



STATE OF SOUTH CAROLINA  
**DEPARTMENT OF REVENUE**

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SC INFORMATION LETTER #17-15

**SUBJECT:** Tax Legislative Update for 2017

**DATE:** September 20, 2017

**AUTHORITY:** S.C. Code Ann. Section 12-4-320 (2014)  
S.C. Code Ann. Section 1-23-10(4) (2005)  
SC Revenue Procedure #09-3

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

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.

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**DISCLAIMER:**

This is intended to be a summary of the main points of the legislation; it is not an interpretation by the Department. It is written in general terms for widest possible use and may not contain all the specific requirements or provisions of authority. It is intended as a guide only, and the application of its contents to specific situations will depend on the particular circumstances involved. It does not represent official Department policy. Please refer to the full text of the legislation for specific details and requirements.

Any legislation regarding insurance premium taxes, unemployment taxes, distribution of funds, millage rate changes, and other similar provisions are 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 can be obtained from the South Carolina Legislature’s website at <http://www.scstatehouse.gov/>.

## **LIST OF BILLS BY SUBJECT CATEGORY**

A list of significant changes in tax and regulatory laws (both permanent and temporary) enacted during the 2017 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 reenacted, temporary provisos expire on June 30, 2018.

Also included are reminders of provisions which were enacted in a prior year but are effective in 2017 or thereafter. These provisions are indicated as “reminders” in the chart below.

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, [www.dor.sc.gov](http://www.dor.sc.gov).

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

<b>BILL #</b>	<b>ACT #</b>	<b>SUBJECT</b>
250	4	Internal Revenue Code Conformity
3147 – Sec. 1	272 (2016)	Military Individual – Earned Income and Retirement Income - New Deduction; General Retirement and Age 65 and Older Deduction - Amended – <b>Reminder</b>
3516 – Sec. 15	40	Motor Fuel User Fee Credit – New Refundable Credit
3516 – Sec. 16	40	South Carolina Earned Income Credit – New Credit
3516 – Sec. 17	40	Two-Wage Earner Credit – Credit Increased
3516 – Sec. 18	40	Tuition Tax Credit – Credit Increased
3720 – Proviso 1A.9	97	Teaching Supplies and Materials – Reimbursement Amount Not Taxable or Refundable Income Tax Credit – <b>Reenacted Temporary Proviso</b>
3720 – Proviso 1A.10	97	Teacher of the Year Awards – Not Subject to South Carolina Income Tax – <b>Reenacted Temporary Proviso</b>
3720 – Proviso 109.11	97	Educational Credit for Exceptional Needs Children – <b>Reenacted &amp; Revised Temporary Proviso</b>
3720 – Proviso 117.128	97	Retail Facilities Revitalization Act – Repeal of Act Suspended – <b>Reenacted Temporary Proviso</b>
3720 – Proviso 118.10	97	Consumer Protection Services – Individual Income Tax Deduction – <b>Reenacted Temporary Proviso</b>

### **PROPERTY TAXES and FEES IN LIEU OF PROPERTY TAXES**

<b>BILL #</b>	<b>ACT #</b>	<b>SUBJECT</b>
3247 – Sec. 1 and 10	89	Mopeds – Exemption from Property Taxes
3516 – Sec. 19	40	Manufacturing Property – New Partial Exemption
3720 – Proviso 1.48	97	Index of Taxpaying Ability – Imputed Value for Owner-Occupied Residential Property – <b>Reenacted Temporary Proviso</b>
3720 – Proviso 113.8	97	Agricultural Use Exemption for Timberland – Impact of Additional County Requirements – <b>Reenacted Temporary Proviso</b>
3720 – Proviso 117.38	97	Personal Property Tax Relief Fund – <b>Reenacted Temporary Proviso</b>
3720 – Proviso 117.128	97	Retail Facilities Revitalization Act – Repeal of Act Suspended – <b>Reenacted Temporary Proviso</b>
3720 – Proviso 117.138	97	Improvements to Property Damaged by Catastrophic Weather Event – <b>New Temporary Proviso</b>

## SALES AND USE TAXES

BILL #	ACT #	SUBJECT
488	57	Motor Vehicle Dealer License Plates – Exclusion from Gross Proceeds of Sale Expanded
3516 – Sec. 5	40	New Infrastructure Maintenance Fee – Administered by the South Carolina Department of Motor Vehicles
3516 – Sec. 7.A	40	Maximum Sales and Use Tax – Increase for Certain Items
3516 – Sec. 7.A	40	Sales Tax for Certain Items Registered Out-of-State – Collection by the South Carolina Department of Motor Vehicles
3516 – Sec. 7.B	40	Items Subject to the New Infrastructure Maintenance Fee – New Exemption
3516 – Sec. 7.C	40	Casual Excise Tax – Revised List of Applicable Items
3720 – Proviso 117.37	97	Private Schools – Use Tax Exemption – <b>Reenacted Temporary Proviso</b>
3720 – Proviso 117.57	97	Respiratory Syncytial Virus Medicines Exemption – Effective Date – <b>Reenacted Temporary Proviso</b>
3720 – Proviso 117.61	97	Viscosupplementation Therapies – Sales and Use Tax Suspended – <b>Reenacted Temporary Proviso</b>
3720 – Proviso 117.137	97	State Ports Authority – Distribution Facility Eligibility – <b>New Temporary Proviso</b>
3891 – Sec. 1	224 (2016)	Vehicle License Fees – Subject to State and Local Sales and Use Tax - <b>Reminder</b>
3891 – Sec. 2	224 (2016)	Heavy Equipment Rental Fee – Not Subject to State and Local Sales Tax – <b>Reminder</b>
Regulation Doc. No. 4664	117- 307.7	Hurricane Rental Insurance Charges for Accommodations – <b>New Regulation</b>
Regulation Doc. No. 4731	117- 305.5	Exemption for Meals Sold to School Children – <b>Amended Regulation</b>

## MISCELLANEOUS

BILL #	ACT #	SUBCATEGORY	SUBJECT
		<b>Administrative &amp; Procedural</b>	
3720 – Provisos 93.7 and 117.86	97		3% Reduction on Interest Rate on Tax Refunds – <b>Reenacted Temporary Provisos</b>
3720 – Proviso 109.6	97		Voluntary Website Posting of Tax Return Information for Candidates and gubernatorial Appointees – <b>Reenacted Temporary Proviso</b>
		<b>Miscellaneous Taxes</b>	
3406 – Sec. 2	68		Admissions Tax Exemption for Payment to Nonprofit Athletic Booster Organizations for Right to Purchase Athletic Event Season Tickets – Prior Proviso Codified
3516 – Sec. 2	40		Motor Fuel User Fee – Rate Change
3516 – Sec. 10	40		Motor Fuel User Fee – Inventory Tax Repealed
3720 – Proviso 1.15	97		Local Government School Buses – Motor Fuel User Fee Exemption – <b>Reenacted Temporary Proviso</b>
3720 – Proviso 33.10	97		Nursing Home Bed Franchise Fee – Suspension – <b>Reenacted Temporary Proviso</b>
3720 – Proviso 118.7	97		Admissions Tax Rebate – Motorsports, Tennis, and Soccer Facilities – <b>Reenacted Temporary Proviso</b>

## MISCELLANEOUS (CONTINUED)

4151	149 (2016)		Cigarette Stamp Tax Program – New Process – <b>Reminder</b>
Regulation Doc. No. 4702	117- 1600		Cigarette Stamp Tax – <b>New Regulation</b>
		<b>Other</b>	
277	181 (2016)		Telecommunication Providers – Dual Party Relay Charges and Universal Service Fund – <b>Reminder</b>
667	270 (2016)		Boundary Clarification between South Carolina and North Carolina – <b>Reminder</b>
3516 – Sec. 3	40		Motor Carrier Road Tax – Rate Change
3516 – Sec. 8	40		New Motor Carrier Road Use Fee – Administered by the South Carolina Department of Motor Vehicles
3516 – Sec. 8	40		Motor Carrier Business License Fee or Tax Imposed by Municipality or County
3891 – Sec. 1	224 (2016)		Vehicle License Fee – <b>Reminder</b>
3891 – Sec. 2-3	224 (2016)		Heavy Equipment Rental Surcharge - Repealed; Heavy Equipment Rental Fees - New – <b>Reminder</b>
		<b>Regulatory</b>	
114	44		Special Nonprofit Event License – New License and Other Requirements
116	45		Alcoholic Beverage On-Premises License or Permit Holders – New Requirement for Liability Insurance
275 and 3137 – Sec. 6-7	50 and 62		Breweries and Brewpubs – Modified Insurance Requirement, Licensing and Permits
334	33		Baseball Complex – New Licensing Provisions for Beer and Wine and for Alcoholic Liquors
3137 – Sec. 1-2	62		Tastings and Retail Sales of Micro-Distillers and Manufacturers – Revised Limits and Permits
3137 – Sec. 3	62		Sampling at Retail Liquor Stores – Use of Mixers Permitted
3137 – Sec. 4	62		Retail Dealer License – Repeal of Three-License Limit; Repeal of Retailer Tasting Restriction
3720 – Proviso 117.105	97		Donation of Beer, Wine, and Alcoholic Liquors to a Nonprofit Organization – <b>Reenacted Temporary Proviso</b>

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

Senate Bill 250 (Act No. 4)

## **Internal Revenue Code Conformity**

Conformity Date. Code Section 12-6-40(A)(1)(a) has been amended, except as otherwise provided, to update South Carolina's income tax laws to conform to the Internal Revenue Code of 1986, as amended through December 31, 2016, and includes the effective date provisions contained therein.

Extension of Expiring Federal Provisions. Code Section 12-6-40(A)(1)(c) provides that if during 2017 the federal government extends, without otherwise amending, Internal Revenue Code provisions that expired on December 31, 2016, then these sections or portions of sections which have been adopted by South Carolina will be extended in the same manner that they are for federal income tax purposes.

Effective Date: April 5, 2017

House Bill 3516, Section 15 (Act No. 40)

## **Motor Fuel User Fee Credit – New Refundable Credit**

Code Section 12-6-3780 has been added to allow a resident taxpayer a refundable income tax credit for preventative maintenance costs associated with a private passenger motor vehicle or motorcycle registered in South Carolina during the year, subject to certain limitations.

The credit is the lesser of: (1) the resident taxpayer's preventative maintenance expenses; or (2) the resident taxpayer's actual motor fuel user fee increase incurred for that motor vehicle as a result of increases in the motor fuel user fee pursuant to Code Section 12-28-310(D).

Other credit requirements and provisions include:

1. A resident taxpayer may claim the credit for up to two private passenger motor vehicles. The credit is calculated separately for each vehicle.
2. The credit must be claimed on the resident taxpayer's income tax return.
3. The Department may require any documentation it deems necessary to implement the provisions of this section.

4. A maximum aggregate amount of credit is available per tax year as follows:

<b>Tax Year</b>	<b>Total Credit Allowed for All Taxpayers</b>
2018	\$40 million
2019	\$65 million
2020	\$85 million
2021	\$110 million
2022 and thereafter, if reauthorized	\$114 million

If the Revenue and Fiscal Affairs Office estimates that the total amount of credits claimed will exceed the maximum amount of aggregate credit allowed, it shall certify to the Department a pro rata adjustment to the credit otherwise provided.

For purposes of this credit, “private passenger motor vehicle,” “motor fuel expenditures,” and “preventative maintenance” are defined as follows:

- “Private passenger motor vehicle” is defined in Code Section 56-3-630. Code Section 56-3-630 provides, in part, that a private passenger motor vehicle is a motor vehicle designed, used, and maintained for the transportation of ten or fewer persons and trucks having an empty weight of 9,000 pounds or less and a gross weight of 11,000 pounds or less.
- “Motor fuel expenditures” are purchases of motor fuel within South Carolina to which the motor fuel user fee imposed pursuant to Code Section 12-28-310(D) applies.
- “Preventative maintenance” includes costs incurred within South Carolina for new tires, oil changes, regular vehicle maintenance, and the like.

Expiration of Credit: Unless reauthorized by the General Assembly, the credit may not be claimed for any tax year beginning after 2022.

See SC Revenue Ruling #17-6 for more information regarding the credit.

Effective Date: For tax years beginning after 2017

House Bill 3516, Section 16 (Act No. 40)

### **South Carolina Earned Income Credit – New Credit**

Code Section 12-6-3632 has been added to provide a full-year resident individual a nonrefundable South Carolina earned income tax credit. The credit is equal to 125% of the federal earned income tax credit allowed the taxpayer under Internal Revenue Code Section 32.

The credit will be phased in over six years in equal installments of 20.83% beginning in 2018 as follows:

<b>Tax Year</b>	<b>Credit Amount</b>
2018	20.83% of federal earned income credit
2019	41.67% of federal earned income credit
2020	62.5% of federal earned income credit
2021	83.33% of federal earned income credit
2022	104.17% of federal earned income credit
2023 and thereafter	125% of federal earned income credit

Effective Date: Tax years beginning after 2017

House Bill 3516, Section 17 (Act No. 40)

**Two-Wage Earner Credit – Credit Increased**

Code Section 12-6-3330, providing a two-wage earner income tax credit for married individuals filing a joint return when both spouses have South Carolina earned income, has been amended to increase the maximum credit available from \$210 to \$350. Prior to this amendment, the credit was limited to 0.7% of the lesser of \$30,000 or the South Carolina qualified earned income of the spouse with the lower South Carolina qualified earned income for the tax year.

The amendment increases the \$30,000 threshold to \$50,000. It is phased in over six years in equal installments of \$3,333 each tax year as follows:

<b>Tax Year</b>	<b>A</b>	<b>B</b>	<b>Maximum Credit (Columns A x B)</b>
	<b>Earned Income Maximum Threshold</b>	<b>Factor</b>	
2018	\$33,333	0.7%	\$233
2019	\$36,667	0.7%	\$257
2020	\$40,000	0.7%	\$280
2021	\$43,333	0.7%	\$303
2022	\$46,667	0.7%	\$327
2023 and thereafter	\$50,000	0.7%	\$350

Effective Date: Tax years beginning after 2017

House Bill 3516, Section 18 (Act No. 40)

**Tuition Tax Credit – Credit Increased**

Code Section 12-6-3385, providing a refundable individual income tax credit for college tuition paid during a tax year, has been amended to increase the tuition tax credit to 50% of tuition paid during a tax year, not to exceed \$1,500, for tuition paid to both two-year institutions and four-year institutions.

Prior to amendment, the credit was equal to 25% of tuition paid during a tax year, not to exceed \$350 for tuition paid to a two-year institution, or \$850 for tuition paid to a four-year institution.

Code Sections 12-6-3385(A)(1)(b) and (c) have been added to provide that the maximum amount of credits allowed for all taxpayers may not exceed \$40 million in tax year 2018, and thereafter may not exceed the maximum amount in tax year 2018, plus a cumulative amount equal to the percentage increase in the Higher Education Price Index, not to exceed more than three percent a year. The Revenue and Fiscal Affairs Office shall certify the maximum credit to the Department. If the total amount of credits claimed by all taxpayers exceeds the maximum amount, then each credit must be reduced proportionately.

Effective Date: Tax years beginning after 2017

**REENACTED OR REVISED TEMPORARY PROVISOS**

**The following temporary provisos were enacted in a prior legislative session and were reenacted by the General Assembly in 2017. Temporary provisos are effective for the State fiscal year July 1, 2017 through June 30, 2018, and will expire June 30, 2018, unless reenacted by the General Assembly in the next legislative session.**

House Bill 3720, Part IB, Section 118, Proviso 118.10 (Act No. 97)

**Consumer Protection Services – 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 and 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; or
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” 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” 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.

House Bill 3720, Part IB, Section 109, Proviso 109.11 (Act No. 97)

### **Educational Credit for Exceptional Needs Children**

This reenacted and revised temporary proviso continues to provide for the Educational Credit for Exceptional Needs Children Fund. The fund, organized as a public charity, may accept contributions, which it shall use to provide scholarships to exceptional needs children attending “eligible schools.” The public charity, governed by five appointed directors, will award grants for the cost of tuition, up to \$11,000, for qualifying students with exceptional needs to attend an eligible school.

This proviso authorizes tax credits up to \$13 million for funding tuition for exceptional needs children enrolled in eligible schools that have been approved by the Education Oversight Committee. Below is a brief summary of the two tax credits authorized by this proviso.

1. Nonrefundable Credit for Contributions to the Fund. A taxpayer is allowed a nonrefundable credit against income or bank taxes for the amount of cash and the monetary value of any publicly traded securities the taxpayer contributes to the fund if: (a) the contribution is used to provide grants for tuition to exceptional needs children enrolled in eligible schools and (b) the taxpayer does not designate a specific child or school as the beneficiary of the contribution. The credit is limited to 60% of a taxpayer’s total income tax or bank tax liability for the tax year the contribution is made.

Other conditions of the credit are:

- a. If the taxpayer deducts the amount of the contribution on the taxpayer's federal income tax return and claims this credit, then the taxpayer must add back the amount of the deduction for South Carolina income tax purposes.
  - b. A corporation or entity entitled to this credit may not convey, assign, or transfer this credit to another entity unless all of the assets of the entity are conveyed, assigned, or transferred in the same transaction.
  - c. A taxpayer may only claim this credit for contributions made during the fiscal year.
2. Refundable Credit for Tuition Payments Made by Parents and Guardians. A taxpayer is entitled to a refundable tax credit against income taxes for the amount of cash and the monetary value of any publicly traded securities, not exceeding \$11,000 per child, for tuition payments to an eligible school for an exceptional needs child within his custody or care. If the child, however, also receives a grant from the fund, then the taxpayer may only claim a credit equal to the difference of \$11,000 or the cost of tuition, whichever is lower, and the amount of the grant.

Credit Limits. The total authorized nonrefundable credits available for contributions to the fund may not exceed \$11 million annually. The total amount of refundable tax credits may not exceed \$2 million annually. If the credits claimed by all taxpayers exceed either limit amount, the Department shall allow credits only up to those amounts on a first come, first served basis.

Definitions. For purposes of this proviso, "exceptional needs child," "qualifying student," and "tuition" are defined as follows:

- An "exceptional needs child" is a child:
  - a. Who has been evaluated under the criteria of SC Regulation 43-243.1, and determined eligible as a child with a disability who needs special education and related services, in accordance with Section 300.8 of the Federal Individuals with Disabilities Education Act (20 U.S.C.A. Section 1400, et seq.); or
  - b. Who has been diagnosed within the last three years by a licensed speech-language pathologist, psychiatrist, or medical, mental health, psychoeducational, or other comparable licensed health care provider as having a neurodevelopmental disorder, a substantial sensory or physical impairment such as deaf, blind, or orthopedic disability, or some other disability or acute or chronic condition that significantly impedes the student's ability to learn and succeed in school without specialized instructional and associated supports and services tailored to the child's unique needs.
- A "qualifying student" is a student who is (a) an "exceptional needs child," (b) a South Carolina resident, and (c) eligible to be enrolled in a South Carolina secondary or elementary public school at the kindergarten or later year level for the applicable school year.

- “Tuition” is the total amount of money charged for the cost of a qualifying student to attend an independent school including, but not limited to, fees for attending the school, textbook fees, and school-related transportation (transportation to and from school only).

In addition, the proviso provides for a comprehensive study of the Exceptional Needs Tax Credit program and the submission of a report of the study to the General Assembly by January 15, 2018.

House Bill 3720, Part IB, Section 1A, Proviso 1A.9 (Act No. 97)

### **Teaching Supplies and Materials – Reimbursement Amount Not Taxable or Refundable Income Tax Credit**

This temporary proviso allows public school teachers identified in the *Professional Certified Staff*, certified special school classroom teachers, certified media specialists, certified guidance counselors, and career specialists who are employed by a school district, charter school, or lead teachers employed in a publically funded full day 4K classroom approved by South Carolina First Steps to School Readiness, a \$275 reimbursement designed to offset expenses incurred for teaching supplies and materials. The reimbursement is not considered taxable income by South Carolina.

This proviso also provides 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 2017 tax return. The credit is the lesser of \$275 or the amount spent on teacher supplies and materials. The return or amended return claiming the credit must be filed on or before June 30, 2018, and may include expenses incurred after December 31, 2017. Note: Any person who receives the reimbursement provided by this proviso is not eligible for the income tax credit allowed by this proviso.

House Bill 3720, Part IB, Section 1A, Proviso 1A.10 (Act No. 97)

### **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.

House Bill 3720, Part IB, Section 117, Proviso 117.128 (Act No. 97)

**Retail Facilities Revitalization Act – Repeal of Act Suspended**

The South Carolina Retail Facilities Revitalization Act (Title 6, Chapter 34) was enacted in 2006 (Act No. 285) to create an incentive for the renovation, improvement, and redevelopment of abandoned retail facility sites in South Carolina. A taxpayer who renovates, improves, or redevelops an abandoned retail facility at an eligible site may elect to take either an income tax credit or a property tax credit. Act No. 285 of 2006 contained a repeal provision stating that the Act is repealed on July 1, 2016.

Under this temporary proviso, the repeal of the South Carolina Retail Facilities Revitalization Act as to sites for which written notification of election of mode of credit has been provided to the Department prior to July 1, 2016, and for which a building permit has been issued prior to July 1, 2016, is suspended for fiscal year 2017 - 2018.

**REMINDER**

**The following provision was enacted in 2016 but is effective in 2017 and thereafter. The provision is summarized below for informational purposes.**

House Bill 3147, Section 1 (Act No. 272)

**Military Individual - Earned Income and Retirement Income – New Deduction  
- General Retirement and Age 65 and Older Deduction – Amended**

Code Section 12-6-1170 provides an income tax deduction for an individual with retirement income and an income tax deduction for persons 65 and older. Code Section 12-6-1171 has been added to provide an income tax deduction for (a) an individual under age 65 with South Carolina earned income and military retirement income or (b) an individual age 65 and older with military retirement income. With the addition of Code Section 12-6-1171, Code Section 12-6-1170 has been amended to provide for a reduction in the deduction allowed by an amount claimed under Code Section 12-6-1171. A summary of new Code Section 12-6-1171 and the related amendment to Code Section 12-6-1170 is provided below.

I. Summary of New Code Section 12-6-1171.

- A. Individual Under Age 65 with South Carolina Earned Income and Military Retirement Income. Code Section 12-6-1171(A)(1) provides that an individual who has military retirement income may deduct an amount of his “South Carolina earned income” from South Carolina taxable income equal to the amount of military retirement income that is included in South Carolina taxable income. For purposes of this item, South Carolina

earned income has the same meaning as provided in Code Section 12-6-3330. The deduction amount is phased in as follows:

<b>Tax Year Beginning In</b>	<b>Deduction Amount Not to Exceed</b>
2016	\$ 5,900
2017	\$ 8,800
2018	\$11,700
2019	\$14,600
2020 and thereafter	\$17,500

In the case of married taxpayers who file a joint federal income tax return, the deduction is calculated separately as though they had not filed a joint return, so that each individual's deduction is based on the same individual's retirement income and earned income.

- B. Individual Age 65 and Older with Military Retirement Income. Code Section 12-6-1171(A)(2) provides that beginning in the year in which an individual reaches age 65, an individual who has military retirement income may deduct his military retirement income that is included in South Carolina taxable income. The deduction amount is phased in as follows:

<b>Tax Year Beginning In</b>	<b>Deduction Amount Not to Exceed</b>
2016	\$18,000
2017	\$21,000
2018	\$24,000
2019	\$27,000
2020 and thereafter	\$30,000

A surviving spouse receiving military retirement income that is attributable to the deceased spouse shall apply this deduction in the same manner that the deduction applied to the deceased spouse. If the surviving spouse also has other retirement income, an additional retirement deduction is allowed.

- C. Definitions of Retirement Income. For purposes of Code Section 12-6-1171, the term "retirement income" means the total of all otherwise taxable income not subject to a penalty for premature distribution received by the taxpayer or the taxpayer's surviving spouse in a taxable year from a qualified military retirement plan. For purposes of a surviving spouse, "retirement income" also includes a retirement benefit plan and dependent indemnity compensation related to the deceased spouse's military service.

II. Summary of Code Section 12-6-1170 and New Code Section 12-6-1170(C) for Military Individuals.

- A. Code Section 12-6-1170(A) – General Retirement Income Deduction. Code Section 12-6-1170(A) continues to provide an annual income tax deduction from South Carolina taxable income for retirement income to the owner of a qualified retirement account.

The qualifying taxpayer receiving retirement income may deduct up to \$3,000 of such retirement income annually until reaching age 65, and deduct up to \$10,000 of such retirement income annually at age 65 and thereafter. In addition, a surviving spouse is allowed a deduction for income received from his or her retirement plan, if any, and a separate deduction for retirement income that is attributable to the deceased spouse, if any.

- B. Code Section 12-6-1170(B) – Deduction for Age 65 and Older. Code Section 12-6-1170(B) continues to provide an income tax deduction of up to \$15,000 against any South Carolina taxable income of a resident individual who is 65 or older by the end of the tax year. Taxpayers filing a joint return are allowed a deduction of up to \$15,000 when only one spouse is 65 or older, and up to \$30,000 when both spouses are 65 or older, by the end of the tax year. Amounts deducted as retirement income under Code Section 12-6-1170(A) reduce the \$15,000 deduction. Amounts deducted as a surviving spouse under Code Section 12-6-1170(A) do not reduce this \$15,000 deduction.
- C. New Code Section 12-6-1170(C) – Military Individuals Claiming a Deduction Under Code Section 12-6-1171. Code Section 12-6-1170(C) has been added to provide modifications to the amounts allowed under the general provisions of Code Section 12-6-1170(A) and (B). It provides:
1. If a taxpayer claims a deduction under Code Section 12-6-1171, then the deduction allowed under Code Section 12-6-1170 must be reduced by the amount the taxpayer deducts under Code Section 12-6-1171. This reduction does not apply if the deduction claimed under Code Section 12-6-1171 is claimed by a surviving spouse.
  2. In the case of married taxpayers who file a joint federal income tax return, this reduction applies to each individual separately, so that the reduction only applies to the amount the individual claiming the deduction pursuant to Code Section 12-6-1171 otherwise could have claimed under Code Section 12-6-1170 if the individual had not filed a joint return.

Effective Date: Applies to tax years beginning after 2015

# **PROPERTY TAXES and FEES IN LIEU OF PROPERTY TAXES**

House Bill 3720, Part IB, Section 117, Proviso 117.138 (Act No. 97)

## **Improvements to Property Damaged by Catastrophic Weather Event**

This temporary proviso provides that any improvements made to real property or personal property used as a residence, such as a mobile home or manufactured housing unit, damaged during the catastrophic weather event in October 2015 or Hurricane Matthew of 2016, after the event and before June 30, 2018, is not considered an improvement and does not require a re-appraisal. This provision only applies if as a result of the catastrophic weather event, the improvements made to the property were funded by the United States Department of Housing and Urban Development Block Grant - Disaster Recovery program. This provision also applies if, at the discretion of the county and using qualifications determined by the county, the improvements were made with the assistance of a volunteer organization active in disaster, or a similar volunteer organization.

During the current fiscal year, the property tax value of an eligible property shall remain the same unless an assessable transfer of interest occurs. No refund is allowed on account of values adjusted as provided in this provision.

Effective Date: This temporary proviso is effective for State fiscal year July 1, 2017 through June 30, 2018. It will expire June 30, 2018, unless reenacted by the General Assembly in the next legislative session.

House Bill 3516, Section 19 (Act No. 40)

## **Manufacturing Property – New Partial Exemption**

Code Section 12-37-220(B)(52) has been added to exempt from ad valorem property taxes 14.2857% of the property tax value of manufacturing property assessed for property tax purposes pursuant to Code Section 12-43-220(a)(1), both real and personal. If the exemption is applied to real property, then it must be applied to the property tax value as it may be adjusted downward to reflect the 15% cap on value provided in Section 6, Article X of the South Carolina Constitution.

The exemption amount is phased in over six equal and cumulative percentage installments, as follows:

<b>Property Tax Year Beginning In</b>	<b>Exemption Amount</b>
2018	2.38095%
2019	4.7619%
2020	7.14285%
2021	9.5238%
2022	11.90475%
2023 and thereafter	14.2857%

The revenue loss resulting from the exemption must be reimbursed and allocated to the political subdivisions of South Carolina, including school districts, in the same manner as the Trust Fund for Tax Relief, not to exceed \$85 million per year. For any year in which the reimbursements are projected by the Revenue and Fiscal Affairs Office to exceed the reimbursement cap, the exemption amount shall be proportionately reduced so as not to exceed the reimbursement cap. Property exempted from property taxes in the manner provided in Code Section 12-37-220(B)(52), as discussed above, is considered taxable property for purposes of bonded indebtedness pursuant to Section 15, Article X of the South Carolina Constitution.

Effective Date: For property tax years beginning after 2017

House Bill 3247, Sections 1 and 10 (Act No. 89)

**Mopeds – Exemption from Property Taxes**

Title 56, Chapter 2 has been amended to add Article 3, “Mopeds,” concerning the titling, registration and licensing of mopeds. Code Section 56-2-3010(D) exempts mopeds from ad valorem property taxes.

Code Section 56-1-10(26) defines a “moped” as follows:

A “moped” means a cycle, defined as a motor vehicle, with or without pedals, to permit propulsion by human power, that travels on not more than three wheels in contact with the ground whether powered by gasoline, electricity, alternative fuel, or a hybrid combination thereof. Based on the engine or fuel source, the moped must be equipped not to exceed the following limitations: a motor of fifty cubic centimeters; or designed to have an input exceeding 750 watts and no more than 1500 watts. If an internal combustion engine is used, the moped must have a power drive system that functions directly or automatically without clutching or shifting by the operator after the drive system is engaged.

Effective Date: November 19, 2018

## **REENACTED TEMPORARY PROVISOS**

**The following temporary provisos were enacted in prior legislative sessions and were reenacted by the General Assembly in 2017. Temporary provisos are effective for the State fiscal year July 1, 2017 through June 30, 2018, and will expire June 30, 2018, unless reenacted by the General Assembly in the next legislative session.**

House Bill 3720, Part IB, Section 1, Proviso 1.48 (Act No. 97)

### **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 pursuant to Code Section 12-43-220(c) 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 the current fiscal year, 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 3720, Part IB, Section 113, Proviso 113.8 (Act No. 97)

### **Agricultural Use Exemption for Timberland – Impact of Additional County Requirements**

Chapter 27 of Title 6 establishes the Local Government Fund (“Fund”) and requires that South Carolina’s annual general appropriations act allocate 4.5% of general fund revenues from the latest completed fiscal year to the Fund. No later than thirty days after the end of each calendar quarter, the State Treasurer must distribute fund revenues to counties and municipalities in accordance with Code Section 6-27-40.

Code Section 12-43-230(a) and Code Section 12-43-232 provide certain requirements for a landowner to receive an agricultural use exemption. Under this proviso, if a county imposes any additional requirements for an agricultural use exemption with respect to timberland, the county's Fund distributions will be withheld.

House Bill 3720, Part IB, Section 117, Proviso 117.38 (Act No. 97)

### **Personal Property Tax Relief Fund**

This temporary proviso provides 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 a 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.

House Bill 3720, Part IB, Section 117, Proviso 117.128 (Act No. 97)

### **Retail Facilities Revitalization Act – Repeal of Act Suspended**

The South Carolina Retail Facilities Revitalization Act (Title 6, Chapter 34) was enacted in 2006 (Act No. 285) to create an incentive for the renovation, improvement, and redevelopment of abandoned retail facility sites in South Carolina. A taxpayer who renovates, improves, or redevelops an abandoned retail facility at an eligible site may elect to take either an income tax credit or a property tax credit. Act No. 285 of 2006 contained a repeal provision stating that the Act is repealed on July 1, 2016.

Under this temporary proviso, the repeal of the South Carolina Retail Facilities Revitalization Act as to sites for which written notification of election of mode of credit has been provided to the Department prior to July 1, 2016, and for which a building permit has been issued prior to July 1, 2016, is suspended for fiscal year 2017 - 2018.

# SALES AND USE TAXES

House Bill 3516, Section 5 (Act No. 40)

## **New Infrastructure Maintenance Fee – Administered by the South Carolina Department of Motor Vehicles**

In 2017, the General Assembly enacted the South Carolina Infrastructure and Economic Development Reform Act (Act No. 40) to address the needs of South Carolina's transportation infrastructure system. The Act imposed a new infrastructure maintenance fee upon the registration of a vehicle with the South Carolina Department of Motor Vehicles and amended the application of the sales and use tax and casual excise tax to motor vehicles, trailers, semitrailers, and other items.

The infrastructure maintenance fee is administered by the South Carolina Department of Motor Vehicles. Since the changes to the sales and use tax law are so intertwined with the new infrastructure maintenance fee, a summary of the infrastructure maintenance fee is provided below. Questions concerning these provisions should be directed to the South Carolina Department of Motor Vehicles at [cartaxes@scdmv.net](mailto:cartaxes@scdmv.net).

Code Section 56-3-627 has been added to impose a new infrastructure maintenance fee beginning July 1, 2017 to account for necessary road maintenance in South Carolina. This fee will be in addition to the registration fees imposed by Chapter 3 of Title 56.

The owner of each vehicle, trailer, semitrailer or other item that must be registered pursuant to Chapter 3 of Title 56 must pay the infrastructure maintenance fee upon first registering the vehicle, trailer, semitrailer or other item with the South Carolina Department of Motor Vehicles. The South Carolina Department of Motor Vehicles may not issue a registration until the infrastructure maintenance fee has been collected.

The infrastructure maintenance fee is remitted to the South Carolina Department of Motor Vehicles and is imposed under three circumstances as follows:

1. Purchases or Leases from a Dealer.

The infrastructure maintenance fee is imposed when the owner first registers a vehicle, trailer, semitrailer or other item required to be registered under Chapter 3 of Title 56 that was purchased or leased from a dealer. The infrastructure maintenance fee is the lesser of (1) 5% of the gross proceeds of sales, or sales price (as those terms are defined in Chapter 36 of Title 12); or (2) \$500.

If the dealer has a South Carolina retail license or offers to license and register the item, then the dealer must collect the infrastructure maintenance fee and remit it to the South Carolina Department of Motor Vehicles.

## 2. Purchases or Leases from a Person Other than a Dealer.

The infrastructure maintenance fee is imposed when the owner first registers a vehicle, trailer, semitrailer or other item required to be registered under Chapter 3 of Title 56 that was purchased or leased from a person other than a dealer (such as an individual or a business that is not licensed as a dealer). The infrastructure maintenance fee is the lesser of (1) 5% of the fair market value or (2) \$500.

Code Section 56-3-627(C)(2) excludes from the infrastructure maintenance fee the following purchases and leases from non-dealers:

- a. Items transferred to members of the immediate family;
- b. Items transferred to legal heirs, legatees, or distributees;
- c. Items transferred from an individual to a partnership upon formation of a partnership;
- d. Items transferred from a stockholder to a corporation upon formation of a corporation;
- e. Items transferred to a licensed motor vehicle or motorcycle dealer for the purpose of resale;
- f. Items transferred to a financial institution for the purpose of resale, or to any other secured party as a result of repossession for the purpose of resale;
- g. Items transferred to a seller or secured party as a partial payment;
- h. Transactions exempt from the sales or use tax under Code Section 12-36-2120; and
- i. Items where a sales or use tax has been paid on the transaction necessitating the transfer.

Code Section 56-3-627(C)(4) contains several definitions regarding purchases or leases from a person other than a dealer. The definitions are summarized below.

- “Fair market value” means the total purchase price less any trade-in, or the valuation shown in a national publication of used values adopted by the South Carolina Department of Motor Vehicles, less any trade-in.
- “Immediate family” means spouse, parents, children, sisters, brothers, grandparents, and grandchildren.
- “Total purchase price” means the price of an item agreed upon by the buyer and seller with an allowance for a trade-in, if applicable.

## 3. Purchased or Leased Vehicles which are First Registered Out-of-State and Later Registered in South Carolina by the Same Owner.

The infrastructure maintenance fee is imposed when the same owner purchases or leases a vehicle, trailer, semitrailer or other item required to be registered under Chapter 3 of Title 56, first registers the item in another state, and subsequently registers the item for the first time in South Carolina. This infrastructure maintenance fee is \$250.

The \$250 infrastructure maintenance fee for a vehicle first registered out-of-state and later registered in South Carolina for the first time by the same owner does not apply to a person serving on active duty in the Armed Forces of the United States. This \$250 infrastructure maintenance fee also does not apply to a spouse or dependent of a person serving on active duty in the Armed Forces of the United States.

#### 4. Additional Information.

See SC Information Letter #17-10 for more information on the new infrastructure maintenance fee, including information on exemptions from the infrastructure maintenance fee for nonresident members of the United States Armed Forces. See below for a summary regarding the exemption from the sales and use tax for items subject to the new infrastructure maintenance fee.

For questions regarding the new infrastructure maintenance fee, please contact the South Carolina Department of Motor Vehicles at [cartaxes@scdmv.net](mailto:cartaxes@scdmv.net).

Effective Date: July 1, 2017

#### House Bill 3516, Section 7.B (Act No. 40)

##### **Items Subject to the New Infrastructure Maintenance Fee – New Exemption**

Code Section 12-36-2120(83) has been added to exempt from state and local sales and use tax the gross proceeds of sales, or sales price, of any item subject to the new infrastructure maintenance fee imposed under Code Section 56-3-627.

Effective Date: July 1, 2017

#### House Bill 3516, Section 7.A (Act No. 40)

##### **Maximum Sales and Use Tax – Increase for Certain Items**

Code Section 12-36-2110(A) contains a maximum sales and use tax on certain enumerated items. Code Section 12-36-2110(A) has been amended to increase the maximum tax from \$300 to \$500 for each sale or qualifying lease of each item listed below:

1. Aircraft, including unassembled aircraft which is to be assembled by the purchaser, but not items to be added to the unassembled aircraft;
2. Motor vehicle;
3. Motorcycle;
4. Boat;

5. Trailer or semitrailer, pulled by a truck tractor, as defined in Code Section 56-3-20, and horse trailers, but not including house trailers or campers as defined in Code Section 56-3-710;
6. Fire safety education trailer;
7. Recreational vehicle, including a tent camper, travel trailer, park model, park trailer, motor home, and fifth wheel; or
8. Self-propelled light construction equipment with compatible attachments limited to a maximum of 160 net engine horsepower.

Note: This amendment did not change the \$300 maximum tax imposed under Code Section 12-36-2110(C) for musical instruments and office equipment purchased by a religious organization exempt under Internal Revenue Code Section 501(c)(3). The maximum tax imposed under Code Section 12-36-2110(B) for certain energy efficient manufactured homes also remains unchanged.

Effective Date: July 1, 2017

House Bill 3516, Section 7.C (Act No. 40)

### **Casual Excise Tax – Revised List of Applicable Items**

Code Section 12-36-1710, imposing a casual excise tax on the issuance of a certificate of title or other proof of ownership on certain items, has been amended and now only applies to (a) boats, (b) boat motors, and (c) airplanes. This amendment deleted motor vehicles and motorcycles from the items subject to casual excise tax. Purchases and leases of motor vehicles and motorcycles are now subject to an infrastructure maintenance fee pursuant to Code Section 56-3-627 upon registration with the South Carolina Department of Motor Vehicles (unless otherwise exempt).

Effective Date: July 1, 2017

House Bill 3516, Section 7.A (Act No. 40)

### **Sales Tax for Certain Items Registered Out-of-State – Collection by the South Carolina Department of Motor Vehicles**

Beginning July 1, 2017, the new infrastructure maintenance fee applies to motor vehicles, motorcycles, and other items which are required to be registered with the South Carolina Department of Motor Vehicles under Chapter 3 of Title 56. However, the sales tax, rather than the infrastructure maintenance fee, continues to apply to the sale of motor vehicles, motorcycles, and other items sold to persons that will register and use such items in another state, unless the transaction is otherwise exempt.

Code Section 12-36-2110(A)(5) has been added to provide that the sales tax due on sales by dealers (registered with the South Carolina Department of Motor Vehicles) of items subject to a maximum sales tax under Code Section 12-36-2110(A)(1) (e.g., a motor vehicle or motorcycle) which would be subject to the new infrastructure maintenance fee in Code Section 56-3-627 if registered in South Carolina, but that will instead be registered in another state, must now be collected by and remitted to the South Carolina Department of Motor Vehicles. Prior to July 1, 2017, the South Carolina Department of Revenue collected this tax.

For more information regarding transactions where the infrastructure maintenance fee or the sales and use tax applies, and to whom the fee or tax is remitted, see SC Information Letter #17-10.

Effective Date: July 1, 2017

Senate Bill 488 (Act No. 57)

**Motor Vehicle Dealer License Plates – Exclusion from Gross Proceeds of Sale Expanded**

Code Section 12-36-90 defines the term “gross proceeds of sales,” which is the basis or measure for the sales tax. The term includes the fair market value of tangible personal property previously purchased at wholesale and withdrawn, used or consumed by the business or by any person withdrawing it from the business or stock. Excluded from “gross proceeds of sales” under Code Section 12-36-90(2)(e) are motor vehicles operated with a dealer, transporter, manufacturer, or education license plate and used in accordance with the provisions of Code Section 56-3-2320 or 56-3-2330.

Code Section 56-3-2320(A), which concerns the issuance and use of motor vehicle dealer license plates, has been amended to allow a dealer license plate to also be used by a person whose vehicle is being serviced or repaired by the dealership if the vehicle displaying the license plate is part of a manufacturer program and is provided by the dealer at no charge to the person. The person whose vehicle is being serviced or repaired may use a dealer license plate for no more than 30 days.

Effective Date: May 19, 2017

House Bill 3720, Part IB, Section 117, Proviso 117.137 (Act No. 97)

**State Ports Authority – Distribution Facility Eligibility**

This temporary proviso provides that the State Ports Authority shall be considered a distribution facility for the purpose of sales tax exemptions associated with the purchase of equipment and

construction materials. Note: Sales tax exemptions implicated by this proviso include Code Sections 12-36-2120(51) and (67).

Effective Date: This temporary proviso is effective for State fiscal year July 1, 2017 through June 30, 2018. It will expire June 30, 2018, unless reenacted by the General Assembly in the next legislative session.

## **SALES AND USE TAX REGULATIONS**

Document No. 4664 – SC Regulation 117-307.7

### **Hurricane Rental Insurance Charges for Accommodations – New Regulation**

Code Section 12-36-920(A) imposes state sales tax at a rate of 7% on charges for the furnishing of sleeping accommodations to transients. Code Section 12-36-920(B) imposes state sales tax at a rate of 6% on additional guest charges at places where rooms, lodgings or accommodations are furnished to transients for a consideration.

Regulation 117-307.7 has been added to address the application of the state sales tax to charges for hurricane rental insurance by persons engaged in the business of furnishing sleeping accommodations to transients. The regulation explains that the 7% rate for furnishing sleeping accommodations applies to a mandatory hurricane rental insurance charge. However, neither the 7% rate for furnishing accommodations nor the 6% rate for additional guest charges is applicable to an optional hurricane rental insurance charge.

In addition, either of the following will result in the sleeping accommodations not being “furnished”:

1. A mandatory evacuation order or hurricane causes the complete cancellation of a person’s vacation because law enforcement will not allow anyone to enter the area during the entire time originally reserved for the vacation; or
2. A hurricane destroys the rental unit and the vacationer cannot take occupancy of the unit or any replacement unit during the entire time originally reserved for the vacation.

In the event that the sleeping accommodations are not “furnished,” neither the charge for the sleeping accommodations nor a charge for optional or mandatory hurricane rental insurance would be subject to tax.

Effective Date: May 26, 2017

**Exemption for Meals Sold to School Children – Amended Regulation**

SC Regulation 117-305.5 was amended to comply with Code Section 12-36-2120(10)(a). Specifically, the amended regulation clarifies that, in addition to meals sold to school children, foodstuffs sold to schools which are used in furnishing meals to school children are also exempt from the tax if the sale or use occurs within the school building and there is not a profit from such sale or use.

Effective Date: May 26, 2017

**REENACTED TEMPORARY PROVISOS**

**The following temporary provisos were enacted in prior legislative sessions and were reenacted by the General Assembly in 2017. Temporary provisos are effective for the State fiscal year July 1, 2017 through June 30, 2018, and will expire June 30, 2018, unless reenacted by the General Assembly in the next legislative session.**

House Bill 3720, Part IB, Section 117, Proviso 117.61 (Act No. 97)

**Viscosupplementation Therapies – Sales and Use Tax Suspended**

For this State fiscal year, sales and use taxes on viscosupplementation therapies are suspended. No refund or forgiveness of tax may be claimed as a result of this provision.

House Bill 3720, Part IB, Section 117, Proviso 117.57 (Act No. 97)

**Respiratory Syncytial Virus Medicines Exemption – Effective Date**

Act No. 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 3720, Part IB, Section 117, Proviso 117.37 (Act No. 97)

### **Private Schools – Use Tax Exemption**

This temporary proviso exempts purchases of tangible personal property for use in private primary and secondary schools, including kindergarten and early childhood education programs, from the use tax if the school is exempt from income taxes under Internal Revenue Code Section 501(c)(3). This exemption does not apply to purchases subject to sales tax. This use tax exemption is also applicable to purchases occurring after 1995; however, no refund is due any taxpayer on purchases exempted by this provision. 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.

## **REMINDERS**

**The following provisions were enacted in 2016 but are effective in 2017. They are summarized below for informational purposes.**

House Bill 3891, Section 1 (Act No. 224)

### **Vehicle License Fees – Subject to State and Local Sales and Use Tax**

The vehicle license fee authorized by Code Section 56-31-50 and separately stated and charged on a vehicle rental contract is subject to state and local sales and use tax in the manner and to the same extent as the fee charged for the lease or rental of the rental vehicle.

See the “Miscellaneous Section - Reminders” for a complete summary regarding vehicle license fees.

Effective Date: January 1, 2017

House Bill 3891, Section 2 (Act No. 224)

### **Heavy Equipment Rental Fee – Not Subject to State and Local Sales Tax**

The new heavy equipment rental fee imposed under Code Section 56-31-60 is not subject to state or local sales tax pursuant to Code Section 56-31-60(D).

See the “Miscellaneous Section - Reminders” for a complete summary regarding heavy equipment rental fees.

Effective Date: January 1, 2017

# **MISCELLANEOUS**

## **(Summarized by Subject Matter)**

### **MISCELLANEOUS TAX LEGISLATION**

House Bill 3406, Section 2 (Act No. 68)

#### **Admissions Tax Exemption for Payment to Nonprofit Athletic Booster Organizations for Right to Purchase Athletic Event Season Tickets – Prior Proviso Codified**

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.

Code Section 12-21-2420 was amended to codify 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. This exemption had been a temporary proviso in the budget bill in past years.

Effective Date: July 1, 2017

House Bill 3516, Section 2 (Act No. 40)

#### **Motor Fuel User Fee – Rate Change**

Code Section 12-28-310(A) imposes a user fee of sixteen cents per gallon on:

1. All gasoline, gasohol, or blended fuels containing gasoline that are used or consumed for any purpose in South Carolina; and
2. All diesel fuel, substitute fuels, or alternative fuels, or blended fuels containing diesel fuel that are used or consumed in South Carolina in producing or generating power for propelling motor vehicles.

Code Section 12-28-310(D) has been added to provide for a user fee increase by two cents a gallon each year for six years as follows:

<b>Date of Rate Change</b>	<b>New User Fee Rate Per Gallon</b>
July 1, 2017	18 cents
July 1, 2018	20 cents
July 1, 2019	22 cents
July 1, 2020	24 cents
July 1, 2021	26 cents
July 1, 2022	28 cents

Note: The inspection fee imposed under Code Section 12-28-2355(A) at the rate of one-quarter cent per gallon, and the environmental impact fee imposed under Code Section 12-28-2355(B) at the rate of one-half cent per gallon, remain unchanged.

Effective Date: July 1, 2017

House Bill 3516, Section 10 (Act No. 40)

### **Motor Fuel User Fee – Inventory Tax Repealed**

Code Section 12-28-530, which concerns the payment in certain circumstances of the motor fuel user fee on motor fuel inventories when there has been an increase in the user fee rate, has been repealed and does not apply to the increased user fee rate that began July 1, 2017 or to any future increase in the user fee rate.

Effective Date: July 1, 2017

## **MISCELLANEOUS TAX REGULATION**

Document No. 4702 – SC Regulation 117-1600

### **Cigarette Stamp Tax – New Regulation**

Act No. 145 of 2016 amended Code Section 12-21-735 so that beginning January 1, 2019, the cigarette tax will be paid by affixing tax stamps to packages of cigarettes. The Act granted the Department authority under Code Section 12-21-735(I) to promulgate regulations necessary to enforce the cigarette stamp tax. In accordance with the Act, the Department promulgated SC Regulation 117-1600.

SC Regulation 117-1600 contains provisions regarding reporting requirements, affixing tax stamps, ordering and purchasing stamps, features of stamps, refunds, display of stamped cigarettes, stamping and storage methods, and promotional cigarettes. Brief summaries of Subsections 1 through 6 of the regulation are provided below.

Subsection 1 contains distributors' monthly reporting requirements for 20 count and 25 count cigarette packs, cigarette stamps, and non-participating manufacturer cigarettes.

Subsection 2 identifies which distributors are subject to the cigarette stamp tax and contains restrictions on which cigarette packs a distributor may affix stamps. A distributor may affix stamps only to packages of cigarettes obtained directly from a manufacturer or importer with a valid permit issued pursuant to 26 U.S.C. Section 5713, and the cigarettes must also be listed on the South Carolina Tobacco Directory published by the Office of the Attorney General pursuant to Code Section 11-48-30. This subsection also provides information regarding exempt stamps, ordering and purchasing stamps, sales of stamps on thirty-day credit periods, restrictions on out-of-state distributors selling to South Carolina residents or merchants, and required features of the stamps.

Subsection 3 provides information on refunds of cigarette stamp taxes, including documentation required to substantiate a refund request.

Subsection 4 contains requirements for displaying stamped cigarettes in vending machines.

Subsection 5 describes acceptable stamping and storage methods for distributors in South Carolina.

Subsection 6 addresses required documentation, stamping requirements, and state and local use tax implications for cigarettes shipped into South Carolina by manufacturers to representatives for promotional use.

Effective Date: May 26, 2017

## **OTHER ITEMS (Including Local Taxes)**

House Bill 3516, Section 8 (Act No. 40)

### **New Motor Carrier Road Use Fee – Administered by the South Carolina Department of Motor Vehicles**

In 2017, the General Assembly enacted the South Carolina Infrastructure and Economic Development Reform Act (Act No. 40) to address the needs of South Carolina's transportation infrastructure system. Article 23, Chapter 37, Title 12, concerning property taxation of motor carriers, has been amended to impose a new motor carrier road use fee on a motor carrier's large commercial motor vehicles and buses. The South Carolina Department of Motor Vehicles will assess and administer the road use fee.

Previously, the South Carolina Department of Revenue assessed and administered an ad valorem property tax on a motor carrier's large commercial motor vehicles and buses. The amendments to Article 23 no longer subject large commercial motor vehicles and buses of a motor carrier to

ad valorem property taxes. These vehicles are now subject to a road use fee. Small commercial motor vehicles are not subject to the road use fee and must be licensed and registered, and are subject to ad valorem taxes as otherwise provided by law. Code Section 12-37-2815.

Questions concerning these provisions should be directed to the South Carolina Department of Motor Vehicles.

Effective Date: January 1, 2019

House Bill 3516, Section 3 (Act No. 40)

**Motor Carrier Road Tax – Rate Change**

Code Section 56-11-410 imposes a road tax on every motor carrier for the privilege of using the streets and highways of South Carolina. The road tax is calculated on the amount of gasoline or other motor fuel used by the motor carrier in its operations in South Carolina, provided the motor carrier is allowed a credit against the road tax for the South Carolina motor fuel user fee imposed by Code Section 12-28-310 and paid by the carrier for operations within and without South Carolina.

Prior to July 1, 2017, the road tax was sixteen cents per gallon. Code Section 56-11-410(A) was amended so that the road tax is imposed at the same rate as the motor fuel user fee imposed by Code Section 12-28-310. Therefore, the road tax will increase two cents a gallon each year for six years as follows:

<b>Date of Rate Change</b>	<b>New Road Tax Rate Per Gallon</b>
July 1, 2017	18 cents
July 1, 2018	20 cents
July 1, 2019	22 cents
July 1, 2020	24 cents
July 1, 2021	26 cents
July 1, 2022	28 cents

Effective Date: July 1, 2017

House Bill 3516, Section 8 (Act No. 40)

**Motor Carrier Business License Fee or Tax Imposed by Municipality or County**

Code Section 58-23-620(B) has been added to provide that if a municipality or county imposes a business license fee or tax pursuant to Code Section 58-23-620(A) on any certificate holder or a common or contract motor carrier of property which operates its vehicles both within and without South Carolina, the fee or tax must be apportioned in the ratio that the miles traveled by

the vehicles operated by the certificate holder in South Carolina bears to miles traveled by those vehicles in all states.

Effective Date: January 1, 2019

## **REGULATORY LEGISLATION**

House Bill 3137, Section 4 (Act No. 62)

### **Retail Dealer License – Repeal of Three-License Limit – Repeal of Retailer Tasting Restriction**

Code Sections 61-6-140 and 61-6-150, which limit a licensee to three retail liquor store licenses, have been amended to eliminate the three-license limit on April 5, 2018. The amendments include the following.

Prior to April 5, 2018, the Department must not issue more than three retail dealer licenses to one licensee in accordance with Code Section 61-6-140 and the limitations of Code Section 61-6-150. The licensee must be eligible for a license for each store pursuant to Code Section 61-6-110. However, the three-license limit in Code Section 61-6-140 and the limitations of Code Section 61-6-150 do not apply to a person having an interest in retail liquor stores as of July 1, 1978.

In addition, Code Section 61-4-960(A)(13) prohibits a retailer (who is authorized to sell beer for off-premises consumption and whose primary product is beer or wine) from holding a beer tasting in conjunction with a tasting in a retail alcoholic liquor store, pursuant to Code Section 61-6-1035, that is adjacent to and licensed in the same name of the retail permit authorizing the sale of beer. Code Section 61-4-960(A)(13) will also be repealed on April 5, 2018.

Repeal of Code Sections: Code Sections 61-6-140, 61-6-150, and 61-4-960(A)(13) will be repealed on April 5, 2018.

Effective Date: May 19, 2017

Senate Bill 114 (Act No. 44)

### **Special Nonprofit Event License – New License and Other Requirements**

#### **1. License for Special Nonprofit Event.**

Code Section 61-2-185 was added to authorize a special license for nonprofit organizations holding special nonprofit events. A special nonprofit event is defined as “an event for which a nonprofit organization solicits and accepts donations of alcohol to be sold for on-premises consumption.”

To obtain a license, a nonprofit organization must submit an application to the Department that satisfies the requirements in Code Section 61-2-90. The application must also include notice to local law enforcement, and it may require criminal background checks. The nonprofit must pay a nonrefundable license fee of \$40 with the application. The nonprofit organization shall not be licensed to hold more than four special nonprofit events in one calendar year.

Additionally, a nonprofit organization applying for a special nonprofit event license must meet the following requirements:

- a. The nonprofit organization must be registered as a domestic nonprofit organization and be in good standing with the South Carolina Secretary of State;
- b. The nonprofit organization must not hold a biennial permit or license issued pursuant to Title 61 for on-premises or off-premises consumption;
- c. A special nonprofit event must last no longer than 72 consecutive hours and an event may take place at more than one location where the nonprofit organization has control of the premises. For multiple locations to constitute one event, each location must be in the same county; and
- d. The nonprofit organization must have a reputation for peace and good order in its community, and the principals must be of good character.

The Department must deny an application that does not contain the information required on the application and the license fee.

## 2. Donation of Alcohol for Sale and On-Premises Consumption.

Code Section 61-2-185(C) defines “alcohol” and “supplier” as follows:

“Alcohol” means beer, ale, porter, and other similar malt or fermented beverages, wine not in excess of twenty-one percent alcohol, alcoholic liquors, or any other type of alcoholic beverage that contains any amount of alcohol and is used as a beverage for human consumption. It does not include alcohol that is not registered as a brand in South Carolina and it does not include alcohol that is made at home for home consumption.

“Supplier” means a manufacturer, producer, vintner, brewer, micro-brewer, importer, distiller, or micro-distiller of alcohol, authorized to do business in this State.

Code Section 61-2-185(D) grants alcohol suppliers and wholesalers an exemption from the restrictions imposed by Code Sections 61-4-735, 61-4-940, and Chapter 6 of Title 61 for alcohol

donations made to a nonprofit organization for sale and on-premises consumption at a special nonprofit event. This exemption is subject to the following requirements:

- a. All alcohol provided must be transferred through a wholesaler that is licensed in South Carolina and authorized by an applicable supplier to sell alcohol to retailers;
- b. Up to three calendar days prior to the event, the nonprofit organization may pick up the alcohol at the applicable wholesaler's warehouse, or the applicable wholesaler may deliver the alcohol to the event premises, provided the nonprofit organization presents its special nonprofit event license to the wholesaler upon pickup or delivery. The wholesaler may deliver the alcohol to the event premises only if the nonprofit organization is in control of the event premises at the time of delivery;
- c. Except as provided in Code Section 61-2-185(E)(1), where applicable, the provisions of Article 13, Chapter 4, Title 61, concerning territorial agreements, apply;
- d. The wholesaler must pay the appropriate state excise taxes on the donated alcohol;
- e. A wholesaler that chooses to donate alcohol to the special nonprofit event may either (1) provide alcohol previously purchased from the supplier and invoice the appropriate supplier for the cost of the alcohol, together with the excise taxes paid or to be paid by the wholesaler; or (2) receive delivery of the donated alcohol from the supplier and bill the supplier for the excise tax paid or to be paid by the wholesaler;
- f. The wholesaler that is providing the alcohol must present an invoice to the nonprofit organization that includes (1) a listing of the types of alcohol and the alcohol brands that have been donated to the event; (2) the wholesaler's regular price to retailers for the alcohol donated; and (3) the name and address of the supplier or wholesaler that has donated the alcohol;
- g. The wholesaler shall transfer the donated alcohol to the nonprofit organization only after presentation of the original special nonprofit event license and the delivery of the wholesaler's invoice to the nonprofit organization; and
- h. The nonprofit organization licensed to hold the special nonprofit event must maintain any and all invoices for alcohol donated or purchased for the event. The invoices must be available at the event upon request of the South Carolina Law Enforcement Division.

### 3. Soliciting Other Services and Items.

A nonprofit organization may solicit from a supplier, and a supplier may provide, the following services and items, with or without charge, for use at a special nonprofit event without violating Code Sections 61-4-735, 61-4-940, or Chapter 6, Title 61:

- a. Individual employees, agents, owners, or members of a supplier to pour and serve alcohol, if each of these individuals has received training from an alcohol education training program recognized by the Department and posted on the Department's website;

- b. Point of sale advertising specialties, as defined by federal law and regulations; and
- c. Equipment used to dispense alcohol for sale for on-premises consumption.

A wholesaler shall not provide individual employees, owners, or members of a wholesaler to pour or serve alcohol at a special nonprofit event. A wholesaler is also prohibited from providing any services not authorized by Code Sections 61-4-735, 61-4-940, or 61-6-1300.

4. Unassigned Territory.

If a brand of beer is registered in South Carolina, but not yet assigned to a wholesaler for the territory where the special nonprofit event is to be held, a producer or importer may deliver the beer to a willing wholesaler who operates in that territory, along with the appropriate excise tax and proof of registration, and the wholesaler may provide such delivered beer for the event.

5. Brewpubs.

Brewpubs may donate beer that is brewed at the brewpub to a nonprofit organization holding a special nonprofit event pursuant to the requirements of Code Section 61-2-185. The brewpub must deliver the donated beer and the appropriate state excise tax to a willing wholesaler that operates in the territory where the event is to be held. The wholesaler shall transfer the donated beer to the nonprofit organization in accordance with the provisions of Code Section 61-2-185.

6. No Assignment of Territory from Donation and Delivery.

Donations of brewpub beers, and beer brands that are registered in South Carolina but not yet assigned to wholesaler, and deliveries of such beers by the brewpub, producer, or importer, shall not operate as an assignment of territory to the wholesaler and shall not be considered violations of Article 13 or Article 17, Chapter 4, Title 61.

Effective Date: November 19, 2017

Senate Bill 334 (Act No. 33)

**Baseball Complex – New Licensing Provisions for Beer and Wine and for Alcoholic Liquors**

Code Sections 61-4-515 and 61-6-2016 allow the Department to issue a biennial beer and wine permit and a biennial alcoholic liquor by the drink license to the owner, or his designee, of a motorsports entertainment complex or tennis specific complex located in South Carolina. The permit and license authorize the purchase from licensed wholesalers and sale for on-premises consumption of beer and wine and alcoholic liquor by the drink at any occasion held on the complex grounds, year round on any day of the week.

Both Code Sections 61-4-515 and 61-6-2016 were amended to include baseball complexes as one of the facilities for which the owner or designee may apply for the biennial permit and license. The nonrefundable filing fees and the fees for the biennial permit and license are the same as for other biennial permits and licenses for on-premises consumption of beer and wine and alcoholic liquor by the drink, respectively.

The Department may issue these permits and licenses whether or not the complex on behalf of which an application is submitted is located in a county or municipality that has successfully held a referendum pursuant to Code Section 61-6-2010 allowing the possession, sale, and consumption of beer or wine or alcoholic liquors by the drink for a period not to exceed 24 hours. The Department in its discretion may specify the terms and conditions of the permit, pursuant to the provisions of Chapter 4, Title 61, and other applicable provisions under Title 61.

The owner or designee of the baseball complex may designate particular areas within the complex where patrons of events who have paid an admission price to attend, or guests who are attending private functions at the complex, whether or not a charge for attendance is made, may possess and consume beer and wine, and alcoholic liquors by the drink, provided at their own expense or at the expense of the sponsor of the private function.

A “baseball complex” is defined as a baseball stadium, along with its ancillary grounds and facilities that hosts a professional minor league baseball team.

Effective Date: May 10, 2017

#### Senate Bill 116 (Act No. 45)

#### **Alcoholic Beverage On-Premises License or Permit Holders – New Requirement for Liability Insurance**

Code Section 61-2-145 was added to require a person licensed or permitted to sell alcoholic beverages for on-premises consumption, which remains open after 5 p.m. to sell alcoholic beverages for on-premises consumption, to maintain at least \$1 million of liquor liability insurance or general liability insurance with a liquor liability endorsement during the period of the biennial permit or license. Failure to maintain this coverage constitutes grounds for suspension or revocation of the permit or license. For purposes of Code Section 61-2-145, “alcoholic beverages” means beer, wine, alcoholic liquors, and alcoholic liquor by the drink as defined in Chapters 4 and 6 of Title 61.

The Department is required to add this insurance requirement to all applications and renewals for biennial permits or licenses to sell alcoholic beverages for on-premises consumption in which the permittees and licensees remain open and sell alcoholic beverages for on-premises consumption after 5 p.m.

Beginning July 1, 2017, each applicant or person renewing its license or permit, to whom this requirement applies, shall provide the Department with documentation of a liquor liability insurance policy, or a general liability insurance policy with a liquor liability endorsement, with the required amount of coverage.

Insurers writing such policies to a person licensed or permitted to sell alcoholic beverages for on-premises consumption, where the person remains open to sell alcoholic beverages for on-premises consumption after 5 p.m., must notify the Department in a manner prescribed by Department regulation of the lapse or termination of such policy.

Any person applying for a new biennial permit or license for on-premises consumption under Title 61, and any person renewing a biennial permit or license under Title 61, must comply with the provisions of Code Section 61-2-145 at the time of the application or renewal.

Effective Date: July 1, 2017

Senate Bill 275 (Act No. 50) and House Bill 3137, Sections 6 and 7 (Act No. 62)

### **Breweries and Brewpubs – Modified Insurance Requirement, Licensing and Permits**

#### Breweries.

Code Section 61-4-1515, which allows breweries to sell beer to consumers which is brewed on the permitted premises, has been amended. The amendments include the following.

1. The insurance requirement was modified to require at least \$1 million of liquor liability insurance or general liability insurance with a liquor liability endorsement. Previously, there was no requirement for specialized liquor liability coverage.
2. This amendment allows breweries to use alcohol enforcement training approved by the Department to train employees, whereas previously, they could only use training approved by the Department of Alcohol and Other Drug Abuse Services.
3. Code Section 61-4-1515(B)(2) was added to provide that breweries that have a Department of Health and Environmental Control approved and licensed food establishment on its premises as provided in Code Section 61-4-1515(B)(1) may now apply for a license to sell alcoholic liquor by the drink for on-premises consumption within a specified area of its licensed or permitted premises, physically partitioned from the brewing operation and designated for the purpose of engaging substantially and primarily in the preparation and serving of meals. Additionally, the brewery must:
  - a. Maintain compliance with all provisions of Code Section 61-6-1610 and all other provisions of Chapter 6 regulating the purchase and sale by food establishments of alcoholic liquor by the drink for on-premises consumption not inconsistent with other provisions of Code Section 61-4-1515;

- b. Not sell or allow the consumption of alcoholic liquor by the drink on that part of the brewery's premises designated and permitted for the brewing operation;
  - c. Maintain books, records and bank accounts of the restaurant operation separately from the books, records and bank accounts of the brewing operation, and allocate expenses common to both operations in a manner the brewery considers reasonable, when applicable; and
  - d. Maintain a physical partition between the brewing and food establishment operations. The physical partition may be a permanent wall or a divider permanently affixed to the premises in a manner that the general public may not freely enter the brewing operation, and may contain a door or doors which remain locked during hours when the brewery is not in operation.
4. Code Section 61-4-1515(C) now provides that if a brewery ceases its brewing operations on its permitted premises, the Department shall terminate and the brewery must surrender its permits and licenses issued pursuant to Code Section 61-4-1515(B), including those for food establishments. A brewery may reapply for these permits and licenses upon reinstatement of brewing operations on the formerly permitted premises.

#### Brewpubs.

Brewpubs may obtain a brewery permit, and other licenses and permits available to breweries pursuant to Code Section 61-4-1515(B), for the brewpub's existing permitted premises. The Department shall waive newspaper notice and sign posting requirements, except for alcoholic liquor by the drink applications where the brewpub does not possess this license at the time of application. However, with the exception of operations authorized by Code Section 61-4-1515(B), the Department must deny the brewpub's application if the applicant, or any principal or person acting directly or indirectly on behalf of the applicant, would have ownership or financial interest in a wholesale or retail beer, wine, or alcoholic liquor operation following the issuance of the brewery permit.

A brewpub that becomes a brewery pursuant to Code Section 61-4-1515 must surrender its brewpub permit and alcoholic liquor by the drink license previously issued for the premises at the same time it obtains the brewery permit and applicable permits or licenses authorized pursuant to Code Section 61-4-1515(B).

Note: Senate Bill 275 and House Bill 3137, which were ratified on the same day (as Act Nos. 50 and 62, respectively), have different language for Code Section 61-4-1515. The Code Commissioner has informed us in determining the legislative intent, his intent is to read the Acts together and include Code Sections 61-4-1515(A) and (B)(1) as amended in Sections 6 and 7 of Act No. 62 and Code Sections 61-4-1515(B)(2) through (G) as amended in Section 1 of Act No. 50.

Effective Date: May 19, 2017

House Bill 3137, Sections 1 and 2 (Act No. 62)

**Tastings and Retail Sales of Micro-Distillers and Manufacturers – Revised Limits and Permits**

Code Sections 61-6-1140 and 61-6-1150, concerning tastings and retail sales at micro-distilleries and manufacturing facilities, were amended to make the following changes.

Tastings.

1. The one-half ounce per sample limit was removed, and the 1.5 ounce daily limit on alcoholic liquors dispensed to an individual consumer was increased to 3 ounces.
2. Micro-distilleries and manufacturers may now provide mixers, which must be nonalcoholic and carry zero percent of alcohol by weight, in conjunction with a tasting. The micro-distillery or manufacturer may store mixers used for tastings, but may not charge for the mixers.
3. Minors are forbidden from entering the portion of the facility where tastings are occurring.

Retail Sales.

Retail sales of alcoholic liquors produced at a micro-distillery's or a manufacturer's licensed premises are no longer limited to only 750 milliliter bottles. While this restriction has been removed, the limit on daily sales per consumer remains at 2.25 liters, and the bottles must be marked "not for resale."

Effective Date: May 19, 2017

House Bill 3137, Section 3 (Act No. 62)

**Sampling at Retail Liquor Stores – Use of Mixers Permitted**

Code Section 61-6-1035 was amended to permit the use of mixers for samplings of wine containing over 16% by volume of alcohol, cordials, and other distilled spirits sold in a retail alcoholic liquor store. Mixers must be nonalcoholic and carry zero percent alcohol by weight. While mixers may be provided in conjunction with a tasting, the mixers must be provided free of charge. Mixers that are used in conjunction with tastings may be stored on premises, but not sold.

Effective Date: May 19, 2017

## **REENACTED TEMPORARY PROVISOS**

**The following temporary provisos were enacted in prior legislative sessions and were reenacted by the General Assembly in 2017. Temporary provisos are effective for the State fiscal year July 1, 2017 through June 30, 2018, and will expire June 30, 2018, unless reenacted by the General Assembly in the next legislative session.**

### **ADMINISTRATIVE and PROCEDURAL MATTERS**

House Bill 3720, Part IB, Sections 93 and 117, Provisos 93.7 and 117.86 (Act No. 97)

#### **3% Reduction on Interest Rate on Tax Refunds**

Temporary Proviso 93.7 decreases by 2% the interest rate for tax refunds paid during the current fiscal year. The revenue resulting from this 2% reduction must be used for operations of the State's Guardian ad Litem Program.

Temporary Proviso 117.86 decreases by 1% the interest rate for tax refunds paid during the current fiscal year (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.

House Bill 3720, Part IB, Section 109, Proviso 109.6 (Act No. 97)

#### **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's 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's 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 TAX LEGISLATION**

House Bill 3720, Part IB, Section 1, Proviso 1.15 (Act No. 97)

### **Local Government School Buses – Motor Fuel User Fee Exemption**

This temporary proviso provides that motor fuel used in school buses operated by school districts, other governmental agencies, and "head start" agencies for purposes of transporting students for school or school-related activities is exempt from the State motor fuel user fee.

Note: Motor fuel used in school buses owned by the State is exempt from the State motor fuel user fee under Code Section 12-28-710(12).

House Bill 3720, Part IB, Section 33, Proviso 33.10 (Act No. 97)

### **Nursing Home Bed Franchise Fee – Suspension**

This temporary proviso continues to suspend the nursing home bed franchise fee imposed on February 1, 2002, but subsequently suspended July 1, 2002.

House Bill 3720, Part IB, Section 118, Proviso 118.7 (Act No. 97)

**Admissions Tax Rebate – Motorsports, Tennis, and Soccer Facilities**

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. In addition, any sports facility that either hosts at least one preeminent Women’s Tennis Association-sanctioned tournament or that operates as the home venue for a professional soccer team participating in the United Soccer Leagues, second division or higher, must be rebated half of the facility’s admissions tax revenue for the fiscal year and used by that facility for marketing the events held at the facility.

**REGULATORY LEGISLATION**

House Bill 3720, Part IB, Section 117, Proviso 117.105 (Act No. 97)

**Donation of Beer, Wine, and Alcoholic Liquors to a Nonprofit Organization**

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.

**REMINDERS**

**The following provisions were enacted in 2016 but are effective in 2017 and thereafter. They are summarized below for informational purposes.**

House Bill 3891, Section 1 (Act No. 224)

**Vehicle License Fee**

Code Section 56-31-50, which required rental companies who rented vehicles for 31 days or less to collect a 5% surcharge on rental contracts for short-term rentals of vehicles, has been amended to remove the imposition of the 5% surcharge. Under this amendment, a “motor vehicle rental company” may now charge separately stated fees including, but not limited to, vehicle license fees, airport access fees, airport concession fees, and all applicable taxes to the renter.

Definitions. Code Section 56-31-50 defines the terms “motor vehicle rental company” and “vehicle license fee” as follows:

- “Motor vehicle rental company” is defined as an individual or business entity whose business activity is renting motor vehicles to consumers under rental agreements for periods of ninety days or less.
- “Vehicle license fee” is defined as a charge that may be separately stated and charged on the rental contract in a vehicle rental transaction originating in this State to recover the motor vehicle rental company's costs incurred for:
  - a. licensing, titling, registering, plating, and inspecting of its rental vehicles; and
  - b. taxes paid in connection with registering its rental vehicles.

The terms “renter,” “rental agreement,” and “rental vehicle” are defined in Code Section 56-31-20.

The amount of the vehicle license fee must be disclosed at the time the vehicle is reserved and as part of any estimated pricing provided to the renter. The vehicle license fee must be shown as a separately itemized charge on the rental agreement.

The amount charged for the vehicle license fee must represent the good faith estimate by the motor vehicle rental company of its daily charge calculated to recover its actual total annual recoverable costs, pursuant to Code Section 56-31-50(A)(2), on its rental motor vehicle fleet for the corresponding calendar year. The vehicle license fee must be described in the terms and conditions of the rental agreement as the estimated average per day portion of the motor vehicle company’s costs incurred for licensing, titling, registering, plating, and inspecting its rental vehicles, and taxes paid in connection with registering its rental vehicles.

If the total amount of the vehicle license fees collected by a motor vehicle rental company pursuant to Code Section 56-31-50 in any calendar year exceeds the actual costs of the car rental company, as allowed under Code Section 56-31-50(A)(2), for that calendar year, the car rental company must retain the excess amount and adjust the estimated average per vehicle charge for the following calendar year by a corresponding amount. A motor vehicle rental company may make adjustments during the calendar year to the vehicle license fee charged per vehicle to reflect interim developments affecting the motor vehicle rental company’s prior estimated per vehicle fee for that calendar year.

The vehicle license fee authorized by this section is subject to state and local sales and use tax in the manner and to the same extent as the fee charged for the lease or rental of the rental vehicle.

Effective Date: January 1, 2017

House Bill 3891, Sections 2 and 3 (Act No. 224)

**Heavy Equipment Rental Surcharge – Repealed**  
**Heavy Equipment Rental Fees – New**

Repeal of Code Section 12-37-717. Code Section 12-37-717, which imposed a 3% surcharge on heavy equipment rental contracts, has been repealed.

New Heavy Equipment Rental Fee. Code Section 56-31-60 has been added to require a qualified renter to collect and remit a heavy equipment rental fee on all qualified rentals of any item of qualified heavy equipment property to customers. The fee is 2.5% of the rental price and applies to all qualified rentals made from a rental location in South Carolina where the customer picks up the equipment or where the qualified heavy equipment property is delivered in South Carolina. The fee does not apply to rentals made from a rental location in South Carolina and delivered outside South Carolina.

Fee Collection and Remittance. The rental invoice must include the heavy equipment rental fee. The person or company collecting such fees must remit the fees to the Department on a quarterly basis. The heavy equipment rental fee is not subject to South Carolina or local sales tax.

Fee Exemption. Qualified heavy equipment property directly rented to the federal government, the State, or any political subdivision of the State is exempt from the fee.

Property Tax Exemption. Qualified heavy equipment property subject to the fee is exempt from personal property tax.

Definitions. Code Section 56-31-60(A) provides a list of definitions that are used in the statute. Some of the relevant terms are summarized below.

- “Qualified heavy equipment property” is defined as any construction, earthmoving, or industrial equipment that is mobile and rented by a qualified renter, including attachments for the equipment or other ancillary equipment or tools. Qualified heavy equipment property is mobile if it is not permanently affixed to real property and is moved amongst worksites.
- “Qualified rental” is defined as “qualified heavy equipment property” that is rented for 365 days or less, or pursuant to an open-ended contract, or through a contract without a specified time period.
- “Qualified renter” is defined as a renter (i) whose primary business is renting out qualified heavy equipment property. Primary business means over 51% of the annual revenue of the business in any given year; and (ii) that is engaged in a line of business described in Code 532412 or 532310 of the North American Industry Classification System published by the U.S. Census Bureau, 2012 edition.

- “Rental price” is defined as the amount of the charge for renting the qualified heavy equipment, excluding any separately stated charges that are not rental charges, including, but not limited to, separately stated charges for delivery and pickup fees, damage waivers, environmental fees, sales tax, or any other ancillary charge.

Effective Date: January 1, 2017

Senate Bill 277 (Act No. 181)

**Telecommunication Providers – Dual Party Relay Charges and Universal Service Fund**

I. Dual Party Relay Charge.

Code Section 58-9-2530, which authorizes the Public Service Commission (PSC) to require local exchange carriers to collect and remit a dual party relay charge, has been amended. The PSC may require each local exchange provider, Commercial Mobile Radio Service (CMRS) provider, Voice over Internet Protocol (VoIP) service provider and prepaid wireless seller to impose a dual party relay charge not to exceed 10 cents (reduced from 25 cents). The charge will fund a dual party relay system that allows deaf, hearing or speech impaired users to communicate with an intermediary who orally relays the message or request to a third party.

Code Section 58-9-2535 has been added to prescribe the manner in which each of the following providers and sellers must collect and remit the dual party relay charge:

Local Exchange Providers. A local exchange provider must collect the charge on the subscriber’s bill for any individual local exchange access facility that is capable of simultaneously carrying multiple voice and data transmissions. The charge may be separately stated on the subscriber’s bill. A local exchange provider must file a return with, and remit the charges to, the Office of Regulatory Staff within 45 days after the end of the month during which the charges were collected. The local exchange carrier may retain 2% of the gross charges as an administrative fee.

CMRS Providers. A CMRS provider must collect the charge on the subscriber’s bill for each CMRS connection that has a mobile identification number with a South Carolina area code, with certain exceptions. The charge may be separately stated on the subscriber’s bill. A CMRS provider must file a return with, and remit the charges to, the Department on or before the 20<sup>th</sup> day of the second month following the month in which the charges were collected. The CMRS provider may retain 2% of the gross charges as an administration fee.

VoIP Service Providers. A VoIP service provider must collect the charge on the subscriber’s bill for each VoIP service line. The charge may be separately stated on the subscriber’s bill. The VoIP service provider must file a return with, and remit the charges to, the Department on or before the 20<sup>th</sup> day of the second month following the month in which the charges were collected. The VoIP service provider may retain 2% of the gross charges as an administration fee.

Prepaid Wireless Sellers. A prepaid wireless seller must collect the charge for each prepaid wireless retail transaction occurring in South Carolina. The charge either must be separately stated on an invoice, receipt, or other similar document provided to the consumer; or otherwise disclosed to the consumer. The prepaid wireless seller must remit the charges to the Department on or before the 20<sup>th</sup> day of the second month following the month in which the charges were collected. The prepaid wireless seller may retain 3% of the gross charges as an administration fee.

Other provisions include:

1. No other tax, fee, surcharge, or other charge for dual party relay system funding may be imposed by any State entity.
2. For dual party relay charges that are required to be remitted to the Department, the charges must be administered and collected by the Department in the same manner as taxes as defined in Code Section 12-60-30(27) are administered and collected by the Department under the provisions of Title 12.
3. Rules are provided for sourcing transactions, limiting the number of charges in certain instances, and addressing situations where services overlap.

## II. Universal Service Fund.

Code Section 58-9-280(E), which requires telecommunications companies to collect charges from their customers and to contribute them to a Universal Service Fund (USF) in order to provide basic local exchange telephone service at affordable rates and to assist with alignment of prices and recovery of costs to carriers of last resort, has been amended. The Department must issue an assessment and collect fund contributions from any telecommunications company that does not have a certificate issued by the Public Service Commission (PSC). The Office of Regulatory Staff (ORS) must certify to the Department the USF factor and the amounts to be assessed. Telecommunications companies that have certificates issued by the PSC must continue to remit their contributions to ORS.

Prepaid wireless sellers must collect USF contributions from consumers for prepaid wireless communications services. This fixed per-transaction fee is established annually by ORS. Prepaid wireless sellers must collect the USF contribution on each retail transaction occurring in South Carolina. The USF contribution either must be stated separately on an invoice, receipt, or other similar document provided to the consumer; or must otherwise be disclosed to the consumer. However, at the election of the prepaid wireless seller, the USF contribution may be combined into a single charge with the dual party relay charge and the 911 charge. Prepaid wireless sellers must remit the USF contribution to the Department on or before the 20<sup>th</sup> day of the second month

following the month in which the charge was collected. Prepaid wireless sellers may retain 3% of the gross USF contribution as an administrative fee.

Effective Date: May 25, 2016. Full implementation of the new dual party relay charge and Universal Service Fund provisions must not begin earlier than January 1, 2017. The Department and the Office of Regulatory Staff must provide at least 30 days' public notice of the full implementation date. No person or entity is required to bill, collect, remit, or pay any charges pursuant to Sections 3, 5.A., or 8 of this Act (see Code Sections 58-9-2535, 58-9-280(E), and 58-9-2530, respectively) prior to the full implementation date.

### Senate Bill 667 (Act No. 270)

#### **Boundary Clarification between South Carolina and North Carolina**

##### Intent

This Act clarifies the location of the boundary between North Carolina and South Carolina along Horry, Dillon, Marlboro, Chesterfield, Lancaster, York, Cherokee, Spartanburg, Greenville, Pickens, and Oconee counties. Code Section 1-1-10. This Act is intended only to address the effects on persons whose residences and businesses are determined to be located in South Carolina rather than North Carolina as a result of the boundary clarification. An individual or business whose residence or business location is determined to be located in South Carolina, rather than North Carolina where the residence or business had previously been taxed, should not be liable for back taxes to South Carolina solely as a result of the clarification.

NOTE: This Act does not apply to persons whose residences and businesses are not affected by the boundary clarification.

Below is a brief summary of Act No. 270 which is limited to the tax implications of the Act. The summary addresses income tax; tax credits and incentives; real and personal property taxes (other than motor vehicles); motor vehicle registration and property tax consequences; sales tax and admissions tax; deed recording and county filing fees; tax on cigarettes and tobacco products; motor fuel taxes and user fees; back taxes; refunds; and the Department's ability to compromise taxes.

##### Income Tax

For South Carolina income tax purposes:

1. Individuals whose state of residency changes from North Carolina to South Carolina or from South Carolina to North Carolina as a result of the boundary clarification must be treated as if the individual moved to or from South Carolina on January 1, 2017. Code Section 12-6-5600(A).

2. For businesses whose property location changes from North Carolina to South Carolina or from South Carolina to North Carolina as a result of the boundary classification, for income tax purposes the property is treated as if it moved into or out of South Carolina on January 1, 2017. Code Section 12-6-5600(B).

### Tax Credits and Incentives

For purposes of all South Carolina tax credits or other tax incentives, “new jobs” are not created in South Carolina by employees whose work location is changed from North Carolina to South Carolina as a result of the boundary clarification, as contained in the amendments in Section 1-1-10, effective January 1, 2017, nor is there any new investment in South Carolina as a result of property that changes location from North Carolina to South Carolina as a result of the boundary clarification. Code Section 12-2-115.

### Real and Personal Property Taxes (Other Than Motor Vehicles)

The following property tax consequences apply as a result of the border clarification:

1. On January 1, 2017, any real property which was not on the South Carolina real property tax rolls solely because prior to the boundary clarification it was considered located in North Carolina must be placed on the South Carolina property tax rolls. The real property must be valued based on the latest reassessment date for similar types of property in that location. The 15% cap on the value increases contained in Code Section 12-37-3140 does not apply to this property in the year it is first placed on the tax rolls. Code Section 12-37-140(A).
2. For 2017 only, real property and personal property with a statutory lien date of December 31 whose location is considered to have changed from North Carolina to South Carolina as a result of the boundary clarification will have a lien date of January 1, 2017, rather than December 31 of the preceding year. For all subsequent property tax years the lien date will return to December 31 of the preceding year. Code Section 12-37-140(B).
3. The lien date for property taxes is the date on which the property tax becomes a fixed liability of the taxpayer. Code Section 12-37-140(C).
4. For 2017 only, the lien date for nonbusiness personal property (other than motor vehicles) is January 1, 2017, for individuals whose state of residency changes from North Carolina to South Carolina solely as a result of the boundary clarification. For all subsequent years, the lien date shall return to December 31 of the preceding tax year. Code Section 12-37-155.
5. If a property is subject to property taxes in both North Carolina and South Carolina as a result of the differing lien dates for North Carolina and South Carolina, the taxpayer is only liable for property taxes in the state where the property is deemed located after the boundary clarification. Code Section 12-37-140(F).

6. Taxpayers affected by the boundary clarification must apply for all property tax exemptions, special valuations, and special assessment ratios in accordance with and by the dates specified in South Carolina law. Code Section 12-37-140(E).
7. Agricultural use property whose location is considered to change from South Carolina to North Carolina as a result of the boundary clarification is not subject to roll-back of taxes under Code Section 12-43-220(d) because of the deemed location change. Code Section 12-37-140(D).

### Motor Vehicle Registration and Property Tax Consequences

An individual whose state of residency changes from North Carolina to South Carolina solely as a result of the boundary clarification must register his motor vehicle as a new resident of South Carolina in accordance with Code Section 56-3-210 and pay property taxes in accordance with Chapter 37, Article 21, Title 12. For purposes of Code Section 12-37-145, an individual's residency must be determined on the date of the boundary clarification (which is January 1, 2017). Code Section 12-37-145(A).

A business with motor vehicles whose business location changes from North Carolina to South Carolina solely as a result of the boundary clarification is considered to have moved into South Carolina on January 1, 2017, and must register its motor vehicles in accordance with South Carolina law for moving business property into South Carolina based on the date of the boundary clarification (which is January 1, 2017), and personal property taxes for motor vehicles must be paid in accordance with Article 21, Chapter 37, Title 12. Code Section 12-37-145(B).

Refunds for motor vehicle personal property taxes for persons whose residency or business location is changed from South Carolina to North Carolina as a result of the boundary clarification must be provided, if applicable, on a prorated basis in accordance with Code Section 12-37-2620. Code Section 12-37-145(C).

If as a result of the boundary clarification an individual is required to register his personal motor vehicle in South Carolina and, if the property taxes on that motor vehicle would have been less in North Carolina, the individual may receive a tax rebate from the applicable South Carolina county for the difference between the tax the individual was required to pay in South Carolina and the tax the individual was required to pay in North Carolina on that same vehicle based on the latest North Carolina assessment for the motor vehicle. The individual is entitled to this rebate for two years, including any partial year. The individual must provide the county with a copy of the last North Carolina county property tax assessment for the same motor vehicle to receive this rebate. Code Section 12-37-150.

### Sales Tax and Admissions Tax

Any business that is required to collect or pay sales and use taxes or admissions taxes whose business location changes from North Carolina to South Carolina as a result of the boundary clarification is required to obtain a South Carolina retail license or admissions tax license for that location before January 1, 2017, and must begin collecting and paying South Carolina sales and

use taxes or admissions taxes on January 1, 2017. The retailer must apply for a retail or admissions tax license prior to January 1, 2017, and indicate on the license application the date the taxpayer anticipates beginning to collect sales, use, or admissions taxes is January 1, 2017. Code Section 12-36-2695.

#### Deed Recording and County Filing Fees

If as a result of the boundary clarification property is considered to have changed locations from North Carolina to South Carolina and if solely as a result of this change a deed is filed in South Carolina, no deed recording fees are due on this filing and no county filing fees may be charged. Code Section 12-24-160.

#### Tax on Cigarettes and Tobacco Products

If the location of a retailer that sells cigarettes and tobacco products changes from South Carolina to North Carolina as a result of the boundary clarification and the retailer has South Carolina tax-paid cigarettes and tobacco products in inventory on the date of the boundary change, then the retailer is entitled to a refund of South Carolina cigarette and tobacco taxes paid on those cigarette and tobacco products if North Carolina imposes a tax on those cigarette and tobacco products. This refund may be issued to the retailer notwithstanding that the South Carolina tax was paid by the wholesaler from whom the retailer purchased the cigarettes and tobacco products. The retailer must provide proof that the North Carolina cigarette taxes were paid on the same cigarettes and tobacco that was previously taxed by South Carolina. Code Section 12-21-820(A).

If North Carolina does not impose a tax on the cigarette and tobacco products in inventory as a result of the boundary clarification, the retailer is entitled to a refund of the South Carolina cigarette and tobacco taxes to the extent the South Carolina tax exceeds the North Carolina tax. The refund amount is calculated based on the inventory information required by North Carolina as a result of the boundary clarification. Code Section 12-21-820(B).

Any wholesaler who sold South Carolina tax-paid cigarettes to a retail business is not entitled to a refund of these taxes because of a change in the retailer's location from South Carolina to North Carolina as a result of the boundary clarification. Code Section 12-21-820(C).

#### Motor Fuel Taxes and User Fees

A retailer that sells motor fuel whose business location changes from South Carolina to North Carolina as a result of the boundary clarification is allowed a refund of South Carolina motor fuel taxes or user fees if North Carolina requires the retailer to pay North Carolina motor fuel taxes or user fees on that same fuel. Code Section 12-28-350.

## Back Taxes

When an individual's residency or a taxpayer's property or business location is considered to have changed from North Carolina to South Carolina solely as a result of the boundary clarification, the individual or taxpayer is not liable for any taxes for periods prior to the boundary clarification date based solely on a claim that the individual was a resident or the taxpayer's property or business location was located in South Carolina in the prior year. Code Section 12-2-120(A).

## Refunds

When an individual's residency or a taxpayer's property or business location is considered to have changed from South Carolina to North Carolina solely as a result of the boundary clarification, the individual or taxpayer is not entitled to a refund of any state, county, or local taxes or license fees for periods prior to the boundary clarification date based solely on a claim that the individual was not a resident of South Carolina or the taxpayer's property or business location was not in South Carolina in prior years. Code Section 12-2-120(B).

Taxpayers who have sold products or services subject to South Carolina taxes to persons whose residence or location is considered to have changed from South Carolina to North Carolina solely as a result of the boundary clarification are not allowed a refund for any taxes paid prior to the boundary clarification as a result of these sales. Code Section 12-2-120(C).

## Department's Ability to Compromise Taxes

In the year containing the date of the boundary clarification, the Department has the authority to compromise taxes that result in taxation in both South Carolina and North Carolina solely because of the boundary clarification. Code Section 12-2-130.

Effective Date: January 1, 2017

## House Bill 4151 (Act No. 149)

### **Cigarette Stamp Tax Program – New Process**

Beginning January 1, 2019, Code Section 12-21-735 requires each cigarette distributor who first receives untaxed cigarettes for sale or distribution in South Carolina to pay the taxes imposed on the cigarettes by Code Section 12-21-620 by affixing tax stamps to each individual package of cigarettes before the packages are sold, distributed, or shipped to another person.

Distributors may only affix tax stamps to packages of cigarettes obtained directly from a manufacturer or importer with a valid permit issued pursuant to 26 U.S.C. Section 5713. If cigarettes are manufactured in South Carolina and sold directly to consumers in South Carolina by a manufacturer or importer, the cigarette packages must be stamped by a licensed distributor before being sold.

Receipt or Possession of Unstamped Cigarettes. Only manufacturers or importers with a valid permit issued pursuant to 26 U.S.C. Section 5713 and licensed distributors may receive or possess unstamped packages of cigarettes.

Shipping Unstamped Cigarettes. Only manufacturers or importers with a valid permit issued pursuant to 26 U.S.C. Section 5713 may ship or otherwise cause to be delivered unstamped packages of cigarettes in, into, or from South Carolina, except that licensed distributors may transfer, transport, or cause to be transported unstamped cigarettes from a facility owned by the distributor to another facility owned by the distributor, wherever located.

Sales of Unstamped Cigarettes by South Carolina Licensed Distributors. Qualified South Carolina licensed distributors may sell cigarettes without tax stamps affixed to the package where:

1. The cigarettes are set forth in separate stock for sale to a licensed cigarette distributor in another state;
2. If the cigarettes are not in the possession of a qualified South Carolina licensed distributor, the cigarettes must be in the possession of a person who is a licensed distributor of cigarettes in another state, and the cigarettes must be purchased for the purpose of resale in the other state;
3. The cigarettes, at the time of sale by the South Carolina licensed distributor, are properly stamped with revenue stamps authorized and issued by another state for use on the cigarettes, if the other state requires revenue stamps, or any applicable tax imposed on the cigarettes by the other state has been paid if the law of the other state permits the sale of the cigarettes to consumers in a package not bearing a stamp; and
4. At all times there is an invoice accompanying the cigarettes which indicates the purchase date, the name, address, and telephone number of the seller, and the name, address, and telephone number of the purchaser. A distributor shall have on file a record of each sale, the original purchase order, a copy of the invoice, and a signed receipt from the purchaser showing that the purchase was made exclusively for resale in another state.

Stamp Requirements. Cigarette stamps must meet the following requirements:

1. The Department will designate the type of stamps to be applied by rules and regulations.
2. The cigarette tax stamps and tax exempt stamps must be of a type that when affixed on each individual package the stamps cannot be removed without being mutilated or destroyed.
3. All stamps must contain a serial number or other mark which identifies the distributor that affixed the stamp to the particular package of cigarettes, and all stamps must note whether taxes were paid or whether the package of cigarettes was exempt from the taxes.

Sale and Affixture of Cigarette Stamps. The following provisions concerning cigarette stamps were added:

1. Cigarette tax stamps must be sold only in amounts of 30,000 or multiples of 30,000, and the stamps may only be affixed to packages of cigarettes listed on the South Carolina Tobacco Directory published by the Office of the Attorney General. See <http://www.scag.gov/civil/tobacco>
2. Where the sale of cigarettes falls under the tax exemption in Code Section 12-21-100 (for sales made to the United States for military use or resale to military personnel and sales to ships engaged in foreign or coastwise shipping), distributors must affix stamps indicating packages of cigarettes are exempt from tax.
3. The Department will furnish stamps for taxable and tax exempt cigarette packages and will provide a method of purchasing stamps by rules and regulations.
4. The Department may by rules and regulations authorize the sale of stamps to distributors on 30-day credit periods. Distributors authorized to pay by credit would be required to execute a bond equal to 110% of the distributor's estimated tax liability for 30 days, but not less than \$2,000, on the condition that the distributor pays all cigarette stamp taxes due to the State. Payment for each month's liability is due on or before the 20th day of each month, including Sundays and holidays. The Department has the discretion to revoke a distributor's privilege to purchase stamps in the event of default in the bonding and payment provisions.
5. The Department may appoint cigarette manufacturers and distributors, located inside or outside of South Carolina, as agents to buy or affix cigarette tax stamps. An agent may appoint a person in his employ to affix the stamps to any cigarette under the agent's control. When the Department sells and delivers cigarette tax stamps to an agent, the agent is entitled to a 4.25% discount on the face value of the stamps as compensation for his services and expenses as an agent in affixing and accounting for the cigarette taxes.
6. The Department, by rules and regulations, may authorize a process allowing for a credit for damaged stamps, for product returned as unsellable, and for product unrecoverable as a result of bad debt.

Other Provisions. Other provisions of the cigarette tax law include:

1. Tax Meter Machines. The Department may, by rules and regulations, authorize licensed distributors to use other devices to imprint distinctive markings or to make tax stamps indicating the payment of the tax on each individual package. The machines must accurately record or meter the number of impressions or tax stamps made. The tax meter machines or other devices must be kept available for inspection by the Department at all reasonable times.

2. Tax Credit for Stamping Machine and Equipment. A distributor is allowed a tax credit for the purchase of one stamping machine and equipment within one year of implementation by the Department. The amount of the credit would equal the direct costs (excluding shipping, installation, and ongoing maintenance costs) actually incurred by a distributor to acquire a stamping machine and equipment, as determined by the Department, up to a maximum credit of \$175,000. The total credit is divided by 18, and the distributor is able to claim the credit in 18 equal monthly installments beginning the first calendar month following the purchase of the machine and equipment and continuing for the immediately succeeding 17 months. Any tax credit must only be applied to the tax remitted pursuant to Chapter 21 of Title 12.

Effective Date: January 1, 2019

# LIST OF TEMPORARY PROVISOS

Temporary provisos were enacted as part of the 2017 annual budget - House Bill 3720, Part IB (Act No. 97). They are effective only for the current State fiscal year (July 1, 2017 – June 30, 2018). They expire on June 30, 2018 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**

### **Property Taxes**

Proviso 117.138 Improvements to Property Damaged by Catastrophic Weather Event

### **Sales and Use Taxes**

Proviso 117.137 State Ports Authority – Distribution Facility Eligibility

## **REENACTED OR REVISED PROVISOS**

### **Income Taxes**

- Proviso 1A.9 Teaching Supplies and Materials – Reimbursement Amount Not Taxable or Refundable Income Tax Credit
- Proviso 1A.10 Teacher of the Year Awards – Not Subject to South Carolina Income Tax
- Proviso 109.11 Educational Credit for Exceptional Needs Children (Revised)
- Proviso 117.128 Retail Facilities Revitalization Act – Repeal of Act Suspended
- Proviso 118.10 Consumer Protection Services – Individual Income Tax Deduction

### **Property Taxes**

- Proviso 1.48 Index of Taxpaying Ability – Imputed Value for Owner-Occupied Residential Property
- Proviso 113.8 Agricultural Use Exemption for Timberland – Impact of Additional County Requirements
- Proviso 117.38 Personal Property Tax Relief Fund
- Proviso 117.128 Retail Facilities Revitalization Act – Repeal of Act Suspended

## **Sales and Use Taxes**

- Proviso 117.37 Private Schools – Use Tax Exemption
- Proviso 117.57 Respiratory Syncytial Virus Medicines Exemption – Effective Date
- Proviso 117.61 Viscosupplementation Therapies – Sales and Use Tax Suspended

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

### Administrative & Procedural:

- Provisos 93.7 and 117.86 3% Reduction on Interest Rate on Tax Refunds
- Proviso 109.6 Voluntary Website Posting of Tax Return Information for Candidates and Gubernatorial Appointees

### Miscellaneous Taxes:

- Proviso 1.15 Local Government School Buses – Motor Fuel User Fee Exemption
- Proviso 33.10 Nursing Home Bed Franchise Fee – Suspension
- Proviso 118.7 Admissions Tax Rebate – Motorsports, Tennis, and Soccer Facilities

### Regulatory:

- Proviso 117.105 Donation of Beer, Wine, and Alcoholic Liquors to a Nonprofit Organization

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