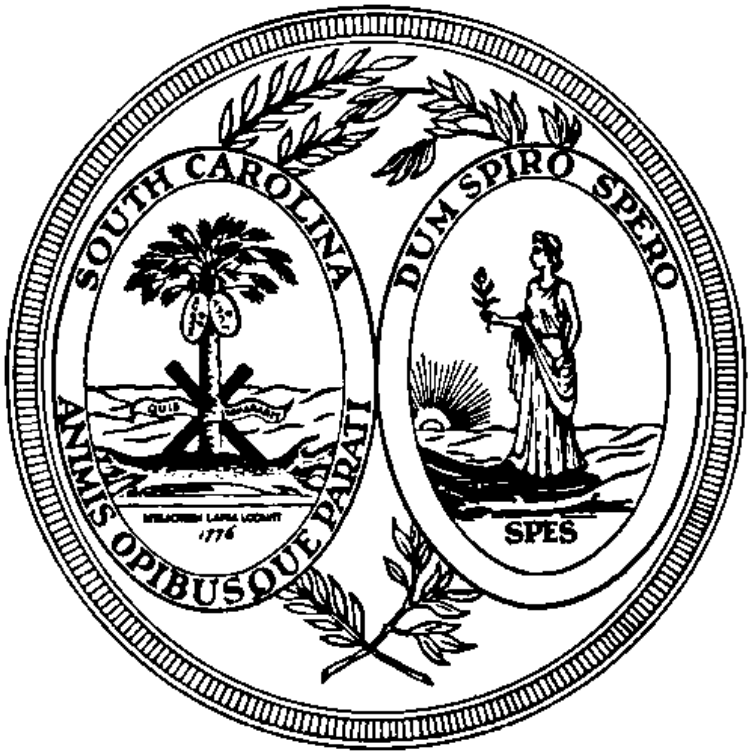
South Carolina Department of Revenue Legislative Update for 2012



The Honorable Nikki R. Haley, Governor
James F. Etter, Director

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TAX LEGISLATIVE UPDATE
FOR 2012

Attached is a brief summary of most of the significant changes in tax and regulatory laws enacted during the past legislative session. The summary is divided into categories, by subject matter, as indicated below.

CATEGORY OF LEGISLATION **PAGE #**

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DISCLAIMER:

This is intended to be a summary of the main points of the legislation; it is not an interpretation by the Department. Please refer to the full text of the legislation for specific details and requirements.

Legislation regarding insurance premium taxes, unemployment taxes, and distribution of funds is not summarized. There may be instances where some tax or incentive related legislation briefly summarized is under the jurisdiction of another state agency or political subdivision, and not the Department. In such cases, questions concerning these provisions should be made directly to the agency or political subdivision having primary responsibility for the administration of these acts.

TEXT OF LEGISLATION:

A complete copy of the legislation discussed in this publication can be obtained from the South Carolina Legislative Council's website at http://www.scstatehouse.gov/ or the Department's website at http://www.sctax.org/Tax+Policy/New+Legislation.htm.

LIST OF BILLS BY SUBJECT CATEGORY

A list of significant changes in tax and regulatory laws (both permanent and temporary) enacted during the 2012 legislative session is provided below. Temporary provisos are enacted in the State budget and are only effective for the State fiscal year (July 1 – June 30); unless re-enacted they expire on June 30, 2013.

This list is divided by subject matter with the bills listed in numeric order. The list of bills with a link to the full text of each act is on the Department's website at: http://www.sctax.org/Tax+Policy/New+Legislation.htm.

INCOME TAXES, WITHHOLDING and CORPORATE LICENSE FEES

BILL #	ACT #	SUBJECT
3059	161	Plug in Hybrid Vehicle Credit
3506 – Sec. 1	233	Investment Tax Credit for Large Rubber & Plastics Manufacturers
3583	126	Internal Revenue Code Conformity
3720 – Sec. 1	187	Job Tax Credit - Definitions
– Sec. 2	187	Credit Against License Fee for Infrastructure (Utility Company)
4205	168	Nonprofit Corporation Providing Water Service Converting to Public Service District
4766	277	SC Benefit Corporations
4813 – Proviso 1A.16	288	Teacher Supplies – Reimbursement Not Taxable – **Reenacted Temporary Proviso**
– Proviso 1A.17	288	Teacher of the Year Award – Not Subject to SC Tax – **New Temporary Proviso**
5418 – Sec. 2		Active Trade or Business Income of Pass Through Entity – New Tax Rate

PROPERTY TAXES and FEES IN LIEU OF PROPERTY TAXES

BILL #	ACT #	SUBJECT
3657 – Sec. 1	186	County Tax Collector Education Requirements
– Sec. 2	186	Forfeited Land Commission
– Sec. 3	186	Tax Sales - Date and Scope
– Sec. 4	186	Default Bidder
3676	256	SC Community Land Trust Act
3720 – Sec. 3-6	187	Fee in Lieu
3934 – Sec. 1-2	179	Multiple Lot Discount
– Sec. 3	179	4% Assessment Ratio Qualifications and Apportionment
– Sec. 4	179	Assessable Transfers of Interest Between Family Members
4632		Marion County School District Consolidation
4704		Abbeville County Revised Tax Value
4766	277	SC Benefit Corporations
4813 – Proviso 1.81	288	Index of Taxpaying Ability – Imputed Value – **Reenacted Temporary Proviso**
– Proviso 89.44	288	Personal Property Tax Relief Fund Not Funded – **Reenacted Temporary Proviso**

SALES AND USE TAXES

BILL #	ACT #	SUBJECT
3720 – Sec. 7	187	Datacenter Exemption
3747	235	Injectable Medications and Biologics
4813 – Proviso 89.43	288	Private Schools – Use Tax Exemption – **Reenacted Temporary Proviso**
– Proviso 89.65	288	Respiratory Syncytial Virus Medicines
– Proviso 89.69	288	Viscosupplementation Therapies

MISCELLANEOUS

BILL #	ACT #	SUBCATEGORY	SUBJECT
		Administrative & Procedural	
3221	135		DOR Electronic Filing of Documents Relating to Enforced Collection
3506 – Sec. 2	233		Discounts for Certain Timely Filed Returns
4813 – Proviso 72.13	288		2% Reduction on Interest on Tax Refunds – **Reenacted Temporary Proviso**
– Proviso 81.6	288		Website Posting of Candidates Tax Returns – **Reenacted Temporary Proviso**
– Proviso 89.102	288		Additional 1% Reduction on Interest on Refunds – **Reenacted Temporary Proviso**
		Miscellaneous Taxes	
1167 – Sec. 1-3	267		Tax Increment Financing
– Sec. 4	267		Local Capital Projects Sales Tax
3508	284		Government and Nongovernment Owned Communications Service Providers
3676	256		SC Community Land Trust – Deed Recording Fee
4813 – Proviso 1.17	288		Local Government School Buses – Motor Fuel Exemption – **Reenacted Temporary Proviso**
– Proviso 21.13	288		Nursing Home Bed Franchise Fee – Suspension – **Reenacted Temporary Proviso**
– Proviso 81.7	288		Admissions Tax – Booster Org./Season Tickets – **Reenacted Temporary Proviso**
– Proviso 90.16	288		Admissions Tax Rebate – Motorsports – **Reenacted Temporary Proviso**
		Regulatory	
3630	121		Sales by Wineries
5098	266		Local Option Permits – Referendum Procedure

INCOME TAXES, WITHHOLDING, and CORPORATE LICENSE FEES

House Bill 3583 (Act No. 126)

Internal Revenue Code Conformity

Conformity Date. Code Section 12-6-40(A)(1)(a) has been amended, except as otherwise provided, to update South Carolina's income tax laws to conform to the Internal Revenue Code of 1986, as amended through December 31, 2011, and includes the effective date provisions contained therein.

Extensions of Federal Expiring Provisions. Code Section 12-6-40(A)(1) has further been amended to add a subitem which provides that if during the year 2012 the federal government extends, without otherwise amending, Internal Revenue Code provisions that expired on December 31, 2011 or January 1, 2012, these sections or portions of sections which have been adopted by South Carolina will be extended in the same manner they are extended for federal income tax purposes.

Internal Revenue Code Sections Not Adopted. Code Section 12-6-50(3), Internal Revenue Code sections specifically not adopted by South Carolina, has been amended to add Internal Revenue Code Sections 59A relating to minimum taxes, 846 through 848 relating to insurance companies, and 909 relating to the taxation of foreign income.

Effective Date: March 13, 2012

House Bill 5418, Section 2 (Act No. 287)

Active Trade or Business Income of Pass Through Entity – New Tax Rate

Code Section 12-6-545 provides for a reduced income tax rate on active trade or business income of a pass through business (*i.e.*, sole proprietorship, 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 Code Section 12-6-510 (individual income tax.) Code Section 12-6-545(B)(2) has been amended to lower the current tax rate from 5% to 3% over several years.

The new rates are phased in as follows:

Tax Year Beginning In	Tax Rate
2012	4.33 %
2013	3.67 %
2014 and thereafter	3.00 %

Code Section 12-6-545(A)(1) continues to define "active trade or business income or loss" as income or loss of an individual, estate, trust, or any other entity except those taxed or exempted from tax pursuant to Code Sections 12-6-530 (corporate income tax), 12-6-540 (income tax rates for exempt organizations and cooperatives), and 12-6-550 (corporations exempt from taxes imposed by sections 12-6-530 and 12-6-540) resulting from the ownership of an interest in a pass through business.

Active trade or business income or loss does **not** include:

1. Capital gains and losses;

2. Amounts reasonably related to personal services;

3. Guaranteed payments for services referred to in Internal Revenue Code §707(c); and

4. Passive investment income and expenses as defined in Internal Revenue Code §1362(d) generated by a pass through business and income of the same type, regardless of the type of pass through business generating it. (See SC Revenue Ruling #08-2 for more information.)

Effective Date: June 28, 2012

House Bill 4813, Part IB, Section 1A, Proviso 1A.17 (Act No. 288)

Teacher of the Year Awards - Not Subject to South Carolina Income Tax

This temporary proviso continues to provide for the following teacher of the year awards: (a) a $1,000 award to each district Teacher of the Year, (b) a $25,000 award to the State Teacher of the Year, and (c) a $10,000 award to each of the four Honor Roll Teachers of the Year. The temporary proviso has been expanded to add that these awards are not subject to South Carolina income tax.

Effective Date: This temporary proviso is effective for State fiscal year July 1, 2012 through June 30, 2013. It will expire June 30, 2013, unless reenacted by the General Assembly in the next legislative session.

House Bill 3059 (Act No. 161)

Plug-In Hybrid Vehicle Credit - Amended

Code Section 12-6-3376, providing an income tax credit for the purchase or lease of a new plug-in hybrid vehicle in South Carolina, has been substantially amended. The amendments include expanding the definition, revising the credit amount and priority of claims, requiring documentation, and delaying the termination date of the credit. Each change is summarized below.

1. Definition. A plug-in hybrid vehicle is a vehicle that: (a) shares the same benefits as an internal combustion and electric engine with an all-electric range of no less than nine miles, (b) has four or more wheels, (c) draws propulsion using a traction battery, (d) has at least four kilowatt hours of battery capacity, and (e) uses an external source of energy to recharge the battery. The vehicle must be manufactured primarily for use on public streets, roads, highways, and not be a low speed or medium speed vehicle. The terms low and medium speed vehicle are defined.

2. Credit Amount and Priority of the Claim. The credit is $667, plus $111 if the vehicle has at least five kilowatt hours of battery capacity, plus an additional $111 for each kilowatt hour of battery capacity in excess of five kilowatt hours. The maximum credit allowed is $2,000. The credit is nonrefundable and any unused credit may be carried forward for five years. Since claims by all taxpayers for this credit cannot exceed $200,000 each calendar year, claims apply on a first-come basis as determined by the Department.

3. Documentation. A taxpayer claiming the credit must provide the Department with a certification from the vehicle manufacturer, or from the domestic distributor of a foreign vehicle manufacturer, that states the vehicle is a qualified plug-in hybrid and the kilowatt hours of battery capacity.

4. Credit Duration. The credit is applicable for tax years beginning in 2012 – 2016.

Effective Date: Applies to South Carolina purchases and leases made on or after July 1, 2012.

House Bill 3720, Section 1 (Act No. 187)

Job Tax Credit - Definitions Amended

Code Section 12-6-3360 provides a job tax credit to qualifying businesses creating and maintaining new jobs in South Carolina. The definitions for two types of eligible businesses, a "qualifying service related facility" and a "technology intensive facility," have been amended.

1. The term "qualifying service related facility is defined in Code Section 12-6-3360(M)(13)(a) and (b). Subitem (b) has been amended as follows:

    a. To lower the net increase in jobs required by the business from 30, 75, 125, or 250 jobs at a single location paying the required cash compensation level to 25, 50, 100, or 175 jobs at a single location paying the required cash compensation level.

    b. To provide that a business, other than a business engaged in legal, accounting, banking, or investment services (including a business identified under NAICS Section 55, "Management of Companies and Enterprises") or retail sales, with a net increase of at least 150 jobs at a single location comprised of a building or portion of building that has been vacant for at least 12 consecutive months prior to the taxpayer's investment is a qualifying service related facility.

2. The term "technology intensive facility," defined in Code Section 12-6-3360(M)(14), continues to be defined as a facility at which a firm engages in the design, development, and introduction of new products or innovative manufacturing processes, or both, through the systematic application of scientific and technical knowledge.

   This amendment adds to this definition the following three North American Industrial Classification Systems Codes: (a) 541711, "Research and Development in Biotechnology", (b) 541712, "Research and Development in Physical, Engineering, and Life Sciences (except Biotechnology)", and (c) 518210, "Data Processing, Hosting, and Related Services."

Effective Date: June 7, 2012

House Bill 3506, Section 1 (Act No. 233)

Investment Tax Credit for Large Rubber and Plastics Manufacturer - Amended

Code Section 12-14-80 allows a qualifying large manufacturing taxpayer an investment tax credit for "qualified manufacturing and productive equipment property" it places in service. This credit is first used against income tax and, subject to certain limitations, can be claimed against withholding tax. The amendments to Code Section 12-14-80 include:

1. A qualifying taxpayer has been expanded to include a taxpayer who (1) engages in South Carolina in an activity listed under North American Industry Classification System Section 326 (Plastic and Rubber Products Manufacturing); (2) commits to employing 1,200 full-time employees in South Carolina by January 1, 2022; and (3) commits to investing $400 million in South Carolina between September 1, 2011 and January 1, 2022. This credit cannot be claimed until the taxpayer has (a) invested $200 million and (b) filed a statement with the Department stating that it commits to (i) investing $400 million, (ii) meeting the minimum job and hiring requirements by January 1, 2022 and (iii) refunding the tax credit received with interest if the investment and job requirements are not met. Code Sections 12-14-80(A)(2) and (I). Previously, the credit only applied to tire manufacturers who employed at least 5,000 people in South Carolina and made a $2 billion capital investment in South Carolina.

2. "Qualified manufacturing and productive equipment property" that is leased by a qualifying taxpayer is now eligible for the credit. If the qualifying taxpayer is the lessee of the property for which the credit is allowable and is not treated as the income tax owner of such property, the basis of the property for purposes of calculating the amount of the credit for the taxpayer and the capital investment made by the taxpayer with respect to the property shall be the then determined tax basis, as of the date the lease begins, for purposes of calculating income tax in this State in such property of the income tax owner of such property. The taxpayer must include a certification with certain information about the leased property. Code Sections 12-14-80(A) and (C)(2).

3. The term “taxpayer” has been expanded to include any person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the taxpayer. A person controls another person if that person holds a 50% ownership interest in the other person. Code Section 12-14-80(B)(2).

4. The term “capital investment in this state” has been defined to include property capitalized by the taxpayer or subject to a capital or operating lease with the taxpayer. Property that is leased to the taxpayer is treated as being placed in service by the taxpayer on the date the lease begins. Code Section 12-14-80(B)(3).

5. Special rules are provided for determining when a taxpayer who is a lessee of qualified manufacturing and productive equipment property is considered to have disposed of such leased property. Code Section 12-10-80(G).

6. If the taxpayer is the lessee of qualified manufacturing and productive equipment property and has claimed this credit, in lieu of any adjustment to the basis of the property, the taxpayer must include in its South Carolina taxable income, an amount equal to the credit earned for the tax year. Code Section 12-14-80(H)(2).

Effective Date: June 18, 2012

House Bill 3720, Section 2 (Act No. 187)

Credit against License Fee on Utilities and Electric Cooperatives for Eligible Infrastructure Projects - Amended

Code Section 12-20-105, which provides a credit against license fees under Code Section 12-20-100 for amounts paid in cash for qualifying infrastructure for an eligible project, has been amended as follows:

1. The amount of credit that can be claimed by an eligible taxpayer has been increased from $300,000 each year to $400,000 each year.

2. For a project qualifying under Code Section 12-20-105(B)(2) (a project located in a business, commercial, office or industrial park used for economic development and owned or constructed by a county, political subdivision or agency of the state at the time the qualifying improvements are paid for), qualifying expenditures now include site preparation costs including clearing, grubbing, grading and storm water retention and refurbishment of buildings that are owned or controlled by a county or municipality if the buildings are used exclusively for economic development.

Effective Date: June 7, 2012

House Bill 4205 (Act No. 168)

Amounts Due to Members When Not-For-Profit Water Service Corporations Convert to Public Service Districts

Code Section 33-36-1315 allows certain not-for-profit corporations providing water service to become public service districts, "a public body politic and corporate", by resolution adopted by the board of directors of the corporation and subject to conditions provided in the statute.

Subsection (G) has two provisions dealing with amounts which may be due to the members of the not-for-profit corporations as a result of the conversion:

1. If any member of the corporation that becomes a public service district under this section has received or been credited with a specific amount of capital stock, revolving fund certificate, retain certificate, certificate of indebtedness, letter of advice, or other written notice for the corporation and that amount has been realized in federal gross income by the member in a period prior to the date of conversion to a public service member but the corresponding money has not been distributed to the member, then the member is considered to have contributed that amount to the public service district; and

2. If in the resolution required for conversion, the board of directors specifies that (a) the corporation owns assets in excess of those required to continue its operations after the conversion to a public service district or (b) if the assets of the corporation have appreciated in value over their original cost, then prior to the conversion, the corporation will distribute the excess to the members of the corporation on a cooperative basis. The board of directors shall reasonably determine the amount to be distributed.

Effective Date: May 14, 2012

House Bill 4766 (Act No. 277)

South Carolina Benefit Corporation

Title 33, Corporations, Partnerships, and Associations, was amended to add Chapter 38, South Carolina Benefit Corporations Act. Code Section 33-38-500 requires that benefit corporations prepare an annual benefit report, as described in the section, and file that report, with certain specified information redacted, with the annual report delivered to the Secretary of State.

Effective Date: June 14, 2012

PROPERTY TAXES and
FEES IN LIEU OF PROPERTY TAXES

House Bill 3934, Section 1 (Act No. 179)

Multiple Lot Discount - Plats Recorded After 2000

Code Section 12-43-225, which allows a discounted value for property subdivided into at least 10 building lots in a plat recorded on or after January 1, 2001, has been amended as follows.

New Application Procedures. As provided in subsection (B), the owner must make a written application to the county assessor on or before May 1st of the year in which the discount is initially claimed. Once the property is initially qualified for the discount, no further application is required unless ownership changes. Previously, the owner was required to apply annually.

A new provision in subsection (B) allows a late application to be made any time after May 1st until the 30th day following the mailing of the property tax bill for the year in which the discount is claimed. This late application must be submitted in writing with a $100 late application fee payable to the county treasurer for deposit to the county general fund.

Additional Eligibility Period. Subsection (A) states that the discount provided in subsection (B) applies for 5 property tax years or until the lot is sold or a certificate of occupancy is issued for the improvement on the lot, or the improvement is occupied, whichever of them elapses or occurs first. New item (D)(1) allows lots that received the discount on December 31, 2011 an additional 3 years of eligibility in property tax years 2012, 2013, and 2014 in addition to any remaining period for the discount provided in subsection (B).

Item (D)(1) further provides that, if 10 or more lots receiving the discount under this section are sold to a new owner primarily in the business of real estate development, the new owner may make written application to the assessor within 60 days of the date of sale to obtain the discount for the remaining eligibility period under this section.

Valuation Method Clarified. The discounted value of each platted building lot is calculated by dividing the total number of platted building lots into the value of the entire parcel as undeveloped real property. Additional steps phasing in this result have been eliminated from subsection (B).

Lots Purchased by Residential Homebuilders and General Contractors - New Application Procedures and Eligibility Provisions. Subsection (C) allows the discounted value to apply to a lot sold to the holder of a residential homebuilder's license or a general contractor's license through the first tax year that ends 12 months from the date of sale under certain circumstances. The lot sold must already be allowed the discounted value, and the license holder must make a written application to the county assessor within 60 days of the date of sale. Previously, the application deadline was May 1st of the year for which the license holder claimed the discount.

New item (D)(2) allows lots that received the discount provided in subsection (C) after December 31, 2008 and before January 1, 2012 an additional 3 years of eligibility in property tax years 2012, 2013, and 2014 on written application to the assessor no later than 30 days after mailing of the property tax bill.

Item (D)(2) further provides that, if a lot receiving the additional eligibility under this item is transferred to a new owner primarily in the business of residential development or residential construction during its eligibility period, the new owner may apply to the county assessor for the discount allowed under this item for the remaining period of eligibility. The discount must be allowed if the new owner applied within 30 days of the mailing of the tax bill and meets the other requirements of this section.

No Refunds. An uncodified provision states that no refund is allowed due to these amendments to Code Section 12-43-225.

Effective Date: Applies to property tax years beginning after 2011.

House Bill 3934, Section 2 (Act No. 179)

Multiple Lot Discount - Plats Recorded Before 2001

Code Section 12-43-224 allows an annual discounted value if (a) a developer owns at least 10 unsold lots within the homogeneous area, (b) the plat was recorded before January 1, 2001, and (c) the owner makes a written application on or before May 1st of the tax year in which the discount is claimed. It has been amended to exclude lots eligible for the discount under Code Section 12-43-224 from receiving the discount in property tax years after 2011 if the lots were not receiving this discount on December 31, 2011.

Effective Date: Applies to property tax years beginning after 2011.

House Bill 3934, Section 3 (Act No. 179)

Special Assessment Ratio for Legal Residences - Qualifications and Apportionment

Code Section 12-43-220(c)(2), which allows a special 4% assessment ratio for qualified residences when the taxpayer makes a timely application, has been amended as follows.

Qualifications:

1. Subitem (ii) has been amended to clarify that, in addition to certifying eligibility for the special assessment ratio, the taxpayer must provide all information required in the application.

2. The requirements for eligibility have changed. The property owner must, under penalty of perjury, certify that:

   "(A) the residence which is the subject of this application is my legal residence and where I am domiciled at the time of this application and that neither I, nor any member of my household, claim to be a legal resident of a jurisdiction other than South Carolina for any purpose; and

   (B) that neither I, nor a member of my household, claim the special assessment ratio allowed by this section on another residence."

Previously, the owner was required to certify that the owner alone did not claim to be a legal resident of another jurisdiction for any purpose, and the requirement did not extend to any member of the owner's household. A "member of my household" means the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant, and any child under the age of 18 eligible to be claimed as a dependent on the owner-occupant's federal income tax return. In addition, a technical correction to part (B) of the certification has eliminated certain redundant language.

Apportionment: New item (8) has been added to Code Section 12-43-220(c) to limit the portion of the residential property value that is subject to the special 4% assessment ratio in certain situations. Subject to the exceptions below, when (a) a fractional ownership interest in the subject property is created by deed and (b) the ownership interest of the individual claiming eligibility as an owner-occupant is less than 50% ownership in fee simple, the 4% assessment ratio will apply to the percentage of value equal to the percentage of that individual's ownership interest, but not less than $100. Only the portion of the value receiving the 4% assessment ratio will receive the exemption from all property taxes imposed for school operating purposes allowed under 12-37-220(B)(47).

This new limitation does not apply to:

1. an ownership interest that has already transferred by operation of law when a deed is issued;

2. an owner-occupant who owns a 50% or greater interest in the fee simple;

3. a qualified residence that is occupied jointly by a married couple or that remains occupied by a spouse legally separated from a spouse who has abandoned the residence;

4. an owner-occupant who (a) owns at least a 25% interest in the property with immediate family members; (b) is not a member of a household currently receiving the 4% assessment ratio on another property; and (c) otherwise qualifies. For purposes of this exception, an "immediate family member" means a parent, child or sibling.

Effective Date: Applies to property tax years beginning after 2011.

House Bill 3934, Section 4 (Act No. 179)

Assessable Transfers of Interest - Certain Transfers Between Family Members Excluded

An assessable transfer of interest (ATI) is one of the triggers for revaluing real property under the South Carolina Real Property Valuation Reform Act, Article 25, Chapter 37, Title 12. Real property is reappraised at fair market value as of December 31st of the year in which an ATI has occurred, and the resulting valuation becomes the basis for property tax assessment in the property tax year following the year in which the ATI occurred. During that property tax year the new valuation is not subject to the 15% cap imposed on valuation increases attributable to the periodic countywide appraisal and equalization program implemented pursuant to Code Section 12-43-217. Code Section 12-37-3140.

Code Section 12-37-3150(B), which sets forth a list of transactions that do not constitute an ATI, has been amended. A new item provides that a transfer of a fractional interest between family members is not an ATI if (a) monetary consideration is zero or de minimis and (b) both the grantor and the grantee owned an interest in the property before the transfer. For purposes of this item, a family member includes a spouse, parent, brother, sister, child, grandparent, or grandchild.

Effective Date: Applies to property tax years beginning after 2011.

House Bill 4704 (Act No. 292)

Abbeville County - Implementation of Revised Values from Most Recent Countywide Appraisal and Equalization Program

Code Section 12-43-217 provides a 5 year cycle for revaluation of real property through a countywide appraisal and equalization program. Real property must be reappraised by December 31st of the fourth year in the cycle. Generally, the new values are implemented in the fifth year so that property taxes are assessed on reappraised values every 5 years. Subsection (B) allows a county to postpone implementation, but not reappraisal, by one year.

Notwithstanding the provisions of Code Section 12-43-217(B), this joint resolution authorizes postponement of implementation of the revised values determined in Abbeville County's most recent countywide appraisal and equalization program until property tax year 2012.

Effective Date: March 13, 2012

House Bill 4632, Sections 1, 4 and 6 (Act No. 304)

Marion County School District Consolidation

This uncodified provision consolidates all school districts in Marion County ("former districts") into a single district, the Marion County School District ("the new district"), effective July 1, 2012. The elected office of County Superintendent of Education for Marion County is abolished. All powers and duties of the elected superintendent, as well as all powers and duties of respective boards and trustees of each former district, are devolved on the Marion County Board of Education ("the Board") as of July 1, 2012.

The Marion County Board of Education has fiscal authority for the budget and operating millage of the Marion County School District. The budgets and any operating millage to be levied on behalf of certain constituent programs are subsumed within the budget and operating millage of the new district. All state and local governmental calculations and projections concerning Fiscal Year 2012 or Fiscal Year 2013 for purposes of the finances of the public education system in Marion County must be made on the basis of the new district as the sole district.

Notwithstanding another provision of law, the school operating millage for the Marion County School District must be uniform. All taxes now authorized or existing under previous local legislation for public school operating purposes are abolished as of the conclusion of tax year 2011. However, when the revenues from the abolished levies have previously been pledged or are otherwise deemed a necessary revenue source for the operation of the new district, the Board may incorporate millage necessary to secure such revenues into its initial school operating ad valorem tax for tax year 2012. The affected taxes include, but are not limited to, millage to service real property lease-purchase agreements or any other capital acquisition related obligation not constituting general obligation debt and millage levied for particular programs or affiliated entities of any of the former districts that operate on less than a county-wide basis.

For tax year 2012, the school operating millage for the new district must be deemed to comply with the limits on millage increases imposed by Code Section 6-1-320(A) so long as the projected revenue to be derived from the levy subject to Code Section 6-1-320(A) is not more than the Board's good faith estimate of the aggregate revenue of all public school operating millage levied for tax year 2011 in Marion County plus additional revenue of 10%. From tax year 2013 forward, the imposition of property tax for school operating purposes for the new district will be subject to the general laws of the State.

For all general obligation debt of the former districts, as of tax year 2012 the new district is the sole operating school unit of Marion County for purposes of Code Section 59-17-120, which governs the reissuance of bonds.

Effective Date: April 23, 2012

House Bill 3657, Section 1 (Act No. 186)

County Tax Collectors - Education Requirements

Chapter 45 of Title 12 concerns county treasurers and the collection of taxes. Code Section 12-45-15 requires county treasurers to complete at least 18 hours of annual continuing education courses established by the Department.

Code Section 12-45-17 has been added to require a person serving as the county tax collector to satisfactorily complete at least 6 hours of annual continuing education courses that the Department establishes or causes to be established, with content, cost and dates of the courses determined by the Department. This requirement does not apply to a county treasurer who also serves as the county tax collector and completes satisfactorily the requirements of Code Section 12-45-15. The Department may excuse a county tax collector from attending these courses for any year for reasonable cause.

Effective Date: June 7, 2012

House Bill 3657, Section 2 (Act No. 186)

Forfeited Land Commission - Refusal to Accept Title to Certain Land

Article 1 of Chapter 59 of Title 12 provides for a forfeited land commission to take title to real property seized for delinquent taxes that is not transferred to another bidder at a tax sale. Code Section 12-59-85 has been added to allow the forfeited land commission, or a majority of its members, to refuse to accept title to land after it has been bid in by the county auditor and before it has been conveyed to the commission, if the commission determines that acceptance of title would be against public interest.

Effective Date: June 7, 2012

House Bill 3657, Sections 3 and 4 (Act No. 186)

Tax Sales - Date and Scope of Sale and Damages Owed by Defaulting Bidder

Code Section 12-51-50 has been amended to provide that a tax sale must take place on the advertised date, in lieu of a previous requirement that it take place on a legal sales date during regular hours. The amendment also clarifies that, as soon as sufficient funds have been accrued to cover all of the delinquent taxes, assessments, penalties and costs, further items belonging to the same person must not be sold.

Code Section 12-51-70 has been amended to limit to $500 the amount of damages owed by a successful bidder in a tax sale upon failure to make payment within the time specified.

Previously, the amount of damages owed by a defaulting bidder was limited to $300.

Effective Date: June 7, 2012

House Bill 3676 (Act No. 256)

Community Land Trusts – Property Tax Consequences

South Carolina has enacted the "South Carolina Community Land Trust Act of 2012" (Act), Chapter 23, Title 31, providing for the development and use of community land trusts in South Carolina. A community land trust (CLT) is a nonprofit organization that is eligible to receive public funds and government support with all the powers granted to corporations. Code Section 31-23-40(A) and (B).

Under the Act, the CLT's primary purpose must be to hold legal and equitable title to land and the leasing of land for the purpose of preserving the long-term affordability of housing created for predominately low and moderate income households. Code Section 31-23-40(A). Generally, this is accomplished by the CLT retaining title to the underlying land and then renting the land through a ground lease to a qualifying person (lessee). The new legislation provides as follows.

1. The CLT must enter into a written lease agreement with the lessee and may charge a lease fee to the lessee. The improvements and the ground lease are generally subject to resale restrictions and other covenants designed to preserve the property for use, ownership or rental by low to moderate income persons.

2. The lessee's interest in a ground lease with a CLT constitutes an interest in real property. Code Section 31-23-40(D) (2) and (4) and (E).

3. Taxes on real property owned by a CLT must be apportioned in the ground lease between the landowner or CLT and the lessee. The landowner or CLT and the lessee are each responsible for the taxes on the property that it owns although the CLT may include property taxes on the land in the lease fee that is charged to the lessee. The CLT lessor is responsible for the taxes and assessment on the land. The lessee is responsible for the taxes and assessments on all improvements made to the land. Code Section 31-23-40(D) (5).

4. Land owned by a CLT, and buildings that are rented, sold or leased by a CLT subject to long-term rent or resale restrictions designed to ensure that the buildings will remain affordable to low income or moderate income households for at least 30 years must be appraised, assessed and taxed using the income approach as the method of valuation for the land. The assessor must also take resale and rent restrictions that apply to the buildings on the land into consideration in determining the taxable value of the land. The assessor must base the assessment of the property upon the actual income generated by the property and may not take into account any federal or state income tax credits that the developer might receive for developing the property in determining the taxable value attributable to the land and buildings. Code Section 31-23-40(F).

5. Affordable housing offered for rent or sale by the CLT, encumbered by rent or resale restrictions aimed at affordability for low and moderate income households, is eligible for any homestead exemption allowed under South Carolina law. Code Section 31-23-40(F).

Effective Date: June 18, 2012

House Bill 4766 (Act No. 277)

South Carolina Benefit Corporation

Title 33, Corporations, Partnerships, and Associations, was amended to add Chapter 38, South Carolina Benefit Corporations Act. The Act allows certain domestic corporations to become benefit corporations as defined in the Act by including a provision in its original articles of incorporation or through an amendment stating that the corporation is a benefit corporation.

Code Section 33-38-140 provides that a benefit corporation is not entitled to claim an exemption from any property tax imposed by law.

Code Section 33-38-500 requires that benefit corporations prepare an annual benefit report, as described in the section, and file that report, with certain specified information redacted, with the annual report delivered to the Secretary of State.

Effective Date: June 14, 2012

House Bill 3720, Sections 3 through 6 (Act No. 187)

Fee in Lieu Provisions Amended

South Carolina law allows a qualified company to enter into an agreement with a county to pay the county a fee in lieu of property taxes ("fee agreement"). Under a fee agreement, the 10.5% assessment ratio can be reduced to 6% (in certain instances, 4%). In addition, for the period the fee is in effect (which can range from 20 to 40 years), the company and the county can agree to freeze the millage rate applicable to the property at a set millage rate or adjust the millage rate every 5 years. During the period the fee is in effect, the value of the personal property depreciates while the value of the real property either remains constant or by agreement of the county and the company, is reappraised every 5 years.

The provisions of Chapter 44, Title 12 (the "Simplified Fee" provisions) and Code Section 4-12-30 (the "Little Fee" provision) and Code Section 4-29-67 (the "Big Fee" provision) have been amended as follows:

1. Code Section 12-44-30(21), the definition of "termination date" for the Simplified Fee has been amended in two respects. First the amended definition allows a shorter period for the fee to be in effect by defining "termination date" as the last day of the property tax year that

is no later than the 29th year following the first property tax year in which an applicable piece of economic development property is placed in service. Previously, this period was 29 years with no ability of the county to negotiate a shorter period. Second, with respect to a fee agreement that involves an enhanced investment, the termination date is the last day of the property tax year that is no later than the 39th year following the first property tax year in which economic development property is placed in service and the county is authorized, upon application of the company, to extend that period an additional 10 years. Previously, the definition of "termination date" did not separately address the time period for an enhanced investment.

2. Code Sections 12-44-90, 4-12-30(O) and 4-29-67(S) have been amended to add a new provision that allows a county official, upon direction of the governing body of the county, to request and obtain such financial books and records from a company that support the company's fee in lieu of taxes return as may be reasonably necessary to verify the calculations of the company's fee in lieu of taxes payment and the calculations of any special source revenue credit granted to the company.

Effective Date: June 7, 2012

SALES AND USE TAXES

House Bill 3720, Section 7 (Act No. 187)

Datacenter - New Exemptions

Code Section 12-36-2120 has been amended to add exemptions for a qualifying datacenter for (1) computers, computer equipment, and computer software used within a datacenter and (2) electricity used by the datacenter or used by eligible business property located and used at the datacenter. The exemption for electricity does not apply to electricity used for any other purpose, including, but not limited to, electricity used in administrative offices, supervisory offices, parking lots, storage warehouses, maintenance shops, safety control, comfort air conditioning, elevators used in carrying personnel, cafeterias, canteens, first aid rooms, supply rooms, water coolers, drink boxes, unit heaters and waste house lights.

In order to qualify for this exemption, the taxpayer must:

1. Invest at least $50 million in real or personal property or both over a 5 year period; or, if more than one taxpayer, invest a minimum aggregate capital investment of at least $75 million in real or personal property or both over a 5 year period;

2. Create and maintain at least 25 full-time jobs at the facility with an average cash compensation level of 150% of the per capita income of South Carolina or of the county in which the facility is located, whichever is lower, according to the most recently published data available at the time the facility is certified by the Department of Commerce; and

3. Maintain the jobs requirement for 3 consecutive years after certification by the Department of Commerce.

In addition, the facility must be certified by the Department of Commerce, and must notify the Department of Revenue and the Department of Commerce, in writing, of its intention to claim the exemption.

For purposes of meeting the investment and jobs requirements, capital investment, job creation, and the 5 year period begin accruing once the taxpayer notifies both the Department of Revenue and the Department of Commerce of its intention to claim the exemption.

A “datacenter” is defined as a new or existing facility at a single location in South Carolina that provides infrastructure for hosting or data processing services and that has power and cooling systems that are created and maintained to be concurrently maintainable and to include redundant capacity components and multiple distribution paths serving the computer equipment at the facility.

“Computer” is defined as an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions. “Computer equipment” is defined as computer hardware and components, (including servers, routers, power units, network devices, hard drives, processors, motherboards, cooling systems, etc.) the primary purpose of which is to store, retrieve, aggregate, search, organize, process, analyze, or transfer data or any combination of these, or to support related computer engineering or computer science research. Computer software is defined as a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

If the taxpayer meets the requirements to receive this exemption, it may claim the exemption on eligible purchases at any time during the period provided in Code Section 12-54-85(F), including the time period prior to the three year job maintenance requirement. The running of the periods of limitations for assessment of taxes provided in Code Section 12-54-85(F) will be suspended for:

1. The time period beginning with notice to both the Department of Revenue and Department of Commerce of the taxpayers intent to claim the exemption and end with notice to the Department of Revenue that the taxpayer has or has not met the definitional requirements of a datacenter during the five year period; and

2. The three year job maintenance requirement.

Any subsequent purchase of qualified computer equipment, hardware and software, or computers will qualify for the exemption regardless of when the taxpayer makes the investments. If a taxpayer receives the exemption for purchases but fails to meet the requirements at the end of the five-year period, the Department of Revenue may assess any state or local sales or use tax due on the items purchased. If the taxpayer meets the requirements, but subsequently fails to maintain the number of full-time jobs with the required compensation level at the facility, the taxpayer is:

1. Not allowed the exemption for computers, including computer equipment, hardware, and software purchases used by a datacenter until the taxpayer meets the qualifying jobs requirements; and

2. Allowed the exemption for electricity used by a datacenter and eligible business property to be located and used at the datacenter, but the exemption only applies to a percentage of the sale price, calculated by dividing the number of qualifying jobs by 25.

Certification and Repeal Date: This exemption only applies to a datacenter that is certified by the Department of Commerce prior to January 1, 2032. However, for datacenters certified by December 31, 2031, this exemption will remain in effect for an additional ten year period. Upon the end of the ten year period, this exemption is repealed.

Effective Date: June 7, 2012

House Bill 3747 (Act No. 235)

Certain Injectable Medications and Injectable Biologics - New Exemption

Code Section 12-36-2120 has been amended to add an exemption for injectable medications and injectable biologics, so long as the medication or biologic is administered by or pursuant to the supervision of a physician in an office which is under the supervision of a physician, or in a Center for Medicare or Medicaid Services certified kidney dialysis facility.

For purposes of this exemption, "biologics" means the products that are applicable to the prevention, treatment, or cure of a disease or condition of human beings and that are produced using living organisms, materials derived from living organisms, or cellular, subcellular, or molecular components of living organisms.

This exemption will be phased-in based on the annual general fund growth as determined by the Board of Economic Advisors ("BEA"). The BEA will certify the results in writing to the Department. If, beginning with the February 15, 2013 forecast, the BEA forecasts an annual general fund revenue growth of at least 2%, then the exemption will be phased-in as follows:

- Phase-in 1: For sales made on or after July 1st of the first State fiscal year (July 1 through June 30) following a February 15th forecast meeting the 2% growth requirement, 50% of the gross proceeds of sales are exempt.

- Phase-in 2: For sales made on or after July 1st of the next State fiscal year (July 1 through June 30) following the next February 15th forecast meeting the 2% growth requirement, 100% of the gross proceeds of sales are exempt.

Effective Date: For sales beginning July 1 following the February 15 forecast meeting the 2% growth requirement.

REMINDER

The following provision was enacted in 2011, but is effective in 2012 and 2013. It is summarized below for informational purposes.

Senate Bill 36, Section 1 (Act No. 32)

Durable Medical Equipment - Phase Out of Sales and Use Tax

Act No. 32 of 2011 provided for a phased-out sales and use tax rate on the sale of durable medical equipment and related supplies meeting certain conditions. The rate imposed on the gross proceeds of sales for durable medical equipment and related supplies are as follows:

- For sales occurring from July 1, 2011 to June 30, 2012. The sales and use tax rate is 3.5% (plus any applicable local sales and use tax).

- For sales occurring from July 1, 2012 to December 31, 2012. The sales and use tax rate is 1.75% (plus any applicable local sales and use tax).

- For sales occurring on or after January 1, 2013. There is no state or local sales and use tax.

Code Section 12-36-2120(74) exempts from sales and use tax durable medical equipment and related supplies as defined under federal and state Medicaid and Medicare laws that meet the following conditions:

1. The purchase must be paid directly by funds of South Carolina or the United States under the Medicaid or Medicare programs

2. State or federal law or regulation authorizing the payment must prohibit the payment of the sales or use tax and

3. The durable medical equipment and related supplies must be sold by a provider who holds a South Carolina retail sales license and whose principal place of business is located in South Carolina.

Effective Date: June 8, 2011

MISCELLANEOUS
(Summarized by Subject Matter)

ADMINISTRATIVE and PROCEDURAL MATTERS

House Bill 3506, Section 2 (Act No. 233)

Discount for Certain Timely Filed Returns - Amended

Code Section 12-54-87, concerning discounts for timely filed returns, has been added. This section provides that for purposes of discounts allowed for timely filing of returns, if the Department waives all penalties for late filing due to reasonable cause, the discount must be allowed. Examples of returns that provide for a discount include the sales and use tax return filed by retailers, the cigarette and tobacco tax return, and the beer tax return.

Effective Date: June 18, 2012

House Bill 3221 (Act No. 135)

Department Electronic Filing of Documents Relating to Enforced Tax Collections

Code Section 12-53-45 has been added to provide that when filing documents relating to the enforced collection of taxes due South Carolina with county clerks of court and register of deeds, the Department shall electronically file those documents if the clerk of court or register of deeds accepts electronic filings.

Effective Date: July 1, 2012

MISCELLANEOUS TAX LEGISLATION

House Bill 3676 (Act No. 256)

Community Land Trusts – Deed Recording Fee

South Carolina has enacted the "South Carolina Community Land Trust Act of 2012" (Act), Chapter 23, Title 31, providing for the development and use of community land trusts in South Carolina. Under the Act, the CLT's primary purpose must be to hold legal and equitable title to land and the leasing of land for the purpose of preserving the long-term affordability of housing created for predominately low and moderate income households. Generally, this is accomplished by the CLT retaining title to the underlying land and then renting the land through a ground lease to qualifying persons. Under the Act, property purchased, sold, or repurchased and resold by a CLT, including properties held in a CLT, must be assessed the deed recording fee only once per transfer at the time of the resale to the homebuyer. Code Section 31-23-40(G).

Effective Date: June 18, 2012

OTHER ITEMS (Including Local Taxes)

Senate Bill 1167, Section 4 (Act No. 267)

Local Capital Projects Sales and Use Tax - Amended

Code Section 4-10-310, concerning the local capital projects sales and use tax that may be imposed by a county to fund highways, courthouses, hospitals and other listed capital projects, has been amended. This section provides that a county area may not be subject to more than a one percent sales tax levied pursuant to the capital projects sales and use tax, the transportation sales and use tax under Chapter 37, Title 4 or any local law enacted by the General Assembly. This section has been amended to eliminate the one percent limitation for a county area in which as of July 1, 2012, a local sales and use tax was imposed pursuant to a local act of the General Assembly, the revenues of which are used to offset the costs of school construction or other school purposes, or other government expenses, or for any combination of these uses.

Effective Date: June 20, 2012

Senate Bill 1167, Sections 1 through 3 (Act No. 267)

Tax Increment Financing for Redevelopment Projects in Municipalities

Tax increment financing allows tax revenues attributable to increases in the value of the property in a "redevelopment project area," which is designated by a municipality, to be used to finance redevelopment projects that will improve the redevelopment project area. The following changes have been made to the municipal tax increment financing laws in Chapter 6 of Title 31:

1. Code Section 31-6-85 has been added to allow a taxing district and a municipality to enter into an intergovernmental agreement that allows the taxing district to participate in a redevelopment project on a partial or modified basis.

2. Code Section 31-6-80(E) has been amended to provide that prior to the issuance of an ordinance approving a redevelopment plan for a redevelopment project area, changes may be made to the redevelopment plan so long as those changes do not include adding parcels to the redevelopment project area or changing the proposed use of the proceeds of, or extending the term of, the obligations issued under the redevelopment plan. The statute continues to provide that no change may be made to the redevelopment plan that expands the exterior boundaries of the redevelopment area or changes the general land use established in the redevelopment plan. Certain procedures must continue to be followed by the municipality, if it decides to make such changes.

3. Code Section 31-6-80(F) has been amended to provide that if a municipality decides to make changes to the redevelopment plan, other than those specifically prohibited in Code Section 61-6-80(E) subsequent to the adoption of an ordinance approving a redevelopment plan, it must do so in accordance with the following procedures:

a. The municipality must provide notice of the proposed changes by mail to each affected taxing district. A taxing district will only be bound by the changes if it consents to the changes by resolution of the governing body of the taxing district.

b. The municipality must publish notice of the adoption of the ordinance in a newspaper of general circulation in the taxing districts. Any interested party may, within 20 days after the date of publication of the notice of adoption of the redevelopment plan, challenge the validity of the adoption in the court of common pleas in the county in which the redevelopment plan is located.

4. Subsequent to the adoption of an ordinance approving the redevelopment plan, if a municipality decides to include additional parcels in the redevelopment project area, expand exterior boundaries or change the general land use, or extend the maximum term of the obligations or the proposed use of the proceeds of such obligations, they must do so in accordance with the procedures provided for the initial approval of a redevelopment project and designation of a redevelopment project area.

Effective Date: June 20, 2012

House Bill 3508, Sections 1, 6, and 7 (Act No. 284)

Government and Nongovernment-Owned Communication Service Providers

Article 23, Chapter 9, Title 58, previously titled "Government-Owned Telecommunications Service Providers," has been amended and retitled "Government-Owned Communications Service Providers." Under the amendments, government-owned communications service providers, as defined by Code Section 58-9-2610(A)(1), now includes broadband services as well as telecommunication services.

Code Section 58-9-2620 now provides that a government-owned communications service provider must not receive a financial benefit that is not available to a nongovernment-owned communications service provider on the same terms and conditions as it is available to a government-owned communications service provider.

Additionally, Code Section 58-9-2630 now provides that a government-owned communications service provider shall pay or collect taxes annually in a manner equivalent to taxes paid by a nongovernment communications service provider through payment of the following:

1. all state taxes, including corporate income taxes and utility license taxes;

2. all local taxes, including local business license taxes, together with any franchise fees and other local taxes and fees; and

3. all property taxes on otherwise exempt real and personal property that are directly used in the provision of a communications service.

For tax purposes, a government-owned communications service provider shall compute, collect, and remit taxes in the same manner as a nongovernment-owned communications service provider and must be entitled to the same deductions. Additionally, a government-owned provider shall annually remit to the general fund of its owning government entity an amount equal to all taxes or fees a private sector communications service provider must pay. Furthermore, the taxpayer confidentiality provisions contained in Title 12 do not apply to the filing of a government-owned communications service provider. However, the Department of Revenue shall require an annual report of all communications service providers. The report must require a communications company licensed in this State to report the total gross of retail communications to which the business license tax is applicable. This information must be available to any entity authorized to collect a tax on retail communications or its agent. Information provided to an entity or agent authorized to collect a tax must not be disclosed or provided to another person. This information may only be used by an entity or agent of an entity authorized to collect a tax for purposes of determining the accuracy of tax returns, filings, and payment of taxes.

Effective: June 29, 2012

REGULATORY LEGISLATION

House Bill 5098 (Act No. 266)

Local Option Permits - Municipal Referendum Procedure

Code Section 61-6-2010, which authorizes Sunday sales of beer, wine and liquor under temporary permits, known as local option permits, in counties and municipalities that approve Sunday sales by referendum, has been amended. Subsection (H) was added to define "general election" and clarify the procedure for a municipal Sunday sales referendum.

General Elections. For purposes of a referendum under Code Section 61-6-2010, "general election" means either (i) a county election held on the first Tuesday following the first Monday in November of even-numbered years or (ii) a municipal election held at a time other than the first Tuesday following the first Monday in November of even-numbered years.

Municipal Referendum Procedure. A municipality may call, by ordinance, for a referendum to be held on the same date as the county general election if:

1. The municipality does not have a municipal general election scheduled on another day within the same calendar year; and

2. A copy of the ordinance has been filed with the county and municipal election commissions no later than deadline set forth in Code Section 7-13-355 for submission of questions to be placed on a referendum.

The municipality must pay the expenses for its referendum. A municipal referendum held on the same date as the county general election may be conducted by a municipal election commission or a county election commission as agreed between the municipality and the county.

Effective Date: June 18, 2012

House Bill 3630, Section 1 (Act No. 121)

Sales by Wineries Located in South Carolina - Revised

Code Section 61-4-720, which concern sales of wine by a licensed winery located in South Carolina, has been amended. If wine is produced on the winery premises with an alcoholic content not exceeding 16%, the in-state winery is authorized to engage in (a) on-premises sales and (b) delivery or shipment of this wine to consumer homes in or outside the State. A previous requirement that eligible wine be produced with a majority of the juice from fruit and berries grown in South Carolina has been eliminated. A provision allowing the winery to provide wine taste samples is unchanged.

Effective Date: February 22, 2012

House Bill 3630, Section 2 (Act No. 121)

Sales by Permitted Wineries - Revised

Code Section 61-4-730, which authorizes permitted wineries to sell wine at retail, wholesale, or both, has been amended to clarify the eligibility requirements for this activity.

1. If permitted wineries produce and sell wine produced on their premises with at least 60% of the juice from fruit and berries that are grown in South Carolina, the wine may be sold at wholesale as well as retail. The wine may be delivered or shipped to licensed retailers in South Carolina, as well as to consumer homes in or outside the State. Wine must be delivered between 7:00 a.m. and 7:00 p.m.

2. If permitted wineries produce and sell wine produced on their premises with less than 60% of the juice from fruit and berries that are grown in South Carolina, the wineries are not wholesalers of the wine. These wineries must use a licensed South Carolina wholesaler to deliver or ship the wine to licensed retailers in this State. However, these wineries may retail from the winery and ship the wine directly to consumer homes in and outside the State.

3. The procedure for verification of the percentage of juice from fruit and berries grown in South Carolina used in the manufacturing of the wineries' products is as follows. The South Carolina Department of Agriculture will periodically inspect the records of permitted wineries and report its findings to the Department of Revenue within 10 days of the inspection. The owner of a winery found to be in violation of Code Section 61-4-730 is subject to penalties under Code Section 61-4-780, which provides for fines or imprisonment or both upon conviction, mandatory forfeiture of the permit to sell wine, and a 2 year period of ineligibility to engage in a business taxable under Chapter 4 of Title 61.

Effective Date: February 22, 2012

REMINDER

The following provision was enacted in 2011, but is effective in 2012. It is summarized below for informational purposes.

Senate Bill 20, Sections 8 through 14 (Act No. 69)

Unauthorized Aliens and Private Employer Licenses

Chapter 8 of Tile 41, concerning unauthorized aliens and private employment, and Chapter 14 of Title 8, concerning unauthorized aliens and public employment, have been amended. This legislation contains various law enforcement provisions related to unauthorized aliens and requirements for employers to verify the work authorization of all new hires through E-Verify. These provisions are not applicable to the Department and are not discussed in this summary. However, provisions affecting licenses administered by the Department are discussed below.

Under Code Section 41-8-20, all private employers in South Carolina are imputed a South Carolina employment license which permits a private employer to employ a person in the state. A private employer may not employ a person unless the private employer's South Carolina employment license and any other applicable licenses as defined in Code Section 41-8-10 are in effect and are not suspended or revoked.

A "license," as defined in Code Section 41-8-10(C), means an agency permit, certificate, approval, registration, charter, or similar form of authorization that is required by law and that is issued by any agency or political subdivision of the state for the purpose of operating a business in the state. Professional licenses are excluded, but "license" includes employment licenses, articles of organization, articles of incorporation, a certificate of partnership, a partnership registration, a certificate to transact business, or similar forms of authorization issued by the South Carolina Secretary of State, and any transaction privilege tax license.

The imputed employment license and all other licenses meeting the above definition can be suspended or revoked for violation of state law concerning unauthorized aliens and private employment (Chapter 8 of Title 41). This determination is made by the Department of Labor, Licensing and Regulation.

However, under Code Section 41-8-50(J), if the director of the Department of Labor, Licensing and Regulation determines that a private employer's license must be suspended or revoked for violation of state law concerning unauthorized aliens and private employment (Chapter 8 of Title 41), the director must immediately notify the applicable licensing agency or political subdivision, such as the Department of Revenue, and that agency or political subdivision must suspend or revoke the private employer's license or licenses.

Code Section 41-8-50(K) states that a license suspension or revocation (1) does not constitute a dissolution, liquidation, or a winding down process; or a transfer, or other taxable event for tax purposes, including, but not limited to, taxes imposed or authorized by Title 12 and (2) does not affect protections against personal liability provided in Title 33.

Code Section 41-8-60 provides that a private employer may seek review of any disciplinary action of the director of the Department of Labor, Licensing and Regulation taken pursuant to Code Section 41-8-50 with the Administrative Law Court, and the action must be brought in accordance with the provisions of Chapter 23, Title 1.

Effective Date: January 1, 2012

LIST OF TEMPORARY PROVISOS

Temporary provisos are enacted as part of the annual budget bill, 2012 House Bill 4813, Part IB (Act No. 288). They are effective only for the current State fiscal year (July 1, 2012 – June 30, 2013). They expire on June 30th, unless reenacted by the General Assembly.

The following is a list of new provisos enacted during this legislative session and a list of provisos that were enacted in prior fiscal years and reenacted during this legislative session. A brief summary of the new provisos can be found in this publication under the applicable subject matter categories. A summary of the reenacted provisos can be found in previous SC Information Letters summarizing legislation.

NEW PROVISO

Income
Proviso 1A.17 - Teacher of the Year Award – Not Subject to South Carolina Income Tax

REENACTED PROVISOS

Income Taxes
Proviso 1A.16 - Teacher Supplies - Reimbursement Amount Not Taxable

Property Taxes
Proviso 1.99 - Index of Taxpaying Ability - Imputed Value for Owner-Occupied Residential Property
Proviso 89.44 - Personal Property Tax Relief Fund Not Funded

Sales and Use Taxes
Proviso 89.69 - Viscosupplementation Therapies - Sales and Use Tax Suspended
Proviso 89.65 - Respiratory Syncytial Virus Medicines Exemption - Effective Date
Proviso 89.43 - Private Schools - Use Tax Exemption

Miscellaneous (Administrative, Miscellaneous Taxes, Other, and Regulatory)
Administrative:
Proviso 72.13 - 2% Reduction on Interest Rate on Tax Refunds
Proviso 89.102 - Additional 1% Reduction on Interest Rate on Tax Refunds
Proviso 81.6 - Website Posting of Tax Return Information for Candidates and Gubernatorial Appointees – Voluntary Program

Miscellaneous:
Proviso 81.7 - Admissions Tax Exemption for Payment to Nonprofit Athletic Booster Organizations for Right to Purchase Athletic Event Season Tickets
Proviso 1.17 - Local Government School Buses - Motor Fuel Tax Exemption
Proviso 21.13 - Nursing Home Bed Franchise Fees - Suspension
Proviso 90.16 - Admissions Tax Rebate – Motorsports Entertainment Complex Facility