

SC INFORMATION LETTER #09-11

SUBJECT: Regulations Approved by the General Assembly

DATE: June 23, 2009

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000; Supp. 2008)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

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.

The following regulation proposals were approved by the General Assembly on May 13, 2009 and will become official regulations upon publication in the State Register on **June 26, 2009**.

Each regulation is attached as published on the General Assembly website at <http://www.scstatehouse.net/index.html> (excluding the initial page of legislative history).

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Finally, during the 2008 session of the General Assembly, SC Regulation 117-307.1 was amended to reflect the increase in the general sales and use tax rate from 5% to 6% beginning June 1, 2007. However, the admissions tax rate cited in Question #16 of this regulation was inadvertently changed from 5% to 6%. The admissions tax rate, as established by Code Section 12-21-2420, is 5%.

An errata notice was issued and published in the March 2009 edition of the State Register to correct this error so that Question #16 of the regulation correctly states the admissions tax rate as 5%. This errata notice, which became effective March 27, 2009, can be found on page 38 of this information as published in the State Register.

Document No. 4004
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

117-314.11. Federal Government Construction Contracts

Synopsis:

The South Carolina Department of Revenue is considering adding SC Regulation 117-314.11 concerning the application of the sales and use tax exemption in Code Section 12-36-2120(29) to incorporate longstanding Department of Revenue policy concerning federal government construction contracts into SC Regulation 117-314. This policy is presently set forth in an advisory opinion issued by the Department – SC Revenue Ruling #04-9.

Instruction:

Add SC Regulation 117-314.11 concerning the application of the sales and use tax exemption in Code Section 12-36-2120(29) to incorporate longstanding Department of Revenue policy concerning federal government construction contracts in SC Regulation 117-314.

Text:

117-314.11 Federal Government Construction Contracts

Sales to, or purchases by, a construction contractor of tangible personal property for use in a federal government construction project in South Carolina for which the contractor has a written contract with the federal government are not subject to the sales and use tax under Code Section 12-36-2120(29) if the contract necessitating the purchase provides that title and possession of the property is to transfer from the contractor to the federal government at the time of purchase or after the time of purchase and such property actually transfer to the federal government in accordance with the contract or the property becomes part of real or personal property owned by the federal government or is to transfer to the federal government.

The purpose of this regulation is to address the application of Code Section 12-36-2120(29) to sales to, or purchases by, a construction subcontractor of tangible personal property for use in a federal government construction project in South Carolina for which the subcontractor has a written contract with a general contractor who has a written contract for the project with the federal government.

For purposes of this regulation, the following example and information will be used to illustrate the application of the exemption:

The federal government is constructing a building on a military base located in South Carolina. After following its contracting procedures, the federal government has entered into a written contract with a general construction contractor (“Contractor A”) to construct the building.

Contractor A has hired and entered into a written contract with a construction subcontractor (“Subcontractor B”) to construct a certain portion of the building.

Subcontractor B in turn hires and enters into a written contract with a construction subcontractor (“Subcontractor C”) to construct a certain portion of the building under its contract.

Contractor A, Subcontractor B, and Subcontractor C each purchase the material necessary to complete the project from various suppliers.

Based on the example and information, the exemption in Code Section 12-36-2120(29) for federal government contracts applies as follows:

1. Sales to, or purchases by, Contractor A of tangible personal property for use in a federal government construction project in South Carolina as described in the facts are exempt from the sales and use tax under Code Section 12-36-2120(29) if the written contract necessitating the purchase provides that title and possession of the property is to transfer from Contractor A to the federal government at the time of purchase or after the time of purchase and such property actually transfers to the federal government in accordance with the contract or the property becomes part of real or personal property owned by the federal government, or is to transfer to the federal government.

2. Sales to, or purchases by, Subcontractor B of tangible personal property for use in a federal government construction project in South Carolina as described in the facts are subject to the sales and use tax since Subcontractor B does not have a written contract with the federal government.

However, if Subcontractor B is an agent for the Contractor A, then sales to, or purchases by, Subcontractor B of tangible personal property for use in a federal government construction project in South Carolina as described in the facts are not subject to the sales and use tax if all other provisions of the exemption found in Code Section 12-36-2120(29) are met and all books and records support the existence of an agency relationship. (See information below concerning an agency relationship.)

3. Sales to, or purchases by, Subcontractor C of tangible personal property for use in a federal government construction project in South Carolina as described in the facts are subject to the sales and use tax since Subcontractor C does not have a written contract with the federal government.

However, if Subcontractor C is a subagent for Subcontractor B and Contractor A has specifically granted Subcontractor B the authority to appoint a subagent that can bind Contractor A, then sales to, or purchases by, Subcontractor C of tangible personal property for use in a federal government construction project in South Carolina as described in the facts are not subject to the sales and use tax if all other provision of the exemption found in Code Section 12-36-2120(29) are met and all books and records support the existence of an agency relationship. (See information below concerning an agency relationship.)

The Department will recognize the existence of an agency relationship with respect to the exemption in Code Section 12-36-2120(29), such a determination must be made a case-by-case basis and that if it is determined an agency relationship does not exist the Department will assess the applicable party (depending on the facts) under the sales and use tax law (supplier or contractor or subcontractor) for the tax due. (Note: Regardless of the facts and circumstances, the agency must be in writing.) However, the Department has established the following “safe harbor” for which it will recognize an agency relationship with respect to the above facts and the exemption in Code Section 12-36-2120(29):

1. Purchases by Subcontractor B: Contractor A has appointed, in writing, Subcontractor B as its agent when purchasing tangible personal property for the federal government contract and that as a result of this agency relationship Contractor A is liable for payment of such purchases if Subcontractor B fails to pay the supplier and is also liable for the payment of any sales and use tax for any property that was purchased by Subcontractor B in its capacity as agent and that does not qualify for the exemption in Code Section 12-36-2120(29) if Subcontractor B fails to pay the tax.

Purchases by Subcontractor C: Subcontractor B has appointed, in writing, Subcontractor C as its subagent when purchasing tangible personal property for the federal government contract and Contractor A has specifically granted Subcontractor B the authority to appoint a subagent that can bind Contractor A and that as a result of this subagency relationship Contractor A is liable for payment of such purchases if Subcontractor C fails to pay the supplier and is also liable for the payment of any sales and use tax for any property that was purchased by Subcontractor C in its capacity as subagent and that does not qualify for the exemption in Code Section 12-36-2120(29) if Subcontractors B or C fail to pay the tax.

2. The purchase order of Subcontractor B or Subcontractor C submitted to the supplier must clearly state that Subcontractor B or Subcontractor C is the agent of Contractor A in purchasing the property.

3. Contractor A has applied for and received an exemption certificate from the Department for purposes of the exemption in Code Section 12-36-2120(29). Copies of the application for the exemption, Form ST-10G, can be found on the Department’s website at www.sctax.org. The federal contractor’s exemption certificate that will be issued by the Department will be Form ST-404.

4. Contractor A must provide a copy of the exemption certificate to Subcontractor B and must have completed Section C of the copy indicating that Subcontractor B and Subcontractor C are its agents in purchasing tangible personal property for the federal construction project. Subcontractor B will in turn provide a copy to its subagent, Subcontractor C.

Note: Only Contractor A can complete Section C of the exemption certificate. Therefore, when Contractor A has specifically granted Subcontractor B the authority to appoint a subagent that can bind Contractor A, Subcontractor B will be required to inform Contractor A, who then must list Subcontractor C as its agent on a copy of the certificate.

5. Subcontractor B or Subcontractor C must provide a copy of the certificate to the supplier when purchasing tangible personal property exempt under Code Section 12-36-2120(29).

6. All books and records support the existence of an agency relationship.

Note: Sale or purchases of tangible personal property used or consumed by the purchaser (contractor or subcontractor) are subject to the tax. The exemption in Code Section 12-36-2120(29) only applies property where title and possession of the property transfers from the contractor or subcontractor to the federal government at the time of purchase or after the time of purchase or the property purchased becomes part of real or personal property owned by the federal government.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation. There will be a minimal increase to general fund collections.

Statement of Rationale:

The proposal to add SC Regulation 117-314.11 is needed to ensure that taxpayers understand how the exemption in Code Section 12-36-2120(29) applies to the purchase of tangible personal property by a construction subcontractor for use in a federal government construction project in South Carolina for which the subcontractor has a written contract with a general contractor who has a written contract for the project with the federal government

The proposal to add this regulation is also reasonable in that it represents longstanding Department policy.

Document No. 4005
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

117-1350. Deed Recording Fee

Synopsis:

The South Carolina Department of Revenue is considering amending SC Regulation 117-1350 concerning the deed recording fee to incorporate longstanding Department of Revenue policy concerning common real estate transactions and deed recording fee issues. This policy is presently set forth in an advisory opinion issued by the Department – SC Revenue Ruling #04-6 – and the Department’s deed recording fee manual.

Instructions: Amend SC Regulation 117-1350 concerning the deed recording fee to incorporate longstanding Department of Revenue policy concerning common real estate transactions and deed recording fee issues.

Text:

117-1350 Deed Recording Fee

South Carolina imposes a deed recording fee pursuant to Chapter 24 of Title 12. This fee is composed of two fees – a state fee and a county fee. The fee is collected by the office of the clerk of court or register of deeds, which remits the state portion of the fee to the Department of Revenue on a monthly basis.

The purpose of this regulation is to provide a comprehensive discussion of the application of the deed recording fee to a wide variety of real estate transactions.

117-1350.1 Basis for the Fee

The deed recording fee is imposed for the privilege of recording a deed based on the transaction of transferring realty from one person to another person.

When the consideration paid for realty is money, then the deed recording fee is based on the money paid.

When the consideration paid for realty is “money’s worth” (e.g., other realty, stocks, forgiveness of debt), then the taxpayer must base the deed recording fee upon one of the following:

- (a) the fair market value of the consideration paid,
- (b) the fair market value of the realty being transferred, or

(c) the fair market value for property tax purposes of the realty being transferred.

When the realty is being “transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner,” or the realty is being “transferred to a trust or as a distribution to a trust beneficiary,” then the taxpayer must base the deed recording fee upon one of the following:

(a) the fair market value of the realty being transferred, or

(b) the fair market value for property tax purposes of the realty being transferred.

It should also be noted that a “deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer.” As such, when the fair market value of the realty being transferred is used to calculate the fee, the value of the lien or encumbrance qualifying for this deduction may be deducted from the realty’s fair market value before calculating the deed recording fee due.

The following are examples of the “value” as defined in deed recording fee law and used in determining the deed recording fee due:

Example 1 Transaction: Realty transferred from John Doe to Jerry Public for \$1,000 and the assumption of a mortgage with a balance of \$81,000.

Value: \$1,000. Since the mortgage existed on the realty before the transfer and remained on the realty after the transfer, the \$81,000 is deducted from the total consideration of \$82,000.

Example 2 Transaction: Realty transferred from John Doe to Jerry Public for \$82,000. The grantor paid \$1,000 down and \$81,000 at closing by obtaining a mortgage at a local financial institution.

Value: \$82,000. Since the mortgage did not exist on the realty before the transfer, the \$81,000 cannot be deducted from the total consideration of \$82,000.

Example 3 Transaction: Realty transferred from John Doe to XYZ Bank for cancellation of debt. The balance due on the debt, plus accumulated interest, is \$121,000. This is not a deed in lieu of foreclosure.

Value: \$121,000. By statute, consideration includes the forgiveness or cancellation of a debt. However, the value used may be less than \$121,000 if the fair market value of the realty is less than \$121,000 and the taxpayer elects to use the fair market value of the realty being transferred in determining fair market value of the consideration. In addition, the taxpayer may elect to use the fair market value for property tax purposes in determining fair market value.

Example 4 Transaction: Realty transferred from John Doe to Jerry Public for the cancellation of a debt, not associated with the realty, of \$50,000.

Value: \$50,000. By statute, consideration includes the forgiveness or cancellation of a debt. However, the value used may be less than \$50,000 if the fair market value of the realty is less than \$50,000 and the taxpayer elects to use the fair market value of the realty being transferred in determining fair market value of the consideration. In addition, the taxpayer may elect to use the fair market value for property tax purposes in determining fair market value.

Example 5 Transaction: Realty transferred from XYZ Corporation to one of its stockholders - John Doe. The fair market value of the realty for property tax purposes is \$90,000. No lien or encumbrance existed on the realty prior to the transfer.

Value: \$90,000. By statute, the fair market value of the realty must be used in calculating the fee due in a transaction between a corporation and one of its stockholders. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the law.

117-1350.2 Examples of the Application of the Deed Recording Fee to Various Real Estate Transactions

The following are questions and answers to common real estate transactions and issues.

Value:

1. What is the basis for the deed recording fee?

The basis for the deed recording fee is the realty's value. Code Section 12-24-30 defines the term "value" and states:

(A) For purposes of this chapter, the term "value" means the consideration paid or to be paid in money or money's worth for the realty including other realty, personal property, stocks, bonds, partnership interest, and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of a right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration under the provisions of this section. However, in the case of realty transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value.

(B) A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer.

(C) Taxpayers may elect to use the fair market value as determined for property tax purposes in determining fair market value under the provisions of this section.

2. If realty is transferred for money, and not money's worth such as services, other realty, forgiveness of debt, etc., what is the basis for the deed recording fee if the transaction does not involve realty transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner, or realty transferred to a trust or as a distribution to a trust beneficiary?

Code Section 12-24-30, in subsection (A), states that the fair market value of the realty may be used "in determining fair market value of the consideration under the provisions of this section." The only mention to fair market value in subsection (A) concerns when the consideration is in money's worth, or when the transaction involves a business entity and its owners or a trust. Subsection (C) allows the fair market value for property taxes to be used again only "in determining fair market value under the provisions of this section."

Therefore, if realty is transferred for money, and not money's worth, the basis for the deed recording fee is the money paid or to be paid if the transaction does not involve realty transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner, or realty transferred to a trust or as a distribution to a trust beneficiary. The realty's fair market value cannot be used in this case.

3. If realty is transferred for money's worth, such as services, other realty, forgiveness of debt, etc., what is the basis for the deed recording fee if the transaction does not involve realty transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner, or realty transferred to a trust or as a distribution to a trust beneficiary?

If realty is transferred for money's worth, such as services, other realty, forgiveness of debt, etc., and the transaction does not involve realty transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner, or realty transferred to a trust or as a distribution to a trust beneficiary, then the taxpayer must base the deed recording fee upon one of the following:

- (a) the fair market value of the consideration paid,
- (b) the fair market value of the realty being transferred, or
- (c) the fair market value for property tax purposes of the realty being transferred.

It should also be noted that a "deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and

remaining on the land, tenement, or realty after the transfer.” As such, when the fair market value of the realty being transferred is used to calculate the fee, the value of the lien or encumbrance qualifying for this deduction may be deducted from the realty’s fair market value before calculating the deed recording fee due.

4. What is the basis for the deed recording fee if the transaction involves realty transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner, or realty transferred to a trust or as a distribution to a trust beneficiary?

When the realty is being “transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner,” or the realty is being “transferred to a trust or as a distribution to a trust beneficiary,” then the taxpayer must base the deed recording fee upon one of the following:

- (a) the fair market value of the realty being transferred, or
- (b) the fair market value for property tax purposes of the realty being transferred.

It should also be noted that a “deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer.” As such, when the fair market value of the realty being transferred is used to calculate the fee, the value of the lien or encumbrance qualifying for this deduction may be deducted from the realty’s fair market value before calculating the deed recording fee due.

Responsible Person Signing the Affidavit:

5. Who may sign the affidavit required under Code Section 12-24-70?

The affidavit required under Code Section 12-24-70 must be signed by a responsible person connected with the transaction and the affidavit must state that connection. A “responsible person connected with the transaction” includes, but is not limited to, the grantor, grantee, and an attorney involved in the transaction. However, secretaries, paralegals, runners, and other administrative personnel do not qualify as a “responsible person connected with the transaction” and, therefore, may not sign the affidavit.

Realty Located in More Than One County:

6. If realty is located in more than one county, how should the deed recording fee be paid when the deed is filed in each county?

Code Section 12-24-50 answers this question and states:

The fee imposed by this chapter must be remitted to the clerk of court or the register of deeds in the county in which the realty is located and recorded. If the realty is located in more than one county, the person having the deed recorded in a county must state by

affidavit what portion of the value of the realty is in that county and payment of the fee must be made based on the proportionate value of the realty located in that county.

Unrecorded Deeds:

7. Are deeds that transfer realty but are not recorded at the courthouse (the office of the clerk of court, register of deeds, register of mesne conveyance or other recording official) subject to the deed recording fee?

Deeds that transfer realty but are not recorded at the courthouse (the office of the clerk of court, register of deeds, register of mesne conveyance or other recording official) are not subject to the deed recording fee since under Code Section 12-24-10 “a recording fee is imposed for the privilege of recording a deed” and therefore the deed recording fee is not applicable until the deed is recorded.

Refunds:

8. What are the procedures for applying for a refund of the deed recording fee?

The deed recording fee requires that each deed have a notation placed upon it by the Clerk of Court or the Register of Deeds (“ROD”). This notation must include the date the deed was filed, the fee collected, and any other information the county may require. The notation must state “Exempt” if the transaction falls within one of the exemptions provided under Code Section 12-24-40.

If a taxpayer seeks a refund of any fee paid, the following procedure must be followed:

(a) The original deed and the original affidavit (if the requirement for the affidavit has not been waived by the clerk or register) must be presented to the Clerk of Court or ROD. The Clerk or ROD will verify that the notation on the deed is the notation placed on the deed by the Clerk or ROD. The Clerk or ROD will then sign a letter or form verifying that the notation is authentic and present this to the taxpayer.

(b) The taxpayer should then forward the original deed, the original affidavit and the notation verification letter or form to the Department of Revenue. The taxpayer should also include a cover letter requesting the refund and containing all the information required by Code Section 12-60-470. All refund requests for deed recording fees should be mailed to:

SC Department of Revenue
Refund Request - Deed Recording Fee
P.O. Box 125
Columbia, South Carolina 29214

All refund requests received without the notation verification letter or form will be sent back to the taxpayer with a letter stating that the notation must first be verified by the

Clerk or ROD and that the refund request must contain the verification letter or form. Refunds will also not be issued unless the Department receives the original deed and the original affidavit (unless the requirement for the affidavit has been previously waived by the Clerk or ROD).

(c) If a refund is due, the Department will refund the State portion to the taxpayer and issue an order to the Clerk or ROD to refund the taxpayer the county portion of the fee. The Clerk or ROD should not issue a refund for the county portion of the fee unless they have received a refund order from the Department of Revenue. The Department, prior to returning the original deed and other documentation to the taxpayer, will note on the deed the date of the refund and the amount of the refund issued/ordered.

(d) If the Department determines a refund is not due, the Department will advise the taxpayer. The taxpayer may appeal this denial of the refund under the provisions of Code Sections 12-60-470 and 12-24-150.

Gifts From One Individual To Another Individual:

9. Are deeds that transfer realty from one individual to another individual as a gift (no consideration paid of any kind) subject to the deed recording fee?

Deeds that transfer realty from one individual to another individual as a gift (no consideration paid of any kind) are exempt from the deed recording fee under Code Section 12-24-40(1).

Family Deeds:

10. Are deeds that transfer realty to a spouse subject to the deed recording fee?

Deeds that transfer realty to a spouse are exempt from the deed recording fee under Code Section 12-24-40(4) regardless of whether or not any consideration was paid or will be paid for the transfer.

11. Are deeds that transfer realty to a family member, other than a spouse, subject to the deed recording fee?

Deeds that transfer realty to a family member, other than a spouse, are subject to the deed recording fee based on the consideration paid for the realty, unless otherwise exempt from the deed recording fee. The following are examples of deeds between family members (other than spouses) that are subject to the deed recording fee unless otherwise exempt under Code Section 12-24-40:

(a) a transfer to a brother for \$30,000.00,

(b) a transfer to a sister in exchange for the forgiveness of a debt,

- (c) a transfer to a child for \$10,000.00
- (d) a transfer to a brother in exchange for other realty, and
- (e) a transfer to a sister in exchange for paying off the mortgage on the realty.

The following are examples of deeds between family members (other than spouses) that are exempt from the deed recording fee under Code Section 12-24-40:

- (a) a transfer in which the consideration that is paid or will be paid is equal to or less than \$100.00 (12-24-40(1)),
- (b) a transfer in order to partition realty, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition (12-24-40(5)),
- (c) a transfer that constitutes a contract for the sale of timber to be cut (12-24-40(7)) (see questions concerning timber deeds),
- (d) a transfer in which the realty is subject to a mortgage and the family member receiving the realty is the mortgagee and the transfer constitutes a deed in lieu of foreclosure executed by the family member that is the mortgagor or a deed executed pursuant to a foreclosure proceeding (12-24-40(13)). (see questions concerning foreclosure proceedings), and
- (e) a transfer otherwise exempt under the provisions of Code Section 12-24-40.

12. Are deeds that transfer realty to a former spouse subject to the deed recording fee?

Deeds that transfer realty to a former spouse are subject to the deed recording fee based on the consideration paid for the realty, unless otherwise exempt from the deed recording fee. The following are examples of deeds to a former spouse that are subject to the deed recording fee unless otherwise exempt under Code Section 12-24-40:

- (a) a transfer in exchange for past due alimony payments when the transfer of the realty is not pursuant to the terms of the divorce decree or settlement,
- (b) a transfer for \$30,000.00,
- (c) a transfer in exchange for the forgiveness of a debt,
- (d) a transfer in exchange for other realty, and
- (e) a transfer in exchange for paying off the mortgage on the realty.

The following are examples of deeds to a former spouse that are exempt from the deed recording fee under Code Section 12-24-40:

- (a) a transfer in which the consideration that is paid or will be paid is equal to or less than \$100.00 (12-24-40(1)),
- (b) a transfer pursuant to the terms of the divorce decree or settlement,
- (c) a transfer in order to partition realty, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition (12-24-40(5)),
- (d) a transfer that constitutes a contract for the sale of timber to be cut (12-24-40(7)) (see questions concerning timber deeds),
- (e) a transfer in which the realty is subject to a mortgage and the former spouse receiving the realty is the mortgagee and the transfer constitutes a deed in lieu of foreclosure executed by the grantor as the mortgagor or a deed executed pursuant to a foreclosure proceeding (12-24-40(13)). (see questions concerning foreclosure proceedings), and
- (f) a transfer otherwise exempt under the provisions of Code Section 12-24-40.

Charitable Deeds:

13. Are deeds that transfer realty to a church or other charitable organization subject to the deed recording fee?

Deeds that transfer realty to a church or other charitable organization are subject to the deed recording fee based on the consideration paid for the realty, unless otherwise exempt from the deed recording fee. The following are examples of deeds to a church or other charitable organization that are subject to the deed recording fee unless otherwise exempt under Code Section 12-24-40:

- (a) a transfer for \$50,000.00,
- (b) a transfer in exchange for other realty whether or not the transaction qualifies as a like-kind exchange for federal income tax purposes (both deeds are subject to the deed recording fee), and
- (c) a transfer of realty with a fair market value of \$100,000.00 for only \$50,000.00 (the deed recording fee is based upon \$50,000.00).

Note: If the church or other charitable organization is a stockholder, partner, limited liability company member, or trust beneficiary of the grantor (corporation, partnership, limited liability company or trust), then the deed recording fee is based on the fair market value of the realty or the fair market value of the realty for property tax purposes.

The following are examples of deeds to a church or other charitable organization that are exempt from the deed recording fee under Code Section 12-24-40:

- (a) a transfer in which the consideration that is paid or will be paid is equal to or less than \$100.00 (12-24-40(1)),
- (b) a transfer in order to partition realty, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition (12-24-40(5)),
- (d) a transfer that constitutes a contract for the sale of timber to be cut (12-24-40(7)) (see questions concerning timber deeds),
- (e) a transfer in which the realty is subject to a mortgage and the church or other charitable organization receiving the realty is the mortgagee and the transfer constitutes a deed in lieu of foreclosure executed by the grantor as the mortgagor or a deed executed pursuant to a foreclosure proceeding (12-24-40(13)) (see questions concerning foreclosure proceedings), and
- (f) a transfer otherwise exempt under the provisions of Code Section 12-24-40.

14. Are deeds that transfer realty from a church or other charitable organization to an individual or business subject to the deed recording fee?

Deeds that transfer realty from a church or other charitable organization to an individual or business are subject to the deed recording fee based on the consideration paid for the realty, unless otherwise exempt from the deed recording fee. The following are examples of deeds to a church or other charitable organization that are subject to the deed recording fee unless otherwise exempt under Code Section 12-24-40:

- (a) a transfer for \$50,000.00, and
- (b) a transfer in exchange for other realty whether or not the transaction qualifies as a like-kind exchange for federal income tax purposes (both deeds are subject to the deed recording fee).

The following are examples of deeds from a church or other charitable organization to an individual or business that are exempt from the deed recording fee under Code Section 12-24-40:

- (a) a transfer in which the consideration that is paid or will be paid is equal to or less than \$100.00 (12-24-40(1)),

(b) a transfer in order to partition realty, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition (12-24-40(5)),

(c) a transfer that constitutes a contract for the sale of timber to be cut (12-24-40(7)) (see questions concerning timber deeds),

(d) a transfer in which the realty is subject to a mortgage and the individual or business receiving the realty is the mortgagee and the transfer constitutes a deed in lieu of foreclosure executed by the church or other charitable organization as the mortgagor or a deed executed pursuant to a foreclosure proceeding (12-24-40(13)) (see questions concerning foreclosure proceedings), and

(e) a transfer otherwise exempt under the provisions of Code Section 12-24-40.

Deeds from an Estate:

15. Are deeds that transfer realty from an estate to a beneficiary subject to the deed recording fee?

Deeds that transfer realty from an estate to a beneficiary are subject to the deed recording fee based on the consideration paid for the realty, unless otherwise exempt from the deed recording fee. The following are examples of deeds from an estate to a beneficiary that are subject to the deed recording fee unless otherwise exempt under Code Section 12-24-40:

(a) a transfer pursuant to the will where the will requires the beneficiary to pay a consideration for the realty, and

(b) a transfer in which the beneficiary of the realty directs the personal representative of the estate to transfer the realty directly to a third party in exchange for a consideration paid to the personal representative or the beneficiary (e.g., cash, forgiveness of a debt, etc.).

The following are examples of deeds from an estate to a beneficiary that are exempt from the deed recording fee under Code Section 12-24-40:

(a) a transfer in which the consideration that is paid or will be paid is equal to or less than \$100.00 (12-24-40(1)),

(b) a deed of distribution assigning, transferring, or releasing real property to the distributee of a decedent's estate pursuant to Code Section 62-3-907 as evidence of the distributee's title to the property, and

(c) a transfer otherwise exempt under the provisions of Code Section 12-24-40.

16. Are deeds that transfer realty from an estate to a third party for a consideration in order to pay off debts of the estate subject to the deed recording fee?

Deeds that transfer from an estate to a third party for a consideration in order to pay off debts of the estate are subject to the deed recording fee if the consideration paid (including debts forgiven) for the transfer of realty is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

Deeds to and from Trusts:

17. Are deeds that transfer realty into a trust subject to the deed recording fee?

Deeds that transfer realty into a trust are subject to the deed recording fee based on the fair market value of the realty, except for the following deeds:

- (a) a transfer to a trust by a beneficiary of the trust or by a person who will become a beneficiary of the trust as a result of the transfer as long as no consideration is paid for the transfer other than beneficial interest in the trust or an increase in value in the beneficial interest in the trust (12-24-40(8)),
- (b) a transfer from one family trust to another family trust for the same family, provided no consideration is paid or will be paid for the transfer (12-24-40(8) and 12-24-40(9)),
- (c) a transfer in order to partition realty, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition (12-24-40(5)),
- (d) a transfer in which the realty is subject to a mortgage and the trust receiving the realty is the mortgagee and the transfer constitutes a deed in lieu of foreclosure executed by the mortgagor or a deed executed pursuant to a foreclosure proceeding (12-24-40(13)) (see questions concerning foreclosure proceedings), and
- (e) a transfer otherwise exempt under the provisions of Code Section 12-24-40.

18. Are deeds that transfer realty from a trust to an individual or other legal entity subject to the deed recording fee?

Deeds that transfer realty from a trust to an individual or other legal entity are subject to the deed recording fee based on the fair market value of the realty if the grantee is a beneficiary of the trust, except for the following deeds:

- (a) a transfer from a family trust to a trust beneficiary as long as no consideration is paid for the transfer other than a reduction in the grantee's interest in the family trust (12-24-40(9)),

(b) a transfer from one family trust to another family trust for the same family, provided no consideration is paid or will be paid for the transfer (12-24-40(8) and 12-24-40(9)),

(c) a transfer in order to partition realty, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition (12-24-40(5)),

(d) a transfer in which the realty is subject to a mortgage and the trust beneficiary receiving the realty is the mortgagee and the transfer constitutes a deed in lieu of foreclosure executed by the family trust that is the mortgagor or a deed executed pursuant to a foreclosure proceeding (12-24-40(13)) (see questions concerning foreclosure proceedings), and

(e) a transfer otherwise exempt under the provisions of Code Section 12-24-40.

Deeds that transfer realty from a trust to an individual or other legal entity are subject to the subject to the deed recording fee based on the consideration paid or to be paid if the grantee is not a beneficiary of the trust, the consideration paid or to be paid is more than \$100.00, and the transfer is not otherwise exempt under Code Section 12-24-40.

Deeds to and from Partnerships:

19. Are deeds that transfer realty from a partner to the partnership subject to the deed recording fee?

Deeds that transfer realty from a partner to the partnership are subject to the deed recording fee based on the fair market value of the realty, except for the following deeds:

(a) a transfer from a partner to the partnership if no consideration is paid for the transfer other than additional interest in the partnership or an increase in value in the partner's interest in the partnership (12-24-40(8)),

(b) a transfer in order to partition realty owned jointly by the partner and the partnership of which he is a partner, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition (12-24-40(5)), and

(c) a transfer that is otherwise exempt under Code Section 12-24-40.

20. Are deeds that transfer realty from the partnership to a partner subject to the deed recording fee?

Deeds that transfer realty from the partnership to a partner, including deeds transferring realty to the partner upon liquidation of the partnership, are subject to the deed recording fee based on the fair market value of the realty, except for the following deeds:

(a) a transfer from a family partnership to a partner as long as no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership (12-24-40(9)),

(b) a transfer in order to partition realty owned jointly by the partner and the partnership of which he is a partner, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition (12-24-40(5)),

(c) a transfer in which the realty is subject to a mortgage and the partner receiving the realty is the mortgagee and the transfer constitutes a deed in lieu of foreclosure executed by the partnership that is the mortgagor or a deed executed pursuant to a foreclosure proceeding (12-24-40(13)) (see questions concerning foreclosure proceedings), and

(d) a transfer otherwise exempt under the provisions of Code Section 12-24-40.

21. Are deeds that transfer realty from a non-partner to a partnership, or from a partnership to a non-partner, subject to the deed recording fee?

Deeds that transfer realty from a non-partner to a partnership are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

If a consideration of \$100.00 or less is paid or the transfer is otherwise exempt under Code Section 12-24-40, then the deed transferring realty from a non-partner to the partnership is exempt from the deed recording fee.

22. If Partnership A and Partnership B have the same partners but neither partnership is a partner in the other, is a deed that transfers realty from Partnership A to Partnership B subject to the deed recording fee?

If Partnership A and Partnership B have the same partners but neither partnership is a partner in the other, then a deed that transfers realty from Partnership A to Partnership B is subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

If a consideration of \$100.00 or less is paid or the transfer is otherwise exempt under Code Section 12-24-40, then the deed transferring realty from Partnership A to Partnership B is exempt from the deed recording fee.

Limited Liability Company ("LLC") Deeds:

23. How are deeds that transfer realty to and from a limited liability company ("LLC") treated under the deed recording fee law?

Deeds that transfer realty to and from an LLC, which is treated as a partnership for South Carolina income tax purposes, are treated in the same manner under the deed recording

fee as deeds that transfer realty to and from a partnership. See the section in this regulation concerning deeds to and from partnerships.

Deeds that transfer realty to and from an LLC, which is treated as a corporation for South Carolina income tax purposes, are treated in the same manner under the deed recording fee as deeds that transfer realty to and from a corporation. See the section in this regulation concerning deeds to and from corporations.

Deeds that transfer realty to and from a single member LLC (“SMLLC”), which is treated as a corporation for South Carolina income tax purposes, are treated in the same manner under the deed recording fee as deeds that transfer realty to and from a corporation. See the section in this regulation concerning deeds to and from corporations.

Deeds that transfer realty to the SMLLC from its single member, and deeds that transfer realty to the single member of the SMLLC from the SMLLC, are not subject to the deed recording fee if the SMLLC is ignored for all tax purposes under the provisions of Code Section 12-2-25(B).

Deeds that transfer realty from the SMLLC to a person who is not the single member, and deeds that transfer realty from a person who is not the single member to the SMLLC, are treated as if the realty were transferred from or to the single member if the SMLLC is ignored for all tax purposes under the provisions of Code Section 12-2-25(B). As such, the application will depend on the facts and circumstances of the transfer and on whether the single member is an individual, partnership, LLC, trust or corporation.

Written instruments whereby a single member transfers its interest in the SMLLC to another person are treated as if the realty were transferred from the single member to the other person if the SMLLC is ignored for all tax purposes under the provisions of Code Section 12-2-25(B). As such, the application will depend on the facts and circumstances of the transfer and on whether the single member selling the interest is an individual, partnership, LLC, trust or corporation and whether the person purchasing the interest, the new single member, is an individual, partnership, LLC, trust or corporation.

Deeds to and from Corporations:

24. Are deeds that transfer realty from a stockholder to the corporation subject to the deed recording fee?

Deeds that transfer realty from a stockholder to the corporation are subject to the deed recording fee based on the fair market value of the realty, except for the following deeds:

(a) a transfer from a stockholder to the corporation if no consideration is paid for the transfer other than stock in the corporation or an increase in value in the stockholder’s stock in the corporation (12-24-40(8)),

(b) a transfer in which the realty is subject to a mortgage and the corporation receiving the realty is the mortgagee and the transfer constitutes a deed in lieu of foreclosure executed by the stockholder that is the mortgagor or a deed executed pursuant to a foreclosure proceeding (12-24-40(13)) (see questions concerning foreclosure proceedings),

(c) a transfer in order to partition realty owned jointly by the stockholder and the corporation of which he is a stockholder, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition (12-24-40(5)), and

(d) a transfer that is otherwise exempt under Code Section 12-24-40.

25. Are deeds that transfer realty from the corporation to one of the stockholders subject to the deed recording fee?

Deeds that transfer realty from the corporation to one of the stockholders, including deeds transferring realty to the stockholder upon dissolution of the corporation, are subject to the deed recording fee under Code Section 12-24-40(8) except for the following deeds:

(a) a transfer in order to partition realty owned jointly by the stockholder and the corporation of which he is a stockholder, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition (12-24-40(5)),

(b) a transfer in which the realty is subject to a mortgage and the stockholder receiving the realty is the mortgagee and the transfer constitutes a deed in lieu of foreclosure executed by the corporation that is the mortgagor or a deed executed pursuant to a foreclosure proceeding (12-24-40(13)) (see questions concerning foreclosure proceedings), and

(c) a transfer otherwise exempt under the provisions of Code Section 12-24-40.

26. Are deeds that transfer realty from a non-stockholder to a corporation, or from a corporation to a non-stockholder, subject to the deed recording fee?

Deeds that transfer realty from a non-stockholder to a corporation are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

If a consideration of \$100.00 or less is paid or will be paid or the transfer is otherwise exempt under Code Section 12-24-40, then the deed transferring realty from a non-stockholder to the corporation is exempt from the deed recording fee.

27. If Corporation A and Corporation B have the same stockholders but neither corporation is a stockholder in the other, is a deed that transfers realty from Corporation A to Corporation B subject to the deed recording fee?

If Corporation A and Corporation B have the same stockholders but neither corporation is a stockholder in the other, then a deed that transfers realty from Corporation A to Corporation B is subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

If a consideration of \$100.00 or less is paid or will be paid or the transfer is otherwise exempt under Code Section 12-24-40, then the deed transferring realty from Corporation A to Corporation B is exempt from the deed recording fee.

Master-in-Equity Deeds:

28. Are deeds that transfer realty from a Master-in-Equity to an individual or business subject to the deed recording fee?

Deeds that transfer realty from a Master-in-Equity to an individual or business are subject to the deed recording fee, with the grantee liable for the fee under the provisions of Code Section 12-24-20(B), unless the transfer is otherwise exempt under Code Section 12-24-40.

Note: Since the liability for the deed recording fee has shifted to the grantee in the case of a Master-in-Equity deed, the deed may be exempt if the grantee is otherwise exempted by law. For example, the following deeds are exempt from the deed recording fee when the grantor is a Master-in-Equity:

Grantee	Reason for Exemption
Federal, State or Local Government	12-24-40(2)
Federal Credit Union	12-24-40(2)
Government National Mortgage Association	12-24-40(2)
Farm Credit Bank	12-24-40(2)
Production Credit Association	12-24-40(2)
Bank for Cooperatives	12-24-40(2)
Federal Land Bank Association	12-24-40(2)
U.S. Veterans Administration	12-24-40(2)
Federal National Mortgage Association	12-24-40(3), 12 USCA 1717, and 12 USCA 1723a
Federal Home Loan Mortgage Corporation	12-24-40(3) and 12 USCA 1452

Note: By statute or case law, Federal Credit Unions, the Government National Mortgage Association, Farm Credit Banks, Production Credit Associations, Banks for

Cooperatives, and Federal Land Bank Associations are considered instrumentalities of the federal government.

The Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”) are not instrumentalities of the federal government, but have been granted exemption from most state and local taxes when the liability for the tax falls upon them. Since the liability for the fee transfers to the grantee in the case of a deed from a Master-in-Equity to Fannie Mae or Freddie Mac, the transfer is exempt from the deed recording fee pursuant to federal law.

Foreclosure Deeds:

29. Are deeds that transfer realty, subject to a mortgage, from the mortgagor to the mortgagee subject to the deed recording fee?

Deeds that transfer realty, subject to a mortgage, from the mortgagor to the mortgagee are exempt from the deed recording fee under Code Section 12-24-40(13) if the transfer is by a deed in lieu of foreclosure executed by the mortgagor.

Deeds that transfer realty from the mortgagor to the mortgagee for cancellation or forgiveness of the mortgage are subject to the deed recording fee and do not come within the exemption under Code Section 12-24-40(13) unless the books and records of the parties indicate that the transfer was made in lieu of foreclosure. If the Department determines after the deed is recorded that the transfer was not in lieu of foreclosure, the Department will assess the appropriate deed recording fee, penalty and interest.

30. Are deeds that transfer realty, subject to a mortgage, to the mortgagee pursuant to a foreclosure proceeding subject to the deed recording fee?

Deeds that transfer realty, subject to a mortgage, to the mortgagee pursuant to a foreclosure proceeding are exempt from the deed recording fee under Code Section 12-24-40(13).

31. Are deeds that transfer realty, subject to a mortgage, to the assignee of the mortgagee pursuant to a foreclosure proceeding subject to the deed recording fee?

Since the assignee was not the mortgagee of record at the time of the sale, the provisions of Code Section 12-24-40(13) are not applicable.

However, if the assignee is the federal government, or the deed is a Master-in-Equity deed and the assignee is the Federal National Mortgage Association or the Federal Home Loan Mortgage, the deed that transfers the realty, subject to a mortgage, to the assignee of the mortgagee pursuant to a foreclosure proceeding is not subject to the deed recording fee.

Chapter 7 Bankruptcy Deeds:

32. Are deeds that transfer realty under a Chapter 7 bankruptcy subject to the deed recording fee?

Deeds that transfer realty under a Chapter 7 bankruptcy to a person who is not a stockholder, partner, or owner of the business are subject to the deed recording fee if a consideration of more than \$100.00 is paid or will be paid and the transfer is not otherwise exempt under Code Section 12-24-40.

Deeds that transfer realty under a Chapter 7 bankruptcy to a person who is a stockholder, partner, or owner of the business are subject to the deed recording fee based on the fair market value of the realty unless the transfer is otherwise exempt under Code Section 12-24-40.

Chapter 11 Bankruptcy Deeds:

33. Are deeds that transfer realty under a Chapter 11 bankruptcy subject to the deed recording fee?

Deeds that transfer realty under a Chapter 11 bankruptcy are exempt from the deed recording fee under Code Section 12-24-40(3) and 11 USCA Section 1146 if the transfer is under a plan confirmed under 11 USCA Section 1129. If the transfer is not under a plan confirmed under 11 USCA Section 1129, then the deed transferring the realty is subject to the deed recording fee if consideration of more than \$100.00 is paid for the transfer and the transfer is not otherwise exempt under Code Section 12-24-40.

Chapter 12 Bankruptcy Deeds:

34. Are deeds that transfer realty under a Chapter 12 bankruptcy subject to the deed recording fee?

Deeds that transfer realty under a Chapter 12 bankruptcy are exempt from the deed recording fee under Code Section 12-24-40(3) and 11 USCA Section 1231 if the transfer is under a plan confirmed under 11 USCA Section 1225. If the transfer is not under a plan confirmed under 11 USCA Section 1225, then the deed transferring the realty is subject to the deed recording fee if consideration of more than \$100.00 is paid for the transfer and the transfer is not otherwise exempt under Code Section 12-24-40.

Chapter 13 Bankruptcy Deeds:

35. Are deeds that transfer realty under a Chapter 13 bankruptcy subject to the deed recording fee?

Deeds that transfer realty under a Chapter 13 bankruptcy to a person who is not a stockholder, partner, or owner of the business are subject to the deed recording fee if a consideration of more than \$100.00 is paid or will be paid and the transfer is not otherwise exempt under Code Section 12-24-40.

Deeds that transfer realty under a Chapter 13 bankruptcy to a person who is a stockholder, partner, or owner of the business are subject to the deed recording fee based on the fair market value of the realty unless the transfer is otherwise exempt under Code Section 12-24-40.

State and Local Government Deeds:

36. Are deeds that transfer realty to the State, or to a political subdivision of the State (e.g., counties, cities, school districts), subject to the deed recording fee?

Deeds that transfer realty to the State, or to a political subdivision of the State (e.g., counties, cities, school districts), are exempt from the deed recording fee under Code Section 12-24-40(2).

37. Are deeds that transfer realty from the State, or from a political subdivision of the State (e.g., counties, cities, school districts), to a non-governmental entity subject to the deed recording fee?

Deeds that transfer realty from the State, or from a political subdivision of the State (e.g., counties, cities, school districts), to a non-governmental entity are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

Note: Since under Code Section 12-24-20(B) the liability for the deed recording fee has shifted to the grantee in the case of a deed from the State, or from a political subdivision of the State (e.g., counties, cities, school districts), to a non-governmental entity, the deed may be exempt if the grantee is otherwise exempted by law.

38. Are deeds that transfer realty from the State, or from a political subdivision of the State (e.g., counties, cities, school districts), to another governmental entity subject to the deed recording fee?

Deeds that transfer realty from the State, or from a political subdivision of the State (e.g., counties, cities, school districts), to another governmental entity are exempt from the deed recording fee under Code Section 12-24-40(2).

Federal Government Deeds:

39. Are deeds that transfer realty to the federal government subject to the deed recording fee?

Deeds that transfer realty to the federal government are exempt from the deed recording fee under Code Section 12-24-40(2).

40. Are deeds that transfer realty from the federal government to a non-governmental entity subject to the deed recording fee?

Deeds that transfer realty from the federal government to a non-governmental entity are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

Note: Since under Code Section 12-24-20(B) the liability for the deed recording fee has shifted to the grantee in the case of a deed from the federal government, the deed may be exempt if the grantee is otherwise exempted by law.

Federal Credit Union Deeds:

41. Are deeds that transfer realty to a federal credit union subject to the deed recording fee?

Deeds that transfer realty to a federal credit union are exempt from the deed recording fee under Code Section 12-24-40(2) since federal credit unions are considered instrumentalities of the federal government. See 1986 Op. Atty. Gen. No. 86-72, and a second South Carolina Attorney General Opinion dated March 26, 1991, which both concluded that federally chartered credit unions are instrumentalities of the federal government.

42. Are deeds that transfer realty from the federal credit union to a non-governmental entity subject to the deed recording fee?

Deeds that transfer realty from a federal credit union to a non-governmental entity are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

Note: Since under Code Section 12-24-20(B) the liability for the deed recording fee has shifted to the grantee in the case of a deed from the federal government, the deed may be exempt if the grantee is otherwise exempted by law.

Government National Mortgage Association Deeds:

43. Are deeds that transfer realty to the Government National Mortgage Association subject to the deed recording fee?

Deeds that transfer realty to the Government National Mortgage Association are exempt from the deed recording fee under Code Section 12-24-40(2) since the Government National Mortgage Association is considered an instrumentality of the federal government pursuant to 12 USCA 1717 and 12 USCA 1723a.

44. Are deeds that transfer realty from the Government National Mortgage Association to a non-governmental entity subject to the deed recording fee?

Deeds that transfer realty from the Government National Mortgage Association to a non-governmental entity are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

Note: Since under Code Section 12-24-20(B) the liability for the deed recording fee has shifted to the grantee in the case of a deed from the federal government, the deed may be exempt if the grantee is otherwise exempted by law.

Farm Credit Bank Deeds:

45. Are deeds that transfer realty to a Farm Credit Bank subject to the deed recording fee?

Deeds that transfer realty to a Farm Credit Bank are exempt from the deed recording fee under Code Section 12-24-40(2) since a Farm Credit Bank is considered an instrumentality of the federal government pursuant to 12 USCA 2011 and 12 USCA 2023.

46. Are deeds that transfer realty from a Farm Credit Bank to a non-governmental entity subject to the deed recording fee?

Deeds that transfer realty from a Farm Credit Bank to a non-governmental entity are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

Note: Since under Code Section 12-24-20(B) the liability for the deed recording fee has shifted to the grantee in the case of a deed from the federal government, the deed may be exempt if the grantee is otherwise exempted by law.

Production Credit Association Deeds:

47. Are deeds that transfer realty to a Production Credit Association subject to the deed recording fee?

Deeds that transfer realty to a Production Credit Association are exempt from the deed recording fee under Code Section 12-24-40(2) since a Production Credit Association is considered an instrumentality of the federal government pursuant to 12 USCA 2071 and 12 USCA 2077.

48. Are deeds that transfer realty from a Production Credit Association to a non-governmental entity subject to the deed recording fee?

Deeds that transfer realty from a Production Credit Association to a non-governmental entity are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

Note: Since under Code Section 12-24-20(B) the liability for the deed recording fee has shifted to the grantee in the case of a deed from the federal government, the deed may be exempt if the grantee is otherwise exempted by law.

Federal Land Bank Association Deeds:

49. Are deeds that transfer realty to a Federal Land Bank Association subject to the deed recording fee?

Deeds that transfer realty to a Federal Land Bank Association are exempt from the deed recording fee under Code Section 12-24-40(2) since a Federal Land Bank Association is considered an instrumentality of the federal government pursuant to 12 USCA 2091 and 12 USCA 2098.

50. Are deeds that transfer realty from a Federal Land Bank Association to a non-governmental entity subject to the deed recording fee?

Deeds that transfer realty from a Federal Land Bank Association to a non-governmental entity are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

Note: Since under Code Section 12-24-20(B) the liability for the deed recording fee has shifted to the grantee in the case of a deed from the federal government, the deed may be exempt if the grantee is otherwise exempted by law.

Federal National Mortgage Association (“Fannie Mae”) Deeds:

51. Are deeds that transfer realty to the Federal National Mortgage Association (“Fannie Mae”) subject to the deed recording fee?

Deeds that transfer realty to the Federal National Mortgage Association (“Fannie Mae”) are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

52. Are deeds that transfer realty from the Federal National Mortgage Association (“Fannie Mae”) to a non-governmental entity subject to the deed recording fee?

Deeds that transfer realty from the Federal National Mortgage Association (“Fannie Mae”) to a non-governmental entity are exempt from the deed recording fee under Code Section 12-24-40(3), 12 USCA 1717, and 12 USCA 1723a.

Note: The Federal National Mortgage Association is not a federal instrumentality

Federal Home Loan Mortgage Corporation (“Freddie Mac”) Deeds:

53. Are deeds that transfer realty to the Federal Home Loan Mortgage Corporation (“Freddie Mac”) subject to the deed recording fee?

Deeds that transfer realty to the Federal Home Loan Mortgage Corporation (“Freddie Mac”) are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

54. Are deeds that transfer realty from the Federal Home Loan Mortgage Corporation (“Freddie Mac”) to a non-governmental entity subject to the deed recording fee?

Deeds that transfer realty from the Federal Home Loan Mortgage Corporation (“Freddie Mac”) to a non-governmental entity are exempt from the deed recording fee under Code Section 12-24-40(3) and 12 USCA 1452.

Note: The Federal Home Loan Mortgage Corporation (“Freddie Mac”) is not a federal instrumentality.

Timeshare Deeds:

55. Are deeds that transfer a one-week interest in a timeshare unit under a vacation time sharing ownership plan (not a “vacation time sharing lease plan”) as defined in Chapter 32 of Title 27 subject to the deed recording fee?

Deeds that transfer a one-week interest in a timeshare unit under a vacation time sharing ownership plan as defined in Chapter 32 of Title 27 are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

56. Are deeds that transfer a one-week interest in a timeshare unit under a vacation time sharing ownership plan (not a “vacation time sharing lease plan”) as defined in Chapter 32 of Title 27 to the original seller, or to the company managing the timeshare development, in exchange for forgiving any unpaid fees subject to the deed recording fee?

Deeds that transfer a one-week interest in a timeshare unit under a vacation time sharing ownership plan as defined in Chapter 32 of Title 27 to the original seller, or to the company managing the timeshare development, in exchange for forgiving any unpaid fees are subject to the deed recording fee if the consideration paid or to be paid (the amount of the unpaid fees forgiven) is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

Manufactured Homes:

57. Are deeds that transfer land and the manufactured home anchored to the land subject to the deed recording fee based on the full consideration paid or may the value of the home be deducted in calculating the deed recording fee?

Deeds that transfer land and the manufactured home anchored to the land are subject to the deed recording fee based on the full consideration paid. The manufactured home anchored to the land is realty and its value may not be deducted from the consideration paid in calculating the deed recording fee.

Note: "A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer." See Code Section 12-24-30(B).

Timber Deeds:

58. Are "timber deeds" subject to the deed recording fee?

Deeds that constitute a contract for the sale of timber to be cut are exempt from the deed recording fee under Code Section 12-24-40(7).

Deeds transferring the timber and the underlying land are subject to the deed recording fee based on the full "value" as defined in Code Section 12-24-30, unless otherwise exempt under the statute.

Mineral Rights:

59. Is the recording of a deed that conveys mineral rights (oil, gas, sand, etc.) to another person subject to the deed recording fee?

A deed that conveys mineral rights (oil, gas, sand, etc.) to another person where the minerals are to be severed by the grantee (buyer) is a deed that conveys realty. The recording of this deed is subject to the deed recording fee, unless otherwise exempt under the law, based on the value of the mineral rights as determined by Code Section 12-24-30.

Easements and Rights-of-Way:

60. Is the recording of a deed that conveys an easement or a right of way to another person subject to the deed recording fee?

The recording of a deed that conveys an easement or a right of way to another person is subject to the deed recording fee, unless otherwise exempt under the law, based on the value of the easement or right of way as determined by Code Section 12-24-30.

Note: In addition to the discussion portion of this regulation, see Questions #1 through #4 for a discussion of “value” as determined by Code Section 12-24-30.

Deeds to Obtain Construction Loans:

To best address Questions #61 and #62 (below) concerning deeds to obtain construction loans, the following example will be used:

Mr. X owns realty with a fair market value of \$22,000.00 and wants to construct a home on that realty. Mr. X hires ABC Home Contractors (“ABC”) to build a home on the realty for \$250,000.00.

In order to obtain the construction loan to build the home, the financial institution is requiring that title to the realty on which the home is to be constructed be in the name of ABC. Mr. X transfers the realty to ABC under an agreement that ABC will construct the home (per specifications agreed upon by both parties) and then transfer the realty back to Mr. X upon payment of the \$250,000.00.

Note: For purposes of this example, neither transfer involves a lien or encumbrance that existed on the realty before the transfer and remained on the realty after the transfer. In addition, neither transfer in this example involves (1) a transaction between a corporation, a partnership, or other entity and its stockholder, partner, or owner, or (2) a transaction involving a transfer of realty to a trust or as a transfer of realty as a distribution to a trust beneficiary.

61. Is the deed that transfers realty from Mr. X to ABC, as discussed in the facts above, so that ABC may obtain a construction loan to build a home for the Mr. X, subject to the deed recording fee?

The deed that transfers realty from Mr. X to ABC, so that ABC may obtain a construction loan to build a home for Mr. X, is subject to the deed recording fee based on \$22,000.00 - the fair market value of the realty.

Note: If the fair market value of the realty for property tax purposes is less than \$22,000.00, Code Section 12-24-30(C) allows the taxpayer to use that figure in computing the deed recording fee due.

62. Is the deed that transfers the same realty, as discussed in the facts above, from ABC back to Mr. X upon completion of the building subject to the deed recording fee?

The deed that transfers the same realty from ABC back to Mr. X upon completion of the home is subject to the deed recording fee based on \$250,000.00 - the money paid or to be paid pursuant to the contract for constructing the home.

63. Are deeds that transfer realty as part of an income tax deferred exchange under Internal Revenue Code Section 1031 subject to the deed recording fee?

The exchange of realty pursuant Section 1031 of the Internal Revenue Code constitutes a transfer of realty for a consideration subject to the fee unless otherwise exempted under Code Section 12-24-40.

117-1350.3 Remittance of Fee in the County in Which the Realty is Located

The fee must be remitted to the clerk of court or the register of deeds in the county in which the realty is located and recorded.

117-1350.4 Remittance of Fee for Realty Located in More Than One County

If the realty is located in more than one county, the person having the deed recorded in a county must state by affidavit what portion of the value of the realty is in that county, and payment of the fee must be made based on the proportionate value of the realty located in that county.

117-1350.5 Notation on the Instrument

Prior to recording a deed subject to the fee, the county must collect the fee and place a notation on the deed containing the following (1) the date the deed was filed; (2) the fee collected; and (3) any other information required by the county. If the deed qualifies for an exemption, the word "EXEMPT" should be placed in the notation.

117-1350.6 Affidavit of Value

An affidavit is to be filed with a deed, and that affidavit must show the value of the realty. For deeds exempt under the law, the value will not be required to be stated on the affidavit. Such affidavits must state the reason why the deed is exempt from the fee. The affidavit required by this section must be signed by a responsible person connected with the transaction and the affidavit must state that connection. Secretaries, paralegals, runners, and other administrative personnel do not qualify as a "responsible person connected with the transaction" and, therefore, may not sign the affidavit.

The clerk of court or register of deeds shall file these affidavits in his office.

The clerk of court or register of deeds may, at his discretion, waive the affidavit requirement. In addition, "[a]n affidavit is not required for an instrument or deed of distribution assigning, transferring, or releasing real property to the distributee of an estate pursuant to Section 62-3-907 as evidence of the distributee's title."

A person required to furnish the affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

117-1350.7 Assumption of a Mortgage in the Conveyance of Real Property

To set forth the true, full, and complete consideration, paid or to be paid, where any mortgage is assumed in the conveyance of real property, it is necessary for the deed or affidavit to state the Number of the Real Estate Mortgage Book and the Page Number, and the remaining balance assumed.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions' expenditures in complying with this proposed legislation. There will be a minimal increase to general fund collections.

Statement of Rationale:

The purpose of this proposal is to amend SC Regulation 117-1350 to ensure that the present regulation concerning the deed recording fee has information concerning common real estate transactions and deed recording fee issues.

The proposal to amend this regulation is also reasonable in that it represents longstanding Department policy that is consistent with the statute.

Document No. 3205
DEPARTMENT OF INSURANCE
CHAPTER 69

Statutory Authority: 1976 Code Sections 1-23-110 et seq., 12-6-3660 and 38-3-110

69-75. Tax Credits For Fortification Measures

Synopsis:

The Omnibus Coastal Property Insurance Reform Act of 2007 amended Article 25, Chapter 6, Title 12 of the S.C. Code Ann. by adding Section 12-6-3660 to require that an individual taxpayer is allowed a credit against the tax imposed pursuant to Section 12-6-510 for costs incurred to retrofit a structure qualifying as the taxpayer's legal residence pursuant to Section 12-43-220(c) to make it more resistant to loss due to hurricane, rising floodwater, or other catastrophic windstorm event. Section 12-6-3665 provides that an individual taxpayer is allowed a credit from the income tax imposed pursuant to Section 12-6-510 for South Carolina state sales or use taxes paid on purchases of tangible personal property used to retrofit the individual's legal residence pursuant to Section 12-6-3660. The Act provides the authority to the Department of Insurance to define by regulation how these fortification measures qualify for income tax credits and the evidence that the individual taxpayer shall maintain and provide to claim the credit. The proposed regulation provides detailed information about the fortification measures that qualify for the credits.

Instructions:

Add Regulation 69-75, Tax Credits For Fortification Measures, as drafted below, to the South Carolina Code of Regulations.

Text:

69-75. Tax Credits For Fortification Measures

Section 1. Purpose and Qualifying Fortification Measures

A. The purpose of this regulation is to set forth the fortification measures that qualify for the state income tax credit allowed pursuant to Section 12-6-3660.

B. An individual taxpayer is allowed a state income tax credit for costs incurred to implement the fortification measures outlined in this regulation. The fortification measures must be made to a structure qualifying as the taxpayer's legal residence pursuant to Section 12-43-220(c). The tax credit allowed pursuant to Section 12-6-3660 for any taxable year must not exceed the lesser of:

- (1) twenty-five percent of the cost incurred; or
- (2) one thousand dollars

for a qualifying residence regardless of the number of taxpayers residing in the residence.

C. The standards which must be met by an individual taxpayer to qualify for state income tax credits for costs to fortify the taxpayer's legal residence pursuant to S.C. Code Section 12-6-3660 or sales and use tax credits pursuant to S.C. Code Section 12-6-3665 are the same as those required under the SC Safe Home Program that are contained in the *South Carolina Safe Home Resource Document for Mitigation Techniques* dated July 2008, developed for the SC Safe Home Program by the Federal Alliance for Safe Homes and available at www.scsafehome.com. That document is incorporated herein by reference and available on the Department's website. Fortification measures must be accomplished in accordance with the standards contained in the *South Carolina Safe Home Resource Document for Mitigation Techniques*. All products must have an ICC Evaluation Services Legacy Report or other appropriate test reports acceptable to the local building officials for the intended use.

The South Carolina Department of Insurance must review and update the manual as necessary to comply with changes in building code standards, mitigation measures or other applicable provisions of state or federal law.

Section 2. Evidence

A. To qualify for the tax credit, the individual taxpayer must maintain evidence that the fortification measures were implemented and costs incurred. Evidence necessary to prove the taxpayer is entitled to the credit must be provided to the Department of Revenue upon request.

B. The acceptable forms of evidence include:

(1) A written certification or a report (with certification) from a licensed professional with expertise in construction techniques, building design or property inspection or appraisal including, but not limited to an: architect; appraiser; building inspector; or contractor that the fortification measure has been implemented in accordance with applicable standards. Copies of the applicable receipts must accompany the certification or report; or

(2) An Affidavit from the individual taxpayer certifying that the fortification measures have been implemented. Copies of the applicable receipts must accompany the affidavit.

Fiscal Impact Statement:

There will be no increased costs to the state or its political subdivisions. There may be a reduction in income tax collected by the state from those taxpayers who qualify for the credit. It is believed this will be offset by the anticipated benefit to the state in reduced damage from windstorm. Any such decrease will positively affect the state by reducing debris, etc. from damaged property, and will benefit the public by reducing the possibility of death, injury, and homelessness from hurricanes or other catastrophic windstorm events.

Statement of Rationale:

This proposed regulation is a part of a comprehensive initiative to address the property insurance issues in South Carolina. A healthy insurance marketplace is imperative to the well-being of our state's economy. Significant hurricane losses by the insurance industry and predictions for above-average hurricane frequency and severity have contributed to the decline of the property insurance market in South Carolina. Strengthening of residential structures should lessen the extent of damage to homes and reduce the loss of life or injury due to hurricanes or other catastrophic windstorm events.

SOUTH CAROLINA DEPARTMENT OF REVENUE

ERRATA

117-307.1 Examples of the Application of Tax to Various Charges Imposed by Hotels, Motels, and Other Facilities.

During the 2008 session of the General Assembly, SC Regulation 117-307.1 was amended to reflect the increase in the general sales and use tax rate from 5% to 6% beginning June 1, 2007. However, the admissions tax rate cited in Question #16 of this regulation was inadvertently changed from 5% to 6%. The admissions tax rate, as established by SC Code Section 12-21-2420, is 5%.

This notice is being issued to correct that error; therefore, Question #16 of SC Regulation 117-307.1 should read as follows:

Golf and Other Tourist Packages

16.Q. If a hotel has a "golf package" for \$100.00 per night, and the customer is entitled to a room at the hotel, one round of golf at a golf course at no extra charge, and a meal at no extra charge, what tax rate applies?

A. The \$100 charge would be subject to the 7% tax, except any portion forwarded to the golf course for payment of the green fee and any portion forwarded to the restaurant for payment of the meal. However, see the one exception in the "Note" in Example #1.

The following examples best explain this answer:

Example #1: The hotel receives \$100 from the guest for the golf package. The hotel pays the golf course \$30 for the guest's green fee and pays the restaurant \$5 for the guest's meal.

The hotel would be liable for the 7% tax on \$65 (\$100 - \$35). The golf course would be liable for the 5% admissions tax on \$30 and the restaurant would be liable for 6% sales tax on the sale of the meal. This calculation must be made on a guest by guest basis. In other words, the 7% tax due will be determined for each guest by multiplying 7% by the total charge for the package less the portion forwarded to the golf course for payment of the green fee and the portion forwarded to the restaurant for payment of the meal.

Note: If the hotel's guest is unable to play golf that day ("No-Show") (but still received the meal), and under terms of the golf package the guest will not be required to pay the "green fee portion" of the package, the hotel would be liable for the 7% tax on the amount it received from the guest less the amount paid by the hotel to the restaurant. For example, if the hotel determined that the "green fee portion" of the \$100 package was \$30 and required the guest to only pay \$70 for that day, then the hotel would be liable for the 7% tax on \$65 and the restaurant would be liable the 6% sales tax on the sale of meal.

If the hotel's guest is unable to play golf that day ("No-Show") (but still received the meal), and under terms of the golf package the guest must still pay the hotel the full \$100, the hotel would be liable for the 7% tax on the "accommodations portion" of the package. The golf course would not be liable for the 5% admissions tax since the guest did not play golf and the golf course did not receive an admissions fee from the hotel. However, the hotel is liable for the 6% tax on the other portion of the \$100 paid by the guest since it now represents an additional guest charge for the service of making the golf arrangements that were not used. This additional guest charge will be equal to the green fee that the hotel would have had to pay to the golf course. In other words, if the hotel would have been required to pay \$30 had the guest played golf, then the additional guest charge would be \$30. As such, the hotel would be liable for the 7% tax on \$65 and the 6% tax (as an additional guest charge for the service) on \$30 and the restaurant would be liable for the 6% sales tax on the sale of the meal.

Example #2: The hotel receives \$100 from the guest for the golf package. The hotel pays the restaurant \$5 for the guest's meal. The hotel has an agreement with the golf course to pay the golf course \$30 for the guest's green fee. When a guest does play golf, the hotel pays the \$30; however, the hotel will receive money back from the golf course at a later date to help pay for the hotel's advertisements of its golf packages.

The hotel would be liable for the 7% tax on \$65 (\$100 - \$35). The golf course would be liable for the 5% admissions tax on \$30 and the restaurant would be liable for the 6% sales tax on the sale of the meal. The fact that the hotel will receive a portion of the money back in the future does not affect the taxation of the charges. It is merely an expense of the golf course that is paid to the hotel.

Notes: 1. To ensure the 7% tax is not circumvented by sending most of the package charge to the golf course and then later having a large portion of it returned to the hotel as "advertising," the amount paid to the golf course and returned to the hotel to pay for advertising must be reasonable and supported by the books and records of both taxpayers. Otherwise, the Department will assess taxes according to a reasonable breakdown of room charges, green fees, and meal charges.

2. Other tourist packages, such as tennis, honeymoon, and entertainment packages, handled in a similar manner would be taxed in the manner described above for golf packages.