PART F: LAND CONSERVATION OR ENVIRONMENTAL CREDITS

37. CONSERVATION CREDIT

a. General Provisions

South Carolina Code §12-6-3515 allows a taxpayer who is entitled to and claims a federal charitable deduction for a gift of land for conservation or for a qualified conservation contribution on a qualified real property interest located in South Carolina to claim a South Carolina income tax credit equal to 25% of the value of the gift of land for conservation or to the qualified real property interest associated with the qualified conservation contribution. The credit cannot exceed $250 per acre of property to which the qualified conservation contribution or gift of land for conservation applies. The total credit claimed by a single taxpayer cannot exceed $52,500 per year. Any unused credit may be carried forward until used. The credit is claimed on Form TC-19, "Credit for Conservation or Qualified Conservation Contribution of Real Property."

b. Definitions and Requirements

For purposes of this credit, "qualified conservation contribution" and "qualified real property interest" have the same meaning as defined in Internal Revenue Code §170(h). The term "gift of land for conservation" is a charitable contribution of fee simple title to real property conveyed for conservation purposes as defined in Internal Revenue Code §170(h)(4)(A) to a qualified conservation organization as defined in Internal Revenue Code §170(h)(3). The conservation credit is <u>not</u> allowed unless the contribution meets the requirements of Internal Revenue Code §170, South Carolina Code §12-6-3515, and South Carolina Code §12-6-5590 (*i.e.,* donative intent).

Notwithstanding Internal Revenue Code §170(h) and applicable regulations, a taxpayer is not disqualified from claiming this credit because of silvacultural and forestry practices permitted by or undertaken pursuant to a conservation contribution on a real property interest provided that: (1) the practices conform to Best Management Practices established by the South Carolina Forestry Commission existing at the time the conservation contribution is made, or at the time a particular forestry or silvacultural practice is undertaken; (2) the conservation contribution otherwise conforms to the requirements of Internal Revenue Code §170(h); and, (3) the taxpayer provides the Department with information to determine that the taxpayer would

otherwise be eligible for the deduction under Internal Revenue Code §170(h). The credit is 25% of the deduction that would otherwise be allowable under Internal Revenue Code §170(h) but for the silvacultural and forestry activities performed on the real property interest and is subject to all the other conditions and limitations of this section.

For purposes of applying the per acre and per taxpayer limitations, the attribution rules of Internal Revenue Code §267 apply. The fair market value of all qualified donations must be substantiated by a "qualified appraisal" prepared by a "qualified appraiser" as defined under applicable federal law and regulations relating to charitable contributions.

c. Transfer of Credit

The unused credit may be transferred, devised, or distributed, with or without consideration, to another taxpayer upon written notification to, and approval by, the Department of the transfer. The Department's approval is valid only if the transfer is completed consistent with the information contained in the request for transfer. If the Department has not approved the transfer within two weeks of submission of the request, the request will be deemed approved two weeks after the transferor has submitted all information requested in complete form and the transfer is carried out consistent with the information submitted in the request.

A taxpayer may transfer the unused credits to one or more taxpayers (transferees) for any tax year and each of these transferees will be eligible to claim up to $52,500 in total conservation credits for the current tax year and any subsequent tax years. The total conservation credits include any credits for the current year, whether transferred to a taxpayer or earned or retained by a taxpayer, and any carryover of previous year's credits transferred to a taxpayer or earned or retained by a taxpayer. If a taxpayer transfers the credit, the unused credit retains all its original attributes in the hands of the transferee. If there is a sale, exchange, or transfer of the credit, general income tax principles apply for purposes of the state income tax credit.

The procedure to request approval from the Department of the transfer, devise, or distribution of the conservation credit, and the information required to be submitted with the request, is provided in South Carolina Revenue Procedure #08-1.

38. CREDIT FOR WATER IMPOUNDMENTS AND WATER CONTROLS

South Carolina Code §12-6-3370 allows a taxpayer a credit equal to 25% of all expenditures incurred for the construction, installation, or restoration of certain ponds, lakes, other water impoundments, and water control structures designed for the purposes of water storage for irrigation, water supply, sediment control, erosion control, or aquaculture and wildlife

management, provided these items are not located in or adjacent to and filled primarily by coastal waters of the state. To qualify for the credit the taxpayer must obtain a construction permit issued by the Department of Health and Environmental Control or proof of exemption from permit requirements issued by the Department of Health and Environmental Control, the Natural Resources Conservation Service, or a local Soil and Water Conservation District.

The maximum credit that may be claimed is $2,500. In the case of pass through entities, the credit is determined at the entity level and is limited to $2,500. Any unused credit can be carried forward for 5 years. The credit is claimed on Form TC-3, "Water Resources Credit."

39. HABITAT MANAGEMENT CREDIT

South Carolina Code §12-6-3520 provides an income tax credit equal to 50% of the costs incurred for habitat management or construction and maintenance of improvements on real property that are made to land described in South Carolina Code §50-15-55(A) as a certified management area for endangered species, or of species in need of management, and which meets the requirements of regulations promulgated by the Department of Natural Resources.

NOTE: Until the Department of Natural Resources promulgates regulations, this credit is not available.

To qualify for the credit, all costs must be incurred on land that has been designated as a certified management area for endangered species provided in South Carolina Code §50-15-40, or for nongame and wildlife species determined to be in need of management under South Carolina Code §50-15-30.

The credit must be claimed in the year that the costs are incurred and may not exceed 50% of the taxpayer's income tax liability. Any credit generated by an S corporation must be used first against any tax liability of the S corporation and any remaining credit passes through to the shareholders. Any unused credit can be carried forward 10 years.

Rules exists requiring recapture of the credit. If the landowner voluntarily chooses to leave the agreement made concerning the certified areas after taking the tax credit, then the taxpayer's tax liability must be increased by the full amount of the credit previously claimed.

40. BROWNFIELDS VOLUNTARY CLEANUP CREDIT

South Carolina Code §12-6-3550 allows a credit against taxes due for costs of voluntary cleanup activity by a nonresponsible party pursuant to the Brownfields Voluntary Cleanup Program in South Carolina Code Title 44, Chapter 56, Article 7.

The "basic" credit amount is equal to 50% of the cleanup expenses paid or accrued or cash contributions for site cleanup conducted during the tax year the tax credit application is submitted, not to exceed $50,000 in a tax year. Any unused credit, up to $100,000, may be carried forward 5 years. An "additional" credit equal to 10% of the total cleanup costs, not to exceed $50,000, is allowed in the final year of cleanup, as evidenced by the South Carolina Department of Environmental Control ("DHEC") issuing a certificate of completion for the site. Multiple taxpayers working jointly to clean up a single site are allowed the credit in the same proportion as their contribution to the payment of cleanup costs. The credit is claimed on Form TC-20, "Credit for Expenses Incurred Through Brownfields Voluntary Cleanup Program."

The following requirements apply to the credit:

1. The taxpayer must have entered into a nonresponsible party voluntary contract with DHEC as provided in South Carolina Code §44-56-750.

2. The taxpayer must file a tax credit certificate application annually with DHEC in order to obtain a tax credit certificate. The tax credit application and required documentation must be received by DHEC by December 31. Information included with the application form must include: (a) copies of contracts, invoices or payment records involving the actual costs incurred for the tax year related to the site rehabilitation and (b) a copy of an independent certified public accountant report attesting to the accuracy and validity of the cleanup costs.

DHEC will issue a tax credit certificate upon review of the application and documentation before April 1 if it determines that the applicant has met all requirements. It may revoke or modify any written decision granting eligibility for partial tax credits if it is discovered that the taxpayer submitted false information. The taxpayer must pay DHEC's administrative review costs pursuant to South Carolina Code §44-56-750(D).

41. RECYCLING FACILITY TAX CREDITS

South Carolina Code §12-6-3460 provides a taxpayer constructing or operating a qualified recycling facility a 30% credit each year for an investment in recycling property. Recycling property is property incorporated into or associated with a qualified recycling facility.

The credit may be used to reduce: (a) corporate income tax imposed under South Carolina Code §12-6-530, (b) sales and use tax imposed by the state or any political subdivision of the state, (c) corporate license fees imposed by South Carolina Code §12-20-50 or (d) any similar tax.

In order to qualify as a "qualified recycling facility" the facility must:

1. Manufacture products for sale composed of 50% or more post-consumer waste material by weight or volume, such as scrap metal and iron, used plastics, paper, glass, and rubber;

2. Invest at least $300 million in the acquisition, construction, erection, and installation of real and personal property by the end of the fifth year after the first year of construction or operation; and

3. Receive certification from the Department that the facility is a qualified recycling facility.

Any unused credit may be carried forward indefinitely. If the facility does not meet the required minimum investment, all credits must be recaptured. The credit is claimed on Form TC-17, "Recycling Property Tax Credit."

South Carolina Code §12-6-3465 provides that a qualified recycling facility is also entitled to a credit equal to the amount of all of its job development benefits collected under South Carolina Code §12-10-80. This credit can be used to reduce the taxpayer's corporate income tax imposed by South Carolina Code §12-6-530, sales or use tax imposed by the state or any political subdivision of the state, corporate license fees imposed by South Carolina Code §12-20-50, or any tax similar to these taxes. Any unused credit may be carried forward to subsequent taxable years until such credit is exhausted.

There are also significant fee in lieu of property tax and sales tax incentives available to qualifying recycling facilities. These benefits are discussed in the Property Tax and Sales and Use Tax Sections.