temporary provisos are effective for the State fiscal year July 1, 2008 through June 30, 2009, and will expire June 30, 2009, unless reenacted by the General Assembly in the next legislative session.

House Bill 4800, Part IB, Section 89, Proviso 89.52 (Act No. 310)

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 4800, Part IB, Section 66, Proviso 66.7 (Act No. 310)

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 2007, but are effective in 2008 or thereafter. They are summarized below for informational purposes.

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 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.

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 so 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 aircrafts which qualify 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.

SALES AND USE TAXES

Senate Bill 1143, Section 1 (Act No. 338)

Sales Tax Holiday – Energy Efficient Products

Code Section 12-36-2120, providing a list of sales tax exemptions, has been amended to add a sales tax exemption for certain energy efficient products purchased from 12:01 a.m. October 1 through midnight October 31 during years 2009 – 2018 if certain revenue growth forecasts are met.

The exemption requirements include:

1. The exemption applies to a purchase for noncommercial home or personal use; it does not apply to energy efficient products purchased for trade, business, or resale.
2. The sales price per product must be \$2,500 or less.
3. An “energy efficient product” is:
 - a. a dishwasher, clothes washer, air conditioner, ceiling fan, fluorescent light bulb, dehumidifier, programmable thermostat, refrigerator, door, or window, the energy efficiency of which has been designated by the US Environmental Protection Agency and the US Department of Energy as meeting or exceeding each agency’s energy savings efficiency requirements or which have been designated as meeting or exceeding such requirements under each agency’s ENERGY STAR program;
 - b. gas, oil, or propane water heaters with an energy factor of 0.08 or greater; and
 - c. electric water heaters with an energy factor of 2.0 or greater.
4. For the exemption to be allowed for an applicable year, the Board of Economic Advisors must certify to the Department that the general fund revenue growth for the upcoming fiscal year meets the requirements in Code Section 12-36-2120(e).

Note Expiration: This annual October sales tax holiday for energy efficient products ends October 31, 2018.

Effective Date: July 1, 2009

Note: On June 26, 2008, the Supreme Court of South Carolina accepted original jurisdiction in *The American Petroleum Institute and BP Products North America Inc v. South Carolina Department of Revenue, et al.* The Petitioners are seeking a

declaratory judgment that Senate Bill 1143, Section 3 (Act No. 338), dealing with motor fuel products offered by a terminal, violates the one subject rule of the South Carolina Constitution, Article III, Section 17 and is unconstitutional. The Court has issued a temporary injunction enjoining the Respondents from implementing Section 3. The Department will issue additional information if the Court's decision affects Senate Bill 1143, Section 1, concerning the Sales Tax Holiday – Energy Efficient Products, summarized above.

Senate Bill 1141, Section 1 (Act No. 354)

Manufactured Homes – Expanded Exemption for Energy Star Homes

Code Section 12-36-2110(B), concerning the calculation of the maximum tax for manufactured homes, has been amended to completely exempt certain Energy Star homes from the sales and use tax for sales occurring from July 1, 2009 through July 1, 2019.

The sale of a manufactured home is subject to a maximum tax of \$300 if the home meets or exceeds certain energy efficient requirements specifically outlined in the law. If the home does not meet these energy efficient requirements, the sale of the home is subject to a maximum tax of \$300 plus 2% of the taxable basis or measure that exceeds \$6,000.

Under the amendment, sales of manufactured homes from July 1, 2009 through July 1, 2019, would be exempt from the entire tax if the manufactured home has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency's energy saving efficiency requirements or has been designated as meeting or exceeding such requirements under each agency's ENERGY STAR program.

The dealer selling the manufactured home must still maintain records, on forms provided by the State Energy Office, on each manufactured home sold that meets the energy efficiency levels established in this law. These records must be maintained for 3 years and must be made available for inspection upon request of the Department of Consumer Affairs or the State Energy Office.

The maximum tax and exemption provisions of this subsection only apply to a manufactured home as defined in Code Section 40-29-20; they do not apply to a single-family modular home regulated pursuant to Chapter 43, Title 23. Code Section 40-29-20 defines a manufactured home as a structure, transportable in one or more sections which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length or when erected on site is three hundred twenty or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a

permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained in it.

Note Expiration: The exemption expires July 2, 2019 and, therefore, will not apply to sales of manufactured homes occurring on or after that date.

Effective Date: July 1, 2009

Senate Bill 1143, Section 2 (Act No. 338)

Sales Tax Holiday – Handguns, Rifles, and Shotguns

Code Section 12-36-2120, providing a list of sales tax exemptions, has been amended to add a sales tax exemption for sales of handguns as defined in Code Section 16-23-10(1), rifles, and shotguns for 48 hours beginning 12:01 a.m. Friday after Thanksgiving and ending midnight the following Saturday.

Effective Date: July 1, 2008

Note: On June 26, 2008, the Supreme Court of South Carolina accepted original jurisdiction in *The American Petroleum Institute and BP Products North America Inc v. South Carolina Department of Revenue, et al.* The Petitioners are seeking a declaratory judgment that Senate Bill 1143, Section 3 (Act No. 338), dealing with motor fuel products offered by a terminal, violates the one subject rule of the South Carolina Constitution, Article III, Section 17 and is unconstitutional. The Court has issued a temporary injunction enjoining the Respondents from implementing Section 3. The Department will issue additional information if the Court's decision affects Senate Bill 1143, Section 2, concerning the Sales Tax Holiday – Handguns, Rifles, and Shotguns, summarized above.

SALES AND USE TAX REGULATIONS

Document No. 3110

Returned Merchandise and Restocking Fees – New Regulation

SC Regulation 117-318.8, concerning the application of the sales and use tax with respect to returned merchandise and restocking fees, has been enacted. It provides that the sales price of property returned by a customer is not subject to the tax only if the “full sales price” is refunded in cash or by credit as set forth in Code Section 12-36-90(2)(b) and Code Section 12-36-130(2)(b). For a copy of this regulation, see SC Information Letter #08-3.

Effective Date: October 1, 2008

Document No. 3158

Transfers between State Agencies and Political Subdivisions – Technical Correction

SC Regulation 117-304.1, concerning the application of the sales and use tax to transfers of tangible personal property from a State agency to another State agency, a county or a municipality, has been amended to make a technical correction. This regulation does not deem such transfers to be sales at retail provided the transferring agency is only reimbursed its costs and paid the tax on its initial purchase of the tangible personal property. In other words, the sale of tangible personal property by a State agency to another agency is not subject to the sales tax if the transferring agency is only reimbursed its costs and expenses in conveying the property and it paid the tax on its initial purchase of the property.

Code Section 12-36-910(B)(4) imposes the sales tax on the “fair market value of tangible personal property manufactured within this State, and used or consumed within this State by the manufacturer.” For example, if a manufacturer of an industrial cleaning solution uses the cleaning solution instead of selling it, the manufacturer is liable for the sales tax on the fair market value of the cleaning solution it manufactured and used.

As amended, SC Regulation 117-304.1 now ensures that a State agency that manufactures tangible personal property receives the same treatment for property it manufactures and uses that it would if it manufactured the property and transferred it to another State agency, county or municipality at cost. For a copy of this regulation, see SC Information Letter #08-10.

Effective Date: June 27, 2008

Document No. 3163

Hotels, Motels, and Similar Facilities – Technical Correction

SC Regulation 117-307 and SC Regulation 117-307.1, concerning the sales tax on accommodations and “additional guest charges,” have been amended to update references from the old 5% state tax rate to the new 6% state tax rate (effective June 1, 2007) with respect to additional guest charges at places providing sleeping accommodations under Code Section 12-36-920(B) and all other sales of tangible personal property at a place providing sleeping accommodations. For a copy of this regulation, see SC Information Letter #08-10.

Effective Date: June 1, 2007

Document No. 3159

Certain Facilities Not Subject to Sales Tax on Accommodations - Revised

SC Regulation 117-307.3 concerns the exception to the 7% sales tax on accommodations for the rental or charges for any rooms, lodgings or accommodations furnished to transients by facilities that consist of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of such facilities.

The purpose of this revision is to incorporate the longstanding position of the Department that in order for the exception to apply, the facility must serve as the owner's or operator's "place of abode" during the same times at which the remaining sleeping rooms are rented to transients and the rooms must not be rented to transients by a person other than the owner or operator using the facility as his or her "place of abode." Examples to assist in understanding this exception are provided in the regulation. For a copy of this regulation, see SC Information Letter #08-10.

Effective Date: June 27, 2008

Document No. 3164

Communications Services – Revised

SC Regulation 117-329, concerning the application of the sales and use tax to communications services, has been amended to summarize the longstanding position of the Department concerning the taxability of various communications services and to list as many communications services as possible that the Department has held in the past as subject to the tax, including communications services such as telephone services, paging services, answering services, cable television services, satellite programming services (includes, but is not limited to, emergency communication services and television, radio, music or other programming services), fax transmission services, voice mail messaging services, e-mail services, and database access transmission services (on-line information services), such as legal research services, credit reporting/research services, and charges to access an individual website. For a copy of this regulation, see SC Information Letter #08-10.

Effective Date: June 27, 2008

Sales of Unprepared Food Exemption – New Regulation

SC Regulation 117-337 has been added to provide guidance as to the application of Code Section 12-36-2120(75) which exempts from the state sales and use tax the gross proceeds of sales or sales price of “unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons.” This exemption does not apply to local sales and use taxes that are administered and collected by the Department on behalf of the counties and other jurisdictions, unless the local tax law specifically exempts the sales of such unprepared food.

Under the regulation, the determination as to whether a sale of unprepared food is exempt from the state sales and use tax is based on whether the food is of a type that is eligible to be purchased with USDA food stamps, the type of location selling the food, and whether the food is being sold for immediate consumption, business or institutional consumption, or home consumption.

In other words, a food must be of a type eligible to be purchased with USDA food stamps and must also be sold for home consumption (based on the type of food and the type of location selling the food) to qualify for the exemption from the state sales and use tax under Code Section 12-36-2120(75). For example, bottled soft drinks are eligible to be purchased with USDA food stamps, but if bottled soft drinks are sold at a concession stand at a festival, then the bottled soft drinks are sold for immediate consumption and not home consumption and the sale at the festival would be subject to the full state sales tax rate. For a copy of this regulation, see SC Information Letter #08-16.

Effective Date: July 25, 2008

REENACTED TEMPORARY PROVISOS

The following temporary provisos were enacted in prior legislative sessions and were reenacted by the General Assembly in 2008. Temporary provisos are effective for the State fiscal year July 1, 2008 through June 30, 2009, and will expire June 30, 2009, unless reenacted by the General Assembly in the next legislative session.

House Bill 4800, Part IB, Section 89, Proviso 89.92 (Act No. 310)

Viscosupplementation Therapies - Sales and Use Tax Suspended

For this State fiscal year, 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 4800, Part IB, Section 89, Proviso 89.81 (Act No. 310)

Respiratory Syncytial Virus Medicines Exemption - Effective Date

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 4800, Part IB, Section 89, Proviso 89.50 (Act No. 310)

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. See SC Regulation 117-334 for information as to which tax, the sales tax or the use tax, applies when goods are shipped into South Carolina. 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 1127 (Joint Resolution)

Tax Return Preparer Penalties – Electronic Filing or 2D Barcode Required

In 2005, Code Section 12-54-250(F) was 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. Where electronic means are not available to file the return, but 2D barcode is available, the preparer must use 2D barcode. Subject to limited exceptions, a person who does not comply with the provisions of this section may be penalized \$50 for each return. Code Section 12-54-250(F) was effective for tax years beginning on or after January 1, 2007.

This joint resolution requests that the Department delay imposing the \$50 penalty before returns due to be filed after December 31, 2008, and to refund any penalties imposed for failure to comply before that date. The Director of the Department has directed the enforcement of the penalty authorized under Code Section 12-54-250(F) will begin for returns originally due on or after January 1, 2009.

Effective Date: February 28, 2008

Senate Bill 530, Section 2, Part 21, Subpart A (Act No. 353) and House Bill 4800, Part IB, Section 81, Proviso 81.7 (Act No. 310)

Fee Charged for Certificate of Compliance – Prior Proviso Codified

Code Section 12-4-388(C) was added to codify a provision allowing 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. This provision had been a temporary proviso in the budget bill in past years.

Effective Date: July 1, 2008

Senate Bill 530, Section 2, Part 21, Subpart A (Act No. 353) and House Bill 4800, Part IB, Section 81, Proviso 81.8 (Act No. 310)

Fee Charged for Installment Agreement – Prior Proviso Codified

Code Section 12-4-388(D) was added to codify a provision allowing the Department to impose a \$45 fee for entering into installment agreements for the payment of tax liabilities. This provision had been a temporary proviso in the budget bill in past years.

Effective Date: July 1, 2008

MISCELLANEOUS TAXES

House Bill 4067 (Act No. 292)

Deeds Transferring Realty to Trust Distributee upon the Trust Settlor's Death

Chapter 24 of Title 12 imposes a deed recording fee for recording a deed that transfers realty to another person. Code Section 12-24-10(B) exempts from the fee an “instrument or deed of distribution assigning, transferring, or releasing real property to the distributee of a decedent’s estate in accordance with Code Section 62-3-907.”

Code Section 12-24-10(B) has been amended to also exempt a deed transferring real property from a trust to a trust distributee upon the trust settlor’s death, pursuant to the trust terms, if a deed of distribution would be the appropriate instrument to transfer the subject property and the property was a part of the decedent’s probate estate.

Effective Date: June 11, 2008

House Bill 4900 (Act No. 331)

Reduced Cigarette Ignition Propensity Standards

The General Assembly has enacted the “Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act” in Chapter 51 of Title 23. The purpose of this Act is to provide that cigarettes may not be sold or offered for sale in South Carolina unless the cigarettes have been tested in accordance with certain test methods, met certain performance standards, and received certain certifications. In addition the cigarettes must be properly marked to indicate compliance with this Act.

While the State Fire Marshal administers this law, and is responsible for promulgating regulations necessary to administer it, the following provisions apply to the Department:

1. The Department in the regular course of conducting cigarette tax inspections of wholesalers, retailers and anyone liable for the tax may inspect the cigarettes to determine if they are marked as required under this Act. If the cigarettes are not marked as required, the Department shall notify the State Fire Marshall. Code Section 23-51-70(B).
2. The Department, as well as the Attorney General, the State Fire Marshal and other law enforcement personnel, may examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises. A person in the possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered for sale, is directed and required to give the Department, as well as the Attorney General, State Fire Marshal, and other law enforcement personnel, the means, facilities, and opportunity for these examinations. Code Section 23-51-80.
3. Cigarettes seized by the State Fire Marshall or any law enforcement personnel for not being marked as required under this Act must be turned over to the Department. These cigarettes are forfeited to the State. Cigarettes seized must be destroyed; however, prior to their destruction the true holder of the trademark rights in the cigarette brand must be permitted to inspect the cigarettes. Code Section 23-51-60(G).
4. Each manufacturer must certify to the State Fire Marshall that each cigarette has been tested and met the requirements of this Act. This certification must contain certain information about each cigarette, such as brand or trade name, style, length, and the marking required under the Act. Each cigarette must be recertified every three years. The certifications must be made available to the Department, as well as the Attorney General. Code Section 23-51-40.

Note: This Act also contains an uncodified provision that became effective June 5, 2008, that prohibits local governments from enacting any ordinance in conflict with, or preempting, the provisions of this Act.

Effective Date: January 1, 2010

OTHER ITEMS (Including Local Taxes)

Senate Bill 1171, Section 5 (Act No. 313)

Admissions Tax – Exemption for Motorsports Entertainment Complexes

An uncodified partial exemption from the admissions tax for one-half of the paid admissions has been enacted for a motorsports entertainment complex. A motorsports entertainment complex means a motorsports facility and its ancillary grounds and facilities that:

1. Has at least 60,000 fixed seats for race patrons;
2. Has at least three scheduled days of motorsports events, and events ancillary and incidental thereto, each calendar year that are sanctioned by a nationally or internationally recognized governing body of motorsports that establishes an annual schedule of motorsports events; and
3. Engages in tourism promotion.

Note Expiration: This partial exemption expires July 1, 2018 and, therefore, will not apply to paid admissions occurring on or after that date.

Effective Date: July 1, 2008

House Bill 3649, Section 1 (Act No. 261)

Alternative Fuel Vehicles and Conversion Equipment - Rebate Eliminated

The Energy Freedom and Rural Development Act contained in Chapter 63 of Title 12 was enacted in 2007. As originally enacted, Code Section 12-63-20(A) provided that purchasers or lessees of certain alternative fuel and fuel efficient vehicles, and purchasers of certain conversion equipment, were eligible for a sales tax rebate of up to \$300 from July 1, 2008 to June 30, 2013. During the 2008 legislative session, Code Section 12-63-20 was revised and the sales tax rebate was eliminated.

Effective Date: May 29, 2008

Alternative Fuels and Biomass Electricity and Energy Incentives - Amended

The Energy Freedom and Rural Development Act contained in Chapter 63 of Title 12 was enacted in 2007 and effective July 1, 2008. The statute was revised in the 2008 legislative session. Code Sections 12-63-20(A) and 12-63-20(B), as amended, are summarized below.

Alternative Fuel Incentive: Code Section 12-63-20(A) provides the following incentives to retailers and wholesalers of certain alternative fuels 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 user fee.
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 or D975 blended stock. The payment of these incentives must be made to the retailer upon compliance with verification procedures set forth by the Department of Agriculture.

Biomass Electricity and Energy Incentive: Code Section 12-63-20(B) provides the following incentives to producers of electricity and energy generated from biomass resources beginning after June 30, 2008, and ending before July 1, 2018:

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. This incentive payment is also applicable to electricity from a qualifying facility placed in service and first producing electricity on or after July 1, 2008. The maximum incentive payment is \$100,000 per year per taxpayer for 5 years, but in no case will incentive payments apply after June 30, 2018.
2. A payment of 30¢ per therm for energy produced from biomass resources in a facility not using biomass resources before June 30, 2008, or facilities which utilize at least 25% more energy from biomass resources than the greatest 3 year average before

June 30, 2008. This incentive payment is also applicable to energy from a qualifying facility placed in service and first producing energy on or after July 1, 2008. The maximum incentive payment is \$100,000 per year per taxpayer for 5 years, but in no case will incentive payments apply after June 30, 2018.

For purposes of this incentive, “biomass resource” means wood, wood waste, agricultural waste, animal waste, sewage, landfill gas, and other organic materials, not including fossil fuels.

Note Expiration: The incentive payments to retailers and wholesalers for alternative fuels in Code Section 12-63-20(A) expire on July 1, 2012 and, therefore, will not apply to sales occurring on or after that date.

The incentive payments to producers of electricity and energy in Code Section 12-63-20(B) expire on July 1, 2013 and, therefore, will not apply to electricity or energy produced on or after that date; however, if a qualifying facility is placed in service and first producing electricity or 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 or energy, but in no case does the incentive payment apply to electricity or energy produced after June 30, 2018.

Effective Date: May 29, 2008, and applies to sales after June 30, 2009 for the incentives for alternative fuel sales in Code Section 12-63-20(A); and applies after June 30, 2008 for the incentives for biomass electricity and energy in Code Section 12-63-20(B).

Senate Bill 993 (Act No. 371)

Allendale County School District Sales and Use Tax

The Allendale County School District School Bond-Property Tax Relief Act has been enacted to allow the imposition of a sales and use tax not exceeding 1% within Allendale County. The tax must be approved by a referendum open to all qualified electors residing in Allendale County. This tax must be administered and collected by the Department in the same manner that other sales and use taxes are collected. The tax is in addition to all other local sales and use taxes. This tax applies to the gross proceeds of sales in the applicable jurisdiction which are subject to the tax imposed by Chapter 36, Title 12, the collection and enforcement provisions of Chapter 54, Title 12, and to tangible personal property subject to the use tax in Article 13, Chapter 36, Title 12. The gross proceeds of the sale of unprepared food which may be purchased with food stamps and items subject to a maximum tax are exempt from this tax.

The tax, if approved in the referendum, must be imposed beginning on the first day of the third full month following the filing of a declaration of the results of the referendum with the Department. The tax terminates on the final day of the maximum time specified for the imposition, or earlier, upon payment of the final maturing installments of the principal of the general obligation bonds.

Effective Date: February 20, 2008

Senate Bill 1232 (Act No. 316)

Education Capital Improvements Sales and Use Tax Act

The Education Capital Improvements Sales and Use Tax Act has been enacted in Title 4, Chapter 10 to allow the imposition of a 1% sales and use tax within a county for specific education capital improvements for the school district for not more than 15 years.

The tax must be approved by a referendum open to all qualified electors residing in the county. This tax must be administered and collected by the Department in the same manner that other sales and use taxes are collected. The tax is in addition to all other local sales and use taxes. This tax applies to the gross proceeds of sales in the applicable jurisdiction which are subject to the tax imposed by Chapter 36, Title 12, the collection and enforcement provisions of Chapter 54, Title 12, and to tangible personal property subject to the use tax in Chapter 36, Title 12. The gross proceeds of the sale of food which may lawfully be purchased with food stamps and items subject to a maximum tax are exempt from this tax.

Pursuant to a memorandum of agreement, a portion of the revenue may be shared with the area commission (governing body of a technical college) or higher education board of trustees (governing body of a public institution of higher learning) or both, for specific education capital improvements on the campus of the recipient located in the county listed in the referendum.

The tax, if approved in the referendum, must be imposed beginning on the first day of the fourth full month following the filing of a declaration of the results of the referendum with the Department. The tax terminates upon the earlier of the final day of the maximum time specified for the imposition or 60 days after filing with the Department certified copies of a resolution adopted by the board of trustees of the school district requesting termination of the tax. Where revenues are shared pursuant to a memorandum of agreement as provided in Code Section 4-10-420, the termination resolution must be adopted by all parties to the agreement.

The tax may be renewed within a county in the same manner as proceedings for the initial imposition of the tax. This tax may only be imposed in counties which have collected at least \$7 million in state accommodations taxes in the most recent fiscal year for which data is available. Once the threshold is met, a county remains eligible to impose this tax.

This tax may not be imposed in a county that is imposing or is scheduled to impose a local sales and use tax for public school capital improvements.

Effective Date: June 12, 2008

Senate Bill 1171, Section 4 (Act No. 313)

Redevelopment Fee – Collection Period Extended

Code Section 12-10-88 allows certain withholding taxes associated with persons employed by federal employers located on a closed or realigned military installation to be directed to the redevelopment authority that is overseeing the redevelopment of the installation for its use. This money is commonly referred to as “redevelopment fees.” Code Section 12-10-88(C) has been amended to provide that redevelopment fees may be remitted for the period that begins when the applicable redevelopment authority first submits the required information to the Department and ends 15 years later or on January 1, 2015, whichever occurs later. Previously, the period to remit the fees terminated on the earlier of these dates.

Effective Date: Tax years beginning on or after January 1, 2008.

Senate Bill 1171, Sections 6 and 7 (Act No. 313)

(See also House Bill 4815 (Act No. 359))

Film Commission Transferred to Department of Parks, Recreation and Tourism

The South Carolina Film Commission, along with its duties, has been transferred from the Department of Commerce to the Department of Parks, Recreation and Tourism. In a related amendment, the South Carolina Motion Picture Incentive Act in Chapter 62 of Title 12, has been amended to make changes to reflect the transfer of the Film Commission.

Effective Date: July 1, 2008

House Bill 3649, Section 2 (Act No. 261)

Renewable Energy Fund Grants

Code Section 46-3-260(B) has been amended to provide that the Department of Agriculture in coordination with the State Energy Office may prescribe forms, procedures, policy documents and distribute funds under the renewable energy grants

program. Under prior law, the Department of Revenue was responsible for prescribing forms, procedures and issuing policy documents for the implementation of this program.

Effective Date: May 29, 2008

House Bill 4745, Section 1 (Act No. 350)

South Carolina Residential Improvement District Act

The South Carolina Residential Improvement District Act, Chapter 35 of Title 6, has been added to provide an additional means to fund infrastructure and improvements related to new development and redevelopment in a qualifying district.

These improvements may be funded by assessments against real property within a district, by special district bonds or other obligations secured by such assessments, from available general revenues, or from any combination of such financing sources. The Act provides definitions for certain terms, including “assessment,” “improvement,” and “district.”

Creating a District. To create an improvement district, the owners of all the real property within a proposed district must sign a petition and submit it to the local governing body requesting it to create the district. The petition must contain specific information as provided in the Act, including a description of the real property within the proposed district and an improvement plan for the district. Code Sections 6-35-30 and 6-35-118.

By resolution, the governing body must set forth certain information required by the Act and must set a time for a public hearing on these matters. Notice of the public hearing must be published for the time period and in the manner set forth in the Act. Code Sections 6-35-120 and 6-35-130.

At least 7 days after the public hearing is held, the governing body, by ordinance, may create the district. The ordinance may provide for creation of the district as originally proposed or with such changes and modifications as the governing body may determine. The ordinance must contain certain information specified in the Act and may provide for financing of the improvements in the district by assessments, bonds, or in another manner allowed by law. Code Section 6-35-170.

Notice of adoption of the ordinance must be published in a newspaper of general circulation in the district once a week for 2 consecutive weeks. A person affected by the ordinance may challenge the action of the governing body by instituting an action in the court of common pleas for the county in which the district is located. Code Section 6-35-170.

Assessment Provisions. To fund the improvements in the district, the governing body may impose an assessment against the real property within the district. Only a county or municipality that has adopted a comprehensive plan recommended by its planning

commission in accordance with Chapter 29, Title 6, may impose an assessment under the Act. Code Section 6-35-50(B).

The assessment may be based on: (1) the assessed value of the property; (2) area or front footage of the property; (3) the value of improvements to be constructed in the district; (4) a combination of the above; or (5) other means agreed on between the property owner and the governing body. Code Section 6-35-20(1).

The following provisions apply to assessments:

1. The amount of the assessment must be based on actual costs of the improvements or reasonable estimates of those costs, as provided in Code Section 6-35-50(A)(2).
2. The rates of assessments within a district need not be uniform, but must be agreed on between the property owner and the governing body across different sections of, or uses within, the district. Code Section 6-35-20(1).
3. Once in place, the assessment remains valid and enforceable even if there is a transfer of real property; however, an improvement plan may provide for a change in the basis of assessment in the event of transfer or other appropriate event. Code Section 6-35-20(1).
4. An assessment roll must be prepared and made available for inspection. Code Section 6-35-180 provides procedures for notice, consideration of objections and appeal of the final decision of the governing body.

Bond Provisions. To fund improvements in the district, the governing body of a county or municipality may issue special district bonds or revenue bonds. The bonds may be secured by pledge of and be payable from the assessments or any other available source of funds that is not a general tax. However, the bonds must not be secured by the full faith and credit of the county or municipality. Bonds issued under the Act do not count for purposes of calculating the bond-borrowing limit pursuant to Article X of the South Carolina Constitution. Code Sections 6-35-60 and 6-35-70.

The proceeds of the bonds may be applied to payment of the costs of improvements, including the costs of financing, as provided in Code Section 6-35-60. In the case of any obligation secured by assessment, the governing body must collect from the owner(s) an improvement fee equal to 4% of the aggregate par value of such obligation, to be used as provided in Code Sections 6-35-100 and 6-35-110.

Miscellaneous Provisions.

1. In certain instances, collective improvements (*i.e.*, improvements to be funded by multiple districts) also may be included in an improvement plan. Code Section 6-35-110(A).

2. With certain exceptions, the burden of funding the improvements shall not be charged to any property outside of the district. Code Section 6-35-50(D).
3. The owner or developer of real property in a district must disclose to prospective buyers that the property is subject to assessment under the provisions of the Act, including the maximum annual amount and duration of the assessments. Code Section 6-35-95.
4. The governing body must publish an annual report for each district, as provided in Code Section 6-35-50(C). The annual report must be publicly available by the time property tax bills are issued in the district.
5. The improvements become the property of the municipality, county, State or other public or quasi-public entity and may be removed, altered, or added to in the discretion of the governing body and may be leased to other public, quasi-public, or nonpublic entities. Code Section 6-35-160.

Effective Date: June 17, 2008

House Bill 4743, Sections 1, 2, and 6 (Act No. 358)

Tax Increment Financing for Municipalities and Counties

Chapter 6, Title 31 allows municipalities to engage in tax increment financing of redevelopment projects to encourage the revitalization of blighted urban areas. Chapter 7, Title 31 and Chapter 33, Title 6 allow counties to engage in tax increment financing of redevelopment projects to encourage revitalization of blighted areas within a county. Chapter 33, Title 6 has been repealed since those provisions are covered in Chapter 7 of Title 31.

The definitions of “redevelopment project” for purposes of Chapter 6, Title 31 and Chapter 7, Title 31, as set forth in Code Sections 31-6-30(6) and 31-7-30(7), respectively, have been amended to include affordable housing projects if certain requirements are met. In both cases, affordable housing projects may be included in a redevelopment project where all or a part of new property tax revenues generated in the tax increment financing district are used (1) to provide or support publicly-owned affordable housing in the district or (2) to provide infrastructure projects to support privately-owned affordable housing in the district. As used in both definitions, the term “affordable housing” means residential housing for rent or sale that is appropriately priced for rent or sale to those whose income does not exceed 80% of the median income for the local area, with adjustments for household size, according to the latest figures available from the United States Department of Housing and Urban Development.

Effective Date: June 25, 2008

House Bill 4554, Section 1 (Act No. 412)

Local Business License Tax – New Rules for Real Estate Professionals and Auctioneers

Code Section 6-1-315, which authorizes a local governing body to impose or increase a business license tax by ordinance, has been amended to restrict license taxes or fees on real estate licensees and auctioneers.

Real Estate Professionals. The governing body of a county or municipality may not impose a license, occupation, or professional tax or fee on real estate licensees other than the broker-in-charge at the place where the real estate licensee maintains a principal or branch office. If imposed, the tax or fee on the broker-in-charge shall permit the broker-in-charge and the broker's affiliated real estate professionals to engage in all of the real estate brokerage activities described in Chapter 57 of Title 40 without further licensing or taxing, other than the state licenses issued pursuant to Chapter 57 of Title 40 or other provisions of law. Payment of a tax or fee on the gross receipts of a broker-in-charge is in lieu of a tax or fee on all affiliated real estate professionals.

Counties or municipalities other than those in which the broker-in-charge maintains a principal or branch office may impose a license, occupation, or professional tax or fee only with respect to gross receipts derived from real property transactions located in that county or municipality.

Auctioneers. The governing body of a county or municipality may not impose a license, occupation, or professional tax or fee on the gross proceeds of an auctioneer licensed under Chapter 6 of Title 40 for the first 3 auctions the auctioneer conducts in the county or municipality, unless the auctioneer maintains a principal or branch office in the county or municipality.

Effective Date: June 25, 2008

House Bill 4554, Section 2 (Act No. 412)

Municipal Business License Tax – New Rule for Computing Gross Income

Code Section 5-7-30, which among other things authorizes a municipality to impose a business license tax on gross income, has been amended to provide that, when a person or business pays a business license tax to a county or to another municipality where the income is earned, the gross income for the purpose of computing the tax must be reduced by the amount of gross income taxed in the other county or municipality.

Effective Date: June 25, 2008

REGULATORY

House Bill 4400, Section 5 (Act No. 280)

SC Illegal Immigration Reform Act – Certain Licenses and Permits

The “South Carolina Illegal Immigration Reform Act” has been enacted. This legislation impacts taxes and licenses administered by the Department primarily in three areas: (1) issuing certain regulatory licenses and permits, (2) eliminating the income tax deduction for payments made to certain individuals, and (3) requiring withholding on certain individuals. The following briefly summarizes the applicability of the Act on obtaining alcoholic beverage licenses and permits and bingo licenses.

Chapter 29 of Title 8 has been added and provides that beginning July 1, 2008, every State agency or political subdivision is required to verify the lawful presence in the United States of any alien 18 years of age or older who has applied for state or local public benefits, as defined in 8 U.S.C. Section 1621, or for federal public benefits, as defined in 8 U.S.C. Section 1611. State and local public benefits are defined to include “any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government.” However, verification of lawful presence in the United States is not required in certain instances enumerated in the law, including when lawful presence in the United States is not required by law, regulation or ordinance.

For purposes of the Department, verification of lawful presence is limited to licenses or permits issued by the Department that require the applicant to be lawfully present in the United States. At this time only alcoholic beverage licenses and permits and bingo licenses meet this requirement. To verify the lawful presence of a person in the United States for purposes of these licenses and permits, the Department must follow a specific procedure in Code Section 8-29-10(D). This requires an agency or political subdivision to obtain from an applicant either: (1) an affidavit that he is a United States citizen or legal permanent resident 18 years of age or older; or (2) an affidavit that he is a qualified alien or nonimmigrant under the Federal Immigration and Nationality Act, Public Law 82-414, 18 years of age or older, and lawfully present in the United States.

If an applicant has executed an affidavit that he is an alien lawfully present in the United States, the Department must verify the applicant’s lawful presence to obtain the license or permit through the Systematic Alien Verification of Entitlement program operated by the United States Department of Homeland Security. Until the eligibility verification is made, the affidavit shall be presumed to be proof of lawful presence for the purposes of this provision. If the Department cannot verify an applicant’s lawful presence in the United States, the applicant cannot receive a license or permit or the license or permit issued must be revoked.

A person who knowingly and wilfully makes a false, fictitious, or fraudulent statement or representation in an affidavit; or who aids or abets a person in knowingly and wilfully making a false, fictitious, or fraudulent statement or representation in an affidavit; or who solicits or conspires to make a false, fictitious, or fraudulent statement or representation in an affidavit may be subject to civil and criminal charges and penalties.

Note: For questions about unauthorized aliens and the documentation needed to substantiate a person's status, please direct your inquiry to your attorney, the federal Department of Immigration and Naturalization, or the South Carolina Department of Labor, Licensing, and Regulation.

Effective Date: July 1, 2008

Senate Bill 530, Section 2, Part 21, Subpart E (Act No. 353)

Local Option Permits – Prior Proviso Codified

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.

Subsection (F) was added to Code Section 61-6-2010 to provide that local option permits may be issued in all parts of a municipality if any part of the municipality is located in a county where the issuance of these permits has been approved. 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. Note: This provision had been a temporary proviso in the budget bill in past years

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.

Effective Date: July 1, 2008

Senate Bill 951, Section 2.A (Act No. 287)

Definition of “Bona Fide Engaged Primarily and Substantially in the Preparation and Serving of Meals” - Revised

Code Section 61-6-20(2) defines the term “bona fide engaged primarily and substantially in the preparation and serving of meals” for purposes of an on-premise consumption liquor license. This definition has been amended to omit the reference to a “Grade A retail establishment food permit.” It also added that a business that provides seating at tables for at least 40 persons simultaneously must:

1. Be equipped with a kitchen that is utilized for the cooking, preparation, and serving of meals on customer request at normal meal times;
2. Have readily available to its customers either menus with the listings of various meals offered for service or a listing of available meals and foods, posted in a conspicuous place readily discernible by the customers; and
3. Prepare for service to customers, on the demand of the customer, hot meals at least once each day the business chooses to be open.

Effective Date: June 11, 2008

Senate Bill 951, Section 2.B (Act No. 287)

Liquor by the Drink – New Definitions

Code Section 61-6-1610, which establishes requirements and restrictions for an on-premises consumption liquor license, has been amended to include the following definitions:

1. “Kitchen” means a separate and distinct area of the business establishment that is used solely for the preparation, serving, and disposal of solid foods that make up meals. The area must be adequately equipped for the cooking, serving, and storage of solid foods and must include at least 21 cubic feet of refrigerated space for food and a stove.
2. “Meal” means an assortment of various prepared foods available to customers on the licensed premises during the normal mealtimes that occur when the licensed business

establishment is open to the public. Sandwiches, boiled eggs, sausages, and other snacks prepared off the licensed premises but sold there are not a meal.

3. “Primarily” means that the serving of the meals by a business establishment is a regular source of business to the licensed establishment, that meals are served on the demand of customers during the normal mealtimes that occur when the licensed business establishment is open to the public, and that an adequate supply of food is present on the licensed premises to meet the demand.

Effective Date: June 11, 2008

Senate Bill 951, Section 3 (Act No. 287)

Liquor by the Drink – New Penalties for Failure to Report and Remit Excise Tax and New Licensing Restrictions

Code Section 12-33-245 imposes a 5% excise tax on the gross proceeds of sales of alcoholic liquor by the drink. Subsection (D) has been added to provide the following civil penalties for failure to report and remit the full amount of the excise tax:

1. First violation – \$1,000.
2. Second violation – \$1,000 and automatic suspension for 30 days of the license allowing such sales.
3. Third or subsequent violation – \$5,000 and revocation of the license.

These penalties are in addition to all other penalties that may be imposed for failure to report and remit the full amount of the excise tax.

Subsection (E), restricting who may obtain a new license for the premises concerned when a license is suspended or revoked, has been added. A partner or person with a financial interest in the previously licensed business may not be issued a new license for the premises concerned. Also, a person within the second degree of kinship to a person whose license is suspended or revoked may not be issued a license for the premises concerned for one year after the date of suspension or revocation.

Effective Date: June 11, 2008

Senate Bill 1048 (Act No. 243)

Sunday Sales of Locally Produced Wine

Code Section 61-4-120 limits the sale of beer and wine on Sundays. Subsection (B) was added to provide that wine may be sold on Sunday if the wine is produced using grapes grown in South Carolina, the grapes are harvested, processed, fermented, bottled, and sold at the same contiguous location, the seller meets all applicable licensing and taxing requirements, and the local governing body adopts an ordinance permitting wine sales under these limited circumstances.

Effective Date: May 27, 2008

REENACTED TEMPORARY PROVISOS

The following temporary provisos were enacted in prior legislative sessions and were reenacted by the General Assembly in 2008. Temporary provisos are effective for the State fiscal year July 1, 2008 through June 30, 2009, and will expire June 30, 2009, unless reenacted by the General Assembly in the next legislative session.

ADMINISTRATIVE and PROCEDURAL MATTERS

House Bill 4800, Part IB, Section 72, Proviso 72.17 (Act No. 310)

Reduction on Interest Rate on Tax Refunds

This temporary proviso decreases by 2% the interest rate for tax refunds paid during fiscal year July 1, 2008 through June 30, 2009. The revenue resulting from this reduction must be used for operations of the State's Guardian ad Litem Program.

MISCELLANEOUS TAXES

House Bill 4800, Part IB, Section 1, Proviso 1.17 (Act No. 310)

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 4800, Part IB, Section 21, Proviso 21.21 (Act No. 310)

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.

CODIFIED TEMPORARY PROVISOS

The following temporary provisos were enacted in prior legislative sessions and were permanently codified by the General Assembly in 2008 and also reenacted or repealed as a temporary proviso by the General Assembly in 2008. In either instance, the permanent provisions are summarized above in the “Miscellaneous” section.

ADMINISTRATIVE and PROCEDURAL MATTERS

Senate Bill 530, Section 2, Part 21, Subpart A (Act No. 353) and House Bill 4800, Part IB, Section 81, Proviso 81.7 (Act No. 310)

Fee Charged for Certificate of Compliance

Senate Bill 530, Section 2, Part 21, Subpart A (Act No. 353) and House Bill 4800, Part IB, Section 81, Proviso 81.8 (Act No. 310)

Fee Charged for Installment Agreement

REGULATORY MATTERS

Senate Bill 530, Section 2, Part 21, Subpart E (Act No. 353)

Local Option Permits - Municipalities

REMINDER

The following provisions were enacted in 2007 or before, but are effective in 2008. They are summarized below for informational purposes.

OTHER ITEMS (Including Local Taxes)

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 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 the general admissions tax imposed under Article 17, Chapter 21 of Title 12.

Further changes were 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 was 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

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