



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC INFORMATION LETTER #94-20

SUBJECT: Legislative Changes Update

DATE: August 19, 1994

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1993)
SC Revenue Procedure #94-1

SCOPE: An Information Letter is a document issued for the purpose of disseminating general information or information concerning an administrative pronouncement.

Information Letters issued to disseminate general information have no precedential value and do not represent the official position of the Department. Information Letters designated as administrative pronouncements represent the official advisory opinion of the Department.

Attached is a brief summary of most of the significant changes in laws administered by the Department of Revenue that were enacted by the General Assembly during the past legislative session. Several of these laws have not been assigned act numbers as of the date of this information letter and this is indicated in the summary.

Also attached is a brief summary of three bills, House Bill 3907, Senate Bill 967 and Senate Bill 1284, that have not been signed or vetoed by the Governor as of the date of this information letter. These bills effect taxation issues only. They do not effect Alcoholic Beverage or Motor Vehicles. These bills are summarized by tax type on pages 45 - 58 for your reference. At such time when these bills are signed or vetoed by the Governor, the Department of Revenue will issue an information letter explaining the action taken by the Governor and the effective dates of the laws.

This information letter is divided into three categories of legislation:

- (1) Alcoholic Beverage Control,
- (2) Motor Vehicles, and
- (3) Taxation.

Other legislation enacted this year that is solely under the jurisdiction of the Department of Public Safety, Department of Transportation, and South Carolina Law Enforcement Division is not discussed in this information letter.

If you would like a complete copy of the legislation discussed in this information letter, please call the Legislative Council in Columbia, South Carolina at 803-734-2145.

ALCOHOLIC BEVERAGE CONTROL

Appropriations Bill, Section 52, (Act No. 497).

Temporary Beer or Beer and Wine Permit

Code Section 61-9-175 has been added to provide that a person purchasing a retail business that has a retail permit to sell beer or wine may be issued a temporary permit at the time of application for a permanent retail beer or beer and wine permit providing:

1. The Department of Revenue does not consider the location to be a public nuisance, and,
2. The applicant currently holds a valid beer or beer and wine permit, or has had the State Law Enforcement Division conduct a criminal background check not more than 30 days before he applies for a license.

The temporary permit is valid until a permanent retail beer or beer and wine permit is approved or disapproved by the Department of Revenue, but is not valid for more than 120 days. The fee for each temporary permit is \$25.

Effective Date: July 1, 1994

Appropriations Bill, Section 76, (Act No. 497).

Applicants Owing Delinquent State or Federal Taxes, Penalties, or Interest

Code Section 61-3-425 prohibits the issuance, renewal, or transfer of a license for alcoholic beverages, beer, and wine unless the Department of Revenue and Internal Revenue Service determine that the applicant does not owe State or federal delinquent taxes, penalties, or interest.

Effective Date: July 1, 1994

House Bill 3180, (Act No. 445).

Brewpubs

This Act added Article 12 to Chapter 9 of Title 61 to provide for the establishment, operation, and permitting of brewpubs.

A "brewpub" is defined as a tavern, public house, restaurant, or hotel which produces on the permitted premises a maximum of 2000 barrels a year of beer for sale on the premises.

The biennial cost of the brewpub permit is \$2000 and allows the holder to produce on the permitted premises up to 2000 barrels a year of beer for sale on draft, in a sanitary container brought by the purchaser, or in bottles for consumption off the premises, to sell the beer of a producer which has been purchased from a wholesaler through the normal 3-tier distribution chain, and to serve food.

The brewpub permit is issued in lieu of a permit required for the manufacture of beer or sale of beer and wine including a brewer's and retailer's permit, however, the sale of alcoholic liquor in mini bottles for on premise consumption requires a separate license.

Effective Date: July 1, 1994

House Bill 4811, (Act No. 453).

Sale of Nonalcoholic Items

Code Section 61-3-1020 has been amended to permit retail dealers to sell nonalcoholic items, other than beer or wine, packaged together with alcoholic liquors (i.e. distilled spirits) if the nonalcoholic items and the alcoholic liquors are in sealed packages and are packaged together by the alcoholic liquor producer at its place of business. Glassware may still be sold by retail liquor dealers as long as the glassware and alcoholic liquors are packaged together by the wholesaler or producer in packaging provided by the producer.

Effective Date: June 16, 1994

MOTOR VEHICLES

Appropriations Bill, Section 29, (Act No. 497).

License Fees Deposited in General Fund

Code Section 56-1-145 providing for a portion of the revenue realized from the issuance of driver's licenses be spent to improve access routes to distressed and impacted areas of the State has been repealed so that all revenues generated from driver's licenses will be deposited in the General Fund.

Effective Date: July 1, 1994

Appropriations Bill, Section 37, (Act No. 497).

Dealer License Plates

Code Section 56-3-2320 relating to the issuance of dealer license plates has been amended. Some of the key provisions of the legislation include:

1. Dealer license plates may be used on motor vehicles loaned to the dealer for test driving purposes.
2. The use by a prospective purchaser is limited to 7 days.
3. For purposes of meeting the dealer plate eligibility requirements, the required number of motor vehicle sales in the 12 months preceding the application for dealer plates has been changed to 20 sales. The transfer of motor vehicles between licensed dealers for the purpose of meeting these requirements is prohibited. The sales requirement may be waived by the Department if the dealer has been licensed for less than one year.
4. A dealer may be issued 2 plates for the first 20 vehicles sold during the preceding year and 1 additional plate for each additional 15 vehicles sold.
5. The transfer of ownership of a motor vehicle between the same individual or corporation more than one time is considered as only 1 sale.
6. Each dealer plate costs \$20.

7. Notwithstanding the provisions of Code Section 56-3-2320, a dealer exclusively selling heavy duty trucks at retail is eligible to obtain dealer license plates for exclusive use on the heavy duty trucks regardless of the number of trucks sold by him during the preceding required number of months. For purposes of this provision, heavy duty trucks are trucks having a gross vehicle weight of 16,000 lbs. or more.
8. Persons who purchased a dealer license plate last year for \$300 will be reimbursed \$280 from the county that received the fee.

Education License Plates

Code Section 56-3-2320 has also been amended to provide for the issuance of an education license plate to a public or private school, college, or university for use on vehicles loaned or rented to them by a licensed motor vehicle dealer. Each plate costs \$200 and is valid for 2 years. There is no limit on the number of plates which may be issued.

With respect to property taxes, Code Section 12-37-2721 has been added to exempt from personal property taxes motor vehicles owned and licensed by motor vehicle dealers and operated on the highway with education license plates.

With respect to sales and use taxes, Code Section 12-36-90 has been amended to exclude motor vehicles operated with an education license plate from "gross proceeds of sales" and the sales tax.

Code Section 12-36-110 has been amended to provide that the use of a motor vehicle operated with an education license plate is not a sale at retail and is not subject to sales tax.

Transporter License Plates

Code Section 56-3-2350 relating to special motor vehicle registration has been amended to eliminate the provision allowing a motor vehicle dealer or wholesaler to purchase transporter license plates. The amendment to the dealer license plate requirements is intended to compensate for the elimination of transporter license plates.

Effective Date: January 1, 1994

Appropriations Bill, Section 55, (Act No. 497).

Driver's License Valid for Five Years - Fee Increases

Code Section 56-1-210 has been amended to extend the driver's license expiration date from 4 years to 5 years. As a result the fee for issuance of a driver's license, as provided in Code Section 56-1-140, has been increased from \$10.00 to \$12.50.

In addition, Code Section 56-1-200 has been amended to increase the fee for replacement of a lost or destroyed drivers license from \$0.50 to \$3.00.

Effective Date: January 1, 1995

Staggered Registration Periods

A technical correction has been made to Code Section 56-3-376 to provide that the renewal dates for vehicles with established registration periods may be revised to allow staggered monthly renewals.

Effective Date: January 1, 1995

Appropriations Bill, Section 60, (Act No. 497).

License Plate Replacement Date

Code Section 56-3-1230 has been amended to delete the requirement that the Department of Revenue issue a new license plate at least every 6 years. New license plates will now be issued at intervals considered appropriate by the Department.

In addition, Code Section 56-3-1230 has been amended to provide that permanent license plates may be revalidated and replaced at intervals determined by the Department.

Effective Date: June 29, 1994

Appropriations Bill, Section 70, (Act No. 497).

Manufacturer's License Plates

Code Section 56-3-2330 has been added to provide for the issuance of manufacturer license plates to "motor vehicle manufacturers" (i.e. a person in the business of manufacturing or assembling new and unused vehicles in South Carolina).

The key elements of the legislation are described below:

1. No more than 200 manufacturer license plates will be issued to a motor vehicle manufacturer.
2. The plates must be used exclusively on motor vehicles, including motorcycles, owned or in the possession of a manufacturer.
3. The plates must not be used to operate wreckers used by the manufacturer or to operate vehicles leased or rented by the manufacturer to the public.
4. Vehicles with manufacturer plates, not to exceed one licensed plate per household, may be operated by persons authorized by the manufacturer on vehicles of that manufacturer's brand on state streets and highways for testing, distribution, evaluation, and promotion of vehicles.
5. Vehicles with manufacturer plates may be used no more than 10 consecutive days in connection with civic and sporting events.
6. Each plate costs \$200.
7. The plate is valid for 2 years.
8. Code Section 12-37-2721 has been added to exempt from personal property taxes motor vehicles held by a manufacturer and operated on the highway with a manufacturer license plate.
9. Code Section 12-36-90 has been amended to exclude motor vehicles operated with a manufacturer license plate from "gross proceeds of sales" and the sales tax.
10. Code Section 12-36-110 has been amended to provide that the use of a motor vehicle operated with a manufacturer license plate is not a sale at retail and is not subject to sales tax.

Effective Date: July 1, 1994

Appropriations Bill, Section 84, (Act No. 497).

Tire Research and Development License Plates

Code Section 56-3-2335 has been added to provide for the issuance of research and development license plates to "research and development businesses" (i.e. a person who

manufacturers tires in South Carolina for use as original equipment on new and unused motor vehicles and who conducts research and development activities on tires in conjunction with its manufacturing activities in South Carolina).

The key elements of the legislation are described below:

1. No more than 30 research and development license plates will be issued to a research and development business.
2. The plates must be used exclusively on motor vehicles, including motorcycles, provided by a motor vehicle manufacturer to the research and development business for the purpose of testing and evaluating the performance of the research and development business' tires on the motor vehicles.
3. The plate costs \$200.
4. The plate is valid for 2 years.
5. Code Section 12-37-2722 has been added to exempt from personal property taxes motor vehicles using a research and development license plate.

Effective Date: July 1, 1994

Appropriations Bill, Section 85, (Act No. 497).

Overweight and Oversize Vehicle Permits

Code Section 57-3-130 through 57-3-190 have been added to transfer responsibility for permitting overweight and oversized motor vehicles, trucks, mobile homes and modular vehicles and homes from the Department of Revenue to the Department of Transportation.

Effective Date: July 1, 1994

Appropriations Bill, Section 106, (Act No. 497).

Transfer of License Plates

Code Section 56-3-1290 has been amended to provide that the owner or lessee of a vehicle may transfer a previously issued license plate from one vehicle he owns or leases to another vehicle of the same general type that he owns or leases.

Effective Date: July 1, 1994

Appropriations Bill, Section 112, (Act No. 497).

Sex Offender Registry

Article 7 of Chapter 3, Title 23 has been added to create a sex offender registry which requires state residents who have been convicted of certain sex or other offenses to register with the sheriff of the county in which they reside.

Code Section 23-3-460 requires that the South Carolina Department of Motor Vehicles inform, in writing, any new resident who applies for a drivers license, a chauffeur's license, vehicle tag or state identification card the obligation of offenders to register.

Effective Date: July 1, 1994

Appropriations Bill, Section 121, (Act No. 497).

Dealership May Issue First Time Tag and Registration

Code Section 56-3-2335 has been added to allow the Department of Revenue to authorize selected licensed motor vehicle dealers to issue first time vehicle registrations and license tags directly from the dealership.

Notarized Bill of Sale or Registration Not Required

Code Section 12-36-1710(F) has been amended to allow an applicant for a certificate of title to submit a bill of sale signed with the owners signature, subject to the penalties of perjury. A notary public is no longer required to witness the owner's signature.

In addition, Code Section 56-3-230 has been amended to delete the requirement that a notary public must witness the owner's signature on an application to register and license a vehicle.

Persons Prohibited From Obtaining a Drivers License

Code Section 56-1-40 has been amended to revise the list of persons to whom a drivers license may not be issued or renewed. These persons include:

1. A person whose driver's license is suspended or revoked in South Carolina or another jurisdiction or a person whose driver's license is subject to being suspended in South Carolina or another jurisdiction as a result of a conviction or adjudication that authorizes or requires the suspension or revocation of a driver's license under South Carolina laws.

2. A person who is a habitual user of alcohol or any other drug to a degree that prevents him from safely operating a motor vehicle.
3. A person who has a mental or physical condition which prevents him from safely operating a motor vehicle.

In addition, this legislation amended Code Section 56-1-40(7) that prohibits persons who are not residents of South Carolina from obtaining a drivers license. This section now allows a driver's license to be issued to persons from other countries who are present in South Carolina on a student or work visa and their dependents.

Beginner's Permit

Code Section 56-1-50 has been amended to extend the time a person may drive with a beginner's permit from 6 months to 12 months. In addition, the permit may be renewed or a new permit issued for additional 12 month periods. The fee for every beginner's or renewal permit has been increased from \$2.00 to \$2.50.

In addition, Code Section 56-1-100 has been amended to provide that an unemancipated minor does not need approval of a father, mother, guardian or responsible adult when extending the time to drive with a beginners permit.

Insurance Information

With respect to the issuance of a driver's license or permit, Code Section 56-1-80 has been amended to provide that every person who obtains a driver's license or permit for the first time in South Carolina and every person who renews a driver's license or permit must be furnished a written request form for completion and verification of liability insurance coverage.

With respect to the registration of a motor vehicle, Code Section 56-10-10 has been amended to provide that the owner must provide the name of the liability insurer, and the owner's signed statement that insurance is in place, subject to perjury statutes of South Carolina. The requirements requiring the owner to provide the agent name, policy number and effective date have been deleted.

Registration Grace Period

Code Section 56-3-210 has been amended to extend the period of time in which a person may register and license a newly acquired vehicle or a vehicle moved into South Carolina from 30 days to 45 days.

Dealer Plate Used in Driver Education Program

Code Section 56-3-2320 has been amended to provide that a dealer may lend a motor vehicle with a dealer license plate to a public or private school for use in a driver education program. There is no charge for a plate used for this purpose and no limit to the number of plates that may be issued for this purpose. The dealer must return the plate to the Department of Revenue when the motor vehicle is no longer used for driver education. (This amendment to Code Section 56-3-2320 is also in House Bill 4974.)

Bond Requirement for Wholesaler and Dealer Licenses

Code Section 56-15-320 has been amended to delete the requirement that motor vehicle dealers and wholesalers are required to deliver a new bond or proper continuation each year before the license is renewed. A posted bond remains effective until the Department of Revenue is notified of its cancellation.

Effective Date: January 1, 1995

House Bill 3845, (Act No. 322).

Corporate-Owned Fleet Motor Vehicles

All motor vehicles included in a corporate-owned fleet are registered annually at one time. Code Section 56-3-1010, relating to the definition for corporate-owned fleet motor vehicles, has been amended to expand the definition of fleet to include property carrying vehicles (i.e. trucks) with an empty weight of no more than 22,000 lbs. and a gross vehicle weight of no more than 26,000 lbs.

Effective Date: March 24, 1994

House Bill 4377, (Act No. 417).

Refund of Biennial Vehicle Registration Fee

Code Section 56-3-905 has been added to provide that the owner or lessee of a motor vehicle who surrenders a license plate and registration in the first 12 months of the biennial licensing period is entitled to a refund equal to one-half of the registration fee paid. (See Property Tax Section, House Bill 3907, Section 32, regarding refund of a portion of property tax paid.)

Effective Date: Applies to biennial licenses issued after July 31, 1993

Intrastate Motor Carrier Limitations

Code Section 56-5-90 has been added to provide driving time limitations for an intrastate motor carrier driver.

Effective Date: May 25, 1994

Registration Fee for Persons 64 Years Old

Code Section 56-3-620 has been amended to provide a decrease in the biennial registration fee for private passenger-carrying vehicles from \$24 to \$22 for persons who are 64 years old at the time of registering the vehicle.

Effective Date: May 25, 1994

Farm Truck Licenses

Code Section 56-3-670, relating to the fee for farm truck licenses, has been amended to provide that farm trucks with an empty weight of less than 7500 lbs. may be used for ordinary domestic purposes and general transportation but must not be used to transport persons or property for hire.

Additionally, this amendment revised the fees charged for a special farm vehicle license. This license is renewed annually.

Effective Date: Licenses issued after July 31, 1994

Senate Bill 1113, (Act No. Unassigned).

Biennial Licensing and Registration Implementation Delay

This Act granted the Department of Revenue the authority to authorize a requesting county to delay implementation of the biennial licensing and registration provisions of Section 22 of Act 164 of 1993. In no event may a delay be granted beyond January 1, 1995.

Effective Date: July 14, 1994

TAXATION

ADMINISTRATIVE

Appropriations Bill, Section 24, (Act No. 497).

Litigation Settlements by State Agencies

Code Section 11-1-45 has been added to provide that a state agency or instrumentality of the State may not enter into a settlement of any litigation, dispute or claim over \$100,000 that requires the use of money appropriated in a general or supplemental appropriations act or of money from public funds unless prior written approval is obtained from the Budget and Control Board.

The Budget and Control Board has exempted the Department of Revenue from this provision for refunds up to \$5,000,000.

This provision does not apply to the General Assembly, Senate, House of Representatives, local political subdivisions, special purpose districts, and special taxing districts.

Effective Date: June 29, 1994

Appropriations Bill, Section 31, (Act No. 497).

Reporting of Suspected Insurance Fraud

As part of the Appropriations Bill, the Legislature enacted the "Omnibus Insurance Fraud and Reporting Immunity Act". The purpose of this act "is to confront aggressively the problem of insurance fraud in South Carolina by facilitating the detection of insurance fraud, to allow reporting of suspected insurance fraud; to grant immunity for reporting suspected insurance fraud; to prescribe penalties for insurance fraud; to require restitution for victims of insurance fraud; to establish a division within the Office of the Attorney General to prosecute insurance fraud; and to require the investigation of alleged insurance fraud by State Law Enforcement Division.

Any authorized agency, as defined in the statute, provided with or obtaining information relating to a suspected false statement or misrepresentation in connection with an insurance transaction may release the information to any other authorized agency. The Department of Revenue is listed as an authorized agency. In addition, the Department of

Revenue and several other agencies must report, but not adjudicate, all cases of suspected or reported false statements or misrepresentations in connection with an insurance transaction to the newly created Insurance Fraud Division of the Office of the Attorney General for appropriate investigation or prosecution, or both.

Effective Date: July 1, 1994

Appropriations Bill, Section 50, (Act No. 497).

Index of Taxpaying Ability

Code Section 59-20-20 has been amended to provide that for purposes of computing the index of taxpaying ability, the property classification assessment ratios for the second completed taxable year preceding the fiscal year in which the index is utilized will be used. These assessments must be the audited assessments by school district contained in the annual report submitted yearly to the Comptroller General's office. The county auditor must provide fiscal year-end audited assessments of real and personal property to the Property Division of the Department of Revenue for each of the school districts of the county for the second completed taxable year preceding the fiscal year in which the index is used not later than October first of each year.

The index must be determined annually by the Department of Revenue and Taxation from sales ratio data based on the most recent studies made which correspond with the base year assessments used to compute the current index. The Department of Revenue shall provide a preliminary index by November first of each year end and a final index by February first of each year to the State Department of Education and to the auditor of each county.

Any school district is entitled to a hearing before the Department of Revenue to review its designated index of taxpaying ability within thirty days of filing a request for the hearing.

Effective Date: June 29, 1994

Appropriations Bill, Section 62, (Act No. 497).

Checks Issued by State Treasurer

Code Section 11-5-260 has been added to provide that checks issued by the State Treasurer and not cashed within 2 years from the date of the check are to be credited to the State Treasury and written off the Treasurer's books. A check may be reissued upon satisfactory proof of nonpayment.

Effective Date: July 1, 1994

Appropriations Bill, Section 76, (Act No. 497).

License Revocation

This Act repealed Article 7, Chapter 54 of Title 12 providing for the revocation of professional licenses if a person has neglected or refused to file returns or pay a tax required under the provisions of law administered by the Department of Revenue.

Effective Date: July 1, 1994

House Bill 4180, (Act No. 384).

Model Nonprofit Corporation Act

The South Carolina Nonprofit Corporation Act has been enacted revising procedures for the organization and formation of nonprofit corporations in South Carolina.

Assets of Dissolved Nonprofit Corporation

Section 33-31-1440 has been added to provide that the assets of a dissolved corporation that should be transferred to a creditor, claimant, or member of the corporation who cannot be found must be reduced to cash and deposited with the Department of Revenue until claimed by the creditor, claimant or member.

Effective Date: May 10, 1994

House Bill 4794, (Act No. 452).

Administrative Law Judges

This Act amended code sections in Titles 1, 61 and 8 relating to the hearings and proceedings and the internal administration and operation of the Administrative Law Judge Division. The Administrative Law Judge Division is currently operating under temporary rules. It has proposed permanent rules which are expected to be promulgated during the 1995 session of the General Assembly.

In addition, this legislation provided that the Administrative Law Judge Division will not preside over motor vehicle matters provided for in Title 56.

Effective Date: June 16, 1994

Senate Bill 886, (Act No. 470).

Fees for Settlement of Estates

Code Section 8-21-790 has been amended to delete the language authorizing the Department of Revenue to retain three-fourths of the total settlement fees received by the Office of the Probate Court of any county that exceed \$10,000 in any one year.

Effective Date: August 13, 1994

House Bill 4691, (Act No. 464).

Claim for Refund of Tax or Fee

Code Section 12-47-440, providing for claims and suits for recovery of a tax or fee that has been erroneously, improperly, or illegally assessed, collected or paid, has been amended to provide that this section applies to any tax or fee administered by the Department of Revenue.

This amendment applies to tax periods beginning in 1990 and later and to tax periods beginning before 1990 if the claim for refund is one under review by the Department of Revenue on the effective date of this act, June 29, 1994, and is not a claim for refund arising under or based upon Davis v. Michigan.

SC Revenue Ruling #91-10, dealing with claims for refunds, has become obsolete as a result of this legislation.

Effective Date: Tax periods beginning in 1990 and later and to tax periods beginning before 1990 if the claim for refund is one under review by the Department of Revenue on the effective date of this act, June 29, 1994, and is not a claim for refund arising under or based upon Davis v. Michigan.

INCOME TAX

Appropriations Bill, Section 3, (Act No. 497).

Additional Deduction for Dependent Under 6 Years of Age

Code Section 12-7-435 has been amended to provide a resident taxpayer an additional deduction in arriving at South Carolina taxable income for each dependent claimed on the taxpayer's federal income tax return who is under 6 years of age.

The additional deduction allowed is an amount equal to a percentage of the federal income tax personal exemption amount allowed for the applicable tax year, as follows:

Taxable year 1994	25%
Taxable year 1995*	50%
Taxable year 1996*	75%
Taxable years after 1996*	100%

* This provision applies in taxable years 1995 and thereafter providing funds are available.

Effective Date: Taxable year 1994 and thereafter, providing funds are available.

Capital Gains Deduction Delayed

In order to fund the additional deduction for dependents under 6 years of age (see above), the capital gains deduction set forth in Code Section 12-7-437 will remain at 29% for the 1994 tax year, the same amount allowed last year. The deduction will increase to 44% for tax years beginning after 1994.

Any taxpayer subject to a penalty for underpayment of 1994 estimated taxes because of the capital gains deduction delay may request a penalty waiver. Taxpayers requesting a waiver should attach Form SC2210 to their 1994 income tax return and write "Waiver/Capital Gains" in the left margin of the form. They should also attach a statement explaining the reason for the waiver request. The Department will waive the underpayment penalty where appropriate, pursuant to Code Section 12-54-160 and SC Revenue Procedure #93-1.

Effective Date: Tax Years beginning in 1994

Appropriations Bill, Section 6, (Act No. 497).

Income Tax Conformity

Code Section 12-7-20 has been amended to update South Carolina's income tax laws to conform to the Internal Revenue Code of 1986 as amended through December 31, 1993. The Commission determined that the Department would continue to follow its longstanding administrative policy of interpreting the amendment of 12-7-20 to update the definition of the Internal Revenue Code to include an adoption of the Internal Revenue Code's effective date.

Effective Date: June 29, 1994

Appropriations Bill, Section 78, (Act No. 497).

Corporate Headquarters Income Tax Credit

Code Section 12-7-1245 has been amended to reduce the number of new jobs that must be created by a headquarters establishment, expansion, or addition in order for a corporation to qualify for the credit. The amendment made the following changes:

1. Code Section 12-7-1245(B)(2), relating to real property costs, has been amended to require the creation of at least 40 new jobs performing headquarters or research and development related functions and services. At least 20 of these new jobs must be classified as headquarters staff employees.
2. Code Section 12-7-1245(D)(2)(a), relating to an additional credit for personal property costs, has been amended to require the creation of at least 75 new full-time jobs performing headquarters or research and development related functions and services which have an average cash compensation level of more than one and one-half times the per capita income of South Carolina at the time the jobs are filled.

Effective Date: Taxable Years after 1993

Appropriations Bill, Section 129, (Act No. 497).

Credit for Hiring Persons Terminated by Federal Base Closing

Code Section 12-7-1273 has been added to provide an employer a nonrefundable income tax credit equal to 10% of the first \$7,000 of "qualified wages" paid during the taxable year for hiring an individual who was terminated from a prior employment as a result of the closing or realignment of a federal military installation. The credit may not reduce the tax liability below zero. Any unused credit may be carried forward 10 years.

The term "qualified wages" is defined in Code Section 12-7-1273(3) and (4) as follows:

- (3) wages paid by an employer to an employee if:
 - (a) at least 90% of the employee's services for the employer during the taxable year are directly related to the conduct of the employer's trade or business within an applicable federal military installation or economic impact region; or
 - (b) at least 50% of the services of the employee for the employer during the taxable year are performed within the installation or region;
- (4) (a) "Qualified wages" include, with respect to an individual, only wages attributable to services rendered during the **one year** beginning with the day the individual first works for an employer after becoming a terminated employee.
- (b) Qualified wages for a taxable year may not exceed \$7,000.
- (c) Qualified wages do not include wages paid for services performed as an employee of the federal government or an agency or instrumentality of the federal government.

The term "terminated employee" is defined in Code Section 12-7-1273(5) as follows:

- (a)... an individual who is certified by the South Carolina Employment Security Commission...as being an individual, whether or not a federal employee:
 - (i) who was employed in an economic impact region, and
 - (ii) whose job was terminated by reason of the closing or realignment of the installation.
- (b) An individual may not be treated as a terminated employee with respect to a job termination after the later of:
 - (i) the close of the second calendar year following the calendar year in which the commencement of the job termination occurs; or
 - (ii) the close of the first year period beginning with the date on which the employee first begins work for an employer after the job termination.

The terms "applicable federal military installation" and "economic impact region" are also defined in the statute.

Effective Date: Taxable Years beginning after 1994

Appropriations Bill, Section 136, (Act No. 497).

Job Tax Credit - Use by a Successor Corporation

Code Section 12-7-1220(F) has been amended to provide that unused job tax credits may be transferred and continued to be used by a succeeding corporation following the merger, consolidation, or reorganization of a corporation where tax attributes survive. The merger, consolidation, or reorganization does not create new eligibility for the credit.

In addition, this amendment provides that a corporation may assign its rights to its job tax credit to another corporation if it transfers all, or substantially all, of the assets of the corporation or all, or substantially all, of the assets of a trade or business or operating division of a corporation related to the generation of the job tax credit to that corporation providing the required number of new jobs is maintained.

Effective Date: June 29, 1994

Consolidated Return - Determination of Income Tax Credits

Code Section 12-7-1645 has been added to codify the terms and conditions, as set forth in Regulation 117-77, in which a consolidated corporate income tax return may be filed.

With respect to the computation of income tax credits and the carryover of unused credits, Code Section 12-7-1645(F) was added to provide that income tax credits may be determined on a consolidated basis. Limitations on credits which refer to the income or the income tax liability of a corporation are deemed to refer to the income or income tax liability of the consolidated group, and credits will reduce the consolidated group's tax liability regardless of whether or not the corporation entitled to the credit contributed to the tax liability of the consolidated group.

Effective Date: June 29, 1994

Merchant Marine Capital Construction Funds

Code Section 12-7-430(i) has been added to provide, notwithstanding Section 12 of Act 101 of 1985, Internal Revenue Code Section 7518 [Tax Incentive Relating to Merchant Marine Capital Construction Funds] applies retroactively to taxable years beginning after 1986 and applies to any taxpayer.

Effective Date: Taxable years beginning after 1986

House Bill 3601, (Act No. 298).

Job Tax Credit

Code Section 12-7-1220 has been amended to provided that counties with a population less than 20,000, according to the 1990 U.S. Census, are considered less developed counties for purposes of the job tax credit. Accordingly, Calhoun, Edgefield, Jasper and Saluda counties will be reclassified for 1994 as "less developed counties".

Effective Date: March 1, 1994

House Bill 4691, (Act No. 464).

Federal Retiree Refunds

The General Assembly has ratified and approved the terms of the federal retiree settlement agreement dated December 14, 1993 and approved by the Court on March 2, 1994 in settlement of Bass v. South Carolina and Perri v. South Carolina. This agreement provides that refunds be issued to federal government retirees who filed a timely refund claim on or before April 15, 1992, for the 1985, 1986, 1987 and/or 1988 tax years. Under the terms of this settlement, the refunds would be calculated by the Department of Revenue and would be issued in two installments, or, if necessary, three installments. The scheduled refund dates are June 1, 1994, October 10, 1994, and, if necessary, June 30, 1995. Simple interest at 3% will be paid on the refunds.

Additionally, this legislation provided special relief to federal government retirees who filed South Carolina individual income tax returns in 1985, 1986, 1987, or 1988 that included federal pension income in South Carolina taxable income, but who (1) made a timely filed refund claim for one or more eligible refund years, but not for all of the years eligible for a refund, or (2) never filed a claim for refund for the eligible refund years.

This special relief legislation provides:

1. A taxpayer who made a timely filed claim for refund for one or more tax years under the settlement agreement will automatically be deemed to have filed a timely refund claim for all other eligible tax years. Refunds for those other eligible years in which a refund was not filed by April 15, 1992, however, will be paid in two equal installments in October 1995 and October 1996. No interest will be paid on the refunds.

The South Carolina Department of Revenue will automatically calculate the amount of the eligible refund. No further correspondence or amended returns should be submitted by the affected taxpayer.

2. A taxpayer who never filed a refund claim for any eligible year under the settlement agreement has until August 8, 1994 to file a claim for refund with the Department of Revenue. Refunds for all eligible years will be issued in two equal installments in October 1995 and October 1996. No interest will be paid on the refunds.

One written claim for refund is sufficient for all applicable refund years. In the case of a deceased taxpayer, the surviving spouse, heirs, or personal representative of the deceased taxpayer entitled to receive the refund may file the claim for refund on behalf of the deceased taxpayer.

Effective Date: June 29, 1994

Senate Bill 674, Section 3, (Act No. 427).

Infrastructure Credit

Code Section 12-7-1250, relating to the infrastructure credit for infrastructure projects including water lines, sewer lines, their related facilities, and roads, has been amended to provide the following:

1. The infrastructure credit is 50% of the expenses paid or accrued in building or improving any one infrastructure project, not to exceed \$10,000, annually;
2. Up to \$30,000 of unused infrastructure credit may be carried forward;
3. A corporation filing a consolidated return is entitled to the infrastructure credit on a consolidated basis. The tax credit may be determined on a consolidated basis regardless of whether or not the corporation entitled to the credit contributed to the tax liability of the consolidated group;
4. Any unused infrastructure credit may be transferred and continued to be used by a succeeding corporation following the merger, consolidation, or reorganization of a corporation where tax attributes survive. The merger, consolidation, or reorganization, however, does not create new eligibility for the credit; and,
5. A corporation may assign its rights to its unused infrastructure credit to another corporation if it transfers all, or substantially all, of the assets of the corporation or all, or substantially all, of the assets of a trade or business or operating division of a corporation to another corporation.

Effective Date: Taxable years beginning after 1987

Senate Bill 674, Section 4, (Act No. 427).

Palmetto Seed Capital Credit

Code Section 41-44-30, providing for the Palmetto Seed Capital Fund Limited Partnership and the computation of the credit, has been amended to provide that the credit may be used on a consolidated basis.

In addition, this amendment provides that an unused Palmetto Seed Capital Credit may be transferred and continued to be used by a succeeding corporation following the merger, consolidation, or reorganization of a corporation where tax attributes survive. The merger, consolidation, or reorganization does not create new eligibility for the credit. Further, a corporation may assign its rights to its unused Palmetto Seed Capital credit to another corporation if it transfers all, or substantially all, of the assets of the corporation or all, or substantially all, of the assets of a trade or business or operating division of a corporation to another corporation.

Effective Date: Taxable years beginning after 1987

House Bill 4283, (Act No. 448).

Limited Liability Company and Registered Limited Liability Partnership

This legislation added Chapter 43 of Title 33 to enact the South Carolina Limited Liability Company Act, and also amended the Uniform Partnership Act to authorize the creation of Registered Limited Liability Partnerships in South Carolina.

Limited Liability Company (LLC)

An LLC is an unincorporated business association that provides its owners (members) limited liability and flexible management and financial alternatives. It has become a popular new form of business entity since a properly formed LLC provides the favorable pass-through tax treatment of partnerships, and the limited personal liability of corporations.

Formation

Forming an LLC in South Carolina is a simple process. An LLC is formed when two or more initial members sign Articles of Organization and deliver it to the Secretary of State with a \$110 filing fee. The articles must state: (1) the name of the LLC, (2) the registered office street address, (3) the registered agent's name, (4) whether or not it is managed by managers, and (5) the date it will end. The name of an LLC must contain the words limited liability company, or limited company, or the abbreviation L.L.C., L.C., LLC, or LC.

An LLC can be formed for any lawful purpose, including professional services, unless prevented by the licensing body. There cannot, however, be a one member LLC.

Limited Liability and Suits Against an LLC

Members do not share in the liabilities of the LLC in their capacity as members. This is not a shield if the member individually commits a tort while acting on behalf of the LLC. A member may also be liable for guaranteeing a contractual obligation.

An LLC is an entity amenable to suit. Unless a member is a personal wrongdoer (or has personally agreed to be liable for the debts of the LLC), the member would not be a proper defendant in a claim against the LLC.

Operations

Operating agreement. Members of an LLC can enter into an operating agreement to govern the LLC. An operating agreement is any written agreement, originally adopted by all the members of the LLC, as to the conduct of the business and affairs of the LLC. If there is no operating agreement the statute controls these matters.

The operating agreement can control such issues as voting, indemnification, evidence of contributions, allocations of profits and losses, remuneration, sharing of interim losses, distributions in the event of dissociation, distributions in kind, restrictions on distributions, events of dissociation, timing and causes of dissolution, distribution of assets upon dissolution and mergers with other LLCs.

Contributions to capital. There are no minimum capital requirements and no limit to the type of consideration which may be contributed. The statute does not mandate how capital accounts are to be maintained.

Voting. Unless the operating agreement provides otherwise, a majority of the members is required for ordinary business decisions. All members must consent to amend the operating agreement.

Fiduciary duties. Members of an LLC owe one another statutorily imposed duties of loyalty, care, good faith and fair dealing. These duties cannot be deleted by the operating agreement.

Profits, losses and distributions. The operating agreement controls the sharing of profits, losses and distributions. If an LLC cannot pay its bills or its debts exceed its assets, it is prohibited from making distributions to members.

State dissolution of LLC. The Secretary of State may dissolve an LLC which does not maintain its governmental filing requirements or does not file a tax return or pay a tax.

Foreign LLC

A foreign LLC may register and qualify to do business in South Carolina according to procedures similar to those applicable to foreign corporations. The Act provides that the laws of the foreign jurisdiction will govern the foreign LLC's organization and internal affairs of its members. However, it does not state that the foreign state's law will govern the liability of members.

State Taxation of LLC

If an LLC is a corporation for federal income tax purposes, it is a corporation for South Carolina income tax purposes. Likewise, if an LLC is a partnership for federal income tax purposes, it is a partnership for South Carolina income tax purposes.

South Carolina has adopted all of the partnership provisions (subchapter K) of the Internal Revenue Code and Internal Revenue Code Section 7701 which defines "partnership" and "corporation".

Internal Revenue Code regulations govern how an organization is classified for federal tax purposes. The four characteristics used in classifying an entity as a corporation or partnership for federal tax purposes are: (1) continuity of life, (2) centralized management, (3) limited liability and, (4) free transferability of interests. If an LLC lacks two or more of these corporate characteristics, it will be classified as a partnership for federal income tax purposes. If an LLC possesses 3 or more of these corporate characteristics, it will be taxable as a corporation for federal income tax purposes.

The LLC statute provides for limited liability and specifically permits an LLC to be managed by managers, so emphasis is placed in avoiding the other two entity characteristics.

Avoiding continuity of life. An LLC must contain a date upon which it will automatically terminate. In addition, the withdrawal of a member for any reason (including death, bankruptcy, or a decree of incapacity) is an event of disassociation. Upon disassociation, the LLC is liquidated unless a majority in interest of the remaining members elect in writing within 90 days to continue the LLC. A majority in interest is defined to include a majority of both the "profits" and the "capital" of the LLC.

Avoiding free transferability of interests. There must be unanimous consent before an assignee of an LLC interest may become a member. The consent may not be pre-approved. Any member can vote no on any proposed transfer for any reason, or no reason. There is no obligation to act reasonably in denying the transfer.

Definitions. This Act added Code Section 12-2-25 to provide the following:

(A) As used in this title and unless otherwise required by the context:

- (1) 'Partnership' includes a limited liability company taxed for South Carolina income tax purposes as a partnership.
- (2) 'Partner' includes any member of a limited liability company taxed for South Carolina income tax purposes as a partnership.
- (3) 'Corporation' includes a limited liability company or professional or other association taxed for South Carolina income tax purposes as a corporation.
- (4) 'Shareholder' includes any member of a limited liability company taxed for South Carolina income tax purposes as a corporation.

Therefore, an LLC classified as a partnership for South Carolina income tax purposes will be deemed a partnership for all other tax purposes in South Carolina, such as paying withholding tax that may be required on nonresident partners. An LLC classified as a corporation for South Carolina income tax purposes will be deemed a corporation for all other tax purposes in South Carolina, such as paying a corporate license fee.

Registered Limited Liability Partnership (LLP)

This legislation amended the Uniform Partnership Act to provide for the formation of a registered limited liability partnership. A Registered Limited Liability Partnership (LLP) is a general partnership that provides its partners with limited liability, providing the requirements of the LLP statutes are met.

Formation

Forming an LLP in South Carolina is also a simple process. An LLP is formed when an application is filed by a majority of the partners or any one or more partners authorized to execute it, and delivered to the Secretary of State with a \$100 filing fee. The application must state: (1) the name of the LLP, (2) the principal office address, (3) the registered office address and registered agent's name, if the LLP's principal office is not located in South Carolina, (4) the number of partners, (5) a brief statement of its business, and (6) the partnership is applying for status or renewal as a registered limited liability partnership. The name of the LLP must contain the words "Limited Liability Partnership" or the abbreviation "L.L.P." at the end of its name.

Also, the LLP is required to carry \$100,000 of liability insurance beyond the amount of its deductible. It must be a type that is designed to cover the kinds of negligence,

wrongful acts, and misconduct for which liability is limited by the Act and which insures the partnership and its partners. A bank letter of credit, or cash or insurance bond may be substituted for the liability insurance requirement.

Renewal Requirements

An LLP's registration is only effective for one year. Each year, the LLP must file a renewal application within the 60 day period preceding the expiration date. The Secretary of State is not required to notify an LLP that its registration is up for renewal.

Foreign LLP

A foreign LLP may register and qualify to do business in South Carolina according to procedures similar to those applicable to foreign corporations.

A partner of a foreign LLP is not liable for the debts and obligations of the LLP solely because the LLP transacted business in South Carolina without registration. There is, however, a \$10 per day (not to exceed \$1,000 a year) civil penalty if a foreign LLP transacts business in South Carolina without a certificate of authority.

Limited Liability

The Act amends the Uniform Partnership Act to provide that, except as stated below, a partner in a registered LLP "is not liable directly or indirectly, including by way of indemnification, contribution, or otherwise, for debts, obligations, and liabilities chargeable to the partnership arising from negligence, wrongful acts, or misconduct committed while the partnership is a registered LLP and in the course of the partnership business by another partner or employee, agent, or representative of the partnership".

Exceptions to limited liability. The act does not provide immunity where a partner's liability results from his own negligence, wrongful acts, misconduct, or that of a person under his own direct supervision and control.

A professional is liable for negligent conduct in which he personally participates to the same extent as a sole practitioner, but is not liable for the negligence of other partners, agents, or employees unless he is at fault in appointing, supervising, or cooperating with them.

Effective Date: June 16, 1994

LICENSE FEES AND TAXES

Senate Bill 671, Section 1 and Section 4, (Act No. 378).

Payment of Filing Fees For New Corporations

Code Section 12-19-20(e) has been amended to combine payment of the minimum license fee with the initial filing fee required by the Secretary of State for a domestic corporation to secure articles of incorporation or for a foreign corporation to secure a certificate of authority. This amendment allows a new corporate taxpayer to submit a single check to the Secretary of State for the articles of incorporation or certificate of authority and for the minimum license fee imposed under Chapter 19 of Title 12.

Effective Date: May 10, 1994

Senate Bill 671, Section 2 and 3, (Act No. 378).

License Tax on Utility Companies

Code Sections 12-19-100 and 12-19-110 have been amended to delete the provisions subjecting certain utility companies to the license fee based on value of property and gross receipts. Accordingly, every railroad company, parlor, dining or sleeping car company, tank car company, refrigerating car company, fruit growers' express car company, and all privately operated car lines will compute the license fee based on capital stock and paid in surplus as provided in Code Section 12-19-70.

Effective Date: May 10, 1994

Senate Bill 907, (Act No. 405).

County License Fee and Tax - Insurance Company

Code Section 4-9-30(12), relating to the designation of powers under the alternative form of government, has been amended to prohibit the levy of county license fees and taxes on insurance companies.

Effective Date: May 24, 1994

MISCELLANEOUS TAXES

ADMISSIONS TAX

Appropriations Bill, Section 22, (Act No. 497).

Allocation of Admissions Tax Revenue - Designated Development Areas

Code Section 12-21-2423 allows the amount equal to one-half the admissions tax collected at a major tourism and recreation facility during its first fifteen years of operation to be used for infrastructure improvements. The statute establishes various guidelines as to when a facility qualifies under the provisions of this statute and how the money will be used.

The amendment provided for in this section of the Appropriations Bill expands the definition of "major tourism and recreation facility" to include a "designated development area" as defined by the statute.

Effective Date: July 1, 1994 (Applies to any major tourism and recreation facility which opened after December 31, 1992).

COIN-OPERATED DEVICES

Appropriations Bill, Section 39, (Act No. 497).

Video Game Machines - Watercraft

Code Section 12-21-2720 has been amended to prohibit the Department from issuing "a license for the operation of a video game with a free play feature which is located or intended to be located on a watercraft or vessel plying the territorial waters of [South Carolina]."

Effective Date: June 29, 1994

PROPERTY TAXES

Appropriations Bill, Section 77, (Act No. 497).

Corporate Headquarters, Corporate Office Facility and Distribution Facility Exemption

Section 12-37-220(B)(32) has been amended to allow the exemption from nonschool county ad valorem taxes for corporate headquarters, corporate office facilities and distribution facilities, if the cost of new construction or additions is \$50,000 or more and the taxpayer creates 75 or more full-time jobs or 150 "substantially equivalent" jobs. "Substantially equivalent" jobs are ones requiring a minimum of 20 hours of an employee's time a week for a year of the company's operations or a job requiring a minimum of 20 hours a week in which the employee was initially hired for or transferred to the South Carolina corporate headquarters or office or distribution facility.

Effective Date: June 29, 1994

Appropriations Bill, Section 99, (Act No. 497).

Air Carrier Hub Terminal Facility

Code Section 55-11-500 has been amended to extend the definition of air carrier hub terminal facility to include a facility with at least five common carrier departing flights a day for the purpose of transporting cargo and air freight at least five days a week. This definitional change affects Code Section 12-37-220(B)(33) which allows an exemption from ad valorem taxation for all personal property of an air carrier hub terminal facility.

Effective Date: June 29, 1994

Appropriations Bill, Section 100, (Act No. 497).

Pollution Control Exemption

Code Section 12-37-220 has been amended to provide that the value eligible for the ad valorem exemption for pollution control equipment that serves a dual purpose of production of greige goods and pollution control is 20% of the cost of the equipment.

Effective Date: Effective June 29, 1994, and applies for property for tax years beginning after 1993.

Appropriations Bill, Section 118, (Act No. 497).

Fee in Lieu of Taxes

Code Section 4-29-67 has been amended to provide for a reduction in the \$85 million investment needed to qualify for the fee in lieu of taxes.

If at least 200 new full-time jobs are created, the minimum level of investment is \$60 million.

If at least 300 new full-time jobs are created, the minimum level of investment is \$40 million.

If at least 400 new full-time jobs are created, the minimum level of investment is \$20 million.

Effective Date: June 29, 1994

House Bill 3454, (Act No. 296).

Public Tax Records to be Marked

Code Section 12-51-60 has been amended to provide that when property is sold in order to pay delinquent taxes, the county treasurer shall mark the public tax record regarding the property sold to indicate that the taxes were paid by means of a tax sale and the date of the sale.

Effective Date: All property sold in a delinquent tax sale after December 31, 1993.

House Bill 3922, (Act No. 293).

Below-Cost Housing

Code Section 12-37-220(B)(11) has been amended to extend the property tax exemption allowed to nonprofit housing corporations which provide below-cost housing to handicapped persons or both aged and handicapped persons. The exemption now applies to nonprofit housing corporations providing below-cost housing for elderly persons or households as authorized under Section 202 of the Housing Act of 1959 as amended under Section 801 of the National Affordable Housing Act of 1990. The exemption also extends to all property of nonprofit housing corporations which provide below-cost supportive housing for persons with disabilities as authorized by Section 811 of the National Affordable Housing Act of 1990.

Effective Date: Taxable years beginning after 1993.

Senate Bill 605.

Municipalities May Be Allowed to Grant Exemptions

A proposed amendment to Item (g) of Section 3 of Article X of the Constitution of South Carolina will be submitted to voters at the next general election. The proposed amendment will allow the governing body of a municipality by ordinance to exempt from municipal ad valorem taxation for 5 years:

1. All new corporate headquarters, corporate office facilities, distribution facilities located in the municipality, and addition to such facilities; and,
2. All facilities of new enterprises engaged in research and development activities located in the municipality, and additions to such facilities.

Senate Bill 1251, (Act No. 443).

Installment Payments and Discounts Authorized

Code Section 12-45-75 has been added to provide that a county may by ordinance allow a taxpayer to elect to pay all ad valorem taxes on real property in the county in installments except for taxes paid through an escrow account. All installments must be paid by January 15th. The ordinance may provide for a service charge of not more than \$2 but may not provide for penalties for late payment.

A county may also, by ordinance, provide a discount on all ad valorem taxes on real property located in the county paid before January 15th.

Effective Date: June 16, 1994

Senate Bill 920, (Act No. 406).

Agricultural Use Valuation Changes

Code Section 12-43-232 has been added to provide additional requirements which must be met in order for real property to qualify as agricultural real property. The requirements are as follows:

1. If the tract is used to grow timber, the tract must be 5 acres or more. Tracts of less than 5 acres may qualify if they are contiguous to or are under the same management system as a tract of timberland which meets the minimum acreage requirement or if they are owned in combination with other tracts of nontimberland

agricultural real property that qualify as agricultural real property. Tracts of timberland must be devoted actively to growing trees for commercial use.

2. A tract devoted to growing Christmas trees must be 5 acres or more. If the tract is less than 5 acres, it will qualify as agricultural real property if at least \$1,000 of gross farm income was reported for at least three of the last five years.
3. All other tracts must be at least 10 acres or more. Tracts of less than 10 acres which are contiguous to other tracts which when combined total at least 10 acres will qualify as agricultural real property. Tracts which do not meet this requirement will qualify if at least \$1,000 of gross farm income was reported for at least three of the last five taxable years.
 - a. A new owner will satisfy this requirement if he earns at least \$1,000 of gross farm income in at least three of the first five years. If the new owner fails this requirement, the tract is not considered agricultural real property and is subject to the rollback tax.
 - b. If neither the acreage or income requirements are met, the property will qualify if the current owner or an immediate family member has owned the property for at least 10 years ending January 1, 1994, and the property is classified as agricultural real property for property tax year 1994.
4. Real property idle under a federal or state land retirement program or property idle pursuant to accepted agricultural practices is agricultural real property if the property otherwise would have qualified as such property subject to satisfactory proof to the assessor.

Property must continue to be classified as agricultural real property until the property is applied to some other use or until the property is transferred to other than an immediate family member.

In the case of rented or leased agricultural real property, either the lessor or the lessee shall meet the above requirements.

Unimproved real property subject to a perpetual conservation easement as provided in Chapter 8 of Title 27 must be classified as agricultural real property.

Real property initially classified as agricultural real property and made ineligible for that classification by the provisions of Code Section 12-43-232 is not subject to rollback tax.

Effective Date: Property tax years beginning after 1994

Application Date

Code Section 12-43-220(d)(3) has been amended to provide that property owners have until the first date taxes are due without penalty in which to initially apply for the agricultural classification.

Effective Date: Property tax years beginning after 1994

Penalty for Falsifying Application

Code Section 12-43-340 has been added to provide that it is unlawful for a person to knowingly and wilfully make a false statement on the application for agricultural real property. A person making such a false statement is guilty of a misdemeanor and, upon conviction, must be fined not more than \$200.

Effective Date: May 25, 1994

REAPPLICATION REQUIRED FOR AGRICULTURAL USE VALUATION

Section 6 of this Act provides that, notwithstanding the provisions of Section 12-43-220(d), **every owner of property classified as agricultural real property for property tax year 1994 must reapply to the appropriate county assessor to maintain agricultural use classification for property tax years after 1994.** The application must contain the certification provided in Section 12-43-232 as added by this Act. The county assessor shall send a written notice to every owner of land classified as agricultural property informing the owner of the reapplication requirement.

Effective Date: Property tax years beginning after 1994

Senate Bill 920, (Act No. 406).

Highest and Best Use of Owner-Occupied Residential Property

Code Section 12-43-215 has been added to provide that when owner occupied residential property is valued for purposes of ad valorem taxation pursuant to Section 12-43-220(c), the value of the land must be determined on the basis that its highest and best use is for residential purposes.

Effective Date: Property tax years beginning after 1994

House Bill 4377, Section 1, (Act No. 417).

Tax Not Levied Until License Expires

Section 12-37-2675 has been added to provide that if a license is transferred from one motor vehicle to another, no tax may be levied on the motor vehicle to which the license was transferred until the license expires.

Effective Date: May 25, 1994

House Bill 4376, (Act No. 490).

Minimum Assessment for Personal Property

Code Section 12-39-180 has been amended to provide that a minimum assessment of at least \$20 be placed on all personal property that generates a tax bill, unless a higher minimum assessment is otherwise required by law.

Effective Date: Effective for taxes due for property years beginning after 1993.

SALES AND USE TAXES

Appropriations Bill, Section 37 and Section 70, (Act No. 497).

Certain Motor Vehicles Excluded From Sales and Use Taxes

Code Sections 12-36-90 and 12-36-110 have been amended to provide that the withdrawal or use of a motor vehicle operated with an education license plate or a manufacturer's license plate is not subject to sales and use taxes. (See Appropriations Bill, Section 37 for a discussion of education license plates and Appropriations Bill, Section 70 for a discussion of manufacturer's license plates.)

Effective Date: January 1, 1994 for Education License Plates and July 1, 1994 for Manufacturer's License Plates

Appropriations Bill, Section 45, (Act No. 497).

Exemption for Food Stuffs Sold to Certain Nonprofit Organizations

Code Section 12-36-2120(10) has been amended to exempt from the sales and use tax food stuffs sold to nonprofit organizations for the homeless or needy and food stuffs which are subsequently sold or donated by the nonprofit organization to another nonprofit organization. Only food which can be purchased with food stamps is eligible for this exemption.

Effective Date: July 1, 1994

Appropriations Bill, Section 75, (Act No. 497).

Exemption for Certain Medicines

Code Section 12-36-2120(28) has been amended to exempt from the sales and use tax:

1. free samples of prescription medicine distributed by its manufacturer, and
2. medicines donated by the manufacturer to a college or university for research or treating indigent patients.

Effective Date: July 1, 1994

Appropriations Bill, Section 92, (Act No. 497).

Maximum Tax Applies to Horse Trailers

Code Section 12-36-2110(A)(5) has been amended to extend the \$300 maximum sales tax to sales of horse trailers.

Effective Date: July 1, 1994

Appropriations Bill, Section 119, (Act No. 497).

Exemption for Postage Purchased by Direct Mail Advertising Services

Code Section 12-36-2120 has been amended to add an exemption from the sales and use tax for "postage purchased by a person engaged in the business of selling advertising services for clients consisting of mailing, or directing the mailing of, printed advertising material through the United States mail directly to the client's customers or potential customers or by a person to mail or direct the mailing of printed advertising material through the United States mail to a potential customer."

This section of the Appropriations Bill states that this amendment "is intended to be a clarification and not a change in existing law."

Effective Date: July 1, 1994

Appropriations Bill, Section 120 (Act No. 497).

Communications - Customer Owned Coin-Operated Telephone (COCOT) Providers

The definitions of "sale at retail" and "retail sales" found in Code Section 12-36-110 have been amended to include "sales of all local telecommunications services by local exchange companies (LEC's) to customer owned coin-operated telephone (COCOT) providers". The amendment further states that "the COCOT providers that purchase these services in order to provide payphone services to their customers are considered the users and consumers of the services, and are not subject to sales tax for their subsequent sale of local telecommunication services to their COCOT customers."

Effective Date: June 29, 1994

Appropriations Bill, Section 127, (Act No. 497).

Exemption Certificate for Purchasing Certain Agricultural Items

Code Section 12-36-2680 has been added to require the Department to prescribe an exemption certificate for use by persons when purchasing agricultural items exempt from sales tax as described in '12-36-2120, subitems 5, 6, 7, 16, 18, 23, 32 and 44.

The purchaser may present the certificate when he makes each exempt purchase or keep one on file with the retailer. If the certificate is kept on file, the purchaser must sign the invoice, indicate which items are exempt and state that the items will be used for exempt purposes.

When the requirements of this section are met, the liability for tax is on the purchaser and not the retailer.

Effective Date: January 1, 1995

House Bill 3919, (Act No. 383).

Special Event Sales Tax Return - Festivals

Code Section 12-36-510(C) has been amended to include festivals among those special events for which a retailer may file a special events sales tax return rather than obtaining a retail license. A festival qualifies as a "special event" if it is listed as a special event in the calendar of events provided by the South Carolina Department of Parks, Recreation and Tourism and is operated for less than 12 consecutive days.

Effective Date: May 10, 1994

House Bill 3984, (Act No. 291).

Sales Tax Exemption for Sales to Charitable Hospitals

Code Section 12-36-2120 has been amended to add a sales tax exemption for tangible personal property sold to charitable hospitals that are exempt from property tax under Code Section 12-37-220, providing the hospital predominantly serves children and the care is provided without charge to the patient.

Effective Date: March 2, 1994

Senate Bill 674, Section 1, (Act No. 427).

Governmental License or Permit Charge Excluded from Gross Proceeds

Code Section 12-36-90(2) has been amended to provide that the portion of a charge taxed under Code Section 12-36-910(B)(3) or 12-36-1310(B)(3) attributable to the cost set by statute for a governmental license or permit is not included in gross proceeds of sales.

Effective Date: May 27, 1994

Senate Bill 674, Section 2, (Act No. 427).

Solid Waste Disposal Collection Bags

Code Section 12-36-2120 has been amended to add an exemption from sales and use taxes for solid waste disposal collection bags that are required under the solid waste disposal plan of a county or other political subdivision if the plan requires the purchase of a specifically designated containment bag for solid waste disposal.

Effective Date: May 27, 1994

Senate Bill 1155, (Act No. 331).

Maximum Tax for Manufactured Homes

Code Section 12-36-2110(B) establishes a maximum tax for the sale of a manufactured home as defined in Code Section 40-29-20. The maximum tax is \$300.00 plus two percent of the amount greater than \$6,000.00. However, if certain energy efficient requirements are met, then the sale of the manufactured home is exempt from any tax that may be due above \$300.00.

These energy efficient requirements establish a specific R-value for the walls, the ceiling, and the floor.

The code section has been amended to allow variations in the R-values of the walls, ceiling and floor if the total heat loss for the manufactured home does not exceed the total heat loss calculated by using the R-values set forth in the statute. The edition of the American Society of Heating, Refrigerating and Air Conditioning Engineers Guide in effect at the time of the sale is the source for determining heat loss calculation.

In addition, previously occupied mobile homes now qualify for the exemption of sales taxes exceeding \$300 if the energy efficient standards are met.

Effective Date: April 20, 1994

Senate Bill 1347, (Act No. Unassigned).

Cherokee County School District 1 Bond-Property Tax Relief Act - Optional Special 1% Sales and Use Tax

On May 11, 1994, the Legislature enacted the Cherokee County School District 1 School Bond-Property Tax Relief Act. This Act provides that upon public approval in a referendum conducted by the Cherokee County Election Commission, the Cherokee County School District 1 governing body may impose a 1% optional sales and use tax in Cherokee County for not more than 20 years to be used to pay debt service on general obligation bonds. The bonds would be issued to defray the costs of specified improvements for Cherokee County School District 1.

Effective Date: Governor's Veto Overridden May 11, 1994

WITHHOLDING TAXES

Appropriations Bill, Section 6 (Act No. 497).

When to Deposit and Pay Withholding

Code Section 12-9-390 has been amended to require resident withholding agents to remit South Carolina income taxes withheld on or before the date their federal withholding taxes are due and in the same manner as they remit their federal withholding taxes.

A resident withholding agent who is not required to deposit and pay federal withholding as well as any nonresident withholding agent must make a return and remit South Carolina taxes withheld on or before the 15th of the month following the month in which the aggregate amount withheld is \$500 or more, or on or before the last day of the month following the quarter in which funds were withheld if the aggregate amount withheld in a calendar quarter is less than \$500.

The Department may by rule adopt new federal withholding regulations in order to maintain conformity with the federal withholding system.

Effective Date: June 29, 1994

Appropriations Bill, Section 49, (Act No. 497).

Withholding on Payments to Nonresidents

Code Section 12-9-310(A)(2) and (3) have been amended to require:

1. Withholding on payments of prizes or winnings to a nonresident or resident of \$500 or more. Seven percent of the total amount of the payment must be withheld.
2. Persons making payments of \$1200 or more a year to a nonresident of rentals or royalties to withhold 7% of the total amount of each payment to a person who is not a corporation and 5% to each corporation. Rent paid directly to a nonresident solely for an apartment which is his legal residence is not subject to withholding.
3. A person hiring or contracting or having a contract with a nonresident taxpayer conducting a business or performing services of a temporary nature within this State where payment under the contract exceeds or is expected to exceed \$10,000, to withhold 2% of each payment.

The withholding requirements of 2 and 3 above do not apply if a nonresident has registered with the Secretary of State or the Department of Revenue agreeing to be subject to the jurisdiction of the Department and the courts of this State to determine its South Carolina tax liability. Registering with the Secretary of State or the Department is not an admission of tax liability. If the person renting from or having a royalty contract with a nonresident, or hiring, contracting or having a contract with a nonresident obtains an affidavit from the nonresident stating that the nonresident is registered with the Department or the Secretary of State, the person is not responsible for the withholding.

The Department of Revenue has the authority to exempt certain transactions from withholding as described in this section.

Effective Date: July 1, 1994

WARNING: THE GOVERNOR HAS NOT SIGNED OR VETOED HOUSE BILL 3907, SENATE BILL 967 OR SENATE BILL 1284, THEREFORE, THESE BILLS ARE NOT IN EFFECT. THESE BILLS HAVE BEEN SUMMARIZED BY TAX TYPE FOR YOUR REFERENCE ONLY. SEE EXPLANATORY NOTE IN THE INTRODUCTION OF THIS INFORMATION LETTER.

ADMINISTRATIVE

House Bill 3907, Section 7.

Duplicate Refund

Code Section 12-54-138 has been added to provide that when a duplicate refund check is issued to a taxpayer, the Department of Revenue may assess and collect the amount of one of the refund checks in the same manner as a tax. If the taxpayer returns one of the refund checks uncashed, the Department of Revenue will not charge interest on the duplicate refund amount.

House Bill 3907, Section 18.

Penalty

Code Section 12-54-40(c)(1) has been amended to provide that if any part of an underpayment or claim for refund is due to negligence or disregard of regulations, 5% of the underpayment or negligently claimed refund and 50% of the interest payable under Section 12-54-20 must be added to the tax.

House Bill 3907, Section 20.

Debt Setoff Definitions

Code Section 12-54-420(1) has been amended to define "claimant agency" to include the Municipal Association of South Carolina and the South Carolina Association of Counties when they submit claims on behalf of other political subdivisions as well as their members.

Code Section 12-54-420(4) has been amended to include in the definition of "delinquent debt" collection costs.

House Bill 3907, Section 21.

Investigations Conducted by the Department

Code Section 12-54-810(A) of the South Carolina Taxpayer's Bill of Rights has been amended to allow the department to conduct investigations for any purpose within its responsibilities. Prior to this change, the department could only conduct tax related investigations. This change was necessary since the department is now responsible for the administration and enforcement of several nontax laws, such as alcoholic beverage licensing, motor vehicle licensing and registration, and video game machines.

House Bill 3907, Section 26.

Temporary Rules

Code Section 12-4-320 has been amended to allow the Department to prescribe temporary rules including the filing of returns, payment of taxes and extensions of due dates, if damage by natural forces occurs.

INCOME TAX

House Bill 3907, Section 1.

Deduction for Retirement Income - Surviving Spouse

Code Section 12-7-435(k)(5) has been amended to clarify that a surviving spouse, with respect to the retirement income received, is allowed an income tax deduction for income received from his or her retirement plan or plans (if any) and a second separate income tax deduction for retirement income that is attributable to the deceased spouse (if any).

For each deduction allowed, the surviving spouse must deduct the lesser of the retirement income received or \$3,000.00, or the lesser of the retirement income received or \$10,000.00, depending on the election made.

This amendment sets forth the position taken by the Department of Revenue in one of its official advisory opinions - SC Revenue Ruling #93-12.

House Bill 3907, Section 2.

Employer Child Care Credit

Code Section 12-7-1260, relating to an income tax credit for expenditures an employer makes in establishing a child care program for the benefit of employees, has been amended to limit the credit to costs incurred in establishing a child care program to employers who employ residents of South Carolina and to capital expenditures made in South Carolina. The credit allowed is 50% of the capital expenditures for establishing a child care program but no more than \$100,000.

House Bill 3907, Section 3.

Time for Payment of Tax

Code Section 12-7-1640 has been amended to provide that any tax due must be paid at the time a return is due to be filed, without regard to any extension of time granted for filing the return.

House Bill 3907, Section 4.

Eldercare Trust Fund Checkoff

Code Section 12-7-2419 has been amended to clarify that the checkoff on state tax returns for contributions to the Eldercare Trust Fund applies only to individual income tax returns.

House Bill 3907, Section 5.

Apportionment of Income by a Business Incorporated in a Foreign Country

Code Section 12-7-1145 has been added to provide that a business incorporated in a foreign country is required to apportion only United States source income as determined for federal purposes on Form 1120F if elected. Income must be apportioned using the apportionment rules in Chapter 7 of Title 12.

House Bill 3907, Section 8.

Foreign Corporation Dividend

Code Section 12-7-430(d)(9) has been added to provide that a dividend from a foreign corporation is treated as a dividend from a domestic corporation for the purpose of the dividends received deduction under Internal Revenue Code Section 243.

House Bill 3907, Section 9.

Two Wage Earner Credit When Both Spouses Work

Code Section 12-7-1210(B)(2)(a)(v) has been amended to clarify that for purposes of computing the two wage earner credit the term "earned income" does not include any amount received for services performed by an individual in the employ of his spouse within the meaning of Internal Revenue Code Section 3123(b)(3)(A) as amended through December 31, 1987.

MISCELLANEOUS TAXES

CIGARETTE TAX

House Bill 3907, Section 12.

Separate Compartments Allowed for Out of State Cigarette Shipments

Code Section 12-21-720 has been amended to allow the department to promulgate rules and regulations that would allow wholesale dealers to store cigarettes without affixing the revenue stamps if the cigarettes are to be sold and shipped out of this State and if such cigarettes are stored in a compartment separate from cigarettes with South Carolina tax stamps affixed to them.

Wholesale dealers violating the rules and regulations promulgated by the department will be subject to the penalties contained in Chapter 21 of Title 12.

ELECTRIC POWER TAX

House Bill 3907, Section 35.

New Filing Date for Electric Power Tax Returns

Code Section 12-23-60 has been amended to move the filing date for the monthly electric power tax return to the twentieth day of the month following the month in which the tax accrues. The filing date had been the tenth of the month.

GASOLINE AND MOTOR FUEL TAXES

House Bill 3907, Section 13.

Gasoline and Motor Fuel Tax Refunds - Trucking Equipment

Code Section 12-27-1510 has been amended to clarify the refund provisions that authorize a refund of gasoline and motor fuel taxes for gasoline and motor fuel used in trucking equipment for nonhighway purposes. Specifically, the amendment makes it clear that a refund cannot be issued if the gasoline or motor fuel has not been used or consumed before the filing of the refund application. This amendment continues the policy established by the department in Technical Advice Memorandum #89-4.

MOTOR FUEL TAX

House Bill 3907, Section 6.

Imposition of Motor Fuel Taxes

Code Section 12-27-335 has been added to amend the imposition of the motor fuel tax under Code Section 12-29-310. Specifically, the tax is imposed on all fuel sold or delivered by a supplier:

1. to a service station not licensed as a supplier unless certain requirements are met;
2. to a bulk highway user;
3. which is sold or delivered into the fuel supply tank of a motor vehicle; or,
4. which is consumed by a supplier on the highways in the propulsion of a motor vehicle operated by the supplier.

Sales to a service station are exempt when the purchases are for nonhighway use or for sale for nonhighway use and are stored separate and apart from facilities servicing motor vehicles, if the separate storage facilities and pumps are prominently and permanently labeled not for highway use. The label must be in plain view of the public to indicate that nontax paid products are contained in the area.

HIGHWAY USE

House Bill 3907, Section 14.

New Filing Date for Highway Use Tax Returns

Code Section 12-31-430 has been amended to move the filing date for the quarterly highway use tax report to the last day of the month following the end of the calendar quarter.

SOFT DRINK TAX

House Bill 3907, Section 22.

Repeal of Unnecessary Soft Drink Tax Code Section

Code Section 12-21-2040, which concerned the disposition of revenue from the tax on soft drink crowns and lids, has been repealed. The State collects the soft drink tax via monthly reports and no longer uses crowns and lids as the method of soft drink tax collection.

PROPERTY TAXES

House Bill 3907, Section 23.

Appeals

Code Sections 12-4-755 and 12-4-770 have been added to Article 7, Chapter 4 of Title 12. Section 12-4-755 provides the procedure by which a taxpayer or his representative may appeal an exemption denial on property owned by the taxpayer. This procedure involves the taxpayer or his representative giving written notice of the appeal within 30 days, setting forth all grounds for appeal. The department shall schedule a hearing for the appeal upon receipt of the written notice of appeal.

After hearing the appeal, the Department shall issue a written finding and send copies of the finding to the taxpayer or his representative and the county auditor. The finding to the county auditor is the order for entry upon the assessment rolls of the county as exempt or taxable.

Code Section 12-4-770 provides the procedure by which the taxpayer or his representative may appeal a proposed assessment made by the Property Tax Division of the Department with which he disagrees. The taxpayer must give written notice of the appeal within 30 days of the date of the proposed assessment. The notice must contain all issues and grounds for the appeal as well as what the owner considers to be the fair market value and assessment of the property. The department may extend the time for filing the written notice of appeal.

House Bill 3907, Section 24.

Rounding of Assessed Value

Code Section 12-37-120 has been added to provide that in the calculation of the assessed value of property subject to property tax, the result must be rounded to the nearest \$10. This rounded amount is deemed to be the assessed value of the property.

House Bill 3907, Section 25.

Assessment of Property by County Auditor

Code Section 12-39-70 has been added to provide that for the purpose of appraising and assessing personal property of businesses and other entities under his jurisdiction, the county auditor shall follow the classification of the most recent Standard Industrial Classification Manual.

House Bill 3907, Section 27.

Out-of-State Appraisers

Code Section 12-4-330 has been amended to provide that out-of-state appraisers serving as witnesses are not required to be licensed or certified in this State. Out-of-state appraisers are defined as appraisers with a business address outside of this State.

House Bill 3907, Section 28.

Applications for Property Tax Exemptions

Code Section 12-4-720(A) has been amended to require owners of property exempt under Section 12-37-220A(7) and (8), and B(32), (33), and (34) to file an annual application for exemption before the last day of the fourth month after the close of the taxpayer's accounting period for income tax purposes.

House Bill 3907, Section 29.

Exemptions for Certain Motor Vehicles and Property in Time-share Units

Code Section 12-37-220(B) has been amended to exempt from ad valorem taxation two personal motor vehicles for which special license tags have been issued owned or leased by:

1. any disabled veteran;
2. any Medal of Honor recipient;
3. persons required to use wheelchairs (the vehicle may be owned or leased either solely or jointly); and

4. any member or former member of the armed forces who was a prisoner of war in World War I, World War II, the Korean Conflict, or the Vietnam Conflict. This exemption also extends to the surviving spouse of the POW for life or until remarriage.

This act also provides that property exempt under Section 12-37-220(A), dealing with household goods and furniture used in the home of the owner, includes property located in a time-share unit.

House Bill 3907, Section 30.

Penalties

Code Section 12-37-800 has been amended to provide that a person who intentionally makes a false return, wilfully attempts to understate tax liability, or recklessly or intentionally disregards applicable rules or regulations must be assessed a penalty of 25% of the taxes due. This penalty is in addition to any other penalty.

House Bill 3907, Section 31.

Depreciation

Code Section 12-37-930 concerning the valuation of a manufacturer's machinery and equipment has been amended to include in the definition of "original cost" property on which the taxpayer has made the election allowed pursuant to Internal Revenue Code Section 179.

House Bill 3907, Section 32.

Cancellation of License Plate and Registration Certificate

Code Section 12-37-2725 has been amended to allow an owner of a vehicle to return the license plate and registration certificate to the county auditor for cancellation and a refund on a prorated basis of property taxes paid if the owner becomes a legal resident of another state and registers the vehicle in the new state of residence. (See the Motor Vehicle Division Section, House Bill 4377 regarding possible refund of a portion of the registration fee.)

House Bill 3907, Section 33.

Classification of Property

Code Section 12-43-335 has been amended to provide for the use of additional Standard Industrial Classification ("SIC") codes for assessing property of merchants and related businesses.

This Act also codifies SC Regulation 117-107 which states that, for the purpose of assessing property of manufacturers, the Department will follow the classifications set forth in Division B and Division D of the most recent SIC Manual, with the exception of certain newspaper, book and periodical publishers.

This Act also provides for using the most recent SIC Manual for the classification and assessment of railroads, private carlines, airlines, water, power, telephone, cable television, sewer and pipeline companies.

House Bill 3907, Section 34.

Abatement of Property Tax for Textile Plants of Affiliated Groups

Section 17(A) of Act 168 of 1991 has been amended to provide that a corporation which acquires eight or more existing textile manufacturing facilities in South Carolina which employed at the time of acquisition a total of 3,500 or more employees located in this State may receive the five-year abatement pursuant to Section 12-37-220A(7) from the time of acquisition. For purposes of this section 'corporation' means a single corporation or an 'affiliated group' of corporations as defined in Section 1504 of the Internal Revenue Code which may acquire such facilities pursuant to a single transaction. This section also applies to wholly-owned subsidiaries of the corporation which may have acquired any of the eight textile manufacturing facilities from the corporation in a tax-free transaction pursuant to Section 351 of the Internal Revenue Code.

House Bill 3907, Section 36.

Audit Standards

Code Section 4-9-155 which sets forth that the offices of the county assessor, auditor, treasurer and tax collector must be audited in accordance with standards set forth in the Government Auditing Standards and a manual and guide prescribed by the Department of Revenue has been repealed.

Senate Bill 1284.

Payment in Lieu of Taxes

Code Section 4-29-68 has been amended to provide that a county, municipality, or special purpose district that receives and retains revenues from a payment in lieu of taxes in which these revenues are derived from a redevelopment project area shall, by ordinance adopted pursuant to Section 31-6-70, allocate these revenues as if these revenues remained ad valorem taxes. All taxes collected in the redevelopment project area which are not subject to the ordinance of the municipality adopted pursuant to Section 31-6-70 become payments in lieu of taxes and the portion collected by the municipality may be pledged to secure special source revenue bonds issued by the municipality.

This Act also provides that any real property which is or has been included within a multicounty park under Section 4-1-170 and title to which is held by the State of South Carolina, may be annexed only upon approval by the Budget and Control Board.

Also, the Act states that all multicounty parks must consist of contiguous counties.

Senate Bill 967.

Mobile and Manufactured Homes

Code Sections 12-49-310 and 12-49-315 have been added to provide that before a delinquent tax collector may advertise a mobile or manufactured home for sale, he must give 20 days' notice of the levy to the holder of each lien identified on the forms provided to the auditor of the county for liens created after December 31, 1994 and to the lienholders contained on the certificate of title held by the Department for liens created before January 1, 1995.

Code Section 12-49-325 has been added to require the delinquent tax collector to keep a copy of each notice given pursuant to Section 12-49-310 on which he shall enter the date the notice was delivered, the method of delivery, and the name and address of the recipient of the notice.

Code Section 12-49-330 has been added to provide that, for liens created after December 31, 1994, the rights of any lienholder, who has filed his security interest with the Division of Motor Vehicles and such security interest is shown on the certificate of title, is in no way affected by a tax sale made pursuant to this chapter unless there has been compliance with the provisions of Section 12-49-310.

Code Section 31-17-410 has been added to provide that when an application for title on a mobile or manufactured home has been submitted to the Department, a copy of the application must be provided to the auditor of the county in which the mobile or manufactured home is to be located. Failure to provide the application is a misdemeanor, punishable by a fine of at least \$100 but not more than \$500 or imprisonment for not more than 30 days.

Code Sections 31-17-320 and 31-17-350 have been amended to provide that if a mobile home is purchased or moved to a new county or the title to a mobile home is transferred, a license must be obtained from the licensing agent of the county in which the mobile home is located or to be located.

Code Section 31-17-360 has been amended to provide that before a permit to move a mobile home may be issued, the owner, rental agent, or person in possession must provide to the licensing agent a certificate from the county treasurer that there are no unpaid taxes due on the mobile home and either a copy of the certificate of title to the mobile home, or a copy of the completed application submitted to the Division of Motor Vehicles of the Department of Revenue. If the mobile home is to be moved outside of the county, any taxes must be paid in full. The county treasurer shall collect the taxes before issuing the requisite certificate to the licensing agent, and upon payment of any taxes, give the permit applicant a receipt showing that all taxes have been paid.

Code Section 31-17-380 has been amended to state that when a mobile home is being relocated to another county, the licensing agent issuing the moving permit shall furnish the licensing agent of the county to which the mobile home is being transported a copy of the paid tax receipt from the county from which the home is being moved, and either a copy of the certificate of title or a copy of the completed application submitted to the Division of Motor Vehicles along with a copy of the certified license application or permit.

Section 31-17-390 has been amended to provide that a copy of all license applications and moving permits must be furnished within 10 days to the county auditor as well as the county assessor.

Section 12-49-210 has been amended to state that 'mobile and manufactured home' are defined as provided in Sections 12-43-230(b) and 40-29-20(9). The definition of 'tax collector' as the person in the county charged by law with the collection of delinquent ad valorem taxes has been added to this section.

Section 12-49-225 has been amended to provide that the procedure provided by this section for notifying lienholders before advertising the sale of a mobile or manufactured home applies only to liens created before January 1, 1995.

Section 12-49-271 has been amended to provide that when the delinquent tax collector receives a list of delinquent taxpayers from the county treasurer, and the list includes mobile or manufactured homes, he shall forward to the Department of Revenue a form requesting the name and address of all lienholders shown on the certificate of title.

Section 12-49-290 has been amended to provide that the right, interest, and security of a lienholder who has filed his security interest with the Department of Revenue, and the security interest is shown on the certificate of title, must not be affected by a tax sale unless the provisions of Section 12-49-225 are complied with but only for liens created before January 1, 1995.

Section 12-51-96 has been amended to provide that when an owner of a mobile or manufactured home redeems his property after a delinquent tax sale, the defaulting taxpayer or lienholder must pay rent to the purchaser at the time of redemption of an amount not to exceed 1/12th of the taxes for the last completed property tax year, exclusive of penalties, costs, and interest, for each month between the sale and redemption. The monthly rental must not be less than \$10. For the purposes of this rent calculation, more than 1/2 of the days in any month counts as a whole month.

Section 56-19-240 has been amended by adding a requirement that, in addition to the other information required in an application, the application for title for a mobile or manufactured home must include the address of the site on which the home is to be placed if different from the owner's address.

Senate Bill 967, Section 12.

Minimum Assessment for Legal Residence

Section 12-43-220(c) has been amended to provide that a legal residence qualifying for the 4% assessment ratio must have an assessed value of not less than \$100.

SALES AND USE TAXES

House Bill 3907, Section 16.

Exemption for Gasoline and Motor Fuels

Code Section 12-36-2120(15) exempts gasoline and certain motor fuel from the sales and use tax. This section has been amended to allow the Department to reduce fuel tax refunds issued under Code Section 12-29-380 by the sales tax due, provided the fuel was not used in farm machinery, farm tractors, or commercial fishing vessels.

This code section continues to:

1. exempt all gasoline, with the exception of gasoline used in aircraft;
2. exempt fuels used in farm machinery and farm tractors; and,
3. exempt fuel used in commercial fishing vessels.

The provisions of this section, read in conjunction with other sections, continue to:

1. exempt clean alternative transportation fuels since such are "subject to the tax" under either Chapters 27 or 29 (regardless of the rate of taxation);
2. exempt fuel used in trucking equipment since it is "subject to the tax" under Chapter 29 and not refunded under Code Section 12-29-380 but refunded under Code Section 12-27-1510; and,
3. exempt fuel used in State owned school buses and other student transportation vehicles since this fuel is "subject to the tax" under Chapters 27 and 29, even though the law provides an exemption.

House Bill 3907, Section 17.

Sales of Motor Vehicles to Military Personnel

Code Section 12-36-2120(25) has been amended to exempt from South Carolina sales and use tax sales of vehicles to military personnel stationed in this State by reason of orders of the U.S. Armed Forces who are not residents of South Carolina if the buyer furnishes the vendor within 10 days of the sale a leave and earnings statement from the appropriate department of the armed services which designates the state of residence of the buyer.

Sales to these military personnel will continue to be exempt if the dealer is furnished a properly completed exemption statement by a commissioned officer of higher rank than the purchaser, within 10 days of the sale.

Senate Bill 967, Section 16.

Exemption for Supplies and Machinery Used by Garment or Other Textile Rental Establishments

Code Section 12-36-2120(24) has been amended to exempt from the sales and use tax "supplies and machinery used by ... garment or other textile rental establishments in the direct performance of their primary function ..."

WITHHOLDING TAXES

House Bill 3907, Section 10.

Withholding on South Carolina Income of Nonresident Shareholders and Partners

Code Section 12-9-40 has been amended to provide that a partnership or S-corporation is not required to withhold income taxes with respect to any nonresident partner or shareholder who is exempt from income taxes under Internal Revenue Code Section 501(a) and, also, provides the partnership or S-corporation with a statement indicating its tax exempt status.

The statement provided to the partnership or S-corporation must contain the partner's or shareholder's name, federal identification number, Internal Revenue Code section exemption number, and a copy of the IRS exemption letter.