

# PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **July 22, 2026**

## SC REVENUE RULING #26-x [DRAFT]

**SUBJECT:** Fee-In-Lieu of Tax (FILOT) Agreements and Assets Placed in Service (Property Tax)

**EFFECTIVE DATE:** Applies to all periods open under the statute.

**SUPERSEDES:** All previous advisory opinions and any oral directives in conflict herewith.

**REFERENCES:** S.C. Code Ann. Chapter 44, Title 12 (2014)

**AUTHORITY:** S.C. Code Ann. § 12-4-320 (2014)  
S.C. Code Ann. § 1-23-10(4) (2005)  
SC Revenue Procedure #09-3

**SCOPE:** The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department’s position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

### QUESTION

If a company (“Sponsor”) subject to a Fee-in-Lieu (FILOT) under Chapter 44, Title 12 of the South Carolina Code fails to place assets in service associated with the FILOT project on or before the last day of the property tax year that is three years from the date of the Fee Agreement, does the FILOT automatically terminate and any applicable property immediately become subject to property taxes?

### RESPONSE

No. The FILOT does not automatically terminate if the Sponsor fails to place assets in service on or before the last day of the property tax year that is three years from the date of the Fee Agreement. Instead, that date becomes the default Commencement Date as described below. A Sponsor has five years from the start of the Commencement Date to place all assets that will be subject to the FILOT in service.<sup>1, 2</sup>

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<sup>1</sup> A Sponsor may have longer to place the assets in service if the Sponsor meets certain requirements relating to jobs and investments.

<sup>2</sup> Upon application to the county by the Sponsor, the county may extend the five-year period by up to an additional five years if the Sponsor applies for the extension prior to the end of the original five-year period.

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## BACKGROUND

A Sponsor planning significant investments in this State may enter into an agreement with the county where the project will be located to pay a Fee-in Lieu of Property Taxes (FILOT) instead of ad valorem property taxes. Property subject to the FILOT usually consists of land, improvements to land, and/or machinery and equipment located at the project. The 10.5% assessment ratio can be, and often is, negotiated to 6% (4% for very large investments meeting certain statutory requirements). In addition, the Sponsor and the county can agree to freeze the millage rate applicable to the property at a set millage rate, or adjust the millage rate every five years, for the period the FILOT is in effect. During the period of the FILOT, the value of personal property decreases each year by the depreciation allowable for property tax purposes subject to a 10% floor on the value. Unless otherwise agreed to by the county and the Sponsor, the value of real property remains constant, and is not subject to reappraisal. The FILOT is generally applicable to a single piece of property for up to 30 years (the “Exemption Period”) although this period may be extended by the county by up to ten years.<sup>3</sup>

Although there are three sets of FILOT statutes, the FILOT under Chapter 44, Title 12 is primarily the set of statutes used because it does not require title to the property to be transferred to the county and contains fewer restrictions than the other FILOT statutes. Still, Chapter 44, Title 12 contains complex definitions and provisions that can be confusing and may result in termination of a FILOT if the statutory requirements are not met.

Recently, the Department received questions about the definition of “Commencement Date” contained in Section 12-44-30(2).<sup>4</sup> Specifically, taxpayers asked whether failing to meet one section of that statute results in a termination of the FILOT and immediately subjects any previously purchased property associated with the project to ad valorem property taxes.

## LAW AND DISCUSSION

Section 12-44-30 of the South Carolina Code provides the following definitions for purposes of Chapter 44 of Title 12:<sup>5</sup>

- Commencement Date “means the last day of the property tax year during which economic development property is placed in service, except that this date must not be later than the last day of the property tax year which is three years from the year in which the county and the sponsor enter into a fee agreement. ....”

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<sup>3</sup> Certain qualifying projects automatically receive an additional ten years.

<sup>4</sup> The term “Commencement Date” is not used in the other two FILOT statutes.

<sup>5</sup> These definitions are abbreviated and only include language necessary for the issue addressed in this revenue ruling.

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- Exemption Period: “means the period beginning on the first day of the property tax year after the property tax year in which an applicable piece of economic development property is placed in service and ending on the termination date. For projects which are completed and placed in service during more than one year, the exemption period applies to each year’s investment made by a sponsor during the investment period.”
- Investment Period: “means the period beginning with the first day that economic development property is purchased or acquired and ending five years after the commencement date; ...The minimum investment must be completed within five years of the commencement date. ... .<sup>6</sup>
- Economic Development Property: “means each item of real and tangible personal property comprising a project which satisfies the provisions of Section 12-44-40(C) and other requirements of this chapter and is subject to a fee agreement. That property, other than replacement property qualifying under Section 12-44-60, must be placed in service by the end of the investment period.”
- Fee Agreement: “means an agreement between the sponsor and the county obligating the sponsor to pay fees instead of property taxes during the exemption period for each item of economic development property as more particularly described in Section 12-44-40.”

Per these definitions, the Investment Period begins on the date the Sponsor first acquires or purchases property for the project. The Investment Period generally ends five years after the Commencement Date. The start of the Commencement Date is the last day of the property tax year in which the Sponsor places its first piece of property subject to the FILOT in service.<sup>7</sup>

The definition of “Commencement Date” contains additional language providing that the Commencement Date may be no later than the last day of the property tax year that is three years from the year in which the county and the Sponsor enter into a Fee Agreement (“the three-year period”). Questions have arisen as to whether the failure to place the first piece of property in service by this date automatically terminates the FILOT or if this date becomes the default Commencement Date.

Reading Chapter 44 of Title 12 as a whole, the Department believes the Legislature did not intend for the failure to place property in service during the three-year period to result in an

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<sup>6</sup> This definition also allows for longer periods based on an enhanced investment, nuclear plant facility projects, and extensions provided at the county’s discretion. S.C. Code Ann. § 12-44-30(13).

<sup>7</sup> The IRS defined “placed in service” as “that property is first placed in service when first placed in a condition or state of readiness and availability for a specifically designed function.” I.R.S. P.L.R. 201326009 (June 28, 2013) (citing Tres. Reg. § 1.167(a)-11(e)(1)(i)). Further, Section 12-37-670(A) of the South Carolina Code provides the general rule that “no new structure may be listed or assessed for property tax until it is completed and fit for the use intended.” Nothing in this document is to be construed as impacting the determination of “fit for the intended use” as determined by the appraiser.

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automatic termination of the FILOT.<sup>8</sup> The definition of “Commencement Date” does not state the FILOT is terminated if the Sponsor fails to place any property in service within the three-year period after the execution of the Fee Agreement. Other statutory provisions in Chapter 44, Title 12 contain such language. For example, Section 12-44-140(B) provides the Fee Agreement is automatically terminated if the Sponsor fails to make the minimum investment within the Investment Period while subsection (C) of that same statute provides that if the Sponsor fails to maintain the minimum investment, without regard to depreciation, the Sponsor or Sponsor Affiliate will no longer qualify for the FILOT.

Other provisions of Chapter 44, Title 12, provide that certain property will be disqualified as economic development property if certain conditions are not met. For example, Section 12-44-40(D) provides that the county has two years from the action identifying the project to pass an inducement resolution (if this was not the original action identifying the project), or any property purchased before the inducement resolution is passed is ineligible for the FILOT. Subsection (E) of that same section provides that if a Fee Agreement is not executed within five years of the original action identifying the project, all property acquired or purchased for the project prior to the execution of the Fee Agreement does not qualify as economic development property. Thus, reading Chapter 44 of Title 12 as a whole, the Department believes if the Legislature intended for the failure to place property in service during the three-year period terminated the FILOT, it would have specified this result.

Moreover, other provisions in Chapter 44 of Title 12, indicate an intention by the Legislature to provide leniency to Sponsors in complying with the FILOT requirements. For example, Section 12-44-40(C) provides: “Subject to the provisions of subsection (D)[addressing adoption of an inducement resolution] and the provisions of Section 12-44-110 [addressing previously taxed property], real or tangible personal property of a sponsor or sponsor affiliate which is acquired for which expenditures have been incurred by the sponsor or sponsor affiliate and which are used in connection with a project or portion of a project, qualifies as economic development property, if the expenditures are incurred or the property is acquired before the end of the investment period.” This provision indicates an intent to qualify property acquired or purchased for the project for the FILOT absent a statutory provision that specifically disqualifies the property from qualifying.

Based on the Department’s understanding of the legislative intent regarding the FILOT provisions contained in Chapter 44 of Title 12, the Legislature did not intend for the failure to place property in service during the three-year period beginning on the last day of the property tax year which is three years from the execution of the Fee Agreement to result in the automatic termination of the FILOT. As such, the Department believes Section 12-44-30(2) provides a

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<sup>8</sup> The primary goal of statutory interpretation is to effectuate the intent of the Legislature. Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). “In ascertaining legislative intent, ‘a court should not focus on any single section or provision but should consider the language of the statute as a whole.’” Id. (quoting Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996)).

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default Commencement Date at the end of the three-year period if the Sponsor has not placed any property purchased or acquired for the project in service by that date.

## EXAMPLES

Example A: JERCO is a manufacturer located in County A. An inducement resolution recognizing JERCO's project was passed by County A on July 13, 2024. JERCO purchased several assets associated with its project on August 15, 2024. JERCO and County A entered into a Fee Agreement on December 15, 2024. JERCO placed its first piece of property associated with the project in service on January 1, 2027. JERCO's "Commencement Date" starts on December 31, 2027. JERCO's Investment Period starts on August 15, 2024 and ends on December 31, 2032. JERCO has until December 21, 2032 to meet its applicable minimum investment requirement. Also, unless an extension is granted by the county, JERCO has until December 31, 2032 to place all assets that will be subject to the FILOT into service. Because JERCO placed assets in service that will be subject to the FILOT prior to the expiration of the three-year period, the default rule regarding the three-year period does not come into play.

Example B: CYDCO is a manufacturer located in County A. County A passed an inducement resolution recognizing CYDCO's project on July 1, 2025. CYDCO began purchasing assets associated with its project on August 15, 2025. CYDCO and County A entered into a Fee Agreement on October 1, 2025. In November 2029 CYDCO had yet to place any assets associated with the project in service. CYDCO's Commencement Date started on December 31, 2028. CYDCO's Investment Period started August 15, 2025 and ends on December 31, 2033. CYDCO has until December 21, 2033 to meet its applicable minimum investment requirement. Also, unless an extension is granted by the county, CYDCO has until December 31, 2033 to place all assets that will be subject to the FILOT into service. Because CYDCO **DID NOT** place FILOT assets in service prior to the expiration of the three-year period, the default Commencement Date applies.

## CONCLUSION

Based on the analysis provided above, the FILOT does not automatically terminate if the Sponsor fails to place assets in service on or before the last day of the property tax year that is three years from the date of the Fee Agreement.<sup>9</sup> Instead, that date becomes the default Commencement Date.

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<sup>9</sup> If the Fee Agreement allows for unilateral termination of the agreement by the county if the Sponsor fails to place property in service by a date certain, then the FILOT may be terminated at the county's option if that date passes without any property being placed in service. However, the county is not required to do so. Additionally, the county and the Sponsor may agree to terminate the FILOT if the project fails to go forward, is paused or otherwise provided that the agreement to terminate is mutual.