
State of South Carolina
Department of Revenue
300A Outlet Pointe Blvd., P. O. Box 125, Columbia, South Carolina 29214
Website Address: <http://www.sctax.org>

SC INFORMATION LETTER #13-15

SUBJECT: Tax Legislative Update for 2013

DATE: September 24, 2013

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2000)
S.C. Code Ann. Section 1-23-10(4) (Supp. 2011)
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.

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

<u>CATEGORY OF LEGISLATION</u>	PAGE #
1. Income Tax, Bank Tax, Withholding, and Corporate License Fees	
Legislation.....	5
Reenacted Temporary Proviso.....	17
Reminder – Prior Legislation Effective in 2013.....	18
2. Property Taxes and Fees in Lieu of Property Taxes	
Legislation.....	19
Reenacted Temporary Provisos.....	23
3. Sales and Use Taxes	
Legislation.....	n/a
Reenacted Temporary Provisos.....	25
Reminder – Prior Legislation Effective in 2013.....	26
4. Miscellaneous	
Administrative and Procedural Matters.....	28
Miscellaneous Tax Legislation.....	29
Other Items (including disaster work tax relief).....	31
Regulatory Legislation.....	40
Reenacted Temporary Provisos.....	44

5. Temporary Provisos – List.....	47
6. Security and Consumer Protection Legislation – List	48

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.

Legislation regarding insurance premium taxes, unemployment taxes, and distribution of funds is not summarized. There may be 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 Legislature website at <http://www.scstatehouse.gov/> or the Department’s website at <http://www.sctax.org/Tax+Policy/New+Legislation.htm>.

LIST OF BILLS BY SUBJECT CATEGORY

A list of significant changes in tax and regulatory laws (both permanent and temporary) enacted during the 2013 legislative session is provided below. Temporary provisos are enacted in the State budget and are only effective for the State fiscal year (July 1 – June 30); unless re-enacted they expire on June 30, 2014.

This list is divided by subject matter with the bills listed in numeric order. The list of bills with a link to the full text of each act is on the Department’s website at:

<http://www.sctax.org/Tax+Policy/New+Legislation.htm>.

INCOME TAXES, BANK TAXES, WITHHOLDING and CORPORATE LICENSE FEES

BILL #	ACT #	SUBJECT
261	10	Internal Revenue Code Conformity
3093	57	Abandoned Building Revitalization Credit
3505 – Sec. 1	80	Angel Investor Credit
3557	81	Port Cargo Credit
3710 – Proviso 1.85	101	Credit for Contributions to Nonprofit Scholarship Funding Organization for Exceptional Needs Children – New Temporary Proviso
– Proviso 1A.12	101	Teacher Supplies – Reimbursement Not Taxable or Refundable Credit– New Temporary Proviso
– Proviso 1A.13	101	Teacher of the Year Awards – Not Subject to SC Tax – Reenacted Temporary Proviso
– Proviso 118.18	101	Tax Deduction for Consumer Protection Services - New Temporary Proviso

PROPERTY TAXES and FEES IN LIEU OF PROPERTY TAXES

BILL #	ACT #	SUBJECT
3093	57	Abandoned Building Revitalization Credit
3710 – Proviso 1.64	101	Index of Taxpaying Ability – Imputed Value – Reenacted Temporary Proviso
– Proviso 117.42	101	Personal Property Tax Relief Fund Not Funded – Reenacted Temporary Proviso

SALES AND USE TAXES

BILL #	ACT #	SUBJECT
3710 – Proviso 117.41	101	Private Schools – Use Tax Exemption – Reenacted Temporary Proviso
– Proviso 117.63	101	Respiratory Syncytial Virus Medicines – Reenacted Temporary Proviso
– Proviso 117.67	101	Viscosupplementation Therapies – Reenacted Temporary Proviso

MISCELLANEOUS

BILL #	ACT #	SUBCATEGORY	SUBJECT
		Administrative & Procedural	
3505 – Section 2	80		Disclosure of Information to Secretary of State for Angel Investor Credit Qualifying Business
3710 – Proviso 92.10	101		2% Reduction on Interest on Tax Refunds – Reenacted Temporary Proviso
– Proviso 106.6	101		Website Posting of Candidates Tax Returns – Reenacted Temporary Proviso
– Proviso 117.94	101		Additional 1% Reduction on Interest on Refunds – Reenacted Temporary Proviso
3974 – Section 1	90		Disclosure of Corporate Return Information to Secretary of State
3974 – Section 2	90		Expungement of Tax Liens
		Miscellaneous Taxes	
163	26		Motion Picture Rebates
481	68		Admissions Tax - Motorsports Entertainment Complex Exemption
3538	35		Electronic Cigarettes and Alternative Nicotine Products
3710 – Proviso 1.17	101		Local Government School Buses – Motor Fuel Exemption – Reenacted Temporary Proviso
– Proviso 33.13	101		Nursing Home Bed Franchise Fee – Suspension – Reenacted Temporary Proviso
– Proviso 106.7	101		Admissions Tax – Booster Org./Season Tickets – Reenacted Temporary Proviso
– Proviso 118.10	101		Admissions Tax Rebate - Motorsports Entertainment Complex - New Temporary Proviso
		Other	
3097	30		Drycleaning Facility Restoration Trust Fund
3710 – Proviso 106.10	101		Rapid Responders to Declared Disaster Tax Exemptions - New Temporary Proviso
		Regulatory	
3	5		Unlawful Gambling and Games of Chance
3554 – Section 1	36		Breweries – Beer Samples and Sales
– Section 2	36		Beer Tastings at Certain Retailers
– Section 3	36		Brewery Report
3710 – Proviso 117.131	101		Donation of Alcoholic Liquors to Charitable Organization - New Temporary Proviso
3956	87		“Furnishing Lodging” Definition

INCOME TAXES, BANK TAXES, WITHHOLDING, and CORPORATE LICENSE FEES

Senate Bill 261 (Act No. 10)

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 January 2, 2013, and includes the effective date provisions contained therein.

Code Section 12-6-50, Internal Revenue Code Sections specifically not adopted by South Carolina, has been amended to provide that Internal Revenue Code Section 68, relating to limitations on itemized deductions, and Internal Revenue Code Section 151(d)(3), relating to the phase out of personal exemptions, are not adopted for:

1. A joint return or surviving spouse with adjusted gross income exceeding \$300,000
2. A head of household with adjusted gross income exceeding \$275,000
3. An individual who is not married and who is not a surviving spouse or head of household with adjusted gross income exceeding \$250,000
4. An individual filing married filing separately with gross income exceeding \$150,000.

The amounts above are adjusted for inflation as provided in Internal Revenue Code Sections 68 and 151(d).

Effective Date: April 9, 2013

House Bill 3710, Part IB, Section 118, Proviso 118.18 (Act No. 101)

Consumer Protection Services - New Individual Income Tax Deduction

This temporary proviso allows an individual an income tax deduction for the cost incurred to purchase "identity theft protection" and "identity theft resolution services" by monthly or annual contract or subscription. The deduction is equal to actual costs for the contract or subscription incurred in the tax year, up to \$300 for an individual taxpayer or up to \$1,000 for a joint return or a return claiming dependents.

The deduction is available to:

1. A taxpayer who filed a return (paper or electronic) with the Department for any tax year from 1998 through 2012 or
2. A person whose personally identifiable information was on the return of another eligible person, including minor dependents.

The deduction is not available to:

1. An individual who is enrolled in the identity theft protection and identity theft resolution services offered free of charge by the State (see House Bill 3711, Section 2 (Act No. 104)).
2. An individual who deducted the same actual cost as a business expense.

For purposes of this proviso, “identity theft protection” and “identity theft resolution services” are defined as follows:

Identity theft protection. Identity theft protection means products and services designed to prevent an incident of identity fraud or identity theft or otherwise protect the privacy of a person’s personal identifying information by precluding a third party from gaining unauthorized acquisition of another’s personal identifying information to obtain financial resources or other products, benefits or services.

Identity theft resolution services. Identity theft resolution services means products and services designed to assist persons whose personal identifying information was obtained by a third party, minimizing the effects of the identity fraud or identity theft incident and restoring the person’s identity to pre-theft status.

Effective Date: This temporary proviso is effective for State fiscal year July 1, 2013 through June 30, 2014. It will expire June 30, 2014 unless reenacted by the General Assembly in the next legislative session.

House Bill 3710, Part IB, Section 1A, Proviso 1A.12 (Act No. 101)

Teacher Supplies and Materials – New Refundable Income Tax Credit

This temporary proviso continues to allow 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. The reimbursement is not considered taxable income by South Carolina.

This re-enacted proviso has added that any classroom teacher, including a classroom teacher at a South Carolina private school, not eligible for the teacher supply reimbursement described above, may claim a refundable income tax credit on his 2013 tax return. The credit is the lesser of \$275 or the amount spent on teacher supplies and materials. The return claiming the credit must be filed on or before June 30, 2014. The return can be an original or amended and may be for expenses made after December 31, 2013.

Effective Date: This temporary proviso is effective for State fiscal year July 1, 2013 through June 30, 2014. It will expire June 30, 2014, unless reenacted by the General Assembly in the next legislative session.

House Bill 3505 (Act No. 80)

“Angel Investors” Credit - New Income Tax Credit

The High Growth Small Business Job Creation Act of 2013 was enacted in Title 11, Chapter 44 to improve the availability of early stage capital for emerging high growth enterprises in South Carolina. It is intended to encourage individual angel investors to invest in early stage, high growth, job creating businesses; enlarge the number of high quality, high paying jobs within South Carolina, expand South Carolina’s economy by enlarging its base of wealth creating businesses; and support businesses seeking to commercialize technology invented in South Carolina’s institutions of higher education.

Angel Investor Defined. The Act provides an income tax credit to an “angel investor” for its qualified investment. “Angel investor” is an accredited investor as defined by the United States Securities and Exchange Commission who is:

1. an individual subject to South Carolina income taxes imposed by Chapter 6, Title 12 or
2. a pass-through entity (*i.e.*, a partnership, an S corporation, or a limited liability company taxed as a partnership) formed for investment purposes which (a) has no business operations, (b) does not have committed capital under management over \$5 million, and (c) is not capitalized with funds raised or pooled through private placement memoranda directed to institutional investors. A venture capital fund or commodity fund with institutional investors or a hedge fund does not qualify as an angel investor. Code Sections 11-44-30(1) and (4).

Qualified Investment Defined. A “qualified investment” is an investment made by an angel investor of: (1) a cash investment in a qualified business for common or preferred stock or an equity interest or (2) a cash purchase of subordinated debt in a qualified business. An investment is not a qualified investment if a broker fee, commission or similar payment is made, directly or indirectly, for soliciting the investment or purchase. Code Section 11-44-30(6).

Qualified Business. To qualify for the credit, the investment must be made in a qualified business. Code Section 11-44-30(5) defines a “qualified business” as a business that:

1. Is primarily engaged in manufacturing, processing, warehousing, wholesaling, software development, information technology services, research and development or is a business providing services listed in Code Section 12-6-3360(M)(13) (*i.e.*, definition of “qualifying service-related facility” for purposes of the jobs tax credit).
2. Is not substantially engaged in: (a) retail sales, (b) real estate or construction, (c) professional services, (d) financial brokerage, investment activities, or insurance, (e) natural resource extraction, (f) gambling, or (g) entertainment, amusement, recreation or athletic or fitness activity for which an admission fee is charged. The statute provides rules for establishing when a business is substantially engaged in one of these activities.
3. Is a corporation, limited liability company, or a partnership that has its headquarters located in South Carolina at the time the investment was made and for the entire time the qualified business benefits from the tax credit provided for in this section. Headquarters is defined in Code Section 11-44-30(2).
4. Has had in any complete fiscal year before registration gross income as determined in accordance with the Internal Revenue Code of \$2 million or less on a consolidated basis.
5. Was organized no more than 5 years before the qualified investment was made.
6. Is registered with and certified by the Secretary of State as a qualified business at the time the application is made to the Secretary (for registration process see below).
7. Employs 25 or fewer people in South Carolina at the time it is registered as a qualified business.

Qualified Business Registration. A qualified business must register with the Secretary of State for purposes of this credit. Once the Secretary approves the registration, the business is certified for 12 months. A business may renew its registration if the business is still a qualified business at the time of the renewal. The registration may not be sold or transferred; the statute provides registration rules when a qualified business enters into a merger, conversion, consolidation, or other similar transaction with another business and the surviving company would otherwise meet the requirements for a qualified business. Code Section 11-44-60.

Application for Credit Approval. An investor seeking to claim the tax must submit an application to the Department for tentative approval of the credit during the year for which the credit is claimed or allowed. By January 31 of the year after the application is submitted, the Department will notify each investor of the credits tentatively approved and allocated to each investor.

The total credit allowed is \$5 million for all taxpayers in any calendar year. If the credit amounts on timely filed applications exceed \$5 million, then credits will be allocated to the investors on a pro rata basis. Code Sections 11-44-70 and 11-44-50(1).

Credit Amount and Limitations. The income tax credit is 35% of the investor's qualified investment. The investor may use 50% of the credit in the year the qualified investment is made and 50% in the tax years after the qualified investment is made. The aggregate amount of credit for an individual for all qualified investments in a tax year is \$100,000, not including carry forward credits. The credit for any year cannot exceed an individual's South Carolina income tax liability reduced by all other credits allowed under Titles 11 (Public Finance), 12 (Taxation), and 48 (Environmental Protection and Conservation). Any unused credit can be carried forward for 10 years from the end of the year when the qualified investment is made. Code Sections 11-44-40, 11-44-50(2), and 11-44-30(3).

Other Credit Rules. Other rules and requirements of the credit include:

1. Allocation of Credit Allowed a Pass Through Entity. For any pass through entity (defined as a partnership, S corporation, or limited liability company taxed as a partnership) making a qualified investment directly in a qualified business, each individual who is a shareholder, partner, or member of the entity must be allocated the credit allowed in the same manner as the proportionate shares of income or loss of the pass through entity. Allocation rules are provided in Code Section 11-44-40(C).
2. Transfer and Sale of the Credit. The credit may be sold, exchanged or transferred one time to any taxpayer. The credit may be transferred by the angel investor: (1) to his heir and legatees upon death of the angel investor, (2) to a spouse, or (3) incident to divorce. A taxpayer to whom a credit has been transferred can use the credit for the tax year the transfer occurred and carry forward unused amounts. The transferred credit cannot be used more than 10 tax years after it was originally issued. The Department may develop procedures for the transfer of the credit. Code Sections 11-44-50(4), (5) and (6).
3. Gain or Loss on Sale of Qualified Investments. If the angel investor has a net capital gain on the sale or exchange of the capital assets that were eligible for the credit, then the amount of net capital gain eligible for South Carolina's 44% net capital gain deduction in Code Section 12-6-1150 must be reduced as provided in Code Section 11-44-65(B). If an angel investor taxpayer recognizes a net capital loss on the sale or exchange of capital assets that were eligible for the credit, then the angel investor must increase his South Carolina taxable income as provided in Code Section 11-44-65.

Repeal of Act. The Act is repealed on December 31, 2019. Any carryforward will continue to be allowed until the 10 year period is completed.

Effective Date: For investments made January 1, 2013 and thereafter.

Educational Credit for Exceptional Needs Children – New Credit

This temporary proviso provides that grants may be awarded by a nonprofit scholarship funding organization of up to \$10,000 or the total cost of tuition, whichever is less, for students with exceptional needs to attend an independent school. A person is allowed a tax credit for the amount of money contributed to a nonprofit scholarship funding organization if (1) the contribution is used to provide grants for tuition, transportation, or textbooks to exceptional needs children enrolled in eligible schools who qualify for these grants under this proviso and (2) the person does not designate a specific child or school as the beneficiary of the contribution. The credit is available for a contribution made on or after January 1, 2014, and on or before June 30, 2014, unless the legislature re-enacts this temporary credit proviso in the next legislative session. The credit is limited to 60% of a taxpayer's total tax liability for the tax year the contribution is made.

Other requirements of the credit include:

1. A person shall apply for the tax credit on or with the tax return for the period for which the credit is claimed.
2. If a husband and wife file separate returns, then each may only claim one-half of the credit that would have been allowed on a joint return.
3. A corporation or entity entitled to the credit may not convey, transfer, or assign this credit to another entity unless all of the assets of the corporation or entity are conveyed, assigned, or transferred in the same transaction.
4. The total amount of tax credits authorized is \$8 million.
5. The Department will allow credits on a first come, first serve basis if the total credits claimed by all taxpayers exceed \$8 million.

The Educational Oversight Committee created under Chapter 6, Title 59, is responsible for determining if an eligible school meets the criteria of this proviso and publishing an approved list of such schools; providing a list of nonprofit scholarship funding organizations in good standing which provide grants under this proviso; and providing a list of approved independent schools which accept grants under this proviso.

Every nonprofit scholarship funding organization providing grants under this proviso must have an outside auditing firm conduct a comprehensive financial audit of its operations in conformity with generally accepted accounting principles. Every independent school accepting grants for eligible students under this proviso must have an outside entity or accounting firm examine it compliance with this proviso. The audits must be furnished within 30 days of issuance and acceptance to the Department and the Secretary of State and made available on their websites for public review.

The proviso provides definitions of various terms. These include “nonprofit scholarship funding organization,” “exceptional needs child,” “qualifying student,” “independent school” and “eligible school.”

A “nonprofit scholarship funding organization” is a charitable organization that:

1. Is an exempt organization under Internal Revenue Code Section 501(c)(3);
2. After its first year of operation, allocates at least 95% of its annual contributions and revenues received during a year to provide grants for tuition, transportation to and from school, and textbook expenses to children enrolled in an “eligible school” and after the first year of operation, does not have administrative expenses exceeding 5% of its annual contributions and revenues for the year;
3. Allocates all of its funds used for grants on an annual basis to “exceptional needs” students;
4. Does not provide grants solely for the benefit of one school;
5. Does not have as a member of its governing body a parent, guardian, or member of their immediate family who has a child who is receiving or has received a scholarship grant authorized by this proviso within one year of the date the person became a board member; and
6. Does not have as a member of its governing board any person who has been convicted of a felony, or has declared bankruptcy within the last seven years.

An “eligible school” is an independent school including those religious in nature, other than a public school, at which compulsory attendance requirements of Code Section 59-65-10 may be met, that: (1) is located in South Carolina, (2) offers a general education to primary or secondary school students, (3) does not discriminate based on race, color or national origin, (4) has an educational curriculum that includes courses set forth in South Carolina’s diploma requirements and which administers national achievement or state standardized tests, or both, at progressive grade levels to determine student progress, (5) has school facilities that are subject to applicable federal, state and local laws, and (6) is a member in good standing of the Southern Association of Colleges and Schools, the SC Association of Christian Schools or the SC Independent Schools Association.

A “qualifying student” is a student who: (1) is a South Carolina resident, (2) is eligible to be enrolled in a South Carolina secondary or elementary public school at the kindergarten level or above for the current school year, and (3) is a student with “exceptional needs.” A student with exceptional needs is defined as a child who has been designated by the South Carolina Department of Education to meet the requirements of 34 CFR Section 300.8 (Child with a Disability) and the child’s parents or legal guardian believes that the services provided by the school district of legal residence do not sufficiently meet the needs of the child.

Effective Date: This temporary proviso is effective for state fiscal year July 1, 2013 through June 30, 2014. It will expire June 30, 2014 unless re-enacted by the General Assembly in the next legislative session.

Abandoned Building Revitalization – New Tax Credit

The “South Carolina Abandoned Buildings Revitalization Act” was enacted in Title 12, Chapter 67 to create an incentive for the rehabilitation, renovation, and redevelopment of abandoned buildings located in South Carolina.

A taxpayer rehabilitating an abandoned building is eligible for either:

1. A credit as provided in Code Section 12-67-140(B) against taxes imposed by Chapter 6 (income tax), Chapter 13 (income tax on savings and loans), Chapter 11 (franchise tax on banks), or Chapter 20 (corporate license fees), or combination thereof or
2. A credit as provided in Code Section 12-67-140(C) against real property taxes levied by local taxing entities. (See the “Property Taxes and Fees in Lieu of Property Taxes” Section below for a summary of this credit.)

The following is a summary of the credit provided in Code Section 12-67-140(B).

Applicability of Act. This Act only applies to abandoned building sites or phases or portions thereof put into operation for income producing purposes and that meet the purpose in Code Section 12-67-110. The construction or operation of a charter school, private or parochial school or similar educational institution meets the purpose of this Act. The construction of a single-family residence, however, is not an income producing purpose and does not meet the purpose of this Act. Code Section 12-67-130(B).

Notice of Intent to Rehabilitate. The taxpayer must file a “Notice of Intent to Rehabilitate” with the Department indicating the taxpayer’s intent to rehabilitate the building site. The letter must include: (1) the location of the building site, (2) the amount of acreage involved in the building site, (3) the square footage of existing buildings involved in the building site, (4) which buildings the taxpayer intends to renovate, (5) whether new construction is to be involved and (6) the estimated expenses to be incurred in rehabilitation of the building site. Code Section 12-67-120(7).

The Notice shall be filed before incurring its first rehabilitation expenses at the building site. Failure to provide the Notice results in qualification of only those rehabilitation expenses incurred after the Notice is provided. Code Section 12-67-140(B)(1).

Minimum Rehabilitation Expenses. Code Section 12-67-130 provides that this tax credit applies to abandoned building sites or phases or portions thereof put into operation in which a taxpayer incurs the following rehabilitation expenses:

1. Over \$75,000 for buildings located in a municipality with a population under 1,000 based on the most recent U.S. census.

2. Over \$150,000 for buildings located in the unincorporated areas of a county or in a municipality in the county with a population between 1,000 and 25,000 based on the most recent U.S. census.
3. Over \$250,000 for buildings located in the unincorporated areas of a county or in a municipality in the county with a population over 25,000 based on the most recent official U.S. census.

Credit Amount and Limitations. The amount of the credit in Code Section 12-67-140(B)(2) is:

1. 25% of the actual rehabilitation expenses incurred at the building site if the actual rehabilitation expenses incurred in rehabilitating the building site are between 80% and 125% of the estimated rehabilitation expenses set forth in the Notice of Intent to Rehabilitate.
2. 25% of 125% of the estimated rehabilitation expenses in rehabilitating the building site if the actual rehabilitation expenses exceed 125% of the estimated expenses set forth in the Notice of Intent to Rehabilitate.

No credit is allowed if the actual expenses are below 80% of the estimated expenses.

The entire credit is earned in the tax year the applicable phase or portion of the building site is placed in service and must be taken in equal installments over a 5 year period beginning with the tax year the applicable phase or portion of the building site is placed in service. The credit cannot exceed \$500,000 for any taxpayer in a tax year for each unit or parcel deemed to be an abandoned building site. For any tax year, the credit is limited in use to 50% of the taxpayer's applicable tax liability. Any unused credit may be carried forward for the succeeding 5 years. Code Section 12-67-140(B)(3) and (B)(5).

Other Credit Requirements. Other requirements of the credit are:

1. The taxpayer is not eligible for the credit if the taxpayer owned the building site when the site was operational and immediately prior to its abandonment. Code Section 12-67-140(D).
2. For expenses associated with a building site to qualify for the tax credit, the abandoned buildings on the building site must be either renovated or redeveloped. Code Section 12-67-120(6).
3. A taxpayer that qualifies for both this credit and a credit under the Textiles Communities Revitalization Act (Chapter 65, Title 12) or the Retail Facilities Revitalization Act (Chapter 34, Title 6) may claim only one of these credits. The taxpayer may, however, claim other credits in conjunction with this credit. Code Section 12-67-140(B)(4).
4. If the taxpayer is a partnership or limited liability company taxed as a partnership, the credit may be passed through to the partners or members and may be allocated in any manner chosen by the entity. Code Section 12-67-140(B)(7).

5. If the taxpayer leases the building site, or part of the building site, the taxpayer may transfer any remaining credit associated with the rehabilitation expenses incurred with respect to that part of the site to the lessee. Code Section 12-67-140(B)(6)(a).
6. If the taxpayer sells the building site, or any phase or portion of the building site, the taxpayer may transfer all or part of the remaining credit associated with the rehabilitation expenses incurred with respect to that phase or portion of the site to the purchaser of the applicable portion of the building site. Code Section 12-67-140(B)(6)(a).
7. If the taxpayer transfers the credit, the taxpayer must notify the Department in the manner the Department prescribes. Code Section 12-67-140(B)(6)(b).
8. Use of any building or structure listed on the National Register for Historic Places when used solely for storage or warehouse purposes is considered nonoperational for income producing purposes, however, the credit is further limited by disqualifying for credit purposes the portion of the building or structure that was operational and used as a storage or warehouse for income producing purposes. Code Section 12-67-120(1).

Definitions. Code Section 12-67-120 provides a list of definitions that are used in the statute. Some of the relevant terms are summarized below.

1. An “abandoned building,” in part, means a building or structure, which clearly may be delineated from other buildings or structures, at least 66% of the space has been closed continuously to business or otherwise nonoperational for income producing purposes for at least 5 years immediately preceding the date the taxpayer files a “Notice of Intent to Rehabilitate.”

A building or structure that otherwise qualifies as an “abandoned building” may be subdivided into separate units or parcels, which units or parcels may be owned by the same taxpayer or different taxpayers, and each unit or parcel is deemed to be an abandoned building site for purposes of determining whether each subdivided parcel is abandoned.

An abandoned building is not a building or structure with an immediate preceding use as a single-family residence.

2. A “building site” is the abandoned building together with the parcel of land upon which it is located and other improvements located on the parcel. However, the area of the building site is limited to the land upon which the abandoned building is located and the land immediately surrounding such building used for parking and other similar purposes directly related to the building’s income producing use.
3. “Rehabilitation expenses” are the expenses or capital expenditures incurred in the rehabilitation, demolition, renovation, or redevelopment of the building site. For expenses associated with a building site to qualify for the tax credit, the abandoned buildings on the building site must be either renovated or redeveloped.

Rehabilitation expenses include: (1) the renovation or redevelopment of existing buildings, (2) environmental remediation, (3) site improvements, and (4) the construction of new buildings and other improvements on the building site.

Rehabilitation expenses do not include: (1) the cost of acquiring the building site, (2) the cost of personal property located at the building site, (3) rehabilitation expenses associated with a building site that increase the amount of square footage on the site in excess of 200% of the amount of square footage of the buildings that existed on the building site as of the filing of the Notice of Intent to Rehabilitate, and (4) demolition expenses if the building being demolished is on the National Register of Historic Places.

4. “Placed in service” is the date upon which the building site is completed and ready for its intended use. If the building site is completed and ready for use in phases or portions, each phase or portion is considered to be placed in service when it is completed and ready for its intended use.

Repeal of Act. The South Carolina Abandoned Buildings Revitalization Act in Title 12, Chapter 67 is repealed on December 31, 2019. Any credit carry forward under Code Section 12-67-140(B) will continue to be allowed until the 5 year time period is completed.

Effective Date: Applies to the rehabilitation, renovation and redevelopment of abandoned buildings begun in tax years beginning 2013 and thereafter.

House Bill 3557 (Act No. 81)

Port Cargo Credit - Amended

Code Section 12-6-3375, providing a tax credit for port cargo volume in an amount determined by the Coordinating Council for Economic Development (Department of Commerce), has been amended. The changes include:

Qualifying Taxpayer Expanded. A taxpayer engaged in any of the following is now eligible for the port cargo credit: manufacturing, warehousing, freight forwarding, freight handling, goods processing, cross docking, transloading, wholesaling of goods, or distribution, exported or imported through port facilities in South Carolina. Previously, only a taxpayer engaged in manufacturing, warehousing, or distribution was eligible for the credit.

Cargo Ownership Rule. The provision requiring that the taxpayer claiming the credit must own the cargo at the time the port facilities are used has been deleted.

Use of Credit. The credit may now be claimed against (1) taxes imposed pursuant to Code Section 12-6-530 (corporate income tax), (2) taxes under Code Section 12-6-545 (active trade or business income subject to the reduced individual income tax rate), and (3) employee withholding. Previously, the credit could be used against “income taxes” and “withholding taxes.”

Carryover of Credit Clarified and Expanded to Withholding Tax. If the income tax credit exceeds the taxpayer's income tax liability for the tax year, the excess may be carried forward and claimed against income taxes in the next 5 succeeding tax years. If the credit against withholding tax exceeds the taxpayer's withholding tax liability that is not otherwise refunded for the tax quarter, the excess may be carried forward and claimed in the next 20 succeeding quarters against withholding liability that is not otherwise refunded. Previously, an unused credit was claimed against income tax for the next 5 tax years.

Definitions. A definition for the term "weighted twenty-foot equivalent unit" has been added. The definitions for base year port cargo volume and port cargo volume have been amended.

Allocation of Credit by Coordinating Council – Discretionary Factors Revised. The Coordinating Council has the sole discretion in allocating the port cargo credit and will consider the following factors: (a) the amount of base year port cargo volume, (b) the total and percentage increase in port cargo volume, and (c) factors related to the economic benefit of the State or other factors. The number of qualifying taxpayers and the type of cargo transported were deleted as factors to be considered by the Coordinating Council.

Amount of Credit to be Allocated Against Withholding Tax. The limitation that the amount of port cargo credit allocated for use against employee withholding cannot exceed \$4 million has been deleted. The maximum amount of port cargo credit allowed to all qualifying taxpayers continues to be \$8 million for each calendar year.

Special Credit Allocation for New Warehouse or Distribution Facility against Withholding Tax – Amended. The Coordinating Council may annually award up to \$1 million of the \$8 million port cargo credit against employee withholdings, that are not otherwise refundable, to a new warehouse or distribution facility which commits to spend at least \$40 million at a single site and create 100 new full-time jobs, if the base year cargo is not less than 5,000 twenty foot equivalent units or its non-containerized equivalent. If the credit exceeds the taxpayer's withholding tax liability for the taxable quarter that is not otherwise refundable, the excess may be carried forward in the next 20 succeeding quarters and claimed against withholding liability that is not otherwise refundable. If a taxpayer receives the credit but fails to timely meet the requirements, the taxpayer must repay a pro rata portion of the credit claimed. Previously, this provision did not specify the use of the credit against withholding tax, provide for the credit carryover against withholding tax for 20 quarters, contain base year cargo provisions, or require credit repayment if credit requirements were not met.

New Special Credit Eligibility for Anticipated Distribution Facility. A provision has been added to allow eligibility for the port cargo credit to a taxpayer engaged in the movement of goods imported or exported through South Carolina's port facilities if the cargo supports a presence in South Carolina and the taxpayer does not have a distribution center in South Carolina at the time of initial approval of the credit provided: (1) the taxpayer employs at least 250 full-time or full-time equivalent South Carolinians in operations statewide, (2) the taxpayer completes the construction of the distribution facility in South Carolina, and is operational, within 5 years of the initial approval of the credit, and (3) the base year for the taxpayer is 5,000 twenty-foot

equivalent units or its non-containerized equivalent or more. The credit certificate expires 3 years after issuance if satisfactory proof has not been received. If a taxpayer receives the credit but fails to meet the requirements at the end of the 5 year period, the taxpayer must repay a pro rata portion of the credit claimed.

Effective Date: Tax years beginning after December 31, 2013.

REENACTED TEMPORARY PROVISIO

The following temporary proviso was enacted in a prior legislative session and was reenacted by the General Assembly in 2013. Temporary provisos are effective for the State fiscal year July 1, 2013 through June 30, 2014, and will expire June 30, 2014, unless reenacted by the General Assembly in the next legislative session.

House Bill 3710, Part IB, Section 1A, Proviso 1A.13 (Act No. 101)

Teacher of the Year Awards - Not Subject to South Carolina Income Tax

This temporary proviso provides for the following teacher of the year awards: (a) a \$1,000 award to each district Teacher of the Year, (b) a \$25,000 award to the State Teacher of the Year, and (c) a \$10,000 award to each of the four Honor Roll Teachers of the Year. These awards are not subject to South Carolina income tax.

REMINDER

The following provision was enacted in 2012, but is effective in 2013 and thereafter. It is summarized below for informational purposes.

House Bill 5418, Section 2 (Act No. 287)

Active Trade or Business Income of Pass through Entity – New Tax Rate

Code Section 12-6-545 provides for a reduced income tax rate on active trade or business income of a pass through business (*i.e.*, sole proprietorship, partnership, S corporation, or limited liability company taxed as a sole proprietorship, partnership, or S corporation) in lieu of the income tax rate imposed under Code Section 12-6-510 (individual income tax.) Code Section 12-6-545(B)(2) has been amended to lower the current tax rate from 5% to 3% over several years.

The new rates are phased in as follows:

Tax Year Beginning In	Tax Rate
2012	4.33 %
2013	3.67 %
2014 and thereafter	3.00 %

PROPERTY TAXES and FEES IN LIEU OF PROPERTY TAXES

House Bill 3093 (Act No. 57)

Abandoned Building Revitalization – New Tax Credit

The “South Carolina Abandoned Buildings Revitalization Act” was enacted in Title 12, Chapter 67 to create an incentive for the rehabilitation, renovation, and redevelopment of abandoned buildings located in South Carolina.

A taxpayer rehabilitating an abandoned building is eligible for either:

1. A credit as provided in Code Section 12-67-140(C) against real property taxes levied by local taxing entities or
2. A credit as provided in Code Section 12-67-140(B) against taxes imposed by Chapter 6 (income tax), Chapter 13 (income tax on savings and loans), Chapter 11 (franchise tax on banks), or Chapter 20 (corporate license fees), or combination thereof. (See the “Income” Section above for a summary of this credit.)

The following is a summary of the credit provided in Code Section 12-67-140(C).

Applicability of Act. This Act only applies to abandoned building sites or phases or portions thereof put into operation for income producing purposes and that meet the purpose in Code Section 12-67-110. The construction or operation of a charter school, private or parochial school or similar educational institution meets the purpose of this Act. The construction of a single-family residence, however, is not an income producing purpose and does not meet the purpose of this Act. Code Section 12-67-130(B).

Notice of Intent to Rehabilitate. The taxpayer must file a “Notice of Intent to Rehabilitate” with the municipality in which the building site is located, or the county if the building site is located in an unincorporated area, indicating the taxpayer’s intent to rehabilitate the building site. The letter must include: (1) the location of the building site, (2) the amount of acreage involved in the building site, (3) the square footage of existing buildings involved in the building site, (4) which buildings the taxpayer intends to renovate, (5) whether new construction is to be involved and (6) the estimated expenses to be incurred in rehabilitation of the building site. Code Section 12-67-120(7).

The Notice of Intent to Rehabilitate shall be filed before incurring its first rehabilitation expenses at the building site. Failure to provide the Notice results in qualification of only those rehabilitation expenses incurred after the Notice of Intent to Rehabilitate is provided. Code Section 12-67-140(C)(1).

County Approval. Once the Notice has been provided to the county or municipality, the municipality or the county, by resolution, shall determine the eligibility of the building site and the proposed rehabilitation expenses for the credit. A proposed rehabilitation must be approved by a positive majority vote, as defined in Code Section 6-1-300(5), of the local governing body. If the county or municipality determines that the building site and the proposed rehabilitation expenses are eligible for the credit, there must be a public hearing and the municipality or the county shall approve the building site for the credit by ordinance. Before approving the building site, the municipality or county must find that the credit does not violate a covenant, representation, or warranty in any of its tax increment financing transactions or outstanding general obligation bonds. Code Section 12-67-140(C)(2).

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 in which the building site is located of its intention to grant a credit against real property taxes for the building 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 with the county or municipality on or before the date of the public hearing, the local taxing entity is considered to have consented to the credit. Code Section 12-67-140(C)(4).

Minimum Rehabilitation Expenses. Code Section 12-67-130 provides that this tax credit applies to abandoned building sites or phases or portions thereof put into operation in which a taxpayer incurs the following rehabilitation expenses:

1. Over \$75,000 for buildings located in a municipality with a population under 1,000 based on the most recent U.S. census.
2. Over \$150,000 for buildings located in the unincorporated areas of a county or in a municipality in the county with a population between 1,000 and 25,000 based on the most recent U.S. census.
3. Over \$250,000 for buildings located in the unincorporated areas of a county or in a municipality in the county with a population over 25,000 based on the most recent official U.S. census.

Credit Amount and Limitations. The amount of the credit in Code Section 12-67-140(C)(3) is:

1. 25% of the actual rehabilitation expenses incurred at the building site times the local taxing entity ratio of each local taxing entity that has consented to the credit if the actual rehabilitation expenses incurred in rehabilitating the building site are between 80% and 125% of the estimated rehabilitation expenses set forth in the Notice of Intent to Rehabilitate or
2. 25% of 125% of the estimated expenses in rehabilitating the building times the local taxing entity ratio of each local taxing entity that has consented to the credit if the actual rehabilitation expenses exceed 125% of the estimated expenses set forth in the Notice of Intent to Rehabilitate.

3. No credit is allowed if the actual rehabilitation expenses are below 80% of the estimated rehabilitation expenses.

The local taxing entity ratio is set as of the time the Notice is filed and remains set for the entire period that the credit is claimed by the taxpayer.

The ordinance must provide for the credit to be taken as a credit against up to 75% of the real property taxes due on the building site each year for up to 8 years. The credit against real property taxes for each applicable phase or portion of the building site may be claimed beginning with the property tax year in which the applicable phase or portion of the building site is first placed in service.

Other Credit Requirements. Other requirements of the credit are:

1. The taxpayer is not eligible for the credit if the taxpayer owned the building site when the site was operational and immediately prior to its abandonment. Code Section 12-67-140(D).
2. For expenses associated with a building site to qualify for the tax credit, the abandoned buildings on the building site must be either renovated or redeveloped. Code Section 12-67-120(6).
3. Use of any building or structure listed on the National Register for Historic Places when used solely for storage or warehouse purposes is considered nonoperational for income producing purposes, however, the credit is further limited by disqualifying for credit purposes the portion of the building or structure that was operational and used as a storage or warehouse for income producing purposes. Code Section 12-67-120(1).

Definitions. Code Section 12-67-120 provides a list of definitions that are used in the statute. Some of the relevant terms are summarized below.

1. “Abandoned building,” in part, means a building or structure, which clearly may be delineated from other buildings or structures, at least 66% of the space has been closed continuously to business or otherwise nonoperational for income producing purposes for at least 5 years immediately preceding the date the taxpayer files a “Notice of Intent to Rehabilitate.”

A building or structure that otherwise qualifies as an “abandoned building” may be subdivided into separate units or parcels, which units or parcels may be owned by the same taxpayer or different taxpayers, and each unit or parcel is deemed to be an abandoned building site for purposes of determining whether each subdivided parcel is abandoned.

An abandoned building is not a building or structure with an immediate preceding use as a single-family residence.

2. “Building site” is the abandoned building together with the parcel of land upon which it is located and other improvements located on the parcel. However, the area of the building site is limited to the land upon which the abandoned building is located and the land immediately surrounding such building used for parking and other similar purposes directly related to the building’s income producing use.
3. “Rehabilitation expenses” are the expenses or capital expenditures incurred in the rehabilitation, demolition, renovation, or redevelopment of the building site. For expenses associated with a building site to qualify for the tax credit, the abandoned buildings on the building site must be either renovated or redeveloped.

Rehabilitation expenses include: (1) the renovation or redevelopment of existing buildings, (2) environmental remediation, (3) site improvements, and (4) the construction of new buildings and other improvements on the building site.

Rehabilitation expenses do not include: (1) the cost of acquiring the building site, (2) the cost of personal property located at the building site, (3) rehabilitation expenses associated with a building site that increase the amount of square footage on the site in excess of 200% of the amount of square footage of the buildings that existed on the building site as of the filing of the Notice of Intent to Rehabilitate, and (4) demolition expenses if the building being demolished is on the National Register of Historic Places.

4. “Placed in service” is the date upon which the building site is completed and ready for its intended use. If the building site is completed and ready for use in phases or portions, each phase or portion is considered to be placed in service when it is completed and ready for its intended use.
5. “Local taxing entity” is a county, municipality, school district, special purpose district, and other entity or district with the power to levy ad valorem property taxes against the building site.
6. “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 building site.

Repeal of Act. The South Carolina Abandoned Buildings Revitalization Act in Title 12, Chapter 67 is repealed on December 31, 2019. Any credit carry forward under Code Section 12-67-140(C) will continue to be allowed until the 8 year time period is completed.

Effective Date: Applies to the rehabilitation, renovation and redevelopment of abandoned buildings begun in tax years beginning 2013 and thereafter.

REENACTED TEMPORARY PROVISOS

The following temporary provisos were enacted in prior legislative sessions and were reenacted by the General Assembly in 2013. Temporary provisos are effective for the State fiscal year July 1, 2013 through June 30, 2014, and will expire June 30, 2014, unless reenacted by the General Assembly in the next legislative session.

House Bill 3710, Part IB, Section 1, Proviso 1.64 (Act No. 101)

Index of Taxpaying Ability – Imputed Value for Owner-Occupied Residential Property

The index of taxpaying ability is used to determine state funding for education under the Education Finance Act of 1977, Chapter 20, Title 59. This index, prepared by the Department, shows a local school district's relative fiscal capacity in relation to that of all other districts in the state based on the full market value of all taxable property of the district assessed for ad valorem taxes for the second completed property tax year preceding the fiscal year in which the index is used.

Code Section 12-37-220(B)(47) exempts 100% of the fair market value of owner-occupied residential property receiving a 4% assessment ratio from all property taxes imposed for school operating purposes. School districts are reimbursed for lost revenue based on a 3 tier formula set forth in Code Section 11-11-156.

This temporary proviso clarifies that, for fiscal year 2013-2014, an index value for the exempt owner-occupied residential property must be imputed by adding the second preceding taxable year total school district reimbursements for Tiers 1, 2 and 3(A) of the 3 tier formula and not to include the supplement distribution. The Department shall not include sales ratio data in its calculation of the index of taxpaying ability. The methodology for the calculation of value for classes of property other than exempt owner-occupied residential property is not affected by this temporary proviso.

House Bill 3710, Part IB, Section 117, Proviso 117.42 (Act No. 101)

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).

Note: As of the date of this publication, no county has reduced the ad valorem taxes on personal motor vehicles by imposing this sales tax.

SALES AND USE TAXES

REENACTED TEMPORARY PROVISOS

The following temporary provisos were enacted in prior legislative sessions and were reenacted by the General Assembly in 2013. Temporary provisos are effective for the State fiscal year July 1, 2013 through June 30, 2014, and will expire June 30, 2014, unless reenacted by the General Assembly in the next legislative session.

House Bill 3710, Part IB, Section 117, Proviso 117.67 (Act No. 101)

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 3710, Part IB, Section 117, Proviso 117.63 (Act No. 101)

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 3710, Part IB, Section 117, Proviso 117.41 (Act No. 101)

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.

REMINDER

The following provisions were enacted in 2011 and 2012, respectively, but are effective in 2013 or thereafter. They are summarized below for informational purposes.

Senate Bill 36, Section 1 (Act No. 32)

Durable Medical Equipment - Sales and Use Tax Exemption Fully Phased-In

Act No. 32 of 2011 provided for a phased-out sales and use tax rate on the sale of durable medical equipment and related supplies meeting certain conditions. The rate imposed on the gross proceeds of sales for durable medical equipment and related supplies is as follows:

- For sales occurring from July 1, 2011 to June 30, 2012. The sales and use tax rate is 3.5% (plus any applicable local sales and use tax).
- For sales occurring from July 1, 2012 to December 31, 2012. The sales and use tax rate is 1.75% (plus any applicable local sales and use tax).
- For sales occurring on or after January 1, 2013. There is no state or local sales and use tax.

Code Section 12-36-2120(74) exempts from sales and use tax durable medical equipment and related supplies as defined under federal and state Medicaid and Medicare laws that meet the following conditions:

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

Effective Date: June 8, 2011

Certain Injectable Medications and Injectable Biologics - New Exemption to Phase-In

Code Section 12-36-2120(80) has been added to exempt injectable medications and injectable biologics, so long as the medication or biologic is administered by or pursuant to the supervision of a physician in an office which is under the supervision of a physician, or in a Center for Medicare or Medicaid Services certified kidney dialysis facility.

For purposes of this exemption, “biologics” means the products that are applicable to the prevention, treatment, or cure of a disease or condition of human beings and that are produced using living organisms, materials derived from living organisms, or cellular, subcellular, or molecular components of living organisms.

This exemption will be phased-in based on the annual general fund growth as determined by the Board of Economic Advisors (“BEA”). The BEA will certify the results in writing to the Department. If, beginning with the February 15, 2013 forecast, the BEA forecasts an annual general fund revenue growth of at least 2%, then the exemption will be phased-in as follows:

- Phase-in 1: For sales made on or after July 1st of the first State fiscal year (July 1 through June 30) following a February 15th forecast meeting the 2% growth requirement, 50% of the gross proceeds of sales are exempt.
- Phase-in 2: For sales made on or after July 1st of the next State fiscal year (July 1 through June 30) following the next February 15th forecast meeting the 2% growth requirement, 100% of the gross proceeds of sales are exempt.

Effective Date: For sales beginning July 1 following the February 15 forecast meeting the 2% growth requirement.

Note: The BEA did not forecast sufficient revenue growth for “Phase-in 1” of this exemption to become effective for the State fiscal year July 1, 2013 - June 30, 2014 at its February 15, 2013 forecast meeting. See SC Information Letter #13-9.

MISCELLANEOUS

(Summarized by Subject Matter)

ADMINISTRATIVE and PROCEDURAL MATTERS

House Bill 3974, Section 2 (Act No. 90)

Expungement of Certain Tax Liens

Code Section 12-58-165 has been added to provide that the Department may take necessary action to expunge the recording of any lien imposed pursuant to Code Section 12-54-120, or any other provision authorizing the Department to collect money due, once the lien is fully paid and satisfied. If the Department determines, upon investigation, that no taxes were due, then the recorded lien shall be expunged as if it were fully paid and satisfied.

Effective Date: June 13, 2013

House Bill 3974, Section 1 (Act No. 90)

Disclosure of Information to Secretary of State – Amended to Include Corporate Return Filings

Code Section 12-54-240(17), concerning disclosure of information to the Secretary of State where the Secretary of State has the power to administratively dissolve the taxpayer or revoke the taxpayer's authority to do business, has been amended to add that the Department may also disclose to the Secretary of State information about a taxpayer who filed an initial or final corporate return.

Effective Date: June 13, 2013

House Bill 3505, Section 2 (Act No. 80)

Disclosure of Information to Secretary of State – Qualified Business for Angel Investor Credit

Code Section 12-54-240(B) has been amended to add an item to allow the exchange of information between the Department and the Secretary of State to assist in determining or verifying information concerning whether a business is a "qualified business" pursuant to Code Section 11-44-60 of the High Growth Small Business Job Creation Act (*i.e.*, the angel investor credit).

Effective Date: June 14, 2013

MISCELLANEOUS TAX LEGISLATION

Senate Bill 481 (Act No. 68)

Admissions Tax- Motorsports Entertainment Complex Exemption

Code Section 12-21-2425(B), providing a definition of a motorsports entertainment complex eligible for an exemption from the admissions tax equal to one-half of the paid admissions to a qualifying motorsports entertainment complex, has been amended. A requirement has been added that the motorsports entertainment complex must be a NASCAR-sanctioned motor speedway or racetrack that hosted at least one NASCAR Sprint Cup Series race in 2012, and continues to host at least one NASCAR Sprint Cup Series race, or any successor race featuring the same NASCAR Cup Series. The requirement that the motorsports entertainment complex have 60,000 fixed seats has been deleted.

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

Effective Date: June 13, 2013

House Bill 3710, Part 1B, Section 118, Proviso 118.10 (Act No. 101)

Admissions Tax Rebate – Motorsports Entertainment Complex Facility

This temporary proviso provides that up to \$114,000 in admissions tax revenue collected annually from all events held at a NASCAR sanctioned motor speedway or racetrack that hosts at least one race each year featuring the preeminent NASCAR cup series must be rebated to the motorsports entertainment complex facility in the current fiscal year to keep a NASCAR race at the facility.

Effective Date: This temporary proviso is effective for State fiscal year July 1, 2013 through June 30, 2014. It will expire June 30, 2014, unless reenacted by the General Assembly in the next legislative session.

House Bill 3538 (Act No. 35)

Unlawful Sale or Distribution of Tobacco Products to Person under 18 - Amended

Code Section 16-17-500 provides that it is unlawful for a person to sell, furnish, give, or provide tobacco products, including tobacco product samples, cigarette paper, or a substitute for them, to a person under age 18. This section has been amended to include “alternative nicotine products” to the class of prohibited items for a person to sell, furnish, give, or provide to a person under age

18. Code Section 16-17-500(C) now provides that a person engaged in the sale of alternative nicotine products made through the internet must perform age verification by using a qualified age verification service. Code Section 16-17-502(A) has been amended to provide that it is unlawful for a person to distribute a tobacco or alternative nicotine product to a person under 18.

Code Section 16-17-501 has been amended to define the terms “alternative nicotine product” and “electronic cigarette” as follows:

Alternative nicotine product: A product, including electronic cigarettes, that consists of or contains nicotine that can be ingested into the body by chewing, smoking, absorbing, dissolving, inhaling, or by any other means.

Electronic cigarette: An electronic product or device that produces a vapor that delivers nicotine or other substances to the person inhaling from the device to simulate smoking.

Both alternative nicotine products and electronic cigarettes do not include: (1) cigarettes, as defined in the cigarette and tobacco tax law (Code Section 12-21-620), or other tobacco products, as defined in the cigarette and tobacco tax law, (Code Section 12-21-800); (2) a product that is a drug pursuant to 21 U.S.C. 321(g)(1); (3) a device pursuant to 21 U.S.C. 321(h); or (4) a combination product pursuant to 21 U.S.C. 353(g).

Effective Date: June 7, 2013

OTHER ITEMS (Including Disaster Work Tax Relief)

House Bill 3710, Part IB, Section 106, Proviso 106.10 (Act No. 101)

Emergency Related Infrastructure Work by an Out of State Business or Employee

General Tax, Registration and Licensing Requirements and Exemptions during Disaster Period.

This temporary proviso provides that a business that does not have a presence in, or conduct business in, South Carolina whose services are requested by a business registered in South Carolina or by a state or local government for purposes of performing “disaster or emergency-related work” in South Carolina is exempt from state and local business registration and tax payment and filings during the “disaster period.” The “disaster period” begins within 10 days of the first day of declaration by the Governor, President, or Director of the Department of a declared state disaster or emergency, whichever occurs first, and ends 60 days after the declared period ends, or any longer period authorized by the designated state official or agency.

Out of State Business Disaster Period Exemptions. An out of state business performing work or services in South Carolina during July 1, 2013 – June 30, 2014 related to a declared state disaster or emergency during the portion of a disaster period that occurs in July 1, 2013 – June 30, 2014 is not considered to have established a level of presence that would require it to register, file, and remit state and local taxes or require the business or its out of state employees to be subject to any state licensing or registration requirement.

Out of State Employee Disaster Period Exemptions. An out of state employee is not considered to have established residency or a presence in South Carolina that would require him or his employer to file and pay income taxes or be subject to tax withholdings or to file and pay any other state or local tax or fee during the disaster period that occurs during July 1, 2013 – June 30, 2014.

Specific Tax, Registration and Licensing Exemptions. Included in this proviso is an exemption from all state or local business licensing or registration requirements (including South Carolina Public Service Commission and Secretary of State licensing and regulatory requirements) or state and local taxes or fees, including unemployment insurance, state or local occupational licensing fees, sales and use tax, or property tax on equipment or used or consumed during the disaster period. For purposes of state or local tax measured by net or gross income or receipts, all activity of the out of state business conducted in South Carolina pursuant to this proviso is disregarded with respect to any filing requirements for that tax including the filing required for a unitary or combined group of which the out of state business may be a part.

Applicable Taxes and Fees. Out of state businesses and employees are not exempt under this proviso from transaction taxes and fees including, but not limited to, fuel taxes and fuel user fees or sales and use taxes on materials or services subject to sales and use tax, accommodations taxes, car rental taxes or fees that the out of state affiliated business or out of state employee purchases for use or consumption in South Carolina during the disaster period, unless the taxes or fees are otherwise exempt during a disaster period.

Notification of Responding Business to Department. An out of state business shall provide the Department a notification statement that it is in South Carolina for purposes of responding to a disaster or emergency that includes the business name, state of domicile, principal business address, federal tax identification number, date of entry, and contact information. A registered business in South Carolina shall provide this notification information for an out of state affiliate that enters South Carolina and also include contact information for the registered business.

In South Carolina After Declared Disaster. A business or employee that remains in South Carolina after the disaster period becomes subject to South Carolina's normal standards for establishing presence, residency or doing business and resulting requirements. They must comply with state and local registration, licensing, and filing requirements resulting from establishing business presence or residency in South Carolina.

Definitions. "Disaster or emergency related work" means repairing, renovating, installing, building, rendering services or other business activities that relate to "infrastructure" that has been damaged, impaired, or destroyed by the event precipitating the declared state disaster or emergency.

"Infrastructure" means property or equipment owned or used by communications networks, electric generation, transmission and distribution systems, gas distribution systems, water pipelines, and public roads and bridges and related support facilities that services multiple customers or citizens including, but not limited to, real and personal property such as buildings, offices, lines, poles, pipes, structures and equipment.

"Declared state disaster or emergency" is a disaster or emergency event for which a:

1. Presidential declaration of a federal major disaster or emergency has been issued,
2. Governor's state of emergency proclamation has been issued, or
3. Good faith response effort is required and for which the Director of the Department designates the event as a disaster or emergency.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2013 through June 30, 2014. It will expire June 30, 2014, unless reenacted by the General Assembly in the next legislative session.

Senate Bill 163 (Act No. 26)

Motion Picture Incentive Act – Rebates Increased

The South Carolina Motion Picture Incentive Act, in Chapter 62 of Title 12, providing tax incentives for a motion picture production company, has been amended as follows:

1. Code Section 12-62-50(A)(1) provides that the Film Commission may rebate to a motion picture production company a portion of the South Carolina payroll of the employment of persons subject to South Carolina income tax withholdings in connection with production of a motion picture. The rebate amount has been increased from up to 15% to an amount not to exceed 20% of the total aggregate South Carolina payroll for persons subject to South Carolina income tax withholdings, and may not exceed 25% for South Carolina residents employed in connection with a qualified motion picture project.
2. Code Section 12-62-60(A) allows the Department of Parks, Recreation and Tourism to rebate to a motion picture production company a portion of the expenditures made by the motion picture production company in South Carolina. The rebate amount has been increased from up to 15% to up to 30% of such expenditures.

Effective Date: May 8, 2013

House Bill 3097 (Act No. 30)

Drycleaning Facility Restoration Trust Fund – Reorganized and Amended

The “Drycleaning Facility Restoration Trust Fund” (“Fund”) was enacted in 1995 in Title 44, Chapter 56, Article 4. The purpose of the Fund is to collect and manage funds for the investigation and remediation of environmental contamination arising from the operation of eligible drycleaning facilities and wholesale supply facilities. The Department of Health and Environmental Control (“DHEC”) is responsible for the administration of the Fund.

During this legislative session, Article 4 was substantially reorganized, provisions clarified and technical corrections made. The rearranged and renumbered code sections that pertain to the Department’s responsibilities for collecting and enforcing the revenue of the Fund are:

1. Code Section 44-56-425. This section addresses to whom Article 4 applies and the requirements that must be met to obtain a drycleaning facility exemption certificate from the Department. These provisions were previously in Code Section 44-56-485.
2. Code Section 44-56-435. This section contains the Department’s duties and responsibilities in administering, collecting and enforcing the funds collected. These provisions were previously in Code Section 44-56-480.
3. Code Section 44-56-440. This section provides for the initial and annual registration requirements of a drycleaning facility or property owner and the registration fee amounts based on the number of employees. These provisions were previously in Code Sections 44-56-470 and 44-56-475.
4. Code Section 44-56-450. This section provides for the 1% environmental surcharge imposed on retail drycleaning or dry drop-off facilities. These provisions were previously in Code Section 44-56-430.

5. Code Section 44-56-460. This section provides for the \$2 or \$10 per gallon surcharge for producing or importing solvents. These provisions were previously in Code Section 44-56-480.

Below is a brief summary of the new and other related provisions that affect the Department's duties and responsibilities. This is neither a complete summary nor a summary of DHEC's duties or drycleaning owner or operator responsibilities under DHEC's regulation; it cannot take the place of reading the new law in its entirety.

- ◆ Definitions. Code Section 44-56-410 provides definitions of terms used in Article 4. The terms "drycleaning facility" and "dry drop-off facility" have been amended and the term "route" has been added. These definitions now read:

"Drycleaning facility" means a professional commercial establishment located in this State for the purpose of cleaning clothing and other fabrics utilizing a process that involves the use of drycleaning solvent. In the case of a retail establishment, the establishment is one that operates or has at sometime in the past operated in whole or in part for the purpose of cleaning clothing and other fabrics for members of the public, other drycleaning facilities, and dry drop-off facilities. In the case of a wholesale establishment, the establishment is one that operates or has at sometime in the past operated in whole or in part for the purpose of cleaning clothing and other fabrics for other drycleaning facilities or dry drop-off facilities. 'Drycleaning facility' includes laundry facilities that are using or have used drycleaning solvent as part of their cleaning process but does not include textile mills, uniform rental and linen supply facilities, or drycleaning facilities owned or operated by a local, state, or federal government.

"Dry drop-off facility" means a commercial retail business (including routes) that receives clothing and other fabrics, from customers, for drycleaning or laundering at an off-site drycleaning facility.

"Route" means a commercial business that receives by mobile means clothing and other fabrics, from customers, for drycleaning or laundering at an off-site drycleaning facility.

- ◆ Facilities Exempt from Fund Participation. Code Section 44-56-425 provides that drycleaning facilities that have a "Drycleaning Facility Exemption Certificate" issued by the Department are not subject to provisions of Title 44 Chapter 56, Article 4. The Drycleaning Facility Exemption Certificate only applies to the physical location at which the drycleaning takes place. The Drycleaning Facility Exemption Certificate is not transferable to any other physical location.

The following summarizes the requirements for a facility to have received a "Drycleaning Facility Exemption Certificate" and be exempt from participating in the Fund:

1. Drycleaning Facilities in Existence on July 1, 1995. The Department issued a "Drycleaning Facility Exemption Certificate" to a drycleaning facility that was in existence on July 1, 1995, after DHEC verified that the drycleaning facility has met the following requirements:
 - a. It was in existence on July 1, 1995; and

- b. It drycleaned with nonhalogenated drycleaning fluids only or drycleaned with halogenated drycleaning fluids and nonhalogenated drycleaning fluids and notified the Department before October 1, 1995, of its election to not participate in the Fund; and
 - c. It has never paid any Fund surcharges or fees to the Department or paid an initial registration fee in 1995 and operated as an exempt drycleaning facility the following year and subsequent year until 2009; and
 - d. It requested a Drycleaning Facility Exemption Certificate from the Department between July 1, 2009 and December 31, 2009.
2. Dry Drop-off Facilities. Article 4 does not apply to dry drop-off facilities where the clothing or other fabrics are only cleaned by a drycleaning facility:
- a. Owned or operated by the same person that owns or operates the dry drop-off facility and the drycleaning facility has been issued a drycleaning facility exemption certificate; and
 - b. Issued a Drycleaning Facility Exemption Certificate by the Department on or after July 1, 2009; and
 - c. Where the owner or operator, or related entity does not own or operate any other drycleaning facility that is required to participate in the Fund; and
 - d. Where the owner or operator, or related entity does not own any property on which a drycleaning facility is protected by the moratorium on administrative and judicial actions established by the DHEC Board.

In addition, Article 4 does not apply to dry drop-off facilities where the clothing or other fabrics are cleaned only by a drycleaning facility that complies with Code Section 44-56-425(D)(1), and the dry drop-off facility is not being operated at a property on which a drycleaning facility is protected by the moratorium pursuant to Code Section 44-56-420(B).

Two additional points regarding exempt facilities are:

1. If the ownership or operation of a drycleaning facility that possesses a Drycleaning Facility Exemption Certificate is transferred to another person after December 31, 2009, the new owner or operator shall request and must be provided an updated Drycleaning Facility Exemption Certificate from the Department.
2. If a drycleaning facility paid an initial registration fee in 1995 and operated as an exempt drycleaning facility the following year and subsequent years up until 2009, then it may have any payment made after July 1, 2009 refunded. Code Section 44-56-425(A)(3)(b).

◆ DOR Responsibilities and Duties to Administer, Collect and Enforce Funds Collected. Code Section 44-56-435 contains the Department’s duties and responsibilities in administering, collecting and enforcing the revenue of the Fund collected mainly from registration fees and environmental surcharges. These duties and responsibilities include:

1. The Department shall distribute registration forms to owners and operators of drycleaning and wholesale supply facilities and to property owners. The Department shall use reasonable efforts to identify and notify owners, operators, and property owners of drycleaning and wholesale supply facilities of the registration requirements by certified mail, return receipt requested. The Department shall provide DHEC a copy of each applicant’s registration materials within 30 working days of the receipt of the materials.
2. The Department shall administer, collect, and enforce the surcharges and fees in Code Sections 44-56-440, 44-56-450, and 44-56-460 in the manner that the sales and use taxes are administered, collected, and enforced under Chapter 36, Title 12, except that no timely payment discount or exemptions or exclusions are allowed. The provisions of Title 12 apply to the collection and enforcement of the surcharges and fees by the Department.
3. The Department may establish audit procedures and assess delinquent registration fees and surcharges.
4. The Department shall create and update an annual report of all drycleaning facilities in the State. This report must identify those that have a “Drycleaning Facility Exemption Certificate” and must provide the status of the annual certificates of registration for those in the Fund. The Department shall publicize the report and distribute it as widely as practical on October 30 of each year to interested parties including, but not limited to, wholesale suppliers, dry cleaners, DHEC, and other interested parties.

◆ Registration Requirements of Drycleaning Facility or Property Owner. Code Section 44-56-440 provides for payment of initial and renewal registration fees to the Department. The fee is based on the number of employees employed by the owner or operator of the drycleaning facility and his dry drop-off facilities for the 12 months preceding payment of the fee.

The initial and annual registration fees for each drycleaning facility are computed as follows:

<u>Number of Employees</u> (as defined in Code Section 44-56-410(6))	<u>Registration Fee</u>
1 – 4	\$ 750
5 – 10	\$1,500
11 – more	\$2,250

Drycleaning Facility Owner or Operator to Register. The owner or operator of an operating drycleaning facility must register with and pay an initial registration fee for each facility in operation and pay annual or quarterly renewal registration fees to the Department. The owner or operator must also provide a notarized certification of the number of employees employed at the drycleaning facility for the 12 months preceding payment of the fee.

Property Owner May Register. If the owner or operator of a drycleaning facility does not register a site, the property owner may register the site. To register, the property owner must obtain a notarized certification from the owner or operator of the drycleaning facility, on a form provided by the Department, certifying the number of employees employed by the owner or operator of the drycleaning facility and his dry drop-off facilities for the 12 month period preceding payment of the fee and remit the required fee. If the employee data cannot be obtained, the property owner must pay \$2,250 to register the facility.

Upon registration by the property owner, the owner or operator of the drycleaning facility must be notified by the Department of the registration and must comply with all applicable Fund provisions, including paying subsequent registration renewal fees.

Exemption from Registration Fees. The registration fees are not imposed on a drycleaning facility in existence on July 1, 1995 that has a “Drycleaning Facility Exemption Certificate” issued by the Department on or after July 1, 2009.

Annual “Certificate of Registration” Issued by the Department. Each registered drycleaning facility must be issued an annual drycleaner’s certificate of registration by the Department. The certificate of registration is valid from October 1 – September 30 following the registration date. For registration of a new drycleaning facility, the certificate of registration is valid from the date of issuance through September 30.

Revocation of Certificate of Registration by the Department. The Department, in addition to all other penalties authorized by Article 4 and in addition to the provisions of Code Section 12-54-90 (“Revocation of license to do business for failure to comply with law”), may revoke one or more certificates of registration of any owner or operator of a drycleaning facility for failure to remit any taxes, surcharges, or fees due by the owner or operator pursuant to this article or Title 12 or when the owner or operator fails, neglects, violates, or refuses to comply with the provisions of Code Section 44-56-440. (See Code Section 44-56-435(E)).

- ◆ Surcharge on Retail Drycleaning or Dry Drop-Off Facilities. Code Section 44-56-450 imposes an environmental surcharge on every owner or operator of a retail drycleaning facility or a dry drop-off facility. The surcharge amount is now 1% of the gross proceeds of sales of laundering and drycleaning services. The surcharge is due on the 20th day of the following month. The Department may allow quarterly, semiannual, or annual payments. This surcharge is suspended when DHEC notifies the Department that the uncommitted balance of the Fund account exceeds \$5 million.

Exemption from Surcharge. The 1% surcharge is not imposed on the following facilities or sales:

1. Drycleaning facilities in existence before July 1, 1995 that have a “Drycleaning Facility Exemption Certificate” issued by the Department on or after July 1, 2009.

2. Dry drop-off facilities where clothing or other fabrics are only cleaned by a drycleaning facility and (a) the drycleaning facility is owned or operated by the same person who owns or operates the dry drop-off facility and does not own any property on which a drycleaning facility is protected by the moratorium in Code Section 44-56-420(B), (b) the drycleaning facility is issued a Drycleaning Facility Exemption Certificate by the Department on or after July 1, 2009, and (c) the drycleaning facility's owner or operator, or related entity, does not own or operate any other drycleaning facilities that are participating in the Fund.
3. Wholesale sales of drycleaning services provided to another drycleaning facility or a dry drop-off facility.

◆ Surcharge for Producing or Importing Solvents. Code Section 44-56-460 imposes a surcharge on the privilege of producing in, importing into, or causing to be imported into, South Carolina drycleaning solvent. A surcharge of \$10 per gallon on halogenated drycleaning fluid and \$2 per gallon on nonhalogenated drycleaning fluid is levied on each gallon to be used for drycleaning purposes when imported into or produced in South Carolina. Nonhalogenated drycleaning fluid purchased, produced, or transported in a nonliquid physical state are subject to a surcharge of 20¢ per pound. The surcharge is due on the 20th day of the following month of production, importation, or removal from a storage site.

Registration with the Department. A person producing in, importing into, or causing to be imported into South Carolina drycleaning solvent for sale, use, or otherwise shall register with the Department as a producer or importer of drycleaning solvent and become licensed for the purposes of remitting the surcharge. Persons operating as a producer or importer of drycleaning solvent at more than one location only are required to have a single registration. The registration fee is \$30.

Exemption from Surcharge. The surcharge does not apply to drycleaning solvent supplied to a drycleaning facility in existence prior to July 1, 1995, that has a "Drycleaning Facility Exemption Certificate" issued by the Department on or after July 1, 2009.

Drycleaning solvent exported out of South Carolina from the storage site at which the producer or importer holds it in South Carolina is exempt from the surcharge. Anyone exporting drycleaning solvent on which the surcharge has been paid may apply for a refund or credit. A person who sells drycleaning solvent that is exempt from the collection of the surcharge may apply for a credit or refund with the Department.

Failure to Register. Failure to register as a producer or importer of drycleaning solvent before importing or producing drycleaning solvent into South Carolina is a misdemeanor and, upon conviction, the person may be fined up to \$25,000 or imprisoned up to 30 days. Code Section 44-56-490(G).

Surcharge Report. The surcharge report must include the name, address, and quantity of solvent sold to each drycleaning facility during the month. This information is not subject to the Freedom of Information Act and is not available for distribution to the Drycleaning Advisory Council.

- ◆ Disclosure of Information. Code Section 44-56-495 provides for a Drycleaning Advisory Council to advise DHEC on matters affecting drycleaning and related industries. Code Section 44-56-495(F) provides that the Department may disclose to DHEC information on a return filed with the Department pursuant to Code Section 44-56-450 (the 1% surcharge on gross proceeds of sales of laundering and drycleaning services at a retail drycleaning facility or dry drop-off facility.) Members of the Advisory Council (other than the DHEC administrator representative) or the public may not receive specific information on the surcharge return. Members may be provided available statistical information concerning the surcharge.

Effective Date: May 21, 2013

REGULATORY LEGISLATION

House Bill 3710, Part 1B, Section 117, Proviso 117.131 (Act No. 101)

Donation of Alcoholic Liquors

This temporary proviso provides that a wholesaler may donate beer, wine, and alcoholic liquors to a nonprofit organization that has a license, including a temporary license, to serve the applicable beverage. This provision only applies if the event hosted by the nonprofit organization creates an economic impact on State revenues.

Effective Date: This temporary proviso is effective for State fiscal year July 1, 2013 through June 30, 2014. It will expire June 30, 2014, unless reenacted by the General Assembly in the next legislative session.

House Bill 3956 (Act No. 87)

Definition of “Furnishing Lodging” – Amended

Under the Alcoholic Beverage Control Act, Chapter 6 of Title 61, an otherwise qualified business may be licensed to sell liquor by the drink if it is bona fide engaged primarily and substantially in the preparation and serving of meals or furnishing of lodging.

Code Section 61-6-20 provides definitions for terms used in the Alcoholic Beverage Control Act. Subsection (5) now provides that “furnishing lodging” means those businesses that rent accommodations for lodging to the public on a regular basis consisting of not less than 18 rooms. Previously, 20 rooms were required.

Effective Date: June 13, 2013

Senate Bill 3, Section 1 (Act No. 5)

Alcoholic Beverage Licenses and Special Events for Charity – Scope of Allowed Activities Clarified

Code Section 61-2-180, which allows an alcoholic beverage license holder to conduct special events to raise money for charitable purposes, has been amended to clarify the scope of authorized activities. Language allowing raffles notwithstanding another provision of law has been omitted. Code Section 61-2-180 now provides that any authorized special event or activity is not an exception or limitation to Code Section 12-21-2710, prohibiting certain gaming machines and devices, or other Code provisions under which gambling or games of chance are unlawful and prohibited.

Effective Date: March 22, 2013

Senate Bill 3, Section 2 (Act No. 5)

Beer and Wine Retail Licenses and Certain Game Promotions – Scope of Allowed Activities Clarified

Code Section 61-4-580(3), which prohibits gambling or games of chance on the premises licensed for the sale of beer or wine, has been amended to clarify the scope of authorized activities under an exception for certain game promotions. The exception allows certain game promotions in connection with the sale, promotion or advertisement of a consumer product or service when no purchase or other payment is required to play. New item (d) provides that Code Section 61-4-580(3) is not an exception or limitation to Code Section 12-21-2710, prohibiting certain gaming machines and devices, or other Code provisions under which gambling or games of chance are unlawful and prohibited.

Effective Date: March 22, 2013

House Bill 3554, Sections 1 and 3 (Act No. 36)

Breweries – Beer Samples and Sales

Code Section 61-4-1515, which authorizes South Carolina breweries to offer samples and retail sales of beer brewed on the premises to consumers who take a full tour, has been amended.

On-Premises Consumption. Subsection (A), which previously concerned samples only, has been expanded to authorize sales for on-premises consumption as well as samples, subject to the following conditions:

1. The beer must be brewed on the premises with a maximum alcohol content of 12% by weight.
2. The total amount of beer transferred (by samples and sales) to a consumer for on-premises consumption in a 24 hour period must not exceed 48 ounces, of which only 16 ounces may contain more than 8% alcohol by weight.
3. The brewery must systematically monitor the amounts and types of beer transferred to consumers for on-premises consumption.
4. Consumers must not be intoxicated or under age 21.
5. Signage posted at each entrance and exit and other places visible during the tour must inform consumers of: (a) the alcoholic content by weight of beer available in the brewery and (b) the penalties for conviction for driving under the influence, unlawful transport of an alcoholic beverage container and unlawful transfer of alcohol to minors.
6. The brewery must provide South Carolina Department of Alcohol and Other Drug Abuse Services (DAODAS) approved training for its server staff.

7. The brewery must maintain liability insurance coverage of at least \$1 million for the biennial license period and provide proof of insurance to the State Law Enforcement Division (SLED) and the Department's Alcoholic Beverage Licensing section within 10 days of receiving its biennial license. For a brewery licensed in South Carolina on June 6, 2013, the requirements for proof of liability insurance apply immediately, and the brewery must provide the required documentation by August 5, 2013.

Off-Premises Consumption. Subsection (B), which previously authorized sales of beer brewed on the premises with a maximum alcohol content of 14% by weight, limited to 288 ounces per individual per day for personal use and not for resale, has been clarified to apply to sales for off-premises consumption only, in sealed containers.

Note: The following conditions continue to apply for all sales and for samples where specified:

1. The beer must be brewed on the premises. It must not be offered for sale or sampling except in conjunction with a tour of the licensed premises and the entire brewing process used there.
2. The price for beer sold by the brewery must approximate retail prices generally charged for identical beverages elsewhere in the same county.
3. The brewery must remit beer excise taxes, as well as appropriate sales and use taxes and local hospitality taxes.

Administrative Penalties. Subsection (C) has been amended to provide, in addition to other applicable fines and penalties, the following penalties for violations of Code Section 61-4-1515:

1. A fine of \$500 for a first violation.
2. An additional \$500 for a second violation within a 3 year period.
3. Suspension of the brewery license for not less than a 30 day period for a third violation within a 3 year period.

The revenue from these fines must be directed to SLED to supplement funding for regulation and enforcement of this section. Previously, the penalty for each violation was a fine of \$100, to be used by the Department for the costs of alcohol licensure and regulation.

Monthly Reports by Brewery. An uncodified provision requires each licensed brewery to report to the Department electronically a monthly total of the numbers of persons touring the brewery. This reporting requirement applies on a monthly basis during the period August 6, 2013 to February 1, 2016.

Effective Date: June 6, 2013, except where otherwise indicated.

House Bill 3554, Section 2 (Act No. 36)

Beer Tastings at Certain Retailers – Revised

Code Section 61-4-960(A), which authorizes beer tastings conducted by a retail permit holder for off-premises consumption whose primary product is beer or wine, has been amended. Previously, Code Section 61-4-960(A)(12) prohibited a beer tasting held in conjunction with a wine tasting. This prohibition has been omitted. Note: Wine tastings are allowed as provided in Code Section 61-4-737.

Effective Date: June 6, 2013

House Bill 3554, Section 3 (Act No. 36)

Brewery Retail Sales and Violations – Report to General Assembly Committee Chairmen

This uncodified provision requires a report, compiled jointly by the Department and the State Law Enforcement Division (SLED), to be delivered no later than March 15, 2016, to the chairs of the Senate Judiciary Committee, the Senate Finance Committee, the House Judiciary Committee, and the House Ways and Means Committee, to aid the General Assembly in determining if state laws should be amended and additional revenue appropriated for regulation and enforcement of Code Section 61-4-1515.

The report for the period June 6, 2013 to February 1, 2016 must contain: (1) a list of civil and criminal violations and dispositions of those violations related to the provisions of Code Section 61-4-1515, including, but not limited to, sales or transfers of beer to minors or intoxicated persons, suspensions of brewery licenses, unlawful transportation of beer, and offenses of driving under the influence, if known; (2) a total of excise and sales taxes paid by the breweries to the Department; and (3) a total of all fines and penalties paid by or assessed against persons for violations of Code Section 61-4-1515.

The report for the period August 6, 2013 to February 1, 2016 must contain a monthly total of the numbers of persons touring each brewery licensed in this State, derived from monthly electronic reports submitted by each licensed brewery to the Department.

The Department must furnish a list of all licensed breweries at the request of SLED or local law enforcement agencies.

Effective Date: June 6, 2013

REENACTED TEMPORARY PROVISOS

The following temporary provisos were enacted in prior legislative sessions and were reenacted by the General Assembly in 2013. Temporary provisos are effective for the State fiscal year July 1, 2013 through June 30, 2014, and will expire June 30, 2014, unless reenacted by the General Assembly in the next legislative session.

ADMINISTRATIVE and PROCEDURAL MATTERS

House Bill 3710, Part IB, Section 92, Proviso 92.10 (Act No. 101)

2% Reduction on Interest Rate on Tax Refunds

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

House Bill 3710, Part IB, Section 117, Proviso 117.94 (Act No. 101)

Additional 1% Reduction on Interest Rate on Tax Refunds

This temporary proviso decreases by 1% the interest rate for tax refunds paid during the current fiscal year, in addition to the 2% reduction reauthorized in temporary Proviso 92.10 (for a total 3% interest rate reduction). Of the revenue resulting from this 1% reduction, \$300,000 must be used by the Senate for operating expenses of the Joint Citizens and Legislative Committee on Children. The remaining revenue must be used by the Department of Juvenile Justice for programs for mentoring or other alternatives to incarceration. The revenue resulting from the 2% reduction continues to be used for operations of the State's Guardian ad Litem Program.

House Bill 3710, Part IB, Section 106, Proviso 106.6 (Act No. 101)

Voluntary Website Posting of Tax Return Information for Candidates and Gubernatorial Appointees

This temporary proviso provides that the Department must develop a program to process inquiries from a candidate for an office in South Carolina or its political subdivisions or any gubernatorial appointee concerning that candidate's or appointee's state income tax filings. Upon request by the candidate or appointee in connection with his own income tax return, the Department must determine if the candidate or appointee has filed his annual state income tax returns for the past ten years, paid all income taxes due during that time period, and, if applicable, satisfied all judgments, liens, or other penalties for failure to pay income taxes when due.

Unless the candidate or appointee requests otherwise, the following information will be posted on the Department's website:

1. The candidate or appointee's name;
2. The years that the candidate or appointee was required to file income tax returns during the last ten years and any years that he was not required to file income tax returns;
3. Whether the candidate or appointee filed income tax returns in each of the ten years that he was required to file an income tax return;
4. Whether the candidate or appointee paid income taxes due each year that he was required to file an income tax return; and
5. Whether the candidate or appointee had a judgment, lien, or other penalty levied against him for failure to pay income taxes when due; the year of any levy; and whether the judgment, lien or other penalty has been satisfied.

A candidate or appointee's inquiry constitutes a waiver of confidentiality with the Department concerning the information posted. The Department may not post complete income tax returns.

MISCELLANEOUS

House Bill 3710, Part IB, Section 106, Proviso 106.7 (Act No. 101)

Admissions Tax Exemption for Payment to Nonprofit Athletic Booster Organizations for Right to Purchase Athletic Event Season Tickets

Article 17, Chapter 21 of Title 12 provides for an admissions tax of 5% on paid admissions to places of amusement within South Carolina. Code Section 12-21-2420(4) provides that the admissions tax applies to paid admissions to all athletic events of any institution above the high school level.

This temporary proviso provides that any amount that an accredited college or university requires a season ticket holder to pay to a nonprofit athletic booster organization to receive the right to purchase athletic event tickets is exempt from admissions tax. The nonprofit athletic booster organization must be exempt from federal income taxation.

House Bill 3710, Part IB, Section 1, Proviso 1.17 (Act No. 101)

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 3710, Part IB, Section 33, Proviso 33.13 (Act No. 101)

Nursing Home Bed Franchise Fee – 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.

LIST OF TEMPORARY PROVISOS

Temporary provisos are enacted as part of the 2013 annual budget - House Bill 3710, Part IB (Act No. 101). They are effective only for the current State fiscal year (July 1, 2013 – June 30, 2014). They expire on June 30th, unless reenacted by the General Assembly.

The following is a list of new provisos enacted during this legislative session and a list of provisos that were enacted in prior fiscal years and reenacted during this legislative session. A brief summary of the provisos can be found in this publication under the applicable subject matter categories.

NEW PROVISOS

Income

- Proviso 1.85 Educational Credit for Exceptional Needs Children
- Proviso 1A.12 Teacher Supplies and Materials - Reimbursement Amount Not Taxable and Refundable Income Tax Credit
- Proviso 118.18 Tax Deduction for Consumer Protection Services

Miscellaneous (Administrative, Miscellaneous Taxes, Other, and Regulatory)

- Proviso 106.10 Emergency Related Infrastructure Work by an Out of State Business or Employee
- Proviso 118.10 Admissions Tax Rebate – Motorsports Entertainment Complex Facility
- Proviso 117.131 Donation of Alcoholic Liquors to Charitable Organizations

REENACTED PROVISOS

Income Taxes

- Proviso 1A.13 Teacher of the Year Awards – Not Subject to South Carolina Income Tax

Property Taxes

- Proviso 1.64 Index of Taxpaying Ability - Imputed Value for Owner-Occupied Residential Property
- Proviso 117.42 Personal Property Tax Relief Fund Not Funded

Sales and Use Taxes

- Proviso 117.41 Private Schools - Use Tax Exemption
- Proviso 117.63 Respiratory Syncytial Virus Medicines Exemption - Effective Date
- Proviso 117.67 Viscosupplementation Therapies - Sales and Use Tax Suspended

Miscellaneous (Administrative, Miscellaneous Taxes, Other, and Regulatory)

Administrative:

- Proviso 92.10 2% Reduction on Interest Rate on Tax Refunds
- Proviso 106.6 Voluntary Website Posting of Tax Return Information for Candidates and Gubernatorial Appointees
- Proviso 117.94 Additional 1% Reduction on Interest Rate on Tax Refunds

Miscellaneous:

- Proviso 1.17 - Local Government School Buses - Motor Fuel Tax Exemption
- Proviso 33.13 - Nursing Home Bed Franchise Fees - Suspension
- Proviso 106.7 - Admissions Tax Exemption for Payment to Nonprofit Athletic Booster Organizations for Right to Purchase Athletic Event Season Tickets

LIST OF NEW IDENTITY THEFT COVERAGE and PROTECTION LAWS

- House Bill 3248 - Financial Identity Fraud and Personal Identifying Information
- House Bill 3710 Proviso 97.12 - Identity Theft Reimbursement Fund
- House Bill 3710 Proviso 117.136 - Notification Procedure to Resident for Data Breach of Personal Identifying Information
- House Bill 3710 Proviso 118.18 - Income Tax Deduction for Consumer Protection Services
- House Bill 3711 Section 2 - Consumer Protection Free Coverage Period Extended

A complete copy of this legislation can be obtained from the South Carolina Legislature website at <http://www.scstatehouse.gov/> or the Department's website at:

<http://www.sctax.org/Tax+Policy/New+Security+and+Identity+Theft+Legislation.htm>