

SC INFORMATION LETTER 98-21

SUBJECT: ADMINISTRATIVE PRONOUNCEMENT
Legislative Changes Update - Revision

DATE: September 23, 1998

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1997)
SC Revenue Procedure #97-8

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 are official advisory opinions of the Department.

South Carolina Information Letter #98-16 was issued on August 3, 1998 and briefly summarized most of the significant changes in laws administered by the Department that were enacted by the General Assembly during the past legislative session. This information letter indicated that one bill, House Bill 4853, had not been signed or vetoed by the Governor. On August 31, 1998, the Governor signed House Bill 4853.

Attached is a brief summary of House Bill 4853, Act No. 442, by tax type. A complete copy of the legislation discussed in this information letter can be obtained from the South Carolina Legislative Council's Internet home page at <http://www.lpittr.state.sc.us/>

INCOME TAXES

House Bill 4853, Section 14, (Act No. 442)

(See also House Bill 4700, Part II, Section 49.II, (Act No. 419))

Economic Impact Zone Investment Tax Credit - Changes

Code Section 12-14-60, providing an income tax credit for placing qualifying manufacturing and productive equipment property into service in an “economic impact zone,” has been amended. The substantial changes are summarized below.

1. Code Section 12-14-60(A) has been amended to change the amount of the credit to:

- #1% of the total aggregate bases of 3 year property;
- #2% of the total aggregate bases of 5 year property;
- #3% of the total aggregate bases of 7 year property;
- #4% of the total aggregate bases of 10 year property; and,
- #5% of the total aggregate bases of 15 year or greater property.

Whether property is 3, 5, 7, 10, or 15 year property is determined based on the applicable recovery period for property under Internal Revenue Code Section 168(e). Prior to amendment, the credit was equal the 5% of the aggregate bases of the qualifying property.

2. Code Section 12-14-60(E) has been added to provide for recapture of the credit. If the property is disposed of or removed from the economic impact zone before the end of the applicable recovery period, then the tax due must be increased by an amount of any credit claimed in prior years for such property determined by assuming that the credit is earned ratably over the useful life of the property and the taxpayer must recapture pro rata the unearned portion of the credit.

NOTE: This amendment is different from that enacted in House Bill 4700, Part II, Section 49.II.

3. Code Section 12-14-60(F) has been added to provide for a property basis reduction for the amount of the credit claimed. A taxpayer required to recapture the credit may increase the basis by the amount of any basis reduction attributable to the credit claimed in prior years. The basis must be increased in the year of recapture.

4. Code Section 12-14-60(G) has been added to provide that the credit claimed is limited to \$5 million for a taxpayer subject to the license tax under Code Section 12-20-100 (including utilities and electric cooperatives) for investments made after June 30, 1998.

NOTE: This amendment is different from that enacted in House Bill 4700, Part II, Section 49.II.

5. Code Section 12-14-60(H) has been added to provide that credits claimed for taxable years beginning after 1997 for investments made before July 1, 1998, may not reduce a taxpayer's state income tax liability by more than 50%.
6. Code Section 12-14-60(I) has been added to provide that the amendments relating to any reduction in the amount of credit that may be claimed will not apply in the case of investments at a project operated by a company pursuant to a revitalization agreement entered into between the company and the South Carolina Advisory Council for Economic Development effective on or before July 1, 1996.

NOTE: This amendment is not contained in House Bill 4700, Part II, Section 49.II.

7. Code Section 12-14-40 has been amended to eliminate the provision that ends the designation of an area as an economic impact zone on the earlier of the end of 15 years following designation or the termination date set by the General Assembly. This amendment provides that the designation will continue unless the General Assembly revokes the designation.

Effective Date: House Bill 4853, Section 14, and House Bill 4700, Part II, Section 49.II., contained similar provisions. To the extent that House Bills 4853 and 4700 contain identical provisions, the effective date of these provisions is the effective date of House Bill 4700, June 30, 1998. To the extent House Bill 4853 contains different provisions from House Bill 4700, as noted in the summary above, the effective date of House Bill 4853, Section 14, is August 31, 1998.

PROPERTY TAXES AND FEES IN LIEU

House Bill 4853, Section 4.A., (Act No. 442)

Uncollectible Property Taxes to be Removed From Duplicate List

Code Section 12-49-85 has been added to provide that if the person charged with the collection of ad valorem taxes on real or personal property for a county determines that the taxes are uncollectible, he will record that determination and the reason for it on a list. At least annually he will provide the list to the county auditor, who may remove a particular determination from the duplicate list. The auditor will record the removal and the reason for it. The auditor and the tax collector will review the list annually. If it is determined that the tax was improperly removed from the list or that it is collectible, it must be returned to the duplicate list for collection, with all penalties and interest accruing.

Effective Date: August 31, 1998

House Bill 4853, Section 4.B., (Act No. 442)

Reassessment - Consumer Price Index for All Urban Consumers

The first sentence of Code Section 12-37-251(E), which provides for an increase in the rollback millage in a year of reassessment by the percentage increase in the consumer price index for all urban consumers, has been deleted. Authorized increases in the rollback millage are now covered in Article 3 of Title 6.

Effective Date: August 31, 1998

House Bill 4853, Section 4.C., (Act No. 442)

4% Assessment Ratio for Legal Residence Purchased Under Bond for Title or Contract for Sale

Code Section 12-43-220(c)(5) has been added to provide that to qualify for the legal residence 4% assessment ratio, the owner-occupant of a legal residence that is being purchased under a contract for sale or a bond for title must record the contract for sale or

the bond for title in the office of the register of mesne conveyances or the clerk of court. A contract for sale or a bond for title is the sale of real property by a seller, who finances the sale and retains title to the property solely as security for the debt.

Effective Date: August 31, 1998

House Bill 4853, Section 4.D., (Act No. 442)

“Assessment of the Tax” Defined

Code Section 12-54-85(E), providing that a tax may not be collected by levy, warrant for distraint, or a proceeding in court, unless such was begun within 10 years after the assessment of the tax, has been amended to provide that, for property tax purposes, the “assessment of the tax” occurs on the later of the last day the tax may be paid without penalty or the date of the tax notice.

Effective Date: August 31, 1998

House Bill 4853, Section 4.E., (Act No. 442)

County Assessor Can Correct Error Without Conference

Code Section 12-60-2520(B), dealing with an appeal by a taxpayer of a property valuation, has been amended to provide that if, upon examination of the property taxpayer’s written objection to a property tax assessment made by a county assessor, the county assessor agrees with the taxpayer, the county assessor must correct the error, without the need for a conference. If, upon the examination, the county assessor does not agree with the taxpayer, the assessor shall schedule a conference with the taxpayer.

Effective Date: August 31, 1998

House Bill 4853, Section 4.F., (Act No. 442)

Personal Property Tax Assessment or Homestead Exemption Denial - Change in Time Period to Request Meeting

Code Section 12-60-2910(A) has been amended to provide that a taxpayer may object to a

personal property tax assessment or a denial of a homestead exemption made by the county auditor by requesting, in writing, to meet with the auditor at any time on or before the later of: (1) 30 days after the tax notice is mailed; or (2) last day the tax levied upon the assessment may be timely paid. Previously, the statute provided that the taxpayer request a meeting by the last day the tax could be timely paid.

Effective Date: August 31, 1998

House Bill 4853, Section 4.G., (Act No. 442)

Repeal of Code Sections

Code Sections 12-43-225, concerning certain provisions for applications for special assessment ratios, and 12-49-80, concerning bringing suit for back taxes within 10 years of payment, are no longer necessary and have been repealed.

Effective Date: August 31, 1998

House Bill 4853, Section 12, (Act No. 442)

Motor Carrier Changes

This section made a number of amendments to the motor carrier provisions. The changes are as follows:

1. Code Section 12-37-2810(A) has been amended to include in the definition of “motor carrier” buses for the transportation of property or persons in intrastate or interstate commerce except for scheduled intercity bus service. Code Section 12-37-2810(G) has been added to define bus. “Bus” means every motor vehicle designed for carrying more than sixteen passengers and used for the transportation of persons, for compensation, other than a taxicab or intercity bus. The value of a motor carrier’s vehicles subject to property taxes in South Carolina is determined by the Department based on the ratio of total mileage operated within South Carolina during the preceding calendar year to the total mileage of its entire fleet operated everywhere during the same preceding calendar year.
2. The fair market value of motor vehicles of motor carriers is determined by depreciating the gross capitalized cost of each motor vehicle by an annual percentage

depreciation allowance. Code Section 12-37-2820(B) has been added to provide that “gross capitalized cost” means the original cost upon acquisition for income tax purposes of the motor carrier, but not to include taxes, interest, or cab customizing.

3. Code Section 12-37-2840 has been amended to provide that if a motor carrier fails to file its property tax return, the Department shall issue a proposed assessment which assumes all mileage was within this State.
4. Code Section 12-37-2850 has been amended to provide that the Department shall assess annually the taxes due by motor carriers based on the value determined in Code Section 12-28-2820 and an average millage for all purposes statewide for the preceding calendar year, rather than the current tax year, and shall publish the average millage for the preceding year by June 1 of each year. The amendment deletes the provision that allowed the Department to increase the average millage to cover the loss of revenue incurred from not licensing trailers.

Effective Date: August 31, 1998

House Bill 4853, Section 13, (Act No. 442)

Joint Industrial Park Property - Local Option Sales Tax Credit

Chapter 10 of Title 4 provides for a local option sales tax where a county, upon referendum approval, may levy a sales and use tax of 1% on the gross proceeds of sales within the county. Part of the proceeds from this 1% tax must go into a Property Tax Credit Fund. All of the revenue in the Property Tax Credit Fund must be used to provide a credit against the property tax liability of taxpayers in the county and municipality. Code Section 4-10-40(B) has been amended to clarify the term “property tax liability.” It provides that: “(a) property tax liability includes liability to pay fees in lieu of property taxes; (b) taxable property includes exempt property for which the owner must pay fees in lieu of property taxes; and (c) reference to liability for fees in lieu of tax applies to fees arising pursuant to Section 4-1-170 in connection with location in a multi-county industrial or business park as provided in Section 13 of Article VIII of the Constitution of the State of South Carolina.”

Effective Date: August 31, 1998

MISCELLANEOUS

ALCOHOLIC BEVERAGE LICENSING AND REGULATION

House Bill 4853, Section 5, (Act No. 442)

Issuance of Beer, Wine, and Liquor Licenses

Code Section 61-2-100 has been amended to allow the Department to issue permits and licenses to organizations, associations, or business entities (partnerships, corporations, etc.). Previously, a license had to be issued to an officer of the entity or a person designated by the entity's Chief Executive Officer.

Under this amendment:

1. Only the owner of the business may be issued the permit or license. However, in the case of a publicly held corporation, the corporation must designate an officer or other employee of good moral character (over 21 years of age and a resident of South Carolina) in whose name the permit or license must be held on behalf of the corporation.
2. The Department must initiate action to revoke the permit or license for any permit or license issued to a person not the owner of the business or when the licensed individual or a principal of the licensed entity is under 21 years of age.
3. For purposes of determining if an applicant owes delinquent taxes and is not entitled to a permit or license, all principals of the entity will be considered to be applicants.
4. The Department may not issue a permit or license unless the applicant and all principals of the applicant are of good moral character.
5. A business issued a permit or license must designate an agent and mailing address for service of notices.
6. A "principal" of a business or entity as used in this section means a person who is described in any one or more of the following items:
 - a. An officer of the business or entity which owns the business;

- b. A partner, other than a limited partner who cannot exercise any management control;
- c. A manager of a limited liability company which is managed by managers;
- d. A member of a limited liability company which is not managed by managers;
- e. A fiduciary, including personal representatives, trustees, guardians, committees, and receivers, who manage, hold, or control title to or who otherwise direct or indirect control of the business;
- f. A person who holds 25% or more of the combined voting power of the business or entity;
- g. A person who owns 25% or more of the value of the business entity; or
- h. An employee who has day-to-day operational management responsibilities for the business or entity.

Effective Date: August 31, 1998

House Bill 4853, Section 5, (Act No. 442)

Temporary Licenses and Bonding Requirements for Liquor Licensees

Code Sections 61-6-505 (retail liquor), 61-6-2005 (minibottles), and 61-4-210 (beer and wine) have been amended to allow a person who purchases or acquires by lease, inheritance, divorce decree, eviction, or otherwise a retail business that sells alcoholic beverages to obtain a temporary alcoholic beverage license, not to exceed 120 days, upon initiating the application process for obtaining a permanent license. Previously, the temporary license could only be issued upon the purchase of a retail alcoholic beverage location and not the lease, inheritance or other acquisition of the location.

Code Section 61-6-2890, concerning the licensing of a warehouse of a registered producer, has been amended to no longer require the registered producer to post a bond to ensure the proper handling of the liquor stored in the licensed warehouse.

Code Section 61-6-300 through 61-6-350 (Subarticle 3 of Article 3), concerning bonds for manufacturers of liquor, liquor wholesalers, and liquor retailers, have been repealed.

Effective Date: August 31, 1998

OTHER ITEMS

House Bill 4853, Section 1, (Act No. 442)

Motor Fuel Tax - New Exemptions

Code Section 12-28-710(9) has been amended to exempt from the motor fuel tax kerosene used as heating oil or in trains or used in equipment not licensed as a motor vehicle.

Code Section 12-28-710(12) has been amended to exempt taxable motor fuel (diesel and gasoline) used in the transportation of students by state-funded institutions of higher learning from the motor fuel tax.

Effective Date: August 31, 1998

House Bill 4853, Section 2, (Act No. 442)

Penalty for Illegal Use of Dyed Fuel - Technical Correction

Code Section 12-28-1730(F), imposing a penalty in an amount equivalent to that imposed by the Internal Revenue Code for the illegal use of dyed fuel on South Carolina highways, has been amended to correct an incorrect reference to the Internal Revenue Code. The corrected reference is IRC §6715.

Effective Date: August 31, 1998

House Bill 4853, Section 3, (Act No. 442)

Road Tax on Motor Carriers - Technical Corrections

Code Section 12-31-220, regarding temporary permits for motor carriers having infrequent trips into and through South Carolina, and Code Section 12-31-250, regarding application for a biennial registration card and identification marker for motor carriers, have been repealed. These provisions, in amended form, are contained in Code Sections 56-11-220 and 56-11-250.

Effective Date: August 31, 1998