

**Posted May 8, 2009**

Effective May 7, 2009, H. 3721 became law without the Governor's signature, amending § 12-6-40(A)(1)(a) to recognize the Internal Revenue Code (IRC) as amended through December 31, 2008, including the effective dates, except where otherwise provided, and amending § 12-6-50(4) and (14) to exclude IRC § 168 (l) cellulosic biofuel plant property, (m) certain reuse and recycling property, (n) qualified disaster assistance property, and IRC §§ 1400 through 1400T providing DC Enterprise Zone, Renewal Community, NY Liberty Zone, and GO Zone depreciation.

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SC CONFORMITY ISSUES FOR TAX YEAR 2008

**NOTE: THE OPINIONS EXPRESSED IN THIS DOCUMENT ARE CURRENT THROUGH FEBRUARY 23, 2009 AND MAY NOT BE ATTRIBUTED TO THE SOUTH CAROLINA DEPARTMENT OF REVENUE.**

The purpose of this notice is to advise taxpayer and preparers of adjustments that are necessary prior to conformity. Conformity refers to Internal Revenue Code sections passed or extended in the previous year before S.C. Code § 12-6-40 is updated to include those amendments. As of the date of this notice, S.C. Code Ann. § 12-6-40(A)(1)(a) recognizes the Internal Revenue Code (IRC) as amended through December 31, 2007, including the effective dates, except where otherwise provided.

A taxpayer faced with a conformity issue has two legitimate choices. (1) File a return making an adjustment for the conformity issue; or (2) wait to file a return, requesting an extension of time if necessary, until conformity occurs. Historically, conformity has occurred in all years as far back as 1986.

Many federal tax provisions were enacted or extended in 2008 and made applicable to the 2008 Tax Year. Listed below are just some of the conformity issues and how they should be dealt with prior to conformity through December 31, 2008, provided that the provision is not otherwise excepted. Send your email to [taxtech@sctax.org](mailto:taxtech@sctax.org) for additional information.

▪ **Additional standard deductions for real property taxes and net disaster losses.**

**SC1040** filers: Add back as a line 36 other addition.

**Schedule NR** filers: Add back as a line 33 SC addition.

**NOTE:** For taxpayers who itemize, the available standard deduction in Worksheet A, line 2 for SC1040, line 32 and Schedule NR, line 45 does not include the standard deduction for net casualty loss.

▪ **Above-the-line tuition and fees deduction.**

**SC1040** filers: Add back in full as line 36 other addition.

**Schedule NR** filers: Omit line 28, Column B.

▪ **Above-the-line educator expenses.**

**SC1040** filers: Add back in full as line 36 other addition.

**Schedule NR** filers: Omit line 17, Column B.

▪ **Increase in IRC § 179 expense election to \$250,000 and in the dollar-for-dollar phaseout to \$800,000.**

The § 179 limit for South Carolina purposes for TY 2008 is \$128,000 and the dollar-for-dollar phase-out begins at \$510,000.

**SC1040** filers: Add back the excess as a line 36 other addition. If nonconformity results in a higher SC basis, claim additional depreciation deduction on line 53 other subtractions.

**Schedule NR** filers: Add back as line 33 SC addition. If nonconformity results in a higher SC basis, claim additional depreciation deduction on line 40 other subtractions.

▪ **Tax-free treatment of the qualified IRA distributions to charity.**

**SC1040** filers: Add back in full as line 36 other addition.

**Schedule NR** filers: Add back as line 33 SC addition.

**NOTE:** The amount must be added back as nonexempt income, but the amount of the distribution can be included as a charitable contribution within the taxpayer's itemized deductions.

**Internal Revenue Code Provisions specifically exempted under S.C. Code Ann. § 12-6-50:**

▪ **Bonus Depreciation amendments.**

**SC1040** filers: Add back as line 36 other addition. A higher SC basis will allow you to claim an additional depreciation deduction on line 53 other subtractions.

**Schedule NR** filers: Add back as line 33 SC addition. A higher SC basis will allow you to claim an additional depreciation deduction on line 40 other subtractions.

▪ **Election to claim local general sales taxes as an itemized deduction.**

**SC1040** filers: Add back in line 32 state tax addback (see worksheet in instructions).

**Schedule NR** filers: Add back in line 45 deductions adjustment (see worksheet in instructions).

**Provision to which SC conforms:**

▪ **Reduced extension period from six months to five months for partnerships, estates, and trusts.**

South Carolina recognizes the reduced extension and waives any resulting penalties for taxes filed in 2009. See IL 08-27.