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State of South Carolina  
**Department of Revenue**  
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214  
Website Address: <http://www.sctax.org>

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SC REVENUE PROCEDURE #04-1

SUBJECT: Department of Revenue Internal Appeals Process and Procedure

EFFECTIVE DATE: January 1, 2004

SUPERSEDES: SC Revenue Procedures #95-6, #95-3, #92-1 and all previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: Chapter 60, Title 12

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)  
S. C. Code Ann. Section 1-23-10(4) (Supp. 2001)  
SC Revenue Procedure #03-1

SCOPE: The purpose of a Revenue Procedure is to provide procedural guidance to the public and Department personnel. It is a written statement issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. **A Revenue Procedure does not have the force or effect of law, and is not binding on the public.** It is, however, binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

## I. INTRODUCTION

This document contains the Department of Revenue's ("Department") internal procedures for handling disputed matters within the jurisdiction of the Department. Disputed matters include disputes involving taxes and penalties (including property tax assessments issued by the Department); denials, suspensions and revocations of licenses; and, other matters handled by the Department.

These procedures are intended to ensure public confidence in the integrity and fairness of the Department, to comply with both the letter and the spirit of the South Carolina Taxpayers Bill of Rights and the Revenue Procedures Act, and to resolve disputes where possible without the expense of going to a formal hearing or court.

All time limits contained in this Revenue Procedure, except those mandated by statute or regulation, may be extended by mutual agreement of the taxpayer appealing and the appropriate Department employee. To the extent that the taxpayer requests an extension of time to file a document or submit additional information, the Department may require as a condition of granting the extension, that the taxpayer agree to an equal time extension for the Department to prepare or issue any document or determination it is required to issue.

To understand the appeals process, this Revenue Procedure must be read in conjunction with the South Carolina Revenue Procedures Act, Chapter 60, Title 12 of the S. C. Code, and the Rules of Procedure of the Administrative Law Judge Division. The Rules of Procedure are available from the Administrative Law Judge Division, Edgar A. Brown Building, Second Floor, 1205 Pendleton Street, Columbia, SC 29201, or on its website at [www.scaljd.net](http://www.scaljd.net).

If the taxpayer fails to make a timely response or fails to comply with the procedures outlined in this Revenue Procedure, the Department may decide the appeal against the taxpayer and immediately issue the Department determination. If an appeal is filed with the Administrative Law Judge Division, the Department will likely argue that the taxpayer failed to “exhaust his pre-hearing remedy.” See Section 12-60-30(15) of the South Carolina Code of Laws (“Code”) for a definition of “exhaustion of a taxpayer’s pre-hearing remedy.”

## II. DEFINITIONS

A. **Appeals** - The employee or employees designated by the appropriate division of the Department to carry out the responsibilities and duties assigned to Appeals in this Revenue Procedure.

B. **Contested Case Hearing** - A hearing defined in Section 1-23-310 of the Code, and conducted pursuant to Article 3, Chapter 23 of Title 1, the South Carolina Administrative Procedures Act. For purposes of this Revenue Procedure, it involves hearings by the Administrative Law Judge Division reviewing Department determinations.

C. **Department Determination** - The final determination of an appeal approved by the Director or his designee made in accordance with this Revenue Procedure. This determination may be appealed to the Administrative Law Judge Division. If a document is consistent with this definition, it will be deemed to be the Department determination even though it may be entitled a final agency determination or some other name.

E. **Department Representative** - The person appointed by the Department to prepare the Department determination and represent the Department at the contested case hearing.

F. **Director** - The director of the Department.

G. **Division** - A unit within the Department currently including the following units – Property, Audit Services, Collection Services, Processing Document Management Services, Regulatory, and the Office of the General Counsel.

H. **Final Assessment or Assessment** - For the purpose of this Revenue Procedure:

1. Except for property taxes, an assessment is the determination of any tax due.
2. For property tax purposes, for those property tax assessments issued by the Department, an assessment is the determination of the value of the property multiplied by the assessment ratio. The property tax due is later determined by multiplying the assessment by the millage rate levied by the applicable taxing authority. In the case of the motor carrier property tax, the final notice that a property tax is due in accordance with Section 12-37-2850 of the Code is considered the assessment. An assessment for property taxes of airlines and private car lines will include determination of the equalized assessment ratio, the millage and the tax due. For property tax exemptions, it is the denial of an exemption.
3. Assessments include the determination of any penalty or interest due and owing to the extent that such amounts can be determined at the time of issuance of the assessment.

I. **Proposed assessment** - The first written notice sent or given to a person stating that a division within the Department has concluded that any tax is due or an exemption has been denied or any license is to be suspended or revoked, or an application for a license is denied. In addition, a proposed assessment also includes a division decision which is an action or finding adverse to the taxpayer other than an assessment of taxes, a regulatory violation, or the denial, suspension, or revocation of a regulatory license. For property tax purposes, it includes the first notice stating the value and/or assessment ratio of certain property as determined by the Property Division. The term proposed assessment does not include an auditor's work papers or draft audit reports, or any document that specifically states it is not intended as a proposed assessment.

If a document is consistent with this definition, it will be deemed to be a proposed assessment for purposes of this Revenue Procedure, even if it is called something else. For example, even if it is called an assessment, notice of assessment, assessment notice and tax bill, notice of appraisal and assessment, property assessment notice, notice of adjustment, notice of action on license, regulatory violation and proposed assessment report, or if it looks like an invoice, it will be deemed to be a proposed assessment.

J. **Regulatory License** - Means a license that is issued under the South Carolina alcohol and beverage laws or the South Carolina bingo laws.

**K. Regulatory Violation** - A violation of a statute or regulation which controls the conduct of alcohol beverage licensees or bingo licensees, including a violation which may result in the suspension or revocation of a license. It does not include taxes, interest on taxes, or monetary penalties in Chapter 54 of Title 12.

**L. Tax or Taxes** - Unless the context clearly requires otherwise, taxes include all taxes, licenses, permits, fees, or other amounts, including interest and penalties, imposed by Title 12 of the Code, or subject to assessment or collection by the Department.

**M. Taxpayer** - Means any person or entity liable for, or required to pay, any tax or fee to the Department who has been issued a proposed assessment or a Department determination. It also includes licenses and license applicants for those licenses issued by the Department.

**N. Waiver of Restrictions on Assessments** - Waiver of restrictions on assessments is achieved through the filing of a Form SC870 or SC870AD.

1. Form SC870 – A taxpayer may sign this form if he or she wants the Department to generate a final assessment showing the total tax, interest, and penalty (if any) due so the taxpayer can pay the proposed assessment and stop the accumulation of interest.

2. Form SC870AD – A taxpayer may sign this form when he wants to resolve a dispute. It is not effective until it is accepted by a division administrator or his designee. If accepted by the Department, the taxpayer cannot file or prosecute a claim for refund or credit and the Department will not reopen the case, except for fraud, malfeasance, concealment, or misrepresentation of material fact, or an important mistake in mathematical calculation.

### **III. PRE-HEARING PROCEDURES FOR TAXES AND LICENSES ADMINISTERED BY THE DEPARTMENT OTHER THAN REGULATORY LICENSES AND REGULATORY VIOLATIONS**

#### ***A. Issuance of a Proposed Assessment, Filing a Protest, Collection of the Tax and Division Review***

1. *Issuance of Proposed Assessment* - The appropriate division of the Department will issue a proposed assessment indicating that a tax is due, an assessment of property has been made, a property tax exemption has been denied, or another action adverse to the taxpayer has been taken. The proposed assessment will explain the basis for the proposed assessment and state that a final assessment will be made or other appropriate action will be taken unless the taxpayer pays the tax or files a protest within 90 days of the issuance of the proposed assessment. The Department will also provide the taxpayer with sufficient information to enable the taxpayer to file a protest.

2. *Filing of Protest by Taxpayer* - In order to protest a proposed assessment, the taxpayer must file a written protest within 90 days of the issuance of the proposed assessment. The written protest must contain:

- (1) the name, address, and telephone number of the taxpayer;
- (2) the appropriate taxpayer identification number(s);
- (3) the tax period or date for which the tax was proposed;
- (4) the nature and kind of tax in dispute;
- (5) a statement of facts supporting the taxpayer's position;
- (6) a statement outlining the reasons for the appeal, including any law or authority upon which the taxpayer relies; and
- (7) any other relevant information the Department may reasonably prescribe.

See Sections 12-60-450 and 12-60-1310 of the Code for further information as to the rules regarding the filing of a protest.

3. *Collection Efforts - Protest Filed* - If the taxpayer does file a written protest, for a tax which has not been assessed, the Department will not make any effort to collect the tax or take other action until the matter is resolved within the Department or a contested case hearing has been held and a decision has been rendered by an administrative law judge.

If the matter involves property taxes assessed by the Department or the County Assessor and is unlikely to be resolved by December 31 of the same year, the amount of tax owed will be calculated and the taxpayer will receive a tax bill based upon 80% of the disputed assessed value, or a greater amount if the taxpayer agrees in writing. Additional taxes will be billed or a refund made after the matter is resolved.

Any suspension of collection efforts does not apply to jeopardy assessments or termination assessments, or if the Department determines that public safety or health requires emergency action, in which case the Department may seek an emergency revocation of the taxpayer's license in accordance with Section 12-60-1340 of the Code.

4. *Collection Efforts - No Protest Filed* - If the taxpayer does not file a written protest with the Department within 90 days of the proposed assessment, the Department will make a final assessment and begin collection activities if payment is not made. If the matter involves property taxes (except for those which the Department administers and bills), the Department will certify its assessment to the appropriate county or counties who will issue the tax bill. A suspension of collection activities may be ordered by the Taxpayers' Rights Advocate pursuant to Code Section 12-58-30, in which event no collection will be made until the matter is resolved or the Taxpayers' Rights Advocate allows collection to proceed.

5. *Division Review of Protest* - Once a protest has been filed, personnel within the division that issued the proposed assessment may attempt to resolve the matter with the taxpayer. Resolutions made at this level must be consistent with Department policy and may not be

based upon the hazards of litigation. If they are unable to resolve the matter at this level, they may forward the file along with all appropriate documents and data to Appeals to try and resolve the matter.

## **B. Appeals**

1. *Appeals Receipt of File* - Once it has received a file, Appeals may request additional information from the taxpayer in an attempt to resolve the issues raised by the proposed assessment. In connection with trying to resolve the issues, Appeals may offer the taxpayer a conference if Appeals feels that this would be useful in resolving the issues.

2. *Review of File by Appeals* - Once Appeals has reviewed the matter, Appeals will either inform the taxpayer that Appeals agrees with the taxpayer's position and the matter has been resolved, negotiate a settlement with the taxpayer or inform the taxpayer that the file has been forwarded to the Department's Office of General Counsel for further review. To the extent that Appeals agrees with the taxpayer as to some issues and disagrees with the taxpayer as to others, Appeals will inform the taxpayer of those issues that it agrees with and will forward the remaining issues on to the Department's Office of General Counsel.

3. *Settlement by Appeals* - A taxpayer may offer to settle a case that resides with Appeals. Appeals has the authority to settle any case based upon its finding of the facts and its determination of the law, and it may settle a matter based on the hazards of litigation in accordance with the guidelines and procedures set forth in Section D below. No settlement based on the hazards of litigation is binding until the administrator of the division and the General Counsel or his designee are notified of the settlement, and the Director or his designee has approved the settlement.

4. A taxpayer, or the Department, may elect to forego the procedures set forth in this Section B entitled Appeals.

## **C. The Department Representative**

1. *Receipt of the Appeal by the Department's Office of General Counsel* - If the case is not settled, Appeals will forward the file to the Department's Office of General Counsel or his designee who will assign it to a Department representative. The Department representative will review the file and either:

- a. Prepare the Department's determination and submit it for approval to the General Counsel or his designee and the Director or his designee;
- b. Discuss the file with Appeals or the division and, if necessary, return the file for further development; or
- c. Attempt to settle the case.

2. *Department Representative Review of the File* - The Department representative will review the file and either agree with the taxpayer and close the case file, agree with Appeals or the Division in which case the Department representative will draft a Department determination setting forth the facts, issues and support for the position of the Department, or the Department representative may attempt to settle the case. At any time, the Department representative may request additional information from the taxpayer if he believes it would be helpful in resolving the appeal. As part of its review of the file, the Department representative may choose to meet with the taxpayer.

3. *Settlement of Case by the Department Representative* - A taxpayer may offer to settle a case that resides with the Department representative. The Department representative has the authority to settle any case based upon its finding of the facts and its determination of the law and it may settle a matter based on the hazards of litigation in accordance with the guidelines and procedures set forth in Section D below. No settlement based on the hazards of litigation is binding until it is reviewed by the General Counsel or his designee and approved by the Director or his designee.

4. *Issuance of the Department Determination* - If the Department representative determines that the proposed assessment was correct or determines a matter adverse to the taxpayer, a Department determination will be issued. The Department determination must contain a statement explaining that a request for a contested case hearing must be made to the Department representative within 30 days of the date the Department determination is sent to the taxpayer, and an explanation of how to request a hearing

5. *Transmittal of File to the Administrative Law Judge Division* - If the Department determination is appealed, the Department representative will prepare the transmittal to the Administrative Law Judge Division and represent the Department at the hearing. Administrative Law Judge Division hearings are conducted pursuant to the Administrative Law Judge Division rules which are available from the Administrative Law Judge Division at [www.scaljd.net](http://www.scaljd.net).

#### ***D. Settling of a Case Based on Hazards of Litigation***

1. *Conditions of Settlement* - Subject to the procedures and limitations set forth in this Revenue Procedure, Appeals and the Department representative have the authority to settle cases based upon the hazards of litigation. Appeals or the Department representative may refuse to settle a case based upon the hazards of litigation if they believe that state tax policy would be better served with a judicial resolution. Settlements based on the hazards of litigation should reflect, on an issue by issue basis, the probable result in the event of litigation, or mutual concessions for the purpose of settlement based on the relative strength of the opposing positions where there is substantial uncertainty of the result in the event of litigation.

2. *Factors to Be Considered in Settlement Based on Hazards of Litigation* - Appeals or the Department representative will consider:

- (A) the quality of the evidence likely to be presented,
- (B) the credibility and availability of witnesses,
- (C) the ability of the taxpayer to carry his burden of going forward with the evidence,
- (D) the likelihood that the evidence the taxpayer can present will carry his burden of proof,
- (E) the doubt as to an issue of fact,
- (F) the doubt as to a conclusion of law, and
- (G) the desirability of a judicial decision.

3. *Procedure for Hazard of Litigation Settlements* - If the settlement is based on the hazards of litigation, it must be approved in the manner described herein. Because settlements based on the hazards of litigation must be uniformly made, to settle a case based on the hazards of litigation, Appeals or the Department representative must send a recommendation to the Department's General Counsel or his designee. This recommendation must be based on the principles in this Revenue Procedure. The Department's General Counsel or his designee will review the settlement and advise the Director or his designee who may authorize the settlement. If the settlement is rejected, the Department's General Counsel, or his designee, the Director, or his designee may make suggestions for changes which would make it acceptable. If Appeals or the Department representative concurs with the changes, they may resubmit the recommendation after the changes are made. If appropriate, the taxpayer will sign a Waiver of Restriction on Assessments to complete the settlement.

#### **E. *Miscellaneous Appeals***

1 *Procedure for Claims for Refunds* - The denial of a claim for refund by the Department will be treated the same as a proposed assessment and the taxpayer's appeal is handled in a matter identical to a proposed assessment.

2. *Procedure for Denial of an Installment Agreement* - The appeal of a denial to pay a tax in installments will be treated in the same manner as a proposed assessment.



3. *Procedure for Denial, Suspension or Revocation of a Retail Sales License or other License issued by the Department other than a Regulatory License* - The appeal of the notice of denial, suspension or revocation of a retail sales license or other license issued by the Department, other than a regulatory license, will be handled in the same manner as a proposed assessment.

4. *Procedure for Appeal of a Denial to Release a Lien* - If a division of the Department denies a request to release a lien, the appeal of the denial of such a request will be handled in the same manner as a proposed assessment.

5. *Procedure for Jeopardy Assessments* - Jeopardy assessments will not be handled in accordance with the procedures set forth in this Revenue Procedure, rather the appeal of jeopardy assessment will be handled in accordance with Sections 12-60-910 and 12-60-920 of the Code. Unless specifically directed otherwise, a taxpayer subject to a jeopardy assessment should deal directly with the Department's Chief Counsel for Revenue Litigation or Administrator of the Regulatory Division, as appropriate.

#### **IV. PRE-HEARING PROCEDURE FOR THE DENIAL, SUSPENSION, OR REVOCATION OF A REGULATORY LICENSE OR HANDLING OF A REGULATORY VIOLATION.**

If a regulatory violation may result in the suspension or revocation of the taxpayer's regulatory license, the appeal will be treated as an appeal of the "Denial, Suspension, or Revocation of a Regulatory License" as provided in Part IV.A below.

##### ***A. Appeal of a Denial, Suspension or Revocation of a Regulatory License (Whether or not a Monetary Penalty is Also Imposed)***

1. *Issuance of a Proposed Assessment* - An employee within the Regulatory Division will issue a proposed assessment setting forth information containing the basis for the denial, suspension or revocation of the license, and providing that the matter will be considered closed and the regulatory license will not be issued, or will be suspended or revoked, unless the taxpayer files a written protest within 90 days of the date of the proposed assessment. If a proposed assessment includes a regulatory violation that may result in a penalty being imposed as well as the regulatory license being suspended or revoked, the regulatory violation will be handled under this section IV.A. The employee will provide sufficient information so as to inform the taxpayer as to how to file a protest with the Department.

2. *Filing of Protest by Taxpayer* - The taxpayer may file a written protest within 90 days of the proposed assessment appealing the proposed assessment. The written protest must contain:

- (1) the name, address, and telephone number of the taxpayer;
- (2) the appropriate taxpayer identification number(s);
- (3) the kind of license in dispute;

- (4) a statement of facts supporting the taxpayer's position;
- (5) a statement outlining the reasons for the appeal, including any law or authority upon which the taxpayer relies; and
- (6) any other relevant information the Department may reasonably prescribe.

See Code Section 12-60-1310 for further information as to the rules regarding the filing of a protest.

3. *Suspension or Revocation of License - Protest Filed* - If the taxpayer does file a written protest, the Department will not make any effort to revoke or suspend the Taxpayer's regulatory license or to impose any penalty resulting from a regulatory violation that is appealed pursuant to IV.A, until the matter is resolved within the Department or a contested case hearing has been held and a decision has been rendered by an administrative law judge. However, the Department is not restricted from seeking an emergency revocation pursuant to Section 12-60-1340 of the Code. If a written protest is filed, the Regulatory Division will forward the file on to the Department representative.

4. *Suspension or Revocation of License - No Protest Filed* - If the taxpayer does not file a written protest with the Department within 90 days of the proposed assessment, the Department will suspend or revoke the taxpayer's regulatory license and if applicable, will impose any penalty that has been proposed. A stay of the revocation or suspension of a regulatory license, or the imposition of the penalty, or both, may be ordered by the Taxpayers' Rights Advocate pursuant to Code Section 12-58-30, in which event no action will be taken until the matter is resolved or the Taxpayers' Rights Advocate lifts any stay on suspension or revocation of the license.

5. *Department Representative Receipt of File* - If a written protest is filed, a Department representative will receive the file and may contact the taxpayer to request additional information. The Department representative may then:

1) agree with the taxpayer and close the file and notify all pertinent parties that the file has been closed; or,

2) settle the matter based on the hazards of litigation; or,

3) issue a Department determination. In the event a Department determination is issued, the Department representative will inform the taxpayer that if the taxpayer does not request a contested case hearing within 30 days of the Department's determination, the regulatory license will not be issued or the existing license will be suspended or revoked and any applicable penalty will be imposed.

6. *Denial of a License - Third Party Protester* - If during the application process for a regulatory license consisting of an Alcohol Beverage License and/or Beer and/or Wine Permit issued by the Department, a third party files a protest as defined in South Carolina Code

Sections 61-4-525 or 61-6-185, in accordance with 23 S.C Regulation 7-201, and the Department has no objection to the license, the Department may waive the requirement that the taxpayer exhaust his pre-hearing and administrative remedies, including the filing of a protest, prior to requesting a hearing before the Administrative Law Judge Division.

7. *Transmittal of File to Administrative Law Judge* - If the Department determination is appealed, the Department representative will prepare the transmittal to the Administrative Law Judge Division and represent the Department at the hearing. Administrative Law Judge Division hearings are conducted pursuant to the Administrative Law Judge Division rules which are available from the Administrative Law Judge Division at [www.scaljd.net](http://www.scaljd.net).

***B. Appeals of Regulatory Violations Which Do not Involve the Denial, Suspension or Revocation of a Regulatory License***

1. *Determination of a Regulatory Violation* - Either the Regulatory Division or the State Law Enforcement Division (“SLED”) will cite taxpayer for a regulatory violation. The citation of the violation will be forwarded on to the Regulatory Division for processing. The Regulatory Division will issue taxpayer a proposed assessment setting forth the information containing the basis for the violation and indicate that the violation will become final and nonappealable unless the taxpayer files a written protest protesting the violation within 90 days of the date of the proposed assessment. An employee of the Regulatory Division will provide sufficient information informing the taxpayer how to file a protest with the Department.

2. *Filing of Protest by Taxpayer* - The taxpayer may file a written protest within 90 days of the proposed assessment appealing the proposed assessment. The written protest must contain:

- (1) the name, address, and telephone number of the taxpayer;
- (2) the appropriate taxpayer identification number(s);
- (3) the nature and kind of issue in dispute;
- (4) a statement of facts supporting the taxpayer’s position;
- (5) a statement outlining the reasons for the appeal, including any law or authority upon which the taxpayer relies; and
- (6) any other relevant information the Department may reasonably prescribe.

See Code Section 12-60-450 for further information as to the rules regarding the filing of a protest.

3. *Regulatory Violation - No Protest Filed* - If the taxpayer does not file a written protest with the Department within 90 days of the proposed assessment, the Department will assess any monetary penalty associated with the violation. A suspension of such action may be ordered by the Taxpayer’s Rights Advocate pursuant to Code Section 12-58-30, in which event no action will be taken until the matter is resolved or the Taxpayers’ Rights Advocate lifts the suspension.

4. *Regulatory Violation - Protest Filed* - If the taxpayer does file a written protest, the Department will not assess any penalty until the matter is resolved within the Department or a contested case hearing has been held and a decision has been rendered by an administrative law judge. If a written protest is filed, the Division employee will forward the file on to the Department Representative.

5. *Department Representative Review of File* - If a written protest is filed, a Department representative will receive the file and may contact the taxpayer to request any additional information. The Department may then:

1) agree with the taxpayer and close the file and notify all pertinent parties that the file has been closed; or,

2) settle the matter based on the hazards of litigation; or,

3) issue a Department determination. In the event a Department determination is issued, the Department representative will inform the taxpayer that if the taxpayer does not request a contested case hearing within 30 days of the Department's determination, the violation will be nonappealable and any penalties associated with the regulatory violation will be considered immediately due and owing. Such penalties, with interest if applicable, shall then be immediately assessed against the taxpayer.

6. *Transmittal of File to Administrative Law Judge* - If the Department determination is appealed, the Department representative will prepare the transmittal to the Administrative Law Judge Division and represent the Department at the hearing. Administrative Law Judge Division hearings are conducted pursuant to the Administrative Law Judge Division rules which are available from the Administrative Law Judge Division at [www.scaljd.net](http://www.scaljd.net).

### ***C. Emergency Suspension or Revocation of a Regulatory License***

If the Department determines that public health, safety or welfare requires emergency action, the appeal provisions set forth in this Revenue Procedure will be bypassed and the Department will seek an emergency revocation order in accordance with the provisions set forth in Code Section 12-60-1340.

## **V. CONTACT INFORMATION**

Questions about general information contained in this Revenue Procedure should be directed to Jerilynn VanStory at (803)898-5151. Questions about appealing a proposed assessment relating to a tax matter or a division decision should be addressed to Jan Crangle at (803) 898-5616. Questions about appealing a proposed assessment relating to the denial, suspension or revocation of a regulatory license or appealing a regulatory violation should be addressed to Dana R. Krajack at (803) 898-5172.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III  
Burnet R. Maybank III, Director

January 22, 2004  
Columbia, South Carolina