3. INDIVIDUAL INCOME AND ESTATE AND GIFT TAXES

1. FEDERAL TAX CONFORMITY

South Carolina income tax laws substantially conform to the federal income tax laws. As of the date this publication was edited, South Carolina Code §12-6-40 provides that South Carolina's income tax laws conform to the Internal Revenue Code of 1986 as amended through December 31, 2014. The effective date provisions contained in the Internal Revenue Code are also adopted. South Carolina Code §12-6-50 provides a list of Internal Revenue Code sections specifically not adopted by South Carolina.

This conformity simplifies the filing of returns by adopting federal taxable income as a starting point for South Carolina income tax purposes. With some exceptions, South Carolina income tax liability is determined in accordance with the same set of statutes and rules used in determining federal income tax liability. Subject to certain modifications, the South Carolina gross income and taxable income of an individual is the individual's gross income and taxable income as determined under the Internal Revenue Code.

2. INDIVIDUAL INCOME TAX RATES

South Carolina Code §12-6-510 imposes an income tax upon the South Carolina taxable income of individuals, estates, and trusts at graduated rates ranging from 3% to a maximum rate of 7%. There are 5 income brackets adjusted annually for inflation.

South Carolina Code §12-6-545 allows for a reduced income tax rate on active trade or business income of a pass through business (*i.e.,* sole proprietor, partnership, S corporation, or limited liability company taxed as a sole proprietorship, partnership, or S corporation) in lieu of the income tax rate imposed under South Carolina Code §12-6-510. The tax rate applicable to active trade or business income is 3%. The statute contains a definition of "active trade or business income or loss." See South Carolina Revenue Ruling #08-2 for more information on the reduced tax rate on active trade or business income from a pass through business.

3. ADDITIONAL DEDUCTION FOR CHILDREN UNDER 6

South Carolina Code §12-6-1160 provides that an individual taxpayer is allowed an additional deduction for each child who has not reached age 6 by December 31st of the tax year if claimed as a dependent on the taxpayer's federal return. The deduction is equal to the federal personal exemption.

4. CAPITAL GAINS DEDUCTION

South Carolina Code §12-6-1150 provides a deduction from the South Carolina taxable income of individuals, estates, and trusts equal to 44% of net capital gain recognized. South Carolina defines "net capital gain" in the same manner as Internal Revenue Code §1222 and related sections.

5. RETIREMENT INCOME DEDUCTION

South Carolina Code §12-6-1170(A) provides an annual deduction from South Carolina taxable income for retirement income to the original owner of a qualified retirement account. The qualifying taxpayer receiving retirement income may deduct up to $3,000 of such retirement income annually until reaching age 65, and deduct up to $10,000 of such retirement income annually at age 65 and thereafter. For this purpose, "retirement income" means the total of all otherwise taxable income not subject to a penalty for premature distribution from qualified retirement plans, and public employee retirement plans of federal, state, and local governments, including military retirement.

In addition, a surviving spouse is allowed a deduction for income received from his or her retirement plan, if any, and a second, separate deduction for retirement income that is attributable to the deceased spouse, if any. See South Carolina Revenue Ruling #94-9 for further details on the retirement income deduction of a surviving spouse.

6. DEDUCTION FOR TAXPAYERS 65 AND OLDER

South Carolina Code §12-6-1170(B) provides an income tax deduction of up to $15,000 against any South Carolina taxable income of a resident individual who is 65 or older by the end of the tax year. The following requirements apply to this deduction:

- Amounts deducted as retirement income under South Carolina Code §12-6-1170(A) reduce this $15,000 deduction.

- Amounts deducted as a surviving spouse under South Carolina Code §12-6-1170(A) do not reduce this $15,000 deduction.

- Taxpayers' filing a joint return are allowed a deduction of up to $15,000 when only one spouse is 65 or older, and up to $30,000 when both spouses are 65 or older, by the end of the tax year.

7. DISABILITY RETIREMENT INCOME DEDUCTION

South Carolina Code §12-6-1140(4) provides that amounts included in South Carolina gross income received for disability retirement due to permanent and total disability by a person who could qualify for the homestead exemption under South Carolina Code §12-37-250 by reason of being classified as totally and permanently disabled is deductible from South Carolina income. (See Chapter 5, Individual Property Tax, Section 2 for information concerning the homestead exemption.)

8. COLLEGE INVESTMENT CONTRIBUTION DEDUCTION

South Carolina Code §12-6-1140(11) provides a deduction in computing South Carolina taxable income for contributions to the South Carolina College Investment Program in South Carolina Code §59-2-80. This program allows South Carolina residents to participate in an investment trust fund whereby contributions and investment earnings are used to pay for qualified higher education expenses of designated beneficiaries at eligible educational institutions, as defined in Internal Revenue Code §529. The program is under the direction of the Office of the State Treasurer.

South Carolina Code §59-2-80 provides for the income tax treatment of fund contributions and earnings as follows:

- Contributions to each investment trust account and funds transferred to an investment trust account from another qualified plan are deductible from South Carolina income subject to tax up to the limit of maximum contributions allowed under Internal Revenue Code §529 and to the extent that the transferred funds were not permitted a state income tax deduction previously under South Carolina law.

- State income tax deductions as provided for in South Carolina Code §§59-2-80 and 12-6-1140(11) may be taken in any taxable year for contributions and rollovers made during that taxable year, and up to April 15th of the succeeding year, or the due date of the taxpayer's state income tax return, excluding extensions, whichever is longer.

- Any interest, dividends, gains, or income accruing are not included in South Carolina income of the account owner, contributor, or beneficiary if they remain in the fund or are withdrawn as a qualified withdrawal.
- Earnings withdrawn that are not qualified withdrawals are included in South Carolina income of the resident recipient in the year of withdrawal.

9. SOCIAL SECURITY BENEFITS EXCLUDED

South Carolina Code §12-6-1120(4) provides that social security benefits are not included in South Carolina gross income.

10. CREDIT FOR INCOME TAXES PAID TO ANOTHER STATE

South Carolina Code §12-6-3400 provides an income tax credit to residents for taxes paid to another state on income which also is subject to tax in South Carolina. The credit is allowed only for taxes paid to the other state on income derived from sources within the state, which is taxed under the laws of that state irrespective of the residence of the taxpayer. If; however, a taxpayer is considered to be a resident of South Carolina and is also considered to be a resident of another state, the Department may, at its discretion, allow a credit against the taxes imposed by South Carolina for those taxes imposed by, and paid to, the other state on income taxed in South Carolina.

11. TWO WAGE EARNER CREDIT

South Carolina Code §12-6-3330 provides married individuals filing a joint return a credit against South Carolina income tax equal to seven-tenths of 1% (.007) of the lesser of the following: (1) $30,000 or (2) the South Carolina qualified earned income of the spouse with the lower qualified earned income for the taxable year.

12. COLLEGE TUITION CREDIT

South Carolina Code §12-6-3385 provides for a refundable individual income tax credit for tuition paid to an institution of higher learning. The credit for each taxable year is equal to 25% of the tuition paid, not to exceed $850 for a student attending a 4-year institution or $350 for a student attending a 2-year institution.

The credit may be claimed by the student paying the tuition or by an individual paying the tuition who is eligible to claim the student on his federal income tax return. It may be claimed for no more than 4 consecutive years after the student enrolls in an eligible institution with limits and exceptions.

South Carolina Code §12-6-3385 contains a list of requirements that a student must meet in order to qualify for the credit. Requirements the student must meet include:

- Having completed at least 30 credit hours at the end of the tax year for which the credit is claimed.
- Within 12 months before enrolling in the institution of higher learning graduated from a South Carolina high school.
- Graduating from high school during or after May 1997.

See South Carolina Revenue Ruling #09-3 for a detailed question and answer document on the college tuition tax credit.

13. CHILD AND DEPENDENT CARE EXPENSES CREDIT

South Carolina Code §12-6-3380 provides an individual an income tax credit for qualified child and dependent care expenses. Qualified expenses include amounts paid for household services and care of a child under age 13 claimed as a dependent, a disabled spouse incapable of self-care, or a disabled person incapable of self-care claimed as a dependent, if such expenses are incurred while the taxpayer works or looks for work during the tax year. The credit is computed as provided in Internal Revenue Code §21, except that the credit amount is 7%, and only expenses that are directly attributable to items of South Carolina gross income qualify.

Also, see Business Income Tax, Chapter 2, Section 22 for information on a credit that an employer may claim for costs incurred in establishing a child care program for its employees' children or for child care payments made directly to independent child care facilities.

14. DISASTER/INSURANCE RELATED DEDUCTION AND CREDITS

South Carolina Code Title 12, Chapter 6 contains a variety of disaster or insurance related tax deductions or credits for individuals. Each is briefly explained below.

a. Catastrophe Savings Account

South Carolina Code §12-6-1620 allows a taxpayer to establish a "Catastrophe Savings Account" to cover the insurance deductible or self-insured losses on the taxpayer's South Carolina legal residence for hurricane, rising floodwaters, or other catastrophic windstorm event damage. The total amount that may be contributed to this regular savings or money market account varies from: (1) $2,000 for an individual whose qualified deductible is $1,000 or less; (2) the lesser of $15,000 or twice the taxpayer's qualified deductible for an individual whose qualified deductible is over $1,000; or (3) the lesser of $250,000 or the value of the taxpayer's legal residence for a self-insured individual.

In general, the income tax treatment of fund contributions, earnings and distribution are:

- Contributions are a deduction from South Carolina income subject to tax.
- Interest earned is not included in South Carolina income.
- Distributions for qualified catastrophe expenses are not included in South Carolina income.
- Distributions exceeding qualified catastrophe expenses are included in South Carolina income. Subject to limited exceptions, the tax rate for excess distributions is increased by 2.5% over the regular income tax rate.
- Distributions to a taxpayer age 70 or older closing an account set up to pay a deductible are not included in South Carolina income.

b. Legal Residence Retrofit Credits

Credit for Retrofitting Fortification Costs. South Carolina Code §12-6-3660 provides an income tax credit of up to $1,000 for 25% of the costs to retrofit a taxpayer's legal residence to make it more resistant to loss due to hurricane, rising floodwater, or other catastrophic windstorm event. Ordinary repair or replacement of an existing item does not qualify.

Credit for Sales or Use Tax Paid on Purchases to Retrofit. South Carolina Code §12-6-3665 provides an income tax credit for state sales or use taxes paid on purchases of tangible personal property used to retrofit an individual's legal residence. The credit is 6% of the purchase price of tangible personal property eligible for retrofitting fortification costs discussed above. The credit cannot exceed $1,500. The credit is claimed on SC SCH TC-43.

South Carolina Department of Insurance Regulation 69-75 sets forth the fortification measures that qualify for the credits in South Carolina Code §§12-6-3660 and 12-6-3365. The standards which must be met by an individual taxpayer for costs to qualify for the credit are the same as those required under the South Carolina Safe Home Program and are contained in the *South Carolina Safe Home Resource Document for Mitigation Techniques* (Manual). A copy of the Manual is available at www.scsafehome.com or the SC Safe Home website will direct taxpayers to the location of the Manual on the Department of Insurance website**.**

c. Property and Casualty Insurance Premium Credit

South Carolina Code §12-6-3670 provides an income tax credit for an individual's property and casualty insurance premium for the taxpayer's legal residence paid during the tax year in excess of 5% of the taxpayer's adjusted gross income. The credit allowed for any tax year cannot exceed $1,250. Any unused credit may be carried forward for 5 tax years. The credit is claimed on Form TC-44, "Excess Insurance Premium Credit."

15. NURSING FACILITY/IN-HOME/COMMUNITY CARE CREDIT

South Carolina Code §12-6-3390 provides an individual taxpayer an income tax credit equal to 20% of the expenses paid by the taxpayer for his own support or the support of another to an institution providing nursing facility level of care or paid to a provider for in-home or community care for persons determined to meet nursing facility level of care criteria as certified by a licensed physician. The credit is limited to $300 each taxable year. No credit is allowed for expenses paid from public source funds.

16. CREDIT FOR NONRESIDENT RETIREMENT CONTRIBUTIONS

South Carolina Code §12-6-3500 provides a credit over the taxpayer's lifetime for taxes paid on qualified retirement income contributions while residing in a state other than South Carolina. The Department will prescribe the amount of the annual credit based on the taxpayer's life expectancy at the time the taxpayer is allowed the South Carolina retirement income deduction discussed above in Section 5. The total credit allowed may not exceed an amount determined by multiplying the contributions taxed in each year by the marginal South Carolina individual income tax rate for that year. The credit is claimed on Form TC-29, "Qualified Retirement Plan Contribution."

17. CREDIT FOR REHABILITATION OF A CERTIFIED HISTORIC RESIDENTIAL STRUCTURE

South Carolina Code §12-6-3535 has two similar income tax credits available to taxpayers making historic rehabilitation expenditures in South Carolina. The first credit, rehabilitation of a certified historic structure credit, is available to taxpayers that qualify for the federal rehabilitation credit. The second credit, rehabilitation of a certified historic residential structure credit, is available to individual taxpayers that do not qualify for the federal rehabilitation credit. A general overview of the credit for rehabilitation of a certified historic residential structure is provided below. See Chapter 2, Business Income Tax, Section 36 for a general overview of the credit for rehabilitation of a certified historic structure.

South Carolina Code §12-6-3535(B) allows a taxpayer an income tax credit equal to 25% of the rehabilitation expenses for a certified historic residential structure located in South Carolina. The rehabilitation expenses must, within a 36-month period, exceed $15,000 to qualify for the credit. To claim this credit, the taxpayer must receive certification from the State Historic Preservation Officer (*i.e.,* the Director of the Department of Archives and History or the Director's Designee who administers the historic preservation programs within South Carolina). The credit is claimed in equal amounts over a 5 year period beginning with the year that the certified rehabilitation is placed in service (*i.e.,* completed and allows for the intended use). Any unused credit may be carried forward for the 5 succeeding years. A taxpayer cannot take more than one credit on the same certified historic residential structure within 10 years. The credit is claimed on Form TC-22, "Credit for a Certified Historic Residential Structure."

The terms "certified historic residential structure," "certified rehabilitation," "rehabilitation expenses," and "owner occupied residence" are defined in South Carolina Code §12-6-3535(B).

"Certified historic residential structure" is defined as an owner-occupied residence that is:

- listed individually in the National Register of Historic Places;
- considered by the State Historic Preservation Officer to contribute to the historic significance of a National Register Historic District;
- considered by the State Historic Preservation Officer to meet the criteria for individual listing in the National Register of Historic Places; or
- an outbuilding of an otherwise eligible property considered by the State Historic Preservation Officer to contribute to the historic significance of the property.

"Certified rehabilitation" is repairs or alterations consistent with the Secretary of the Interior's Standards for Rehabilitation and certified as such by the State Historic Preservation Officer before commencement of the work. The review by the State Historic Preservation Officer shall include all repairs, alterations, rehabilitation, and new construction on the certified historic residential structure and the property on which it is located.

"Rehabilitation expenses" are expenses incurred by the taxpayer in the certified rehabilitation of a certified historic residential structure that are paid before the credit is claimed including preservation and rehabilitation work done to the exterior of a certified historic residential structure, repair and stabilization of historic structural systems, restoration of historic plaster, energy efficiency measures except insulation in frame walls, repairs or rehabilitation of heating, air-conditioning, or ventilating systems, repairs or rehabilitation of electrical or plumbing systems exclusive of new electrical appliances and electrical or plumbing fixtures, and architectural and engineering fees.

The term "rehabilitation expenses" does not include the cost of acquiring or marketing the property, the cost of new construction beyond the volume of the existing certified historic residential structure, the value of an owner's personal labor, or the cost of personal property.

"Owner-occupied residence" is a building or portion of a building in which the taxpayer has an ownership interest, in whole or in part in fee, by life estate, or as the income beneficiary of a property trust, that is, after being placed in service, the residence of the taxpayer and is not (a) actively used in a trade or business, (b) held for the production of income, or (c) held for sales or disposition in the ordinary course of the taxpayer's trade or business.

Additional credit provisions include:

1. Additional work done by the taxpayer while the credit is being claimed, for a period of up to 5 years, must be consistent with the Secretary of the Interior's Standards for Rehabilitation. During this period, the State Historic Preservation Officer may inspect and review additional work to the certified historic residential structure. If this work is not consistent with the Standards for Rehabilitation, the taxpayer and Department must be notified in writing and any unused portion of the credit, including carry forward, is forfeited.

2. The South Carolina Department of Archives and History has developed an application and certification process. A copy of the application and certification information can be obtained from the South Carolina Department of Archives and History at 803-896-6196. A taxpayer may appeal a decision of the State Historic Preservation Officer to a committee of the State Review Board.

18. ENERGY EFFICIENT MANUFACTURED HOME INCENTIVE CREDIT

South Carolina Code §48-52-870 provides a $750 income tax credit to any person who purchases a manufactured home from a retail dealership licensed by the South Carolina Manufactured Housing Board for use in South Carolina which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency's energy saving efficiency requirements or requirements under each agency's ENERGY STAR program.

The South Carolina Energy Office must adopt rules to develop credit applications and administer the issuance of the credit. The forms are available at the Manufactured Housing Institute website at http://www.mhisc.com.

This credit may be claimed on SC SCH TC-53**.**

Note: The credit cannot be claimed after July 1, 2019.

19. COMPOSITE RETURNS FOR NONRESIDENT PARTNERS AND SHAREHOLDERS

See Chapter 2, Business Income Tax, Section 8 for information on composite returns.

20. ESTATE AND GIFT TAX

- South Carolina has no gift tax. The federal government no longer has a federal estate tax credit for state death taxes. South Carolina's estate tax was equal to the federal credit for state death taxes. Since the federal credit for state death taxes has been repealed, South Carolina has no estate tax.

21. EDUCATIONAL CREDIT FOR EXCEPTIONAL NEEDS CHILDREN

For the state's fiscal year 2014 – 2015, for contributions made between July 1, 2014 and June 30, 2015, House Bill4701, Part IB, Section 1, Proviso 1.80 provides a credit to a taxpayer who makes a contribution to a nonprofit scholarship funding organization. The contribution must be used to provide grants of up to $10,000 for tuition, transportation, and textbooks for an eligible student to attend an eligible school. Definitions and requirements that must be met to qualify as an "eligible student", an "eligible school" and a "nonprofit scholarship funding organization" are contained in the proviso. Additional restrictions relating to the qualification for, and claiming of, the credit are also contained in the proviso. The proviso should be consulted to make sure all the requirements for claiming the credit have been met.

The credit is equal to 100% of the qualifying contribution but may only offset 60% of a taxpayer's tax liability. The total amount of credit available to all taxpayers for the fiscal year is $8 million dollars and the credit is allowed on a first come, first serve basis. A taxpayer making a contribution must apply to the Department for approval of the credit by using Form SC SCH TC-57A "Application for Exceptional Needs Children Scholarship Credit" which can be found on the Department's website at www.dor.sc.gov – Forms – Tax Credits - SC SCH TC-57A "Application for Exceptional Needs Children Scholarship Credit". It is anticipated that the form to actually claim the credit on a taxpayer's tax return will be SC SCH TC-57 which is also available on the website.

Note: The Education Credit for Exceptional Needs Children will expire on June 30, 2015 unless the legislature reenacts the temporary credit proviso in the next legislative session.