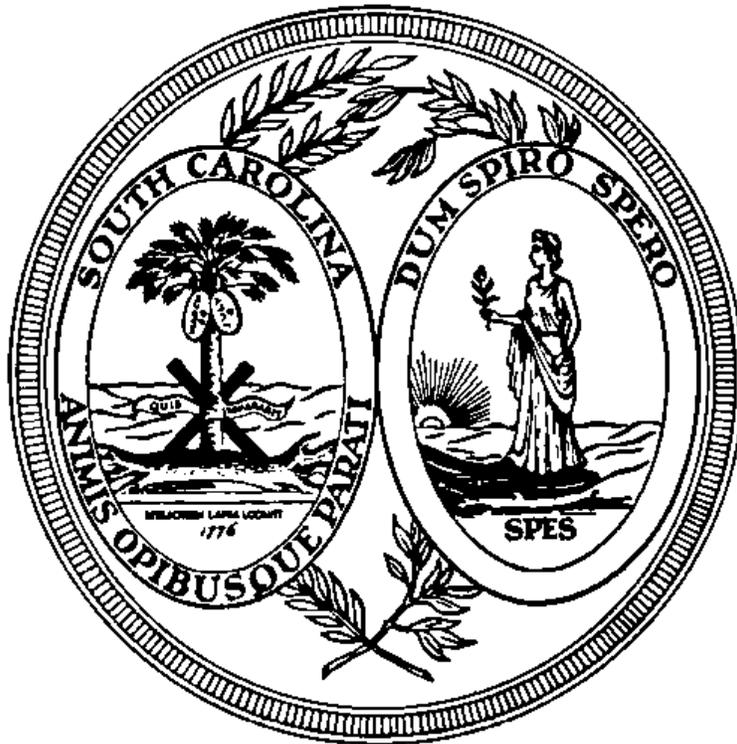


**South Carolina  
Department of Revenue  
Legislative Update  
for 2010**



**The Honorable Mark Sanford, Governor  
Ray N. Stevens, Director**

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**TAX LEGISLATIVE UPDATE  
FOR 2010**

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

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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.

There are several 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. Legislation regarding distribution of funds is not summarized.

**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.net/html-pages/legpage.html>.

## **LIST OF BILLS BY SUBJECT CATEGORY**

A list of significant changes in tax and regulatory laws (both permanent and temporary) and regulations enacted during the 2010 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, 2011.

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/Legislation+for+2010.htm>.

### **INCOME TAXES, WITHHOLDING & CORPORATE LICENSE FEES**

<b>BILL #</b>	<b>ACT #</b>	<b>SUBJECT</b>
728 - Sec. 1 - 4	182	Textile mill revitalization credit - Amended
850 - Sec. 1	274	New contribution check-offs for SC Forestry Commission and SC Department of Natural Resources
915	248	Community Development Act - Termination of Act postponed
1174 - Sec. 1	142	Internal Revenue Code - Conformity
- Sec. 2	142	Haiti relief (charitable deduction) in federal Public Law 111-126 adopted
- Sec. 3	142	Internal Revenue Code - Sections not adopted
- Sec. 4	142	Waiver of estimated tax penalties for large corporations
- Sec. 5	142	2007 Act 110, Section 49 penalty provision for large corporations deleted (See Section 4 above)
- Sec. 6	142	2009 Act 16, Section 3 penalty provision for large corporations deleted (See Section 4 above)
4478 - Sec. 16	290	Job tax credit amendments - New county designations & dollar amounts, qualifying business changes, etc.
- Sec. 17	290	Port volume cargo increase credit - Amended
- Sec. 18	290	Credit against license fee for infrastructure - Amended
- Sec. 19	290	Job development credit - Amended
- Sec. 20 - 21	290	Economic impact zone investment credit replaced; Capital investment tax credit added
- Sec. 22	290	Biodiesel research and development credit - Expanded to include waste grease derived biodiesel
- Sec. 23	290	Manufacturers of renewable energy systems and components - New Credit
- Sec. 24 - 27	290	Renewable energy manufacturing projects - Special benefits
- Sec. 37	290	Repeal of Act 150 of 2010 (See #4514 below)
- Sec. 38	290	Repeal of §12-6-3450 (military base closure) and part of Title 12, Chapter 14 (Economic Impact Zone Credit)
4514 - Sec. 2	150	Tax from new, large S corporation used for grants (Repealed by #4478)
4657 - Proviso 1A.17	291	Teacher supplies reimbursement not taxable - Reenacted temporary proviso
4657 - Proviso 81.8	291	No estimated tax penalty when following IRC §6654(d)(1)(D) <b>New temporary proviso</b>
4663	232	Fire sprinkler credits – Study Committee

**LIST OF BILLS BY SUBJECT CATEGORY (continued)**

**PROPERTY TAXES and FEES IN LIEU OF PROPERTY TAXES**

<b>BILL #</b>	<b>ACT #</b>	<b>SUBJECT</b>
405	279	Boats (exemption, situs, residence, and penalties)
728 - Sec. 1 - 4	182	Textile mill revitalization credit - Amended
728 - Sec. 5	182	Rehabilitated historic/low income property - Special assessment
1024	175	Paraplegic or hemiplegic exemption - Expanded
1131	161	Fee in Lieu - Qualified nuclear plant (Superseded by #4478)
4174 - Sec. 1	275	Assessable transfers of interest in real property
- Sec. 2	275	Fair market value attributable to reassessment - 15% cap clarified
4478 - Sec. 2 - 12	290	Fees in Lieu amendments - Additional time, appraisal of real property, previously taxed property, etc
- Sec. 13	290	Manufacturing property used for warehousing/wholesale distribution - Changes
- Sec. 15B.	290	Industrial Development Project - Definition of project
- Sec. 28	290	Renewable energy manufacturing facility - Depreciation rate
- Sec. 37	290	Repeal of Act 150 of 2010 (See #4514 below)
4514 - Sec. 1	150	Fee in Lieu - Simplified Fee time period expanded (Repealed by #4478)
4657 - Proviso 89.48	291	Personal property tax relief fund - Reenacted temporary proviso
4663	232	Fire sprinkler credits - Study Committee
4839	264	Medal of honor recipients - Exemption revised

**SALES AND USE TAXES**

<b>BILL #</b>	<b>ACT #</b>	<b>SUBJECT</b>
717	280	Research and testing facility - New exemption
4657 - Proviso 89.47	291	Private school use tax - Reenacted temporary proviso
4657 - Proviso 89.72	291	Respiratory syncytial virus medicine - Reenacted temporary proviso
4657 - Proviso 89.77	291	Viscosupplementation therapy - Reenacted temporary proviso
4657 - Proviso 89.107	291	Gun sales tax holiday - Reenacted temporary proviso

**MISCELLANEOUS**

See next page.

**LIST OF BILLS BY SUBJECT CATEGORY (continued)**

**MISCELLANEOUS**

<b>BILL #</b>	<b>ACT #</b>	<b>SUBCATEGORY</b>	<b>SUBJECT</b>
		<b>Administrative and Procedural</b>	
850 - Sec. 2	274		Payment by immediately available funds - penalties
4657 - Proviso 72.17	291		Interest rate paid on refunds - 2% reduction for Guardian Ad Litem - Reenacted temporary proviso
4657 - Proviso 81.6	291		Political candidate tax return inquiry - Reenacted temporary proviso
4657 - Proviso 89.142	291		Interest rate paid on refunds - Additional 1% reduction for the Joint Citizens and Legislative Committee on Children and the Department of Juvenile Justice <b>New temporary proviso</b>
		<b>Miscellaneous Taxes</b>	
3584	170		Cigarette tax increase; Definition of cigarette expanded
4233	228		Beer defined for license tax purposes
4478 - Sec. 14	290		State Rural Infrastructure Fund - Use expanded
4657 - Proviso 1.17	291		Motor fuel exemption for school buses - Reenacted temporary proviso
4657 - Proviso 21.16	291		Nursing home fee suspended - Reenacted temporary proviso
4657 - Proviso 81.7	291		Season tickets admission tax exemption - Reenacted temporary proviso
		<b>Other</b>	
4478 - Sec. 34	290		Redevelopment Authority fees extended for 2 years
4551	135		911 communications system - Monthly charge
		<b>Regulatory</b>	
4516	259		Special permits for nonprofits; technical correction; and repeal of §61-6-510
4572	231		Beer equipment and displays; Beer tastings and sales
4657 - Proviso 81.9	291		Bingo License provision - §12-21-3940(D) suspended (See #4837) <b>New temporary proviso</b>
4837	263		Bingo license provision - §12-21-3940(D) repealed; nonprofit definition
Regulation Doc. 4077	7-202		Premises defined; Reg. 7-401.1 and Reg. 7-700 repealed

# INCOME TAXES, WITHHOLDING, and CORPORATE LICENSE FEES

House Bill 1174, Section 1 (Act No. 142)

## **Internal Revenue Code Conformity**

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, 2009, and includes the effective date provisions contained therein.

Effective Date: March 31, 2010

House Bill 1174, Section 3 (Act No. 142)

## **Internal Revenue Code Sections Not Adopted**

Four new provisions have been added to Code Section 12-6-50 which lists specific Internal Revenue Code sections not adopted by South Carolina. Code Sections 12-6-50(4) and (16) have been amended to specifically not adopt Internal Revenue Code Sections 85(c) and 6654(d)(1)(D). Code Sections 12-6-50(5A) and (5B) have been added to specifically not adopt Internal Revenue Code Sections 108(i) and 163(e)(5)(F).

Internal Revenue Code sections enacted as part of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, but not adopted by South Carolina, provide the following for federal income tax purposes:

1. Internal Revenue Code Section 85(c) excludes \$2,400 of unemployment compensation from gross income for 2009.
2. Internal Revenue Code Section 6654(d)(1)(D) decreases required estimated tax payments for 2009 by allowing quarterly estimated tax payments based on 90%, rather than 100%, of the tax due on the 2008 individual income tax return for qualified individuals. Note: See Proviso 81.8 (Act No. 291) summarized below for penalty waiver information for qualifying individuals who complied with Internal Revenue Code Section 6654(d)(1)(D).
3. Internal Revenue Code Section 108(i) relates to the deferral and ratable inclusion of income arising from business indebtedness discharged by the reacquisition of a debt instrument.

4. Internal Revenue Code Section 163(e)(5)(F) relates to original issue discount on certain high yield obligations.

Effective Date: March 31, 2010

House Bill 4657, Part IB, Section 81, Proviso 81.8 (Act No. 291)

### **Penalty and Interest Waiver for Qualified Individuals for 2009 Estimated Tax Payments**

Under this temporary proviso, the Department will waive interest and penalties for state estimated quarterly individual income tax payments for qualifying individuals who comply with Section 1212 of federal Public Law 111-5, codified as Internal Revenue Code Section 6654(d)(1)(D). An individual is considered a qualified individual for purposes of South Carolina penalty waiver if the individual meets the adjusted gross income requirement and the 50% of gross income from a small business requirement contained in Section 1212, Public Law 111-5 for South Carolina or federal purposes.

Effective Date: This temporary proviso is effective for State fiscal year July 1, 2010 through June 30, 2011. It will expire June 30, 2011, unless reenacted by the General Assembly in the next legislative session.

House Bill 1174, Sections 4, 5, and 6 (Act No. 142)

### **Penalty Waiver for Federal Changes to Corporate Estimated Tax Payments**

1. Code Section 12-6-3910(E) has been added to allow the Department to waive estimated tax penalties for corporations that calculate South Carolina estimated tax payments based on a federal law that: (a) increases estimated payments in one period and decreases estimated payments in another period or (b) changes the dates of estimated tax payments are due for not more than one month.
2. In related amendments, Section 49 of Act 110 of 2007 and Section 3 of Act 16 of 2009 are repealed. These sections provided for South Carolina estimated tax penalty waivers associated with changes in federal estimated tax penalties for large corporations. The federal laws were repealed before the changes were to take effect.

Effective Date: March 31, 2010

House Bill 850, Section 1 (Act No. 274)

**Forestry Commission and Department of Natural Resources – New Check-offs**

Code Section 12-6-5060, providing for various income tax check offs on South Carolina's individual income tax form, has been amended to provide for a designation for a taxpayer to make a contribution to the South Carolina Forestry Commission for use in the state forest system and the South Carolina Department of Natural Resources for use in its programs and operations.

Effective Date: June 17, 2010

House Bill 1174, Section 2 (Act No. 142)

**Charitable Deduction for Haiti Relief Adopted**

South Carolina has adopted federal Public Law 111-126 which allows taxpayers the option to deduct qualifying charitable contributions in 2009 rather than 2010 for aid to victims of the January 12, 2010, Haiti earthquake. To qualify for the 2009 deduction, the contributions must be in cash, must otherwise qualify for the deduction, and must be made between January 11, 2010 and March 1, 2010.

Effective Date: March 31, 2010

House Bill 4478, Section 23 (Act No. 290)

**Manufacturers of Renewable Energy Systems and Components - New Credit**

Code Section 12-6-3588 has been added to provide an income tax credit to companies in the solar, wind, geothermal, and other renewable energy industries who are expanding or locating in South Carolina. To qualify, a company must: (1) manufacture renewable energy systems and components in South Carolina for solar, wind, geothermal, or other renewable energy uses; (2) invest at least \$500 million in new qualifying plant and equipment in the year the tax credit is claimed; and (3) create one and one-half full time jobs for every \$500,000 of qualifying capital investment that each pays at least 125% of the State's average annual median wage as defined by the Department of Commerce. A taxpayer may separately qualify for new facilities in separate locations or for separate expansions at existing facilities in South Carolina.

Expenditures qualifying for this credit must be certified by the State Energy Office. To obtain the amount of credit available to a taxpayer, each taxpayer must submit a request for the credit to the State Energy Office by January 31<sup>st</sup> for qualifying expenditures incurred in the previous calendar year. By March 1<sup>st</sup>, the State Energy Office must notify

the taxpayer of the qualifying expenditures and the allocated credit amount. The credit is claimed for the tax year which contains December 31<sup>st</sup> of the previous calendar year.

The credit is equal to 10% of the cost of the company's total qualifying investment in plant and equipment in South Carolina for renewable energy operations. A taxpayer's total credit for all expenditures allowed must not exceed \$500,000 for any year and \$5 million total for all years. Unused credits can be carried forward 15 years after the tax year in which a qualified expenditure was made. This credit is in lieu of any other applicable income tax credits or abatements allowed by state law. In the event of an overlap or conflict in available credits or abatements, the taxpayer may select the credit or abatement desired in the manner prescribed by the Department.

Note Expiration: "The income tax credit program is for a five-year period beginning January 1, 2010, and ending December 31, 2015."

Effective Date: January 1, 2011

House Bill 4478, Sections 20, 21, and 38 (Act No. 290)

**Capital Investment Tax Credit - Replacing Economic Impact Zone Investment Tax Credit. Repeal of Certain Code Sections in Economic Impact Zone Act in Chapter 14 of Title 12 and Repeal of Credit for Hiring Displaced Workers in Code Section 12-6-3450**

Chapter 14 of Title 12 contains the Economic Impact Zone Community Development Act of 1995. Chapter 14 has been substantially amended. Among the changes are the following:

1. Code Section 12-14-20, containing the purpose of the Economic Impact Zone Community Development Act of 1995, is amended to provide that the purpose of Chapter 14 is to establish a program of providing tax incentives for the creation of capital investment in order to revitalize capital investment in South Carolina, primarily by encouraging the formation of new businesses and the retention and expansion of existing businesses; and to promote meaningful employment. Previously, the Act's purpose was to provide for the establishment of economic impact zones on or in the vicinity of closed or realigned military installations in which various tax incentives may apply to businesses and individuals located in the economic impact zone in order to economically revitalize the area.
2. Code Section 12-14-60, providing for the economic impact zone investment tax credit, has been amended to delete all references to "economic impact zone" and to provide for a capital investment tax credit as follows:

0.5% of total aggregate bases of all qualifying 3 year manufacturing and productive equipment property;

1.0% of total aggregate bases of all qualifying 5 year manufacturing and productive equipment property;

1.5% of total aggregate bases of all qualifying 7 year manufacturing and productive equipment property;

2.0% of total aggregate bases of all qualifying 10 year manufacturing and productive equipment property; and

2.5% of total aggregate bases of all qualifying 15 year or greater manufacturing and productive equipment property.

The definition of qualified manufacturing and productive equipment property in Code Section 12-14-60(B) was amended to replace references to “economic impact zone” with “this State.”

3. To repeal the following code sections in Chapter 14 of Title 12:
  - a. Code Section 12-14-30. This section contained definitions of the terms “economic impact zone,” “applicable federal military installation,” “applicable federal facility,” and “internal revenue code.”
  - b. Code Section 12-14-40. This section provided for the designation and revocation of an area as an economic impact zone.
  - c. Code Section 12-14-50. This section provided for an individual income tax deduction for 20% of the purchase price of economic impact zone stock.
  - d. Code Section 12-14-70. This section contained definitions of the terms “economic impact zone business,” “qualified business,” and “nonqualified financial property” relating to the individual income tax deduction.

In a related amendment, Code Section 12-6-3450, providing a tax credit to employers who hire persons who were employed in an economic impact region and whose job was terminated as a result of the closing or realignment of an applicable federal military installation or applicable federal facility, has been repealed.

Effective Date: January 1, 2011, except the repeal of Code Sections 12-14-30, 12-14-40, 12-14-50, 12-14-70, and 12-6-3450 are effective June 23, 2010.

**Job Tax Credit – Amended**

Code Section 12-6-3360, dealing with the job tax credit, has been amended by this Act. Among the changes are the following:

1. The county rankings have been changed from five designations to four designations. Counties will now be ranked as “Tier I,” “Tier II,” “Tier III,” and “Tier IV” counties. “Tier I” counties are the 12 counties with a combination of the lowest unemployment rate and highest per capita income. “Tier IV” counties are the 11 counties with a combination of the highest unemployment rate and lowest per capita income. Previously, counties were ranked as “developed,” “moderately developed,” “underdeveloped,” “least developed,” and “distressed” counties. Code Section 12-6-3360(B).

2. The dollar amount of the basic job tax credit for each new job created based on the new county designations of Tier I, II, III, and IV are:

\$1,500 per year for each new full time job created in a Tier I county,

\$2,750 per year for each new full time job created in a Tier II county,

\$4,250 per year for each new full time job created in a Tier III county, and

\$8,000 per year for each new full time job created in a Tier IV county.

Note: The credit is one-half of the dollar amount listed above for a taxpayer with 99 or fewer employees claiming the small business job tax credit under Section 12-6-3360(C)(2) for jobs with gross wages less than 120% of the county’s or state’s average per capita income.

Previously, the annual basic credit amount for each new, full time job was \$1,500 in a developed county, \$2,500 in a moderately developed county, \$3,500 in an underdeveloped county, \$4,500 in a least developed county, and \$8,000 in a distressed county. Code Section 12-6-3360(C).

3. Several types of businesses qualifying for the credit have been added or changed as follows:

a. A taxpayer that operates an “agribusiness operation” can now qualify for the job tax credit. Code Section 12-6-3360(A).

b. A taxpayer that operates a retail facility or service-related industry can qualify for the job tax credit only in a Tier IV county. Previously, a retail facility or service related industry in an underdeveloped county not traversed by an interstate

highway, least developed county, or distressed county could qualify for the job tax credit. Code Section 12-6-3360(A).

- c. The definition of “processing facility” has been expanded to include “meat, poultry, and any other variety of food processing operations.” Processing facility continues to mean an establishment that prepares, treats, or converts tangible personal property into finished goods or another form of tangible personal property. The term includes a business engaged in processing agricultural, aquacultural, or maricultural products and specifically includes meat, poultry, and any other variety of food processing operations. It does not include an establishment in which retail sales of tangible personal property are made to retail customers. Code Section 12-6-3360(M)(6).
4. Special provisions have been deleted that qualify certain areas and counties for an increased credit designation. The restriction that a county’s designation cannot be lowered in credit amount more than one tier in the following calendar year has also been deleted. Previously, rankings were done with equal weight given to unemployment rate and per capita income and then adjusted in accordance with special rules in Section 12-6-3360(B) and (L), as applicable. Code Section 12-6-3360(B) and former Code Section 12-6-3360(L).
5. Section 38 of the Act repealed Code Section 12-6-3450 concerning a tax credit for persons terminated as a result of closing or realignment of federal military installations. Code Section 12-6-3450(A)(1)(b) was referenced in Code Section 12-6-3360(F)(2)(d) and Code Section 12-6-3360(M)(3). The general definition of “new job” in Code Section 12-6-3360(M)(3) continues to provide that “this exclusion of a new job created by an employee shifting does not extend to a job created at a new or expanded facility located in a county in which is located an ‘applicable federal facility’ as defined in Section 12-6-3450(A)(1)(b).”

Effective Date: January 1, 2011, except the repeal of Code Section 12-6-3450 is effective June 23, 2010.

**Port Cargo Volume Increase Credit - Amended**

Code Section 12-6-3375 provides a tax credit to a taxpayer engaged in manufacturing, warehousing, or distribution that uses a South Carolina port facility and that increases its port cargo volume at these facilities by at least 5% in a calendar year over its base year port cargo volume. The amount of the credit is determined by the Coordinating Council for Economic Development (“Council”) upon application by the taxpayer. The changes to the credit include:

1. The credit has been expanded to allow it to be used against employee withholding taxes. The total amount of credit available for all taxpayers continues to be \$8 million a calendar year. Only \$4 million of the \$8 million may be used against withholding. Previously, the credit could only be used against income taxes.
2. The time for the taxpayer to submit an application to the Council for certification of the credit amount has changed. The taxpayer may now submit the application after the calendar year in which the increase occurs. Prior to amendment, a taxpayer had to submit the application by March 1<sup>st</sup> of the calendar year following the year of the increase.
3. The Council continues to have the sole discretion in allocating the credit and may now make allocations on a monthly, quarterly, or yearly basis. Previously, credits were allocated on a yearly basis.
4. The provisions in subitems (A)(2) and (B)(2) that provided that a taxpayer could not receive more than \$1 million in credit a year unless the total \$8 million credit had not been allocated have been deleted.
5. The Council may annually award up to \$1 million in credit to a new warehouse or distribution facility which commits to spending at least \$40 million at a single site and creating 100 new full-time jobs, without regard to base year cargo requirements. The Council can award the credit in the year the facility is announced, but cannot tender the credit certificate until the taxpayer has provided proof that the capital investment and job requirements have been, or will be, satisfied. Any credit certificate expires 3 years after issuance if satisfactory proof has not been received.

Effective Date: January 1, 2011

**Textile Mill Revitalization Credit - Amended**

The South Carolina Textile Communities Revitalization Act, contained in Title 12, Chapter 65, provides a credit for the rehabilitation of abandoned textile mill sites in South Carolina. Code Section 12-65-30 allows a taxpayer who rehabilitates an abandoned textile mill site to choose one of the following credits: (1) a credit against income tax, corporate license fees, or both or a credit against bank taxes or (2) a credit against real property taxes.

General amendments applicable to the Textile Communities Revitalization Act include:

1. Code Section 12-65-20(3) has been amended to provide that a “textile mill” is a facility or facilities that were “initially” used for textile manufacturing, dying, or finishing operations and for ancillary uses to those operations. The amendment replaced the word “last” with “initially.”
2. Code Section 12-65-30(D) has been amended to add that a taxpayer is not eligible for the credit if the facility has previously received textile mill credits. The statute continues to provide that a taxpayer who owned the textile mill site when it was operational and immediately prior to its abandonment is not eligible for the credit.
3. Code Section 12-65-60 has been added to provide a procedure which allows the taxpayer to apply to the county or municipality in which the textile mill site is located for certification of the site. The certification can be done by either ordinance or binding resolution of the applicable governing body. The certification must include findings that the site was a textile mill as defined in Code Section 12-65-20(3); that the site is abandoned as provided in Code Section 12-65-20(1); and that the geographic site is consistent with Code Section 12-65-20(4), which provides a definition of textile mill site. The taxpayer may conclusively rely upon the certification in determining the credit allowed. If the taxpayer relies on the certification, a copy must be included with the first return on which the credit is claimed.
4. Code Section 12-65-50 has been added to provide rules to determine the statutory provisions applicable to a taxpayer.
  - a. The provisions of Title 12, Chapter 65 apply to all textile mill sites, or portions thereof, placed in service on or after January 1, 2008.
  - b. Entire textile mill sites placed in service on or before December 31, 2007, are governed by the former provisions of Chapter 32, Title 6 (*i.e.*, the former statutory provisions containing the textile revitalization credit) in effect as of December 31, 2007.

- c. If a portion of the textile mill site was placed in service on or before December 31, 2007, but not all, then the taxpayer may elect to either: (i) have the portion that was placed in service on or before December 31, 2007, governed by the former provisions of Chapter 32, Title 6, in effect as of December 31, 2007, as if the portion were an entire textile mill site; or (ii) have the portion be governed by the provisions of Title 12, Chapter 65 such that the portion must be deemed to be a phase of the site placed in service on a date subsequent to December 31, 2007, identified by the taxpayer.

Additional amendments that pertain only to the “income tax/corporate license fee/bank tax” portion of this credit include:

1. Code Section 12-65-30(C)(2) has been amended to revise the rules regarding the “Notice of Intent to Rehabilitate” indicating a taxpayer’s intent to rehabilitate a textile mill site and an estimate of expenses it will incur in the site rehabilitation. As amended, only a taxpayer that has acquired the textile mill site after December 31, 2007, is required to give a Notice. Transfers between affiliated taxpayers of phases of any textile mill site are not deemed an acquisition for this purpose.

A taxpayer files the Notice with the Department before receiving the building permits for the applicable rehabilitation at the site or phase. If the Notice is not filed prior to receiving the applicable building permits, then only rehabilitation expenses incurred after the Notice is provided qualify. If the actual expenses of the rehabilitation exceed 125% of the estimated expenses set forth in the Notice, the taxpayer qualifies for the credit based on 125% of the estimated expenses as opposed to the actual expenses incurred in rehabilitating the site.

2. Code Section 12-65-30(A)(2) has been expanded to allow the credit to be used against insurance premium taxes imposed by Chapter 7, Title 38. Previously, this part of the credit was allowed against taxes under Chapters 6 (income taxes) and 11 (bank taxes), Title 12; license taxes under Chapter 20, Title 12, or both.
3. Code Section 12-65-30(C)(5) has been amended to provide that a taxpayer’s credit is limited to 50% of each of the following: (a) tax liability under either Chapter 6 or Chapter 11 of Title 12; (b) corporate license fee liability under Chapter 20, Title 12; or (c) insurance premium taxes under Chapter 7, Title 38.
4. Code Section 12-65-30(C)(7), providing for the allocation of the credit by a taxpayer that is partnership or a limited liability company taxed as a partnership among any of its partners or members, has been amended to further provide that such taxpayer may allocate the credit on an annual basis, including allocating the entire credit to any partner or member who was a partner or member at any time during the year in which the credit is allocated.

Effective Date: May 28, 2010

House Bill 4478, Section 22 (Act No. 290)

**Alternative Fuels Research and Development Credit - Extended to Waste Grease Derived Biodiesel**

Code Section 12-6-3631, providing an income tax credit for qualified expenditures a taxpayer incurs for research and development of certain alternative energy sources, has been amended to include certain expenditures to develop feedstocks and processes for waste grease derived biodiesel in the definition of “qualified expenditures for research and development.” The amendment also provides that the credit for research and development for waste grease derived biodiesel is 10% of the qualified expenditures.

Effective Date: January 1, 2011

Senate Bill 915 (Act No. 248)

**Community Economic Development Act – Termination of Act Postponed**

The Community Economic Development Act enacted in 2000, authorizes grants to community development corporations and community development financial institutions as provided in Title 34, Chapter 43. It also provides tax credits to investors in such entities pursuant to Code Section 12-6-3530. The amendment postpones the termination of the Act from June 30, 2010 to June 30, 2015.

Effective Date: June 14, 2010

House Bill 4663, Section 1 (Act No. 232)

**Fire Sprinkler System Tax Credit - Committee Appointed to Study Credit Use**

Code Section 12-6-3622, dealing with the fire sprinkler system tax credit, has been amended to add subsection (e) which requires the General Assembly to appoint a study committee composed of three members appointed by the President Pro Tempore of the Senate and three members appointed by the Speaker of the House of Representatives, including one representative from each of the following organizations: the South Carolina Fire Sprinkler Association, the South Carolina Home Builders Association, the South Carolina Association of Counties, and the Municipal Association of South Carolina. The study committee will develop strategies to increase participation in the tax credit program by local taxing entities and to review and make recommendations for increasing the installation of interconnected hard-wired smoke alarms. The committee will report its findings to the General Assembly by January 20, 2011. At that time the committee will dissolve.

Effective Date: June 7, 2010

House Bill 4478, Section 19 (Act No. 290)

**Job Development Credit Amended**

Code Section 12-10-80 provides a credit against employee withholding taxes to new or expanding businesses making qualifying investments and creating a minimum number of new jobs in South Carolina and entering into a revitalization agreement with the Coordinating Council for Economic Development (“Council”). Code Section 12-10-80 has been amended as follows:

1. A provision has been added to provide that a company’s job development credits are suspended during any quarter the company fails to maintain 100% of the minimum job requirement set forth in the revitalization agreement. A company can only claim credits on jobs, including a range of jobs approved by the Council, as set forth in the company’s final revitalization agreement. This codifies an existing guideline of the Council. Code Section 12-10-80(A)(6).
2. A provision has been added to clarify that credits may be claimed beginning with the withholding quarter after the Council’s approval of the company’s documentation that the minimum job and capital investment requirements have been met. This codifies an existing guideline of the Council. Code Section 12-10-80(A)(7).
3. Subsection (C)(3), which provides for the eligible expenditures that can be reimbursed from job development credits has been amended: (a) to clarify that real property acquired by capital or operating lease with at least a 5 year term, may qualify as an eligible expenditures if approved by the Council and (b) to provide only employee relocation expenses for those employees to whom the company is paying gross wages of at least twice the lower of the per capita income of the state or the county in which the project is located, qualify as eligible expenditures.

Effective Date: January 1, 2011

House Bill 4478, Section 18 (Act No. 290)

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

Code Section 12-20-105, which provides a credit for amounts paid in cash for qualifying infrastructure for an eligible project against the license fee imposed on utilities and electric cooperatives in Code Section 12-20-100, has been amended as follows:

1. Subsection (B)(2), which formerly allowed an office, business, commercial, or industrial park or combination of these parks to be considered an eligible project for purposes of the credit, has been amended to allow a project located in an office, business, commercial, or industrial park or combination of these parks to be

considered an eligible project. The amendment also expands who can own or construct a project to include agencies of the State.

2. Subsection (C)(4) has been amended to allow incubator buildings owned by the county, political subdivision, or agency of the State to qualify as eligible infrastructure.
3. Section (H) was added to provided that by March 1 of each year the Department will issue a report to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Secretary of the Department of Commerce outlining the history of the credit including the amount of credit allowed and the types of infrastructure provided to eligible projects.

Effective Date: January 1, 2011

House Bill 4478, Sections 24 - 27 (Act No. 290)

### **Renewable Energy Manufacturing Facility - New Tax Incentives**

The South Carolina Life Sciences Act in Chapter 15, Title 12, providing certain tax benefits to life science facilities located in South Carolina, has been renamed The South Carolina Life Sciences and Renewable Energy Manufacturing Act, and expanded to apply to a “renewable energy manufacturing facility.”

Code Section 12-15-20(B) has been added to define “renewable energy manufacturing facility.” It is a business which manufactures qualifying machinery and equipment for use by solar and wind turbine energy producers. It also includes a facility manufacturing qualifying advanced lithium ion, or other batteries for alternative energy motor vehicles as described in Code Section 12-6-3377 or for other vehicles certified by the South Carolina Energy Office. The South Carolina Energy Office must qualify a facility as a renewable energy manufacturing facility and the decision is determinative as to whether the facility qualifies for the special tax benefits.

Code Section 12-15-30 provides special tax benefits to a renewable energy manufacturing facility that invests at least \$100 million in the project, as defined in Code Section 12-10-30(8) and creates at least 200 new full time jobs at the project with an average cash compensation level of at least 150% of the annual per capita income (of the state or of the county in which the facility is located, whichever is lower) based on the most recent per capita income data available as of the end of the tax year the jobs are filled. These benefits are:

- a. Job Development Credit Expense Benefit - Employee relocation expenses that qualify for reimbursement under Code Section 12-10-80(C)(3) include such expenses associated with a new or expanded facility.

Note Expiration: This incentive is only available for capital investments and new jobs created after June 30, 2010 and before July 1, 2014.

- b. Job Development Credit Retention Benefit - The Coordinating Council for Economic Development may approve a waiver for the facility to retain 95% of their job development credit under Code Section 12-10-80(D)(2). The “regular” job development credit provisions allow a taxpayer to retain 55% - 100% of job development credit benefits depending on the county in which its facility is located.

Note Expiration: This incentive is only available for capital investments and new jobs created after June 30, 2010 and before July 1, 2014.

Code Section 12-15-40 provides special allocation and apportionment tax benefits to a facility meeting the requirements of subitem (1)(a) of Section 12-15-20. It provides that the Department can enter into an agreement to allow the facility to use a special method of allocation and apportionment of income under Code Section 12-6-2320 for a period of up to 15 years.

Note: See the “Property Tax” Section below for a summary of the amendment in House Bill 4478, Section 28 (Act No. 290) providing for the depreciation rate for a renewable energy manufacturing facility.

Effective Date: June 23, 2010

Senate Bill 4514, Section 2 (Act No. 150) and House Bill 4478, Section 37 (Act No. 290)

### **Income Tax Paid by Shareholders of Large S Corporations Used for Project Funding**

Code Section 12-6-590(C) was added to provide that half of all income taxes paid (up to \$5 million) by shareholders of an S corporation engaged in manufacturing with a new \$500 million capital investment at a single site and 400 new employees is to be placed in a fund and distributed by the Coordinating Council for Economic Development for public infrastructure improvements which directly support the project.

Effective Date: April 27, 2010

Note Repeal: This provision was repealed June 23, 2010 by House Bill 4478, Section 37 (Act No. 290).

## **REMINDER**

**The following provision was enacted in 2006, but is effective for tax years beginning after 2010. It is summarized below for informational purposes.**

Senate Bill 91, Sections 50 through 55 (Act No. 110)

(See also House Bill 3749, Sections 55 through 60 (Act No. 116))

### **Single Factor Apportionment - Related Amendments Effective Upon Final Phase In of Single Sales Factor Apportionment Method**

Effective for tax years beginning after 2006, Act No. 384 of 2006 amended Code Section 12-6-2250 to enact a single factor apportionment factor for businesses dealing in tangible personal property using the 3 factor (with double weighted sales) apportionment method. The single factor apportionment factor is being phased in and will replace the 3 factor (with double weighted sales) apportionment method for tax years beginning in 2011.

The following amendments, effective for tax years beginning after 2010, update cross references from Code Section 12-6-2250 (the 3 factor apportionment method with double weighted sales and phase in provisions of the single sales factor) to Code Section 12-6-2252 (the single sales factor apportionment method) for the following code sections:

1. Code Section 12-6-1130(6) dealing with computation of the depletion deduction;
2. Code Section 12-6-2240 dealing with apportionment of income; and
3. Code Section 12-6-2290 dealing with gross receipts factor.

The following code sections will be repealed once the sales factor is fully phased in effective for tax years beginning after 2010:

1. Code Section 12-6-2250 (the 3 factor apportionment method with double weighted sales and phase in provisions of the single sales factor);
2. Code Section 12-6-2260 (3 factor apportionment method property factor definition); and
3. Code Section 12-6-2270 (3 factor apportionment method payroll factor definition).

Effective Date: Tax years beginning after 2010.

# **PROPERTY TAXES and FEES IN LIEU OF PROPERTY TAXES**

House Bill 4174, Sections 1.A, 1.B, and 1.C (Act No. 275)

## **Assessable Transfers of Interest in Real Property - Revisions to Included Transactions**

The fair market value of real property is generally determined as a result of a periodic countywide reassessment program. Any increase in fair market value resulting from a countywide reassessment program is limited to 15% within a 5 year period. However, valuation may change as a result of an interim appraisal triggered by an assessable transfer of interest (ATI). The 15% cap does not apply to increases in value resulting from an interim appraisal triggered by an ATI.

Code Section 12-37-3150(A) contains a non-exhaustive list of transactions that constitute an ATI and thus trigger a new appraisal (ATI transactions). Some ATI transactions have specific exceptions that do not trigger a new appraisal (ATI exceptions). Certain items of Code Section 12-37-3150(A) have been amended as follows:

Item (3) provides that a conveyance to a trust is an ATI transaction, except if the settlor and/or the settlor's spouse conveys the property to the trust and the settlor and/or the settlor's spouse is the sole present beneficiary. New subitem (b) adds another ATI exception for conveyances by the settlor and/or the settlor's spouse of property subject to the special 4% assessment ratio applicable to primary residences, where there is no present beneficiary other than a child or children of the settlor and/or the settlor's spouse. However, a subsequent conveyance by the beneficiary child or children is not subject to this ATI exception.

Item (6) provides that a conveyance by distribution under a will or by intestate succession is an ATI transaction, except if the distributee is the decedent's spouse. New subitem (b) adds another ATI exception if (1) each distributee is a child of the decedent, (2) the decedent had no surviving spouse, and (3) the property is subject to the special 4% assessment ratio applicable to primary residences. However, a subsequent conveyance by the distributee child or children is not subject to this ATI exception.

Item (8) provides that a transfer of a majority ownership interest (greater than 50%) in a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership or other legal entity, either in a single transaction or a part of a series of related transactions within a 25 year period, is an ATI transaction. This ATI transaction must be reported to the property tax assessor by the legal entity within 45 days of transfer. Item (8) has been amended to clarify that the provision does not apply to transfers that are not subject to federal income tax, as provided in Code Section 12-37-3150(B)(1), including but not limited to transfers of interests to spouses. In addition,

item (8) has been amended to provide that failure to provide notice or accurate information of this ATI transaction subjects the property to a civil penalty of not less than \$100 or more than \$1,000 as determined by the assessor. This penalty is enforceable and collectible as property tax and is in addition to any other applicable penalties. Failure to provide notice is a separate offense for each year after the notice was required.

Effective Date: Applies to real property transfers after 2009. However, no refund is allowed on account of value adjusted by the changes to the provisions of Code Section 12-37-3150.

#### House Bill 4174, Section 1.D (Act No. 275)

#### **Assessable Transfers of Interest in Real Property - Certain Transfers Excluded**

Code Section 12-37-3150(B) contains a list of transactions that do not constitute an assessable transfer of interest (ATI) and thus do not trigger a new appraisal (non-ATI transactions). Code Section 12-37-3150(B) has been amended to add the following non-ATI transactions:

Item (10) - a transfer of an undivided, fractional interest in real estate, if the ownership interest conveyed in a single transaction or series of related transactions within a 25 year period is not more than 50% of the entire fee simple title to the real estate.

Item (11) - transfers between a single member limited liability company that is not taxed separately as a corporation and its single member.

Item (12) - a conveyance, assignment, release, or modification of an easement. This includes, but is not limited to, (a) a conservation easement as defined in Chapter 8, Title 27; (b) a utility easement; or (c) an easement for ingress, egress, or regress.

Item (13) - a transfer or renunciation by deed, release or agreement of a claim of interest in real property for the purpose of quieting and confirming title in the name of one or more of the existing owners or for the purpose of confirming or establishing the location of an uncertain or disputed boundary line.

Item (14) - the execution or recording of a deed to real property for the purpose of creating or terminating a joint tenancy with right of survivorship, provided the grantors and grantees are the same.

Effective Date: Applies to real property transfers after 2009. However, no refund is allowed on account of value adjusted by the changes to the provisions of Code Section 12-37-3150.

House Bill 4174, Section 2 (Act No. 275)

**Fair Market Value of Real Property - 15% Cap Clarified**

Code Section 12-37-3140(B), which provides generally for a limit of 15% on any increase in the value of real property attributable to a periodic countywide appraisal and equalization program, has been amended to clarify that the 15% limit must be calculated on the land and improvements as a whole.

Effective Date: June 16, 2010

House Bill 4478, Section 13 (Act No. 290)

**Manufacturers' Real Property Used for Warehousing and Wholesale Distribution - Changes to Requirements for Alternative Classification**

Code Section 12-43-220(a) concerns the classification of real and personal property owned by or leased to manufacturers and utilities and generally provides for an assessment ratio of 10.5% on property used in the conduct of the business. Item (4) has been amended to provide that real property owned by or leased to a manufacturer and used primarily for warehousing and wholesale distribution is not considered used in the conduct of the manufacturing business. Previously, this exception was available only for property used exclusively for warehousing and wholesale distribution. Real property that falls outside the manufacturers and utilities classification is generally taxed based on a 6% assessment ratio.

The amendment further clarifies that real property subject to this exclusion must not be physically attached to the manufacturing plant unless the warehousing and wholesale distribution area is separated by a permanent wall.

Effective Date: January 1, 2011

House Bill 4478, Section 28 (Act No. 290)

**Renewable Energy Manufacturing Facility Machinery and Equipment - Depreciation Rate**

Code Section 12-37-930 provides a schedule for depreciation of manufacturers' machinery and equipment used in the conduct of the manufacturing business. Schedule item 35, which provides a 20% depreciation rate for machinery and equipment used directly in the manufacturing process by a life sciences facility, has been amended to apply the 20% depreciation rate to machinery and equipment used directly in the manufacturing process by a renewable energy manufacturing facility.

To qualify as a renewable energy manufacturing facility, a business must:  
(1) manufacture either qualifying machinery and equipment for use by solar and wind turbine energy producers or qualifying batteries for alternative energy motor vehicles; (2) invest \$100 million or more in the project, as defined in Code Section 12-10-30(8); and (3) create at least 200 new full-time jobs at the project with an average cash compensation level of at least 150% of the annual per capita income (of the state or of the county in which the facility is located, whichever is lower) based on the most recent per capita income data available as of the end of the tax year in which the jobs are filled.

Note: See the “Income Tax” Section above for a summary of certain tax benefits for a renewable energy manufacturing facility provided in House Bill 4478, Sections 24 - 28 (Act No. 290).

Effective Date: June 23, 2010

House Bill 4839 (Act No. 264)

### **Medal of Honor Recipients - Exemption Clarified**

Code Section 12-37-220(B)(43) provides an exemption for the home and an acre or less of land owned in fee or for life or jointly with a spouse by a resident of this State who is a recipient of the Medal of Honor. This provision has been amended to clarify that it applies regardless of when the Medal of Honor was awarded or the conflict involved.

Effective Date: June 11, 2010

Senate Bill 1024 (Act No. 175)

### **Paraplegic/Hemiplegic Persons - Exemption Expanded**

Code Section 12-37-220(B)(2) allows an exemption for the home and an acre or less of land owned in fee or for life or jointly with a spouse by a paraplegic or hemiplegic person, including certain persons with Parkinson’s Disease, Multiple Sclerosis, or Amyotrophic Lateral Schlerosis (ALS, also known as Lou Gherig’s Disease). This provision has been amended to clarify that the exemption is allowed to the surviving spouse of any qualifying person, provided the spouse does not remarry, resides in the dwelling, and obtains the fee or a life estate in the dwelling.

Effective Date: Applies for property tax years beginning after 2009.

Senate Bill 405, Section 2 (Act No. 279)

**Boats - Local Option for In-State Situs Revised**

Code Section 12-37-714(2) provides that boats and boat motors that are not currently taxed in South Carolina and that are not used exclusively in interstate commerce (*i.e.*, qualifying boats and boat motors) are subject to South Carolina property taxes if present within the State (a) for 60 consecutive days or (b) for 90 days in the aggregate in a property tax year. Alternatively, a county, by ordinance of the local governing body, may subject qualifying boats and boat motors to property tax if present within the State for an alternative period of 180 days in the aggregate.

The provision has been amended to clarify that the number of consecutive days is to be disregarded if the county opts for the 180 day alternative period. The amendment further allows a county, by ordinance of the local governing body, to subject qualifying boats and boat motors to property tax if present within the State for 90 days in the aggregate, regardless of the number of consecutive days.

Effective Date: June 16, 2010

Senate Bill 405, Sections 1 and 3 (Act No. 279)

**Boats Classified as a Primary or Secondary Residence - Revised**

Code Section 12-37-224, allowing certain boats or watercraft to be treated as a primary or secondary residence for property tax purposes, and assessed at a 4% or 6% assessment ratio, respectively, has been amended. The amendments pertaining to the assessment ratio and valuation of these boats and watercraft are as follows:

1. New subsection (B) was added to clarify that a boat or watercraft that qualifies for classification as a primary or secondary residence is one that contains (a) a cooking area with an onboard power source, (b) a sleeping quarter, and (c) a toilet with exterior evacuation. Previously, Code Section 12-37-224 provided for primary or secondary residence status if the boat or watercraft qualified for deduction of the interest expense on a qualified primary or secondary residence pursuant to the Internal Revenue Code.
2. New subsection (B) allows only an individual to claim one qualifying boat or watercraft that he owns as a primary residence (4% assessment ratio). In addition, an individual may claim a second qualifying boat or watercraft that he owns as a secondary residence (6% assessment ratio). Finally, a person other than an individual may claim a qualifying boat or watercraft that the person owns as a secondary residence (6% assessment ratio). A “person” is defined to include an individual, a sole proprietorship, a partnership, an S corporation, and a limited liability company taxed as a sole proprietorship, a partnership, or an S corporation.

An individual claiming a boat as a primary residence must make the same certification required to obtain the 4% assessment ratio for any other legal residence under Code Section 12-43-220(c)(2)(ii).

3. New item (B)(1) of Code Section 12-37-224 provides that the fair market value of qualifying boats and watercraft must be determined in the manner that motor vehicles are valued for property tax purposes (*i.e.*, by reference annually to nationally recognized publications except that the value may not exceed 95% of the previous year's value). The amendment restated but did not change the method of valuation.

In a related amendment, Code Section 12-37-220(B)(38)(b), providing that, by ordinance, a local governing body of a county may exempt from property tax 42.75% of the fair market value of a watercraft and its motor, has been amended to clarify that the exemption does not apply to a boat or watercraft classified for property tax purposes as a primary or secondary residence under Code Section 12-37-224. A corresponding amendment was made to Code Section 12-37-224.

Effective Date: June 16, 2010

Senate Bill 405, Section 4 (Act No. 279)

### **Transfer of Title to Watercraft - Delinquent Property Tax Penalties Revised**

Code Section 50-23-295, which prohibits transfer of title to watercraft or an outboard motor unless the seller certifies that property taxes due for tax years beginning after 1999 have been paid and are current as of the date of sale, has been amended. The civil penalty for falsely signing the certification has been revised and a new criminal penalty has been added.

Civil penalty revised. As amended, subsection (B) provides that a seller who falsely signs the certification that property taxes are current and paid on a watercraft transferred to the buyer, is liable to the buyer for 3 times the amount of damages directly associated with the false certification, as well as applicable costs and reasonable attorney's fees. This provision for damages is in addition to all applicable criminal penalties. Previously, subsection (B) provided that, in addition to all criminal penalties, the penalty for falsely signing the certification was a \$500 fee and suspension of any title issued in the seller's name pending payment of the \$500 fee and all taxes due.

New criminal penalty added. As amended, subsection (B) provides that a person who knowingly sells a watercraft for which he owes unpaid and outstanding property taxes, or on which he knows there is a property tax lien, is guilty of a misdemeanor. A person convicted of this misdemeanor must be fined not more than \$1,000 or imprisoned not more than 30 days.

Effective Date: June 16, 2010

Senate Bill 728, Section 5 (Act No. 182)

**Rehabilitated Historic Property and Low and Moderate Income Rental Property - Special Property Valuation**

Code Section 4-9-195 provides a special method for valuing rehabilitated historic property and low or moderate income rental property for property taxes that result in a special assessment. Under Code Section 4-9-195(E), once a property has received a final certification and is assessed as either rehabilitated historic property or low or moderate income property rental property, it remains certified and is granted the special assessment until a disqualifying event occurs, including a sale or transfer of ownership during the special assessment period other than in the ordinary course of probate proceedings. Notifications of any change affecting ability must be given immediately to the appropriate county and taxing authorities.

Subsection (E) has been amended to provide that the sale or transfer of the property during the special assessment period will no longer disqualify the property from receiving the special assessment. In addition to being applicable to future transactions, this change applies retroactively to any special property assessment granted prior to the effective date of the change notwithstanding any ordinance in effect to the contrary.

Effective Date: May 28, 2010

Senate Bill 728, Sections 1 - 4 (Act No. 182)

**Textile Mill Revitalization Credit - Amended**

The South Carolina Textile Communities Revitalization Act, contained in Title 12, Chapter 65, provides a credit for the rehabilitation of abandoned textile mill sites in South Carolina. Code Section 12-65-30 allows a taxpayer who rehabilitates an abandoned textile mill site to choose one of the following credits: (1) a credit against real property taxes or (2) a credit against income tax, corporate license fees, or both or a credit against bank taxes.

General amendments applicable to the Textile Communities Revitalization Act include:

1. Code Section 12-65-20(3) has been amended to provide that a “textile mill” is a facility or facilities that were “initially” used for textile manufacturing, dying, or finishing operations and for ancillary uses to those operations. The amendment replaced the word “last” with “initially.”
2. Code Section 12-65-30(D) has been amended to add that a taxpayer is not eligible for the credit if the facility has previously received textile mill credits. The statute continues to provide that a taxpayer who owned the textile mill site when it was operational and immediately prior to its abandonment is not eligible for the credit.

3. Code Section 12-65-60 has been added to provide a procedure which allows the taxpayer to apply to the county or municipality in which the textile mill site is located for certification of the site. The certification can be done by either ordinance or binding resolution of the applicable governing body. The certification must include findings that the site was a textile mill as defined in Code Section 12-65-20(3); that the site is abandoned as provided in Code Section 12-65-20(1); and that the geographic site is consistent with Code Section 12-65-20(4), which provides a definition of textile mill site. The taxpayer may conclusively rely upon the certification in determining the credit allowed. If the taxpayer relies on the certification, a copy must be included with the first return on which the credit is claimed.
4. Code Section 12-65-50 has been added to provide rules to determine the statutory provisions applicable to a taxpayer.
  - a. The provisions of Title 12, Chapter 65 apply to all textile mill sites, or portions thereof, placed in service on or after January 1, 2008.
  - b. Entire textile mill sites placed in service on or before December 31, 2007, are governed by the former provisions of Chapter 32, Title 6 (*i.e.*, the former statutory provisions containing the textile revitalization credit) in effect as of December 31, 2007.
  - c. If a portion of the textile mill site was placed in service on or before December 31, 2007, but not all, then the taxpayer may elect to either: (i) have the portion that was placed in service on or before December 31, 2007, governed by the former provisions of Chapter 32, Title 6, in effect as of December 31, 2007, as if the portion were an entire textile mill site; or (ii) have the portion be governed by the provisions of Title 12, Chapter 65 such that the portion must be deemed to be a phase of the site placed in service on a date subsequent to December 31, 2007, identified by the taxpayer.

Note: See the “Income Taxes, Withholding, and Corporate License Fees” Section above for a summary of additional amendments in this Act that pertain only to the “income tax/corporate license fee/bank tax/insurance premium tax” part of this credit.

Effective Date: May 28, 2010

#### House Bill 4663, Section 1 (Act No. 232)

#### **Fire Sprinkler System Tax Credit - Committee Appointed to Study Credit Use**

Code Section 12-6-3622, dealing with the fire sprinkler system tax credit, has been amended to add subsection (e) which requires the General Assembly to appoint a study committee composed of three members appointed by the President Pro Tempore of the

Senate and three members appointed by the Speaker of the House of Representatives, including one representative from each of the following organizations: the South Carolina Fire Sprinkler Association, the South Carolina Home Builders Association, the South Carolina Association of Counties, and the Municipal Association of South Carolina. The study committee will develop strategies to increase participation in the tax credit program by local taxing entities and to review and make recommendations for increasing the installation of interconnected hard-wired smoke alarms. The committee will report its findings to the General Assembly by January 20, 2011. At that time the committee will dissolve.

Effective Date: June 7, 2010

House Bill 4478, Sections 2 - 5 (Act No. 290)

**Little Fee - Revised for Time Limits, Valuation, and Qualifications**

1. Code Section 4-12-30(B)(4)(b) has been amended to provide that if a project consists of a manufacturing, research and development, corporate office, or distribution facility, each sponsor or sponsor affiliate is not required to invest \$2.5 million, if the total investment in the project exceeds \$5 million. Previously, the total investment had to exceed \$10 million.

Effective Date: Agreements executed after January 1, 2011. However, a taxpayer and a county may amend an existing agreement at any time prior to the expiration of the fee to incorporate this change into the agreement.

2. Code Section 4-12-30(C)(4) has been amended to provide that a single piece of property may be subject to the fee for no more than 30 years. Previously, the statute provided that a single piece of property could be subject to the fee for up to 20 years. By resolution on a finding of substantial public benefit, the county may agree to extend this period for another 10 years. Corresponding amendments provide that if a county allows the additional 10 year extension, a single piece of property can be subject to the fee for up to 40 years, and the project itself can be subject to the fee for up to 50 years. For the super fee, a single piece of property can be subject to the fee for up to 40 years (with the extension) and the project itself can be subject to the fee for up to 53 or 55 years depending on the specifics of the project. Previously, the super fee time limits were 30 years and 43 or 45 years, respectively.

Effective Date: Effective for agreements executed after January 1, 2011. However, a taxpayer and a county may amend an existing agreement at any time prior to the expiration of the fee to incorporate this change into the existing agreement.

3. Code Section 4-12-30(D)(2)(a)(i), which provides that real property is generally valued at original cost for the life of the fee, has been amended to provide that a county and a sponsor or sponsor affiliate may agree (initially or by amendment) that the value of real property subject to the fee will be determined by an appraisal completed by the Department. If the county and the sponsor or sponsor affiliate agree to appraisal by the Department, the property will be subject to reappraisal no more than once every 5 years.

Effective Date: Effective in each county in the first property tax year in which a county reassessment program is implemented after December 31, 2010.

4. Code Section 4-12-30(J)(1)(b) has been amended to provide that property that has been subject to South Carolina property taxes is eligible for the fee if it was placed in service in the State pursuant to an inducement agreement or other preliminary county approval before the execution of a lease agreement. Before this amendment, previously taxed property would qualify only if it had not been placed in service.

Effective Date: January 1, 2011

House Bill 4478, Section 6 (Act No. 290)  
(See also Senate Bill 1131 (Act No. 161))

### **Big Fee - Revised for Nuclear Power Plants, Extended Time Periods, Valuation, and Qualification**

1. Code Section 4-29-67(A)(1)(d) has been added to provide a definition of a “qualified nuclear plant facility.” A “qualified nuclear plant facility” is a nuclear electric power generating plant regulated by the Nuclear Regulatory Commission and includes all real and personal property incorporated into or associated with the facility located or to be located within this State with a total minimum level of investment of \$1 billion. Senate Bill 1131 made a substantially similar change to Code Section 4-29-67.

Effective Date: May 12, 2010 (Act No. 161) and June 23, 2010 (Act No. 290)

2. Code Section 4-29-67(B)(4) has been amended to provide that if a project consists of a qualified nuclear plant facility, a sponsor or sponsor affiliate is not required to invest \$45 million each, if the total investment in the project exceeds \$45 million. Senate Bill 1131 made a substantially similar change to Code Section 4-29-67.

Effective Date: May 12, 2010 (Act No. 161) and June 23, 2010 (Act No. 290)

3. Code Section 4-29-67(C)(3) has been amended to provide that a single piece of property may be subject to the fee for no more than 30 years. Previously, the statute provided that a single piece of property could be subject to the fee for up to 20 years. By resolution on a finding of substantial public benefit, the county can agree to

extend this period for another 10 years. Corresponding amendments provide that if a county allows the additional 10 year extension provided for in the statute, a single piece of property can be subject to the fee for up to 40 years, and the project itself can be subject to the fee for up to 50 years. For the super fee, a single piece of property can be subject to the fee for up to 40 years (with the extension) and the project itself can be subject to the fee for up to 53 or 55 years depending on the specifics of the project. Previously, the super fee time limits were 30 years and 43 or 45 years, respectively.

Effective Date: January 1, 2011. However, a county may amend an existing agreement at any time prior to the expiration of the fee to incorporate this change into the agreement.

4. Code Section 4-29-67(D)(2)(a)(iii)(A) which provides that real property is generally valued at original cost for the life of the fee, has been amended to provide that a county and a sponsor or sponsor affiliate may agree (initially or by amendment) that the value of real property subject to the fee will be determined by an appraisal completed by the Department. If the county and the sponsor or sponsor affiliate agree to appraisal by the Department, the property will be subject to reappraisal no more than once every 5 years.

Effective Date: Effective in each county in the first property tax year in which a county reassessment program is implemented after December 31, 2010.

5. Code Section 4-29-67(K)(1)(b) has been amended to provide that property that has been subject to South Carolina property taxes, is eligible for the fee if it was placed in service in the State pursuant to an inducement agreement or other preliminary county approval before the execution of a lease agreement. Before this amendment, previously taxed property would qualify only if it had not been placed in service.

Effective Date: June 23, 2010

6. Code Section 4-29-67(W) now provides a qualified nuclear plant facility additional time to enter into an initial lease agreement with the county and if the project qualifies as a super fee, a taxpayer operating a qualified nuclear plant facility is given additional time to make the minimum investment and complete the project. Senate Bill 1131 made a substantially similar change to Code Section 4-29-67.

Effective Date: May 12, 2010 (Act No. 161) and June 23, 2010 (Act No. 290).

House Bill 4478, Sections 8 - 12 (Act No. 290)  
(See also Senate Bill 1131, Sections 1 - 2 (Act No. 161))

**Simplified Fee - Revised for Nuclear Power Plants, Extended Time Period, Valuation, and Qualification**

1. Code Section 12-44-30(17) has been added to define a “qualified nuclear plant facility.” A “qualified nuclear plant facility” is a nuclear electric power generating plant regulated by the Nuclear Regulatory Commission and includes all real and personal property incorporated into or associated with the facility located or to be located within this State with a total minimum level of investment of \$1 billion. Code Section 12-44-30(2) has been amended to provide that the “commencement date” of a qualified nuclear plant facility is the last day of the first property tax year in which economic development property is placed in service. Code Section 12-44-30(13) has been amended to provide that the “investment period” for a qualified nuclear plant facility is the period beginning with the first day that economic development property is purchased or acquired for the qualified nuclear plant facility and ending 10 years after the commencement date. Code Section 12-44-40(F) has been added extending the statutory time period for a qualified nuclear plant facility to enter into a fee agreement. Senate Bill 1131 made substantially similar amendments to Code Sections 12-44-30 and 12-44-40.

Effective Date: May 12, 2010 (Act No. 161) and June 23, 2010 (Act No. 290).

2. Code Section 12-44-30(19) has been amended to provide that if a project consists of a manufacturing, research and development, corporate office, or distribution facility, each sponsor or sponsor affiliate is not required to invest the \$2.5 minimum investment if the total investment at the project exceeds \$5 million. Previously, the project had to exceed \$10 million to qualify. This item was also amended to include qualified nuclear plant facility as an eligible project for the reduced combined investment. Senate Bill 1131 made a substantially similar change to Code Section 12-44-30 regarding qualified nuclear plant facilities.

Effective Date: May 12, 2010 (Act No. 161) and June 23, 2010 (Act No. 290).

3. Code Section 12-44-30(21) has been amended to provide that the “termination date” is the last day of the property tax year that is the 29<sup>th</sup> year following the first property tax year in which an applicable piece of economic development property is placed in service. By resolution or a finding of substantial public benefit, the county may agree to extend this period for another 10 years. Previously, the termination date was the 19<sup>th</sup> year after the economic development property is placed in service or the 29<sup>th</sup> year

for property subject to an enhanced investment fee, and a single piece of property could be subject to the fee for a total of 30 years.

Effective Date: January 1, 2011. However, a county and a sponsor may amend an existing fee agreement any time before the expiration of the fee to incorporate this change.

4. Section 12-44-50(A)(1)(c)(i) which provides that real property is generally valued at original cost for the life of the fee, has been amended to provide that a county and a sponsor or sponsor affiliate may agree (either initially or by amendment) that real property subject to the fee will be determined by an appraisal completed by the Department. If the county and the sponsor or sponsor affiliate agree to appraisal by the Department, the property will be subject to reappraisal no more than once every 5 years.

Effective Date: Effective in each county in the first property tax year in which a countywide reassessment program is implemented after December 31, 2010.

5. Code Section 12-44-110(2) has been amended to provide that property that has been subject to South Carolina property taxes, is eligible for the fee if it was placed in service in the State pursuant to an inducement agreement or other preliminary county approval before the execution of a lease agreement. Before this amendment, previously taxed property would qualify only if it had not been placed in service.

Effective Date: January 1, 2011

Senate Bill 4514, Section 1 (Act No. 150) and House Bill 4478, Section 37 (Act No. 290)

### **Simplified Fee - “Termination Date” Definition**

Code Section 12-44-30(21), defining “termination date”, has been amended to provide that the termination date is the last day of a property tax year that is the 29<sup>th</sup> year following the first property tax year in which an applicable piece of economic development property is placed in service. Prior to amendment, it was the 19<sup>th</sup> year.

Effective Date: April 27, 2010

Note Repeal: This provision was repealed June 23, 2010 by House Bill 4478, Section 37 (Act No. 290).

House Bill 4478, Section 7 (Act No. 290)

### **Special Source Revenue Bonds or Credits - Eligible Uses Expanded**

Code Section 4-29-68 allows a county to issue special source revenue bonds to pay for, among other things, improved or unimproved real property associated with a manufacturing or commercial project. Code Section 4-29-68(A)(2) has been amended to provide that bonds may be issued, or a credit against the fee may be given, to pay for the cost of personal property including machinery and equipment used in the operation of such a project.

If the bonds, or monies from a credit allowed against the fee due on the property, are used to pay for personal property, and the personal property is removed from the project during the time the fee is in effect and the removed property is not replaced with qualifying replacement property, the amount of the fee due for that property must be paid for the year it is removed and for the 2 years following its removal from the project. If any bond funds or credit fund are used to pay for both real and personal property, or infrastructure and personal property, all of the funds will be presumed to have first been used to pay for personal property. The fee amounts described above will be remitted to the county in which the project is located.

Effective Date: January 1, 2011

House Bill 4478, Section 15B (Act No. 290)

### **Industrial Development Projects - Definition of Project Changed**

Code Section 4-29-10(3), which provides a definition of project that is to be used for industrial development projects under Chapter 29, Title 4 (including industrial development bonds and special source revenue bonds) has been amended to provide that for purposes of Chapter 29, Title 4, unless a different meaning clearly appears from the context, a “project” includes any “recovery zone property” as defined in Internal Revenue Code Section 1400U-3(b) and any “Qualified Conservation Purpose” as defined in Internal Revenue Code Section 54D(f) or any other purposes set forth in Section 54D(e). None of the other restrictions contained in the definition of “project” relating to the use or the user of the project apply to “recovery zone property.”

Recovery zone property is property to which Internal Revenue Code Section 168 applies (or would apply but for Section 179) and which was constructed or acquired for use in the zone after the designation of the recovery zone. To qualify, the original use of the property must commence with the taxpayer in the recovery zone and the property must be used in the active conduct of a qualified business in the zone. A qualified business is any trade or business except the rental of residential real property or certain leisure and other businesses, such as country clubs, massage parlors, and stores that are primarily engaged in the sale of alcohol.

A “recovery zone” is an area designated by a state or local political subdivision as having significant poverty, unemployment, home foreclosures or general distress or an area that has already been designated as an Empowerment Zone or Renewal Community.

A “qualified conservation purpose” includes (a) expenditures incurred for certain energy facilities and purposes; (b) research and development facilities that support alternative energies; (c) mass commuting facilities that reduce the consumption of energy from vehicles used for mass commuting; (d) demonstration projects for the promotion of commercialization of certain green technologies; and (e) public education campaigns to promote energy efficiency.

Note: The definition of “project” contained in Code Section 4-29-67(A)(1)(c), the big fee statute, was not amended.

Effective Date: June 23, 2010

# SALES AND USE TAXES

Senate Bill 717 (Act No. 280)

## **Nonprofit Research and Testing Facility - New Exemption**

Code Section 12-36-2120 has been amended to add an exemption for machinery and equipment, building and other raw materials, and electricity used in the operation of a facility owned by a nonprofit organization exempt under Internal Revenue Code Section 501(c)(3) when the facility is principally used for researching and testing the impact of natural hazards, such as wind, fire, water, earthquake, and hail, on building materials used in residential, commercial, and agricultural buildings.

To qualify for this exemption, the taxpayer must send a notice to the Department of its intent to qualify for the exemption and must invest at least \$20 million in real or personal property at a single site in this State over a 3 year period beginning on the date provided by the taxpayer to the Department in the notice. After the taxpayer notifies the Department of its intent to qualify and use the exemption, the Department must issue an exemption certificate to the taxpayer to be used for qualifying exempt purchases. The taxpayer must also send a notice to the Department within 6 months of the third anniversary of the taxpayer's first use of the exemption advising the Department that it has either met or not met the \$20 million investment requirement.

The Department may assess any tax due on the machinery and equipment purchased tax free but due the State as a result of the taxpayer's failure to meet the \$20 million investment requirement. The running of the periods of limitations for assessment of taxes is suspended for the time period beginning with notice to the Department before the taxpayer uses the exemption and ending with notice to the Department that the taxpayer has either met or not met the \$20 million investment requirement.

Effective Date: June 16, 2010

# **MISCELLANEOUS**

## **(Summarized by Subject Matter)**

### **ADMINISTRATIVE and PROCEDURAL MATTERS**

House Bill 4657, Part IB, Section 89, Proviso 89.142 (Act No. 291)

#### **Additional 1% Reduction on Interest Rate on Tax Refunds**

This new temporary proviso decreases by 1% the interest rate for tax refunds paid during the current fiscal year, in addition to the 2% reduction reauthorized in temporary Proviso 72.17 (for a total 3% interest rate reduction). Of the revenue resulting from this 1% reduction, \$250,000 must be used by the Senate for operating expenses of the Joint Citizens and Legislative Committee on Children. The remaining revenue must be used by the Department of Juvenile Justice for programs for mentoring or other alternatives to incarceration. The revenue resulting from the 2% reduction continues to be used for operations of the State's Guardian ad Litem Program.

Effective Date: This temporary proviso is effective for State fiscal year July 1, 2010 through June 30, 2011.

Senate Bill 850, Section 2 (Act No. 274)

#### **Failure to File and Failure to Pay Penalties and Interest for Payment in Immediately Available Funds - Amended**

Code Section 12-54-250(E) has been repealed. Code Section 12-54-250(E) provided that when payment was made with immediately available funds, the payment of the funds and the filing of the return were considered simultaneous acts for calculating failure to file and failure to pay penalties and interest. As a result, penalties and interest were calculated based on the later of the return file date or payment date. Now the failure to file penalty will be based on the date the return is filed and the failure to pay penalty will be based on the payment date. Code Sections 12-54-43(C) and (D).

Effective Date: June 17, 2010

## **MISCELLANEOUS TAX LEGISLATION**

### House Bill 3584 (Act No. 170)

#### **Cigarette Tax Increase and Definition of Cigarette Expanded**

Code Section 12-21-625 has been added to impose a surtax on cigarettes of \$0.025 per cigarette. This surtax is in addition to the \$0.0035 per cigarette excise tax imposed on cigarettes under Code Section 12-21-620.

With the new surtax, the State cigarette tax rate will increase from \$0.07 to \$0.57 per pack of 20 cigarettes and from \$0.0875 to \$0.7125 per pack of 25 cigarettes. The new surtax became effective July 1, 2010.

In addition, the definition of a “cigarette” was expanded to include “any roll for smoking containing tobacco or any substitute for tobacco, wrapped in any substance, weighing 3 pounds per thousand or less, however labeled or named, which because of its appearance, size, type of tobacco used in the filler, or its packaging, pricing, marketing, or labeling, is likely to be offered to, or purchased by, consumers as a cigarette ....” This new definition became effective May 13, 2010.

Effective Date: May 13, 2010; however, the cigarette tax increase became effective July 1, 2010.

### House Bill 4233 (Act No. 228)

#### **Beer Definition Revised Retroactively for Beer License Tax Purposes**

Code Section 12-21-1010(3), which contains the definition of “beer” for purposes of the beer tax in Article 7, Chapter 21, Title 12, has been amended to provide that “beer” has the same meaning as used in the Alcoholic Beverage Control Act in Title 61. The beer tax now applies to:

1. All beers, ales, porters, and other similar malt or fermented beverages containing not in excess of 5% of alcohol by weight, as provided in Code Section 61-4-10(1); and
2. All beers, ales, porters, and other similar malt or fermented beverages containing more than 5% but less than 14% of alcohol by weight that are manufactured, distributed, or sold in containers of 6 ½ ounces or more or the metric equivalent, as provided in Code Section 61-4-10(2).

Effective Date: June 7, 2010, and applies retroactively to May 2, 2007.

House Bill 4478, Section 14 (Act No. 290)

### **Rural Infrastructure Funds - Eligible Expenditures Expanded**

Code Section 12-10-85, establishing the Rural Infrastructure Fund to provide funds to local governments for infrastructure and economic development, has been amended to expand the eligible expenditures. Eligible expenditures funds can be used for now include: (1) site preparation, (2) acquiring or improving real property, and (3) relocation expenses of an employee if the company pays wages to the employee that are at least twice the State average or the county average for the county in which the project is located, whichever is lower.

Effective Date: January 1, 2011

### **OTHER ITEMS (Including Local Taxes)**

House Bill 4551 (Act No. 135)

### **911 Communications Systems - New Charge for Prepaid Wireless and Voice over Internet Protocol**

Chapter 47 of Title 23 governs local emergency telephone systems (*i.e.*, 911 systems). It provides, in part, that fees (“911 charges”) may be imposed to fund an emergency telephone system with respect to the public telephone system and commercial mobile radio service. While 911 charges imposed with respect to the public telephone system are paid directly to the local government imposing the 911 charge, 911 charges imposed with respect to commercial mobile radio service are paid to the Department. The Department is required to deposit these 911 charges with the State Treasurer for distribution pursuant to Code Section 23-47-65.

Chapter 47 has been amended to include new provisions that allow 911 charges to be imposed on prepaid wireless telecommunications services and “Voice over Internet Protocol” (“VoIP”).

Prepaid Wireless 911 Charge: Code Section 23-47-68 has been added with respect to the new prepaid wireless 911 charge to provide the following:

1. A prepaid wireless 911 charge is levied on each prepaid wireless retail transaction occurring in South Carolina. This prepaid wireless 911 charge will be an amount equal to the average commercial mobile radio service 911 charge.
2. A prepaid wireless seller must collect the prepaid wireless 911 charge from a prepaid wireless consumer. The amount of the prepaid wireless 911 charge shall be either

separately stated on an invoice, receipt, or other similar document that is provided to the prepaid wireless consumer by the prepaid wireless seller or otherwise disclosed to the prepaid wireless consumer.

3. The prepaid wireless retail transaction must be sourced the same as provided in Code Section 12-36-910(B)(5)(b).
4. The prepaid wireless 911 charge is the liability of the prepaid wireless consumer and not the prepaid wireless seller or any prepaid wireless provider. However, the prepaid wireless seller is liable to remit to the Department all prepaid wireless 911 charges that the prepaid wireless seller collects from prepaid wireless consumers.
5. The amount of the prepaid wireless 911 charge collected by a prepaid wireless seller is not includable in the base for measuring any tax, fee, prepaid wireless 911 charge, or other charge that is imposed by this State, any of its political subdivisions, or any intergovernmental agency. The prepaid wireless 911 charge is not considered revenue of the prepaid wireless seller.
6. The Department must establish procedures by which a prepaid wireless seller may document that a sale is not a prepaid wireless retail transaction, which procedures shall substantially coincide with the procedures for documenting sale for resale transactions under Code Section 12-36-950.
7. The prepaid wireless seller must remit the prepaid wireless 911 charge to the Department on a monthly, quarterly or annual basis; however, the prepaid wireless seller is entitled to retain 3% of the gross prepaid wireless 911 charges remitted to the Department as an administrative fee.

“Voice over Internet Protocol 911 Charge: Code Section 23-47-67 has been added to impose a “Voice over Internet Protocol” (“VoIP”) 911 charge in an amount identical to the amount of the 911 charge imposed on each local exchange access facility pursuant to Code Sections 23-47-40(A) and 23-47-50(A). VoIP 911 charges are remitted to the local government to which they are sourced.

Prohibition on Other 911 Charges: Code Section 23-47-69 was added to prohibit the State, any of its political subdivisions, or an intergovernmental agency from requiring any service provider to impose, collect, or remit a tax, fee, surcharge, or other charge for 911 funding purposes other than the 911 charges set forth in Chapter 47 of Title 23.

Advisory Committee: Code Section 23-47-65 was amended to change the name of the “CMRS Emergency Telephone Service Advisory Committee” to the “South Carolina 911 Advisory Committee.”

Definitions: Code Section 23-47-10 was amended to add various definitions for terms related to prepaid wireless and VoIP 911 charges.

Effective Date: July 1, 2011, except that the addition of, or amendments to, Code Sections 23-47-55 (not summarized), 23-47-69, and 23-47 70 (not summarized) are effective March 30, 2010.

House Bill 4478, Section 34 (Act No. 290)

### **Redevelopment Authority Fees Extended for 2 Years**

Code Section 12-10-88 provides that federal employers located on a closed or realigned military installation are to remit a portion of their employees' South Carolina withholding to the redevelopment authority overseeing that facility if the redevelopment authority complies with reporting requirements. These redevelopment fees may be remitted to the redevelopment authority beginning with the date the redevelopment authority first submitted the required information to the Department and for 15 years thereafter or until January 1, 2015, whichever occurs last. This provision has been amended to provide for the collection and remittance of the redevelopment fees for the 15 year period or through January 1, 2017, whichever occurs last.

Effective Date: January 1, 2011

## **REGULATORY LEGISLATION**

House Bill 4837 (Act No. 263)

(See also House Bill 4657, Part IB, Section 81, Proviso 81.9 (Act No. 291))

### **Bingo Licenses and Definition of Nonprofit Organization - Changes**

Code Section 12-21-3940(D), which concerns bingo licenses and prohibits the issuance of a bingo license at an establishment that holds an alcoholic liquor-by-the-drink license issued under Code Section 61-6-1820, has been repealed. Bingo licenses may now be issued at an establishment that holds an alcoholic liquor-by-the-drink license.

Code Section 12-21-3950(5), which defines the term "nonprofit organization" for purposes of the Bingo Tax Act of 1996 (Title 12, Chapter 21, Article 24), has been amended to include organizations exempt from federal income taxes under Internal Revenue Code Section 501(c)(7). For purposes of the Bingo Tax Act of 1996, a "nonprofit organization" now means "an entity which is organized and operated exclusively for charitable, religious, or fraternal purposes and which is exempt from federal income taxes pursuant to Internal Revenue Code Section 501(c)(3), 501(c)(4), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19)."

Effective Date: June 11, 2010

**Temporary Beer and Wine Permits for Special Events – Revised**

Code Section 61-4-550, which authorizes the Department to issue one-day beer and wine permits running for a period not exceeding 15 days, for a fee of \$10 per day, for locations at fairs and special functions, has been amended as follows:

Permits restricted to nonprofit organizations. Under the amendment, an applicant for this permit must be a “nonprofit organization,” defined as:

1. An entity that is organized and operated exclusively for social, benevolent, patriotic, recreational, or fraternal purposes, and that is exempt from federal income taxes pursuant to Internal Revenue Code Section 501(c)(3), (4), (6), (7), (8), (10), or (19);  
or
2. Political parties and their affiliates duly certified by the Secretary of State.

Criminal records check required for all principals. The initial application must be accompanied by a criminal records check of all principals of the organization, conducted by the State Law Enforcement Division not more than 90 days preceding the date of the application. Failure to comply will result in denial of the application. For a subsequent application, a new criminal records check is required only if (a) more than 2 years have elapsed since the most recent criminal records check was conducted or (b) the nonprofit organization has added or replaced a principal. “Principal” has the same meaning as in Code Section 61-2-100(H)(2). All principals are deemed to be the applicant for this permit.

Notification of sheriff required. The applicant must give written notice to the sheriff or sheriff’s designee in the county in which the fair or special event is to be held, a minimum of 15 days before the first day of the event, unless the sheriff waives the 15-day requirement. An objection by the sheriff or sheriff’s designee within 72 hours of receipt of the notice, submitted in writing to the Department is sufficient grounds to deny the application.

Penalties. The penalties imposed for violations of Article 1, Chapter 4, Title 61 apply to nonprofit organizations that are granted temporary permits under Code Section 61-4-550.

Effective Date: Applies to applications for functions beginning on January 1, 2011.

**Temporary License to Sell Alcoholic Liquor by the Drink at Special Functions - Revision, Repeal, and Technical Correction**

The Alcoholic Beverage Control Act, Chapter 6 of Title 61, contains 2 statutes authorizing the Department to issue licenses to sell alcoholic liquor by the drink for a period not exceeding 24 hours. One statute has been amended and one statute has been repealed.

Temporary License Provision Amended. Code Section 61-6-2000, which authorizes the Department to issue licenses allowing nonprofit organizations to sell alcoholic liquor by the drink for a \$35 fee for a single function in a period not exceeding 24 hours, has been amended as follows:

Type of function. Previously, the temporary license was allowed for a “single social occasion.” Under the amendment, the temporary license is allowed for a “special function,” the nature and date of which must be described in the application, and the amendment clarifies that tickets may be sold at the door.

Deadline for application; terms and conditions on license. The Department may deny an application if the completed application and filing fee are not submitted at least 15 days before the date of the special function. The Department may waive the 15-day requirement on request of the applicant. The Department has discretion to specify the terms and conditions of the license in accordance with applicable statutes and regulations.

Definition of “nonprofit organization” added. Under the amendment, an applicant for this permit must be a “nonprofit organization,” defined as:

1. An entity that is organized and operated exclusively for social, benevolent, patriotic, recreational, or fraternal purposes, and that is exempt from federal income taxes pursuant to Internal Revenue Code Section 501(c)(3), (4), (6), (7), (8), (10), or (19); or
2. Political parties and their affiliates duly certified by the Secretary of State.

Criminal records check requirements clarified. The initial application must be accompanied by a criminal records check of all principals of the organization, conducted by the State Law Enforcement Division not more than 90 days preceding the date of the application. Failure to comply will result in denial of the application. For a subsequent application, a new criminal records check is required only if (a) more than 2 years have elapsed since the most recent criminal records check was conducted or (b) the nonprofit organization has added or replaced a principal. “Principal” has the same meaning as in Code Section 61-2-100(H)(2). All principals are deemed to be the applicant for this license.

Notification of sheriff required. The applicant must give written notice within 15 days to the sheriff or sheriff's designee in the county in which the special function is to be held, unless the sheriff waives the 15-day requirement. An objection by the sheriff or sheriff's designee within 72 hours of receipt of the notice, submitted in writing to the Department, is sufficient grounds to deny the application.

Number of licenses issued pursuant to a single application. The Department may issue up to 25 temporary licenses on one application for special functions in a 12-month period to the same nonprofit organization. However, the nonprofit organization is not prohibited from applying for additional temporary licenses in the same 12-month period.

Penalties. The penalties imposed for violations of Article 13, Chapter 6, Title 61 apply to nonprofit organizations that are granted temporary permits under Code Section 61-6-2000.

Repeal and Technical Correction. Code Section 61-6-510, which authorizes the Department to issue temporary licenses allowing certain nonprofit organizations, nonprofit educational foundations and qualified political parties to sell alcoholic liquor by the drink for a \$35 fee for a period not exceeding 24 hours, has been repealed. This repeal is also reflected in a technical correction to Code Section 61-4-240, which provides that a temporary permit to sell beer and wine may be issued with certain temporary licenses to sell alcoholic liquor by the drink. The technical correction removes a reference to Code Section 61-6-510.

Effective Date: Applies to applications for functions beginning on January 1, 2011.

House Bill 4572, Section 1 (Act No. 231)

**Beer Equipment and Beer Displays - Certain Restrictions on Dealings Between Beer Manufacturers, Wholesalers, and Retailers Revised**

Code Section 61-4-940, which restricts certain dealings between beer manufacturers, beer wholesalers and beer retailers, has been amended as follows.

1. Subsection (B) prohibits manufacturers and wholesalers from furnishing fixtures and equipment to retailers, and likewise prohibits retailers from accepting such fixtures and equipment. The amendment to subsection (B) allows a wholesaler to store equipment primarily used by the wholesaler to deliver and stock beer, for a temporary period, at the retailer's licensed location if the retailer consents. Such equipment includes, but is not limited to, pallets, carts, and hand trucks.
2. Subsection (C), which allows a wholesaler to provide certain items and services at no charge to a retailer, has been amended to allow a wholesaler to furnish a retailer with

product displays pursuant to the provisions of 27 Code of Federal Regulations (C.F.R.), Section 6.83, excluding electronic refrigeration equipment. Such product displays must be furnished at no charge to the retailer. Product displays are defined by 27 C.F.R. 6.83 as “any wine racks, bins, barrels, casks, shelving, or similar items the primary function of which is to hold and display consumer products.” Further, 27 C.F.R. 6.83 provides value limitations and advertising requirements for the product displays. A link to 27 C.F.R. 6.83, one of the federal “Tied House” regulations (Part 6 of 27 C.F.R.), is provided at the federal Alcohol and Tobacco Tax and Trade Bureau website: [http://www.ttb.gov/trade\\_practices/laws\\_regs\\_tp.shtml](http://www.ttb.gov/trade_practices/laws_regs_tp.shtml).

3. Subection (F) has been amended to provide that no license holder on one tier of the beer business may require a license holder on another tier to furnish the product displays described in Subsection (C), as amended.

Effective Date: June 7, 2010

#### House Bill 4572, Section 2 (Act No. 231)

#### **Breweries – Beer Tastings and Sales**

Code Section 61-4-1515 has been added to allow South Carolina breweries to offer samples, with or without cost, and retail sales of beer brewed in South Carolina on the licensed premises.

Tastings. The following conditions apply:

1. Tastings must not be offered except as part of a tour by consumers of the licensed premises and the entire brewing process used there.
2. Consumers must not be intoxicated or under age 21.
3. Samples must be brewed at the licensed premises and must not exceed 2 ounces per brand of beer with an alcohol content over 8% by weight or 4 ounces of beer with an alcohol content under 8% by weight.
4. Not more than 4 brands of beer brewed at the licensed premises may be sampled by a consumer in a 24 hour period.

Retail sales. The following restrictions apply:

1. The beer must be brewed on the licensed premises with an alcohol content not exceeding 14% by weight.
2. Beer sales must not exceed an amount equivalent to 288 ounces per individual per day.

3. Beer must not be sold except as part of a tour by the consumer of the licensed premises and the entire brewing process used there.
4. Beer must not be sold for other than personal use; it cannot be resold and must not be sold to a holder of a retail beer and wine license for the purpose of resale in the license holder's business.
5. The price charged by the brewery must approximate retail prices generally charged for identical beverages in the county in which the brewery is located.
6. The brewery must remit beer taxes in accordance with the provisions of Code Sections 12-21-1020 and 12-21-1030. The brewery must also remit appropriate sales and use taxes and local hospitality taxes.

Penalty for violation. A fine of \$100 must be assessed for each violation of Code Section 61-4-1515 in addition to other applicable fines and penalties. This fine must be sent to, and used by, the Department for the costs of alcohol licensure and regulation.

Effective Date: June 7, 2010

House Bill 4572, Section 3 (Act No. 231)

### **Beer Tastings at Certain Retailers – New Provision**

Code Section 61-4-960 has been added to allow the holder of a retail permit for the sale of beer for off-premises consumption, whose primary product is beer or wine, to conduct not more than 24 beer tastings at any one retail location in a calendar quarter. The following conditions apply:

1. A notice with details of the specific date and hours of the tasting must be sent to the State Law Enforcement Division by first class mail or by electronic mail at least 10 days before the tasting.
2. Tastings must be conducted by the retailer or an agent or independent contractor of the retailer. Manufacturers, wholesalers, and their employees, agents or independent contractors are barred from conducting a tasting. However, manufacturers (but not wholesalers) may attend a tasting to provide information and offer educational material on the products sampled.
3. The products sampled must be supplied by the retailer and may not be supplied at no cost or reduced cost by the manufacturer or wholesaler.

4. Not more than one container of each product to be sampled may be open at any time. Open containers must be visible at all times and must be removed when the tasting ends.
5. Not more than 8 products may be offered for sampling at any one tasting, and no more than 2 of those products may have an alcohol content exceeding 10% by weight.
6. Samples must not exceed the following quantities:
  - a. 2 ounces of beer with an alcohol content not exceeding 5% by weight;
  - b. one ounce of beer with an alcohol content between 5% and 14% by weight.
7. A person must not be served more than one sample of each product and must not be allowed to loiter on the store premises. Persons who are intoxicated or under age 21 must not be offered, or allowed to consume, any sample.
8. A retailer must not offer more than one sampling per day or for a period exceeding 4 hours.
9. Tastings of beer may not be offered in conjunction with a wine tasting or with a tasting in an adjacent retail alcoholic liquor store licensed in the same name.
10. The tasting must be held in an area of the retail store designated for tastings.

A fine of \$100 must be assessed for each violation of Code Section 61-4-960 in addition to other applicable fines and penalties. This fine must be sent to, and used by, the Department for the costs of alcohol licensure and regulation.

Effective Date: June 7, 2010

Document No. 4077

### **Definition of “Premises” for Beer, Wine and Liquor Licenses - New Regulation**

SC Regulation 7-202 has been added to revise the definition of “premises” for purposes of licenses for beer, wine, and liquor. Previously, “premises” was defined in SC Regulations 7-401.1 and 7-700, both of which have been repealed.

The purpose of the new regulation is the determination of the extent of the physical place where a business or entity that has been approved to hold a license undertakes the privileges and responsibilities associated with that license. The term “premises” generally means all of the buildings and grounds that are both (1) subject to the direct control of the license holder, as shown by certain documents, and (2) used by the license holder to conduct its business.

A presumption arises that the buildings and grounds described with particularity in the license application are used by the license holder to conduct its business. The regulation provides that the premises may be subject to conditions or restrictions or both imposed under Code Section 61-2-80. In addition, there are provisions governing multiple tracts or buildings, separate locations of a business, the premises of nonprofit organizations and specific facilities licensed to serve alcoholic liquor by the drink, including golf courses, fishing piers and resort complexes.

Effective Date: July 23, 2010

## **LIST OF TEMPORARY PROVISOS**

Temporary provisos are enacted as part of the annual budget bill, 2010 House Bill 4567, Part IB (Act No. 291). They are effective only for the current State fiscal year (July 1, 2010 – June 30, 2011). They expire on June 30<sup>th</sup>, 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 SC Information Letter #09-14.

### **NEW PROVISOS**

#### **Income Taxes**

Proviso 81.8 - No estimated tax penalty when following IRC 6654(d)(1)(D)

#### **Miscellaneous (Administrative, Miscellaneous Taxes, Other, and Regulatory)**

Proviso 89.142 - Additional 1% Interest Rate Reduction on Refunds

Proviso 81.9 - Bingo License

### **REENACTED PROVISOS**

#### **Income Taxes**

Proviso 1A.17 - Teacher Supplies - Reimbursement Amount Not Taxable

#### **Property Taxes**

Proviso 89.48 - Personal Property Tax Relief Fund Not Funded

#### **Sales and Use Taxes**

Proviso 89.77 - Viscosupplementation Therapies - Sales and Use Tax Suspended

Proviso 89.72 - Respiratory Syncytial Virus Medicines

Proviso 89.47 - Private Schools - Use Tax Exemption

Proviso 89.107 - 2010 Sales Tax Holiday for Guns

#### **Miscellaneous (Administrative, Miscellaneous Taxes, Other, and Regulatory)**

Proviso 72.17 - 2% Reduction on Interest Rate on Tax Refunds used for operations of the State's Guardian ad Litem Program

Proviso 81.6 - Website Posting of Tax Return Information for Candidates and Gubernatorial Appointees

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 21.16 - Nursing Home Bed Franchise Fees Suspension