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## **.08 Annual Reports and License Fees**

### **A. Annual Report**

#### **1. General Provisions**

Generally, every domestic corporation,<sup>1</sup> every foreign corporation<sup>2</sup> qualified to do business in South Carolina, and any other corporation required by SC Code §12-6-4910 to file income tax returns must file an annual report with the Department,<sup>3</sup> including a limited liability company (LLC) taxed as a corporation.<sup>4</sup> See Section .08 C. of this portfolio for a discussion of entities exempt from the annual report requirements.

#### **2. Initial Annual Report**

An initial annual report and a license fee of \$25 must be filed with the Secretary of State with the articles of incorporation filed by a domestic corporation or with the application for certificate of authority filed by a foreign corporation.<sup>5</sup> The Secretary of State sends the initial annual report to the Department. A foreign corporation that does not file an application for certificate of authority with the Secretary of State must file the initial annual report and pay the initial license fee of \$25 to the Department on or before 60 days after initially doing business or using a portion of its capital in South Carolina.<sup>6</sup> The initial annual report of corporations is filed on Form CL-1, "Initial Annual Report of Corporations."

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<sup>1</sup>SC Code §12-20-10(3) defines domestic corporation to mean a corporation incorporated under the laws of South Carolina.

<sup>2</sup>SC Code §12-20-10(4) defines foreign corporation to mean a corporation not incorporated under the laws of South Carolina.

<sup>3</sup>SC Code §12-20-20(A).

<sup>4</sup>SC Code §33-44-211, entitled "Annual Report for Secretary of State", was repealed in 2004 by Act No. 221, effective April 29, 2004, eliminating the requirement that every domestic LLC and every foreign LLC authorized to transact business in South Carolina, regardless of how the LLC is taxed, must also file a separate annual report with the Secretary of State on Secretary of State Form "Limited Liability Company Annual Report." See Section .11 Worksheet 1 of this portfolio for contact information regarding LLC Secretary of State reporting requirements and fees.

<sup>5</sup>SC Code §33-1-220. In addition to the \$25 license fee, a \$110 filing fee is due to the Secretary of State. One check for \$135 covering all the fees may be remitted to the Secretary of State.

<sup>6</sup>SC Code §12-20-40.

### 3. Subsequent Annual Reports

After filing the initial annual report, subsequent annual reports must be filed on or before the 15<sup>th</sup> day of the third month following the end of the corporations taxable year, unless otherwise provided.<sup>7</sup> Each subsequent annual report is generally completed on a schedule that is part of the South Carolina income tax return. For example, the annual report information is completed on “Schedule D” of Form SC1120, “C Corporation Income Tax Return,” Form SC1120S, “S Corporation Income Tax Return,” or Form SC1120U, “Public Utility Tax Return.” Electric cooperatives, however, do not file an income tax return but do file an annual report on Form CL-4, “Annual Report of Electric Cooperative Corporations,” on or before the 15<sup>th</sup> day of the third month following the end of their taxable year.

The Department, for good cause, may allow an extension of time to file an annual report.<sup>8</sup> A taxpayer may request an extension of time to file an annual report on or before the date the annual report is due by filing a tentative return and paying the full amount of the license fee due.<sup>9</sup> Form SC1120-T, “Tentative Corporation Tax Return and Conditional Extension,” is generally used to request an extension to file an annual report and income tax return. South Carolina does not recognize a federal corporate income tax extension or any other state’s extension of time to file.

**Note:** There is no preprinted extension form to use to request an extension of time to file Form CL-4, “Annual Report of Electric Cooperative Corporations”; any request for an extension of time to file should be in writing.<sup>10</sup>

### 4. Content

The information in the annual report must be current as of the date the annual report is filed and contain the following information:<sup>11</sup>

1. The name of the corporation and the state or country of incorporation;
2. The address of the registered office and the name of the registered agent in South Carolina;
3. The address of the principal office;

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<sup>7</sup>SC Code §12-20-20(B).

<sup>8</sup>SC Code §12-20-20(C).

<sup>9</sup>SC Code §12-6-4980(A).

<sup>10</sup>SC Code §12-60-40(A).

<sup>11</sup>SC Code §12-20-30(A).

4. The names and business addresses of the directors and principal officers;
5. A brief description of the nature of the business;
6. The total number of authorized shares of stock, itemized by class and series, if any, within each class; and
7. The total number of issued and outstanding shares of stock, itemized by class and series, if any, within each class.

This information is open to unrestricted public inspection. Any person may request a copy of the information from either the Department or the Secretary of State.

## **B. License Fee Overview**

South Carolina's license fee,<sup>12</sup> or franchise tax, is imposed on the privilege of doing business as a corporation in South Carolina to compensate South Carolina for protection and opportunities commensurate to doing business in South Carolina. Unless otherwise exempted,<sup>13</sup> every corporation required to file an annual report is required to pay an annual license fee. Except for the initial license fee, the license fee is paid in advance of the taxpayer's income tax year.

The measure of the license fee is based upon either: (1) the capital stock and paid-in or capital surplus<sup>14</sup> of the corporation or (2) the South Carolina gross receipts and property.<sup>15</sup> The type of license fee a taxpayer pays depends upon the taxpayer's type of business. Most corporations pay the license fee based on capital. Only specifically enumerated companies, such as waterworks companies, power companies, electric cooperatives, gas companies, telephone companies, and express companies, pay the license fee based on gross receipts and property.

## **C. Entities Exempt from Annual Report and License Fee Provisions**

The following organizations, companies, and associations are not subject to the annual report requirements or the license fee requirements in Chapter 20 of Title 12 because of a

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<sup>12</sup>SC Code §12-20-160 provides that for purposes of Chapter 20 of Title 12 and for purposes of administrative and enforcement provisions, the corporate license fee is deemed to be a tax.

<sup>13</sup>See Section .08 C. of this portfolio for a list of entities that are exempt from the corporate license fee requirements.

<sup>14</sup>SC Code §12-20-50.

<sup>15</sup>SC Code §12-20-100.

specific statute<sup>16</sup> or because they are not organized as a corporation and are not taxed under Subchapter C or S provisions of the Internal Revenue Code:<sup>17</sup>

1. An LLC unless it is taxed as a corporation. LLC's taxed as corporations must file annual reports and pay license fees.<sup>18</sup>
2. A corporation whose only contact with South Carolina is registration with the Secretary of State (*i.e.*, a foreign corporation is not doing business in South Carolina).

**Comment:** A corporation that is legally qualified to do business in South Carolina that is not doing business in South Carolina (*i.e.*, it does not have nexus with South Carolina for license fee purposes) should notify the Department's Corporate Section to avoid a computer generated proposed assessment.<sup>19</sup>

3. A nonprofit corporation organized pursuant to Chapter 31 (South Carolina Nonprofit Corporation Act of 1994) of Title 33 exempt from income taxes pursuant to Section 501 of the Internal Revenue Code of 1986.<sup>20</sup>
4. A volunteer fire department and rescue squad.<sup>21</sup>
5. A cooperative organized pursuant to Title 33 of the SC Code.<sup>22</sup>
6. A bank as defined in SC Code §12-11-10.<sup>23</sup>
7. A savings and loan association as defined in SC Code §12-13-10.<sup>24</sup>

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<sup>16</sup>SC Code §12-20-110.

<sup>17</sup>SC Code §12-6-550.

<sup>18</sup>SC Rev. Rul #98-11. See Section .03 C. and Section .11 Worksheet 5 of this portfolio.

<sup>19</sup>See Section .11 Worksheet 1 for contact information.

<sup>20</sup>SC Code §12-20-110(1).

<sup>21</sup>SC Code §12-20-110(2).

<sup>22</sup>SC Code §12-20-110(3).

<sup>23</sup>SC Code §§12-20-110(4) and 12-11-30. See also Sections .08 D. and .03 C. of this portfolio for additional information on the taxation of banks, savings and loans, and insurance companies.

<sup>24</sup>SC Code §§12-20-110(4) and 12-13-50. See also Sections .08 D. and .03 C. of this portfolio for additional information on the taxation of banks, savings and loans, and insurance companies.

8. An insurance company or association including any fraternal, beneficial, or mutual protection insurance company.<sup>25</sup>
9. A foreign corporation whose entire income is not included in gross income for federal income tax purposes due to any treaty obligation of the United States.<sup>26</sup>
10. Nonprofit corporations organized pursuant to Chapter 36 (Corporations Not for Profit Financed by Federal or State Loans) of Title 33 for the purpose of providing water supply and sewerage disposal or a combination of those services.<sup>27</sup>
11. A homeowners association as defined in Internal Revenue Code §528(c)(1).<sup>28</sup>
12. Entities that are not organized as a corporation and are taxed under provisions of the Internal Revenue Code other than Subchapters C or S. Examples of exempt entities, if they are not organized as a corporation, include:<sup>29</sup>
  - a. Real estate investment trusts (“REITs”) as defined in Internal Revenue Code §856 and taxed under Internal Revenue Code §857 if organized as a trust under local law.
  - b. Regulated investment companies (“RICS”) as defined in Internal Revenue Code §851.
  - c. Real Estate Mortgage Investment Conduits (“REMICs”) as defined in Internal Revenue Code §860D.
  - d. Political organizations as defined in Internal Revenue Code §527.

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<sup>25</sup>SC Code §12-20-110(5).

<sup>26</sup>SC Code §12-20-110(6).

<sup>27</sup>SC Code §12-6-550(4).

<sup>28</sup>SC Code §12-20-110(7).

<sup>29</sup>SC Rev. Rul. #95-5.

13. Public corporations.<sup>30</sup> Municipalities and counties are considered to be public corporations.<sup>31</sup> A Redevelopment Commission formed under the Community Development Law of Chapter 10 of Title 31 to redevelop certain blighted areas is also considered a public corporation.<sup>32</sup>

## **D. License Fee Computation**

### **1. Measure of License Fee Based on Capital Stock and Paid in Capital**

#### **a. General Provisions and Computation**

Every corporation, except those otherwise provided,<sup>33</sup> required to file an annual report must pay an annual license fee of \$15 plus one dollar for each thousand dollars, or fraction of a thousand dollars, of capital stock (common and preferred stock) and paid-in or capital surplus of the corporation as shown by the records of the corporation on the first day of the taxable year in which the report is filed. The minimum license fee is \$25.

**Note:** The license fee is computed in advance of the taxpayer's income tax year based on the "capital stock and paid in or capital surplus"<sup>34</sup> on the taxpayer's applicable financial statement balances on the first day of the income tax year in which the report is filed. For example, a calendar year taxpayer filing a corporate income tax return for the year ending December 31, 2004 will include a license fee for the calendar year 2005, based upon capital and paid in surplus as of January 1, 2005 (this is almost always the same capital and paid in surplus as of December 31, 2004.)

For purposes of the license fee computation, capital stock and paid-in or capital surplus is the amount reported on the taxpayer's applicable financial statement.<sup>35</sup> If a taxpayer has a statement described more than once below, then the applicable financial statement is the statement with the lowest number and letter designation.<sup>36</sup> The term "applicable financial statement" means a statement covering the taxable year which is:<sup>37</sup>

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<sup>30</sup>See 1971-72 Op. Atty. Gen. No. 3400 which held it is doubtful that the General Assembly intended the activities of public corporations to be examined by the Department or that a public corporation pay a license fee.

<sup>31</sup>See *York County Fair Association v. South Carolina Tax Commission*, 249 S.C. 337, 154 S.E.2d 361 (1967).

<sup>32</sup>SC PLR #92-2.

<sup>33</sup>See Section .08 C. of this portfolio for a list of entities that are exempt from license fee requirements. See SC Code §12-20-100 for a license fee computed differently on specifically enumerated companies, such as power, gas, waterwork, telephone, and express companies, in lieu of the license fee measured on capital stock and paid in capital.

<sup>34</sup>See SC Code §12-20-50 for definitions of "paid in or capital surplus" and "earned surplus."

<sup>35</sup>SC Code §12-20-50(B)(1).

1. Required to be filed with the Securities and Exchange Commission;
2. A certified audited balance sheet to be used for the purposes of a statement or report:
  - a. for credit purposes,
  - b. to shareholder's, or
  - c. for any other substantial nontax purpose;
3. A balance sheet for a substantial nontax purpose required to be provided to:
  - a. the federal government or agency of the federal government,
  - b. a state government or agency of a state government, or
  - c. a political subdivision of a state or any agency of the political subdivision; or
4. A balance sheet to be used for the purposes of a statement or report:
  - a. for credit purposes,
  - b. to shareholders, or
  - c. for any other purpose.

Although the terms used are somewhat outdated from current accounting terminology, the statute defines the terms “paid in or capital surplus,” and “earned surplus,” which is commonly referred to as retained earnings, as follows:

1. “Paid in or capital surplus” means “the entire surplus of a corporation other than earned surplus including, but not limited to, amounts charged against earned surplus and credited to other surplus accounts, donated capital, amounts representing the increase in valuation of assets made upon a revaluation of the company’s assets, and amounts credited to any surplus account other than earned surplus as a result of a merger or acquisition regardless of whether the amount credited to the surplus account was transferred from an earned surplus account.”<sup>38</sup>

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<sup>36</sup>SC Code §12-20-50(B)(3).

<sup>37</sup>SC Code §12-20-50(B)(2).

<sup>38</sup>SC Code §12-20-50(A).

2. “Earned surplus” means “that portion of the surplus of a corporation equal to the balance of its net profits, income, gains, and losses from the date of incorporation or from the latest date when a deficit was eliminated by application of its capital surplus, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent that such distributions and transfers are made out of earned surplus.”<sup>39</sup>

The computation of the license fee is mechanical and straightforward once the accounting concepts for the balance sheet are understood. The balance sheet provides beginning and end of year balances for total assets, liabilities, and shareholder’s equity. Since retained earnings is not included in the computation of the license fee, the license fee base is determined by subtracting retained earnings from shareholder equity.<sup>40</sup>

**Note:** A taxpayer may not reduce paid in capital by a negative retained earnings to determine the license fee base. However, if the shareholder’s equity section of the balance sheet of the “applicable financial statement” is restated for financial accounting purposes to reflect the elimination of a deficit in retained earnings pursuant to a statutory recapitalization or reorganization under Internal Revenue Code §368, then the license fee base is reduced. A taxpayer may attach a schedule to the income tax return reflecting the computation of the license fee remitted.

**Note:** The impact of the recently emerging concept of Other Comprehensive Income (OCI) set forth in current Generally Accepted Accounting Principles (GAAP) on the license fee needs to be considered. Financial Accounting Standard Board pronouncements, such as SFAS 115, 130, and 133, result in OCI positive and negative adjustments directly to the shareholder equity section of the balance sheet. Prior to the emergence of OCI, these adjustments generally were included in GAAP income, and therefore retained earnings, or were not permitted under GAAP. Although many of the adjustments to OCI are in the nature of “increases (or decreases) in valuation of assets,” no general revaluation is performed. Outside forces, such as changes in the market value, operate to produce changes in OCI. Practitioners may wish to assert that OCI is the equivalent to earned surplus (*i.e.*, retained earnings) and should not enter in the computation of the license fee base. This issue has not yet been considered by the Department. It may respond that the literal reading of SC Code §12-20-50 requires the license fee to be based upon total shareholder’s equity minus only retained earnings.

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<sup>39</sup>SC Code §12-20-50(A).

<sup>40</sup>For accounting and tax purposes, shareholder’s equity is the sum of common stock, preferred stock, additional paid in capital, retained earnings, and adjustments less treasury stock. Note: The effect of treasury stock on the computation of the license fee is sometimes misunderstood. Since for accounting and tax purposes, shareholder’s equity has been reduced by the amount of treasury stock, the computation of the license fee base does not include an “add back” of treasury stock.

## **b. Apportionment of License Fee for Multistate Business**

When a corporation does business partly within and partly without South Carolina or uses its capital partly within and partly without South Carolina, the license fee is apportioned using the same apportionment ratio used for income tax purposes.<sup>41</sup> The \$25 minimum license fee, however, may not be apportioned.<sup>42</sup>

## **c. Special Measure for Bank, Insurance, and Savings and Loan Holding Companies**

The amount of the license fee required for a bank holding company, insurance holding company system, or savings and loan holding company is measured by the capital stock and paid in surplus of the holding company exclusive of the capital stock and paid in surplus of any bank, insurer, or savings and loan association that is a subsidiary of the holding company.<sup>43</sup>

## **2. Measure of License Fee Based on South Carolina Gross Receipts and Property**

### **a. General Provisions**

In place of the license fee based on capital stock and paid in capital, a license fee based on gross receipts from regulated business and South Carolina property used in the conduct of business is imposed on certain companies that are organized under South Carolina law or that are qualified to do business in South Carolina as a waterworks company, power company, electric cooperative, light company, gas company, telephone company, telegraph company, express company, street railway company, or navigation company. These enumerated companies are not defined by statute or regulation.

**Comment:** Historically, these enumerated companies were utilities and certain other companies that were regulated, generally by the South Carolina Public Service Commission. This fact has led to some confusion. Form SC1120U, “Public Utility Tax Return,” provides for the license fee calculation based upon property and gross receipts. Form SC1120, “C Corporation Income Tax Return,” provides for the license fee calculation based upon capital stock and paid in capital. Over the years, this statute has been amended and some businesses have been deregulated. Since some of these companies became deregulated, there is confusion as to whether these enumerated companies should file Form SC1120U or Form SC1120. In addition, new companies of the enumerated types have come into existence which have never been regulated. The

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<sup>41</sup>See Section .05 E. of this portfolio for a discussion of the apportionment rules for income tax purposes.

<sup>42</sup>SC Code §12-20-60.

<sup>43</sup>SC Code §12-20-90. For the purposes of this section, “bank,” “bank holding company,” and “subsidiary” of a bank holding company have the same definitions as in SC Code §34-24-20; “insurer,” “insurance holding company system,” and a “subsidiary” of an insurance holding company system have the same definitions as in SC Code §38-21-10; and savings and loan “association,” “savings and loan holding company,” and a “subsidiary” of a savings and loan company have the same definitions as in SC Code §34-28-300.

license fee section of the income tax forms and instructions have not been revised for unregulated companies which should pay the license fee based upon property. This fact appears to have led some taxpayers and some Department employees to the belief that a license fee measured by property and gross receipts only applied to regulated companies, in spite of the fact that the statute is not limited to regulated companies.<sup>44</sup>

## **b. Computation**

The measure of the license fee based on gross receipts and property is generally a two part computation as follows:

Part I: One dollar for each thousand dollars, or fraction of a thousand dollars, of fair market value of property owned and used within South Carolina in the conduct of business as determined by the Department for property tax purposes for the preceding taxable year;<sup>45</sup> and

Part II: Three dollars for each thousand dollars, or fraction of a thousand dollars, of gross receipts derived from services rendered from regulated business within South Carolina during the preceding taxable year.<sup>46</sup>

Part I of the license fee is based upon the property owned and used in South Carolina in the conduct of business in the prior tax year, regardless of whether the business is regulated or unregulated. The property does not have to be owned by the taxpayer for the previous year in order to be subject to the license fee, but it must be owned and used within South Carolina by one of the specifically listed companies (*i.e.*, a waterworks company, gas company, etc.) and must have been valued for property tax purposes by the Department in the previous year.<sup>47</sup>

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<sup>44</sup>Note that in the calculation of the property and gross receipts license fee, the gross receipts portion is limited to the gross receipts derived from a regulated business but the property portion is for property used in the conduct of regulated or unregulated business. See *Duke Power Company v. South Carolina Tax Commission*, 292 S.C. 64, 354 S.E.2d 902 (1987), *Anonymous Taxpayer v. South Carolina Department of Revenue*, 95-ALJ-17-0634-CC (May 13, 1996), and Commission Decision #91-41 (August 12, 1991).

<sup>45</sup>SC Code §12-20-100(A)(1).

<sup>46</sup>SC Code §12-20-100(A)(2)(a).

<sup>47</sup>SC Tech. Adv. Memo. #87-8 reviewed how the license fee base is determined for a railroad company that is filing its initial corporate income tax return after purchasing railroad property from another railroad company in 1986. The property was assessed as railroad property of the previous owner by the Department. The 1987 license fee was based on the 1986 fair market value assessment by the Department while the property was still in the hands of the previous owner. Note: This statute was amended in 1994 to delete railroad companies and various types of car companies from this license fee.

Part II of the license fee is based upon gross receipts from services rendered from regulated business in South Carolina during the prior tax year (*i.e.*, operating revenue and other receipts). Gross receipts is a broad term defined by regulation to include "...all receipts from operations within the State, and also other profit and loss items with a local situs. Intangible income from intangibles used in the conduct of the business within this State is included in gross receipts."<sup>48</sup> Gross receipts has been interpreted to mean the whole receipts as opposed to the net receipts<sup>49</sup> and the entire gross receipts and not just receipts from customer charges.<sup>50</sup>

### **c. Special Measure for Electric Cooperatives**

Distribution electric cooperatives are subject to Parts I and II of the license fee. Other electric cooperatives, however, are only subject to Part I of the license fee based on property.<sup>51</sup>

### **d. Example**

The Department provided guidance in this license fee computation when reviewing the calculation of the license fee liability of a local exchange telephone carrier. The principles are applicable to any type of company subject to this license fee provision. The Department determined that:

1. The term "receipts derived from services rendered from regulated business within this State" includes access charges related to long distance telephone calls that cross State lines.
2. The gross receipts portion of the license fee is limited to those businesses of the company that are regulated in some manner. Aside from its telephone operations, the taxpayer is engaged in various other business activities. These activities include selling, leasing, and maintaining customer premise telephone equipment; premise wiring and maintenance; billing and collecting on behalf of interexchange carriers; CATV channel service; installation and maintenance of cablevision customer premise wiring; selling yellow pages ads; leasing of telephone equipment; and providing operator services for other carriers. In the taxpayer's case, such regulation would be by the Public Service Commission since that is the regulating agency for telephone companies in South Carolina. The only other business regulated in some manner is the taxpayer's billing and collecting service; other receipts from the nonregulated businesses should be excluded.

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<sup>48</sup>SC Reg. §117-1075.1.

<sup>49</sup>SC Commission Decision #I-D-384 (May 17, 1985).

<sup>50</sup>*Duke Power Co. v. South Carolina Tax Commission*, 292 S.C. 64, 354 S.E.2d 902 (1987).

<sup>51</sup>SC Code §12-20-100.

3. The property portion of the license fee applies to all property owned by the corporation, not just the property that is used in its telephone operations. The measure of the tax is the value of property owned and used by telephone companies in the conduct of business. There are no words in the statute limiting such business to telephone operations. The term “telephone company” is used but that is only for purposes of identifying the taxpayer.<sup>52</sup>

## E. License Fee Specific Issues

### 1. Corporations Subject to License Fee

#### a. General Provisions

Except for those corporations specifically exempted,<sup>53</sup> every corporation incorporated in South Carolina, every corporation qualified to do business in South Carolina, and every other corporation required to file an income tax return in South Carolina is subject to the South Carolina corporate license fee.<sup>54</sup> Public Law 86-272<sup>55</sup> may protect a foreign corporation from paying income tax, but it does not protect it from the license fee if it is qualified to do business in South Carolina. In such instances, the measure of the license fee is apportioned based upon the income tax apportionment ratios although no income tax is imposed.<sup>56</sup> There is a minimum \$25 license fee.

**Comment:** A corporation that is legally qualified to do business in South Carolina that is not doing business in South Carolina (*i.e.*, it does not have nexus with South Carolina for license fee purposes) should notify the Department’s Corporate Section to avoid a computer generated proposed assessment.

Based upon the above, companies subject to the license fee include:<sup>57</sup>

1. Every corporation organized under the laws of South Carolina.

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<sup>52</sup>SC Info. Ltr. #91-32 and Commission Decision #91-41 (August 12, 1991).

<sup>53</sup>See Section .08 C. of this portfolio for a list of entities exempt from the license fee and annual report provisions.

<sup>54</sup>SC Code §12-20-20.

<sup>55</sup>See Section .02 E. of this portfolio.

<sup>56</sup>SC PLR #88-19.

<sup>57</sup>SC Code §12-6-4910.

2. Entities whose federal income tax is determined in accordance with the provisions of Subchapters C or S of the Internal Revenue Code and subject to tax under South Carolina's Income Tax Act in Chapter 6 of Title 12.<sup>58</sup> Examples include LLCs taxed as corporations, including single member LLCs taxed as a separate corporation,<sup>59</sup> and professional associations or other associations taxed for income tax purposes as corporations.<sup>60</sup>
3. Every corporation organized to do business under the laws of any other state, territory, or country, and qualified to do business in South Carolina. Examples include Real Estate Investment Trusts organized as a corporation under any state law<sup>61</sup> and political organizations taxed as a corporation, for South Carolina income tax purposes.

## **b. Qualified Subchapter S Subsidiaries**

For income tax purposes, South Carolina treats the assets, liabilities, income, and deductions of a qualified subchapter S subsidiary (QSub) as it is treated for federal income tax purposes.<sup>62</sup> Additionally, a QSub is treated as a disregarded entity for South Carolina license fee and annual report purposes.<sup>63</sup>

## **2. “Consolidated” (Combined) Return Issues**

Corporations meeting certain requirements are allowed to file a “consolidated” South Carolina income tax return that requires income and losses to be computed separately for each entity based on the proportion of business that each taxpayer conducts in South Carolina.<sup>64</sup>

When a consolidated return is filed, the license fee computation is as follows:

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<sup>58</sup>Banks are taxed under SC Code Chapter 11 of Title 12, Savings and Loan Associations are taxed under Chapter 13 of Title 12, and Insurance Companies are taxed under Title 38 and are not subject to the annual report and corporate license fee provisions.

<sup>59</sup>SC Rev. Rul. #98-11.

<sup>60</sup>SC Code §12-2-25(A) and SC Info. Ltr. #94-23.

<sup>61</sup>SC PLR #92-7.

<sup>62</sup>See Section .03 C. of this portfolio for a discussion of the income taxation of QSub's.

<sup>63</sup>SC Code §12-2-25(B). Effective for tax years beginning after December 31, 2000.

<sup>64</sup>See Section .07 B. of this portfolio for the consolidated return requirements.

1. If the license fee is based on capital stock and paid in capital, then it is measured by the total capital and paid in or capital surplus of each corporation considered separately without offset for investment of one corporation in the capital or surplus of another corporation in the group. The minimum license fee of \$25 applies to each corporation in the consolidated group.<sup>65</sup>
2. If the license fee is measured based on South Carolina property and gross receipts, then the phrase “gross receipts derived from services rendered from regulated business” does not include gross receipts arising from transactions between the separate members of the return group.<sup>66</sup> The minimum license fee of \$25 applies to each corporation in the consolidated group.<sup>67</sup>
3. Since the license fee is generally computed on the corporate income tax return, corporations filing a consolidated return should attach a schedule to the South Carolina income tax return filed in the name of the parent that shows the license fee computation for each entity participating in the consolidated return. A separate income tax return should not be filed to pay the license fee of each entity. One check may be remitted to the Department for the total income tax and license fee liabilities of all entities participating in the consolidated return.

### **3. Due Dates and Forms**

The license fee is due on or before the original due date for filing the annual report.<sup>68</sup> The initial license fee is \$25 and is generally paid to the Secretary of State at the time the articles of incorporation or application for certificate of authority by a foreign corporation is filed with the Secretary of State. A corporation that does not register with the Secretary of State pays the initial license fee with the Department.

Subsequent license fees are imposed for the privilege of doing business in South Carolina and are paid a year in advance of the taxpayer’s income tax year.<sup>69</sup> For example, the income tax return for the calendar year ending December 31, 2004 includes an annual license fee for the calendar year 2005. Subsequent license fees are due on or before the 15<sup>th</sup> day of the third month following the end of the taxpayer’s tax year, unless otherwise provided.<sup>70</sup> Subsequent license

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<sup>65</sup>SC Code §§12-20-70 and 12-20-100. See Section .03 C. of this portfolio for the exception for certain holding companies in SC Code §12-20-90.

<sup>66</sup>SC Code §12-20-100(A)(2)(b).

<sup>67</sup>SC Code §12-20-100(B).

<sup>68</sup>SC Code §12-20-50(A). See Section .09 A. of this portfolio for a discussion of the due date of the annual report.

<sup>69</sup>SC Code §12-20-50(A).

<sup>70</sup>SC Code §12-20-20(B).

fees are computed on Part II of Form SC1120, "South Carolina C Corporation Income Tax Return," Form SC1120S, "S Corporation Income Tax Return," or Form SC1120U, "Public Utility Tax Return," or on Form CL-4, "Annual Report of Electric Cooperative Corporations."

Form SC1120-T, "Tentative Corporation Tax Return and Conditional Extension," is used to request an extension to file a South Carolina corporate income tax return and pay any income tax or license fee due; however, if there is no income tax or license fee due to be paid with the extension, then a valid federal extension can be attached to the corporate return when filed in lieu of filing a SC1120-T.<sup>71</sup> A preprinted form does not exist to extend the time to file Form CL-4, therefore, an extension of time to file Form CL-4 should be requested in writing.<sup>72</sup> South Carolina does not recognize another state's extension of time to file. An extension of time to file does not extend the time to pay the license fee.<sup>73</sup>

#### **4. Short Taxable Years, Initial Returns, and Final Returns**

##### **a. General Provisions**

The following explains when the license fee can be prorated:

1. There is no proration of the license fee for short periods due to initial returns.<sup>74</sup>
2. There is no proration of the license fee for short periods due to final returns.<sup>75</sup> Since the license fee is paid a year in advance, a license fee is not due with a final return.

**Note:** The Department has held that a nonresident corporation that merges effective the day after the close of its final income year is not required to file an annual report and pay a corporate license fee with its final return.<sup>76</sup>

3. If a corporation has a change in its accounting period that results in the filing of an income tax return for less than 12 months, then the license fee due with the short period return is prorated by dividing the annual license fee by 12 months and multiplying the result by the number of months in the short period. Each part of a month is considered a full month. This prorated fee may not be less than the \$25 minimum license fee.<sup>77</sup>

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<sup>71</sup>SC Code §12-6-4980(B). Effective June 24, 2002, South Carolina began accepting a valid federal extension for corporations who are not remitting an income tax or license fee payment with the extension.

<sup>72</sup>SC Code §12-60-40.

<sup>73</sup>SC Code §12-20-20(C).

<sup>74</sup>SC Code §12-20-80(B).

<sup>75</sup>SC Code §12-20-80(B).

<sup>76</sup>SC Tech. Adv. Memo. #88-13.

<sup>77</sup>SC Code §12-20-80.

4. If a taxpayer has a short tax year that is not the result of a change in accounting period, then there is no proration of the license fee.

## b. Examples

Examples best explain the license fee calculations for short periods.<sup>78</sup> Unless otherwise indicated, the following examples assume:

1. The taxpayer is doing business solely in South Carolina (*i.e.*, the South Carolina license fee apportionment ratio is 100%.)
2. The ending balances of the capital stock and paid-in or capital surplus accounts on the applicable financial statements are the same on the last day of the immediately preceding income tax year as the first day of the taxable year in which the annual report is filed.
3. In the rare situation where the capital structure on which the license fee is based is different from the capital reported on the applicable financial statement that is on Form 1120, "U. S. Corporation Income Tax Return," Schedule L, "Balance Sheet Per Books," the taxpayer should attach a schedule to the South Carolina tax return to support the license fee computation.

**Example 1: Change in tax year.** The corporation is a calendar year corporation paying the license fee based on capital stock and paid in capital of \$50,000. There is no change in the capital stock and paid in capital accounts during this time. In 2003, the taxpayer timely requests from the Internal Revenue Service a change in tax year to May 31<sup>st</sup>. It is important to remember that the license fee is paid a year in advance of the income tax year.

1. Full Year Computation - The corporation files a December 31, 2002, income tax return March 15, 2003, and pays a license fee of \$65 for the calendar year 2003 ( $\$50,000 \times .001 + \$15$ ).
2. Short Year Computation - The corporation has a change in accounting period and changes its tax year end to May 31<sup>st</sup>. As a result, a short period income tax return for January 1, 2003, through May 31, 2003, is filed August 15, 2003, along with a prorated license fee of \$27 based on the capital stock and paid in capital of the corporation on June 1, 2003, of \$50,000. The \$27 license fee due with the short period return is calculated as follows:  $(\$50,000 \times .001 + \$15) \times 5/12$ . Although not statutory, it could be thought of as the license fee for January 1, 2004 through May 31, 2004.

**Note:** The South Carolina income tax form does not provide for proration of the license fee; a schedule must be attached to the income tax return computing the prorated license fee. The license fee paid with the 2002 income tax return filed on March 15, 2003, is not credited or refunded to the taxpayer.

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<sup>78</sup> SC Rev. Rul. #05-11.

3. Full Year Computation - The fiscal year corporation files an income tax return for the tax year ending May 31, 2004, on August 15, 2004, and pays a license fee of \$65 for the fiscal year beginning June 1, 2004 through May 31, 2005, based on \$50,000 of capital as of June 1, 2004 ( $\$50,000 \times .001 + \$15$ .)

**Example 2: Short Period Ends During the Month.** The stock of Corporation X is acquired by Corporation Y on September 14, 2003. The corporations are all calendar year taxpayers. Corporation Y does not have nexus with South Carolina. For federal purposes, Corporation X is required to file two short period returns for the following periods: (1) January 1, 2003 through September 14, 2003 and (2) September 15, 2003 through December 31, 2003.

**Reminder:** Code Section 12-20-80(A) provides that each part of a month is considered a full month for purposes of prorating the license fee (*i.e.*, the license fee is not computed based on the number of days in a short period.)

1. Short Year 1 Computation – Time of Acquisition. On September 14, 2003, Corporation X is acquired and required to join the new consolidated group of Corporation Y. As a result, Corporation X files a short period income tax return for January 1, 2003 through September 14, 2003, on December 15, 2003, along with a prorated license fee of \$536 based on the capital stock and paid in capital of the corporation on September 15, 2003, of \$700,000, and the number of full and partial months in the short period. The \$536 license fee due with the short period return is calculated as follows:  $(\$700,000 \times .001 + \$15) \times 9/12$ . Although not statutory, it could be thought of as the license fee for January 1, 2004 through September 14, 2004.
2. Short Year 2 Computation – New Consolidated Group Y. Corporation X's tax year did not change as a result of change in ownership. Corporation X's short period income tax return for September 15, 2003 through December 31, 2003, is filed March 15, 2004, along with a prorated license fee of \$330 based on the capital stock and paid in capital of the corporation on January 1, 2004 of \$975,000, and the number of full and partial months in the short period. The \$330 license fee due with the short period return is calculated as follows:  $(\$975,000 \times .001 + \$15) \times 4/12$ . Although not statutory, it could be thought of as the license fee for September 15, 2004 through December 31, 2004.

**Example 3: Every Prorated License Fee Must be \$25 or More.** Based on a change from a calendar year end to a fiscal year end of February, Corporation X files a 2 month short period South Carolina income tax return for January 1, 2004 through February 29, 2004, on May 15, 2004. The corporation pays the license fee based on capital stock and paid in capital of \$95,000. There is no change in the capital stock and paid in capital accounts during this time.

Short Year Computation - Corporation A files a 2 month short period South Carolina income tax return for January 1, 2004 through February 29, 2004, on May 15, 2004, along with a minimum prorated license fee of \$25 based on the capital stock and paid in capital of the corporation on March 1, 2004, of \$95,000, and the number of full months in the short period. Although the license fee due with the short period return is actually calculated as \$18 as follows:

$(\$95,000 \times .001 + \$15) \times 2/12$ , the \$25 minimum license fee established in Code Section 12-20-50(A) must be paid. Although not statutory, it could be thought of as the license fee for January 1, 2005 through February 28, 2005.

**Example 4: Statutory Merger.** Corporation A and Corporation B are calendar year taxpayers. Corporation A merges into Corporation B pursuant to a statutory merger under an Internal Revenue Code §368(a)(1)(A) reorganization on October 31, 2003. For federal income tax purposes, Corporation A must file a short period return for 10 months and Corporation B, the surviving corporation, must file a full year income tax return. The South Carolina income tax return is due at the same time as the federal income tax return.

1. Pre Merger Full Year - Corporation A and Corporation B each file an income tax return for the calendar year ended December 31, 2002, on March 15, 2003, and each pays a full year license fee for the 2003 calendar year.
2. Final Year Corporation A - Corporation A files a final income tax return for the year ended October 31, 2003, on January 15, 2004. The license fee is paid a year in advance of the income tax year; no license fee is due since this is Corporation A's final income tax return. Further, no portion of the full year license fee paid for the 2003 calendar year (see item 1 above) is refunded or credited to the taxpayer.
3. Full Year Corporation B - Corporation B, the surviving corporation, files an income tax return for the calendar year ending December 31, 2003, on March 15, 2004, and pays a full year license fee for the 2004 calendar year based on the capital stock and paid in capital of the entire merged corporation as of January 1, 2004.

**Example 5: Acquired Company is Required to Leave One Federal Consolidated Group and Join a New Consolidated Return Group; Acquiring Corporation Has Same Tax Year.** Corporation A is a calendar year taxpayer which files a separate South Carolina tax return but is a member of a federal consolidated return group for the tax year January 1, 2002 through December 31, 2002. The license fee for the 2003 tax year is paid based on capital stock and paid in capital of \$150,000. On February 28, 2003, the stock of Corporation A was purchased by an unrelated corporation. For federal income tax purposes, two short period returns are filed as a result of Corporation A's departure from the federal consolidated group – (1) a 2 month return for the period January 1, 2003 through February 28, 2003, where the taxpayer was included in the federal consolidated group, and (2) a 10 month return for the period March 1, 2003 through December 31, 2003, where the taxpayer filed a separate corporate return. Code Section 12-6-4410 requires that a taxpayer's tax year must be the same for South Carolina purposes as it is for federal purposes; South Carolina also requires income tax returns and pro-rated license fees be filed for the two short periods.

1. Full Year Computation – Pre Departure from Federal Consolidated Group.  
Corporation A files an income tax return for the calendar year ended December 31, 2002, on March 15, 2003, and pays a license fee of \$165 for calendar year 2003 computed as follows:  $(\$150,000 \times .001 + \$15)$ .

2. Short Year 1 Computation – Period Included in Federal Consolidated Group. On February 28, 2003, the stock of Corporation A is purchased by an unrelated corporation. Because of Corporation A's departure from the federal consolidated group, a short period consolidated federal return is required. As a result, Corporation A files a 2 month short period South Carolina income tax return for January 1, 2003 through February 28, 2003, on March 15, 2004, along with a prorated license fee of \$28 based on the capital stock and paid in capital of the corporation on March 1, 2003, of \$150,000, and the number of full months (2) in the short period. The \$28 license fee due with the short period return is calculated as follows:  $(\$150,000 \times .001 + \$15) \times 2/12$ . Although not statutory, it could be thought of as the license fee for January 1, 2004 through February 29, 2004.
  
3. Short Year 2 Computation – New Ownership. Although Corporation A's ownership changed, its tax year remained December 31<sup>st</sup>. Corporation A's short period South Carolina income tax return for March 1, 2003 through December 31, 2003, is filed March 15, 2004, along with a prorated license fee of \$138 based on the capital stock and paid in capital of the corporation on January 1, 2004 of \$150,000, and the number of full months (10) in the short period. The \$138 license fee due with the short period return is calculated as follows:  $(\$150,000 \times .001 + \$15) \times 10/12$ . Although not statutory, it could be thought of as the license fee for March 1, 2004 through December 31, 2004.

**Example 6: Acquired Company is Required to Leave One Federal Consolidated Group and Join a New Consolidated Return Group; Tax Year is Changed to Acquiring Corporations.**

Corporation A is a fiscal year taxpayer which files a separate South Carolina income tax return but is a member of a federal consolidated return group for the tax year April 1, 2002 through March 31, 2003. Its license fee for the period April 1, 2003 through March 31, 2004 is based on capital stock and paid in capital of \$300,000. On September 30, 2003, Corporation A was acquired by Corporation X; is required to join Corporation X's consolidated federal return group; and is required to change its year end to December 31. Because of the federal consolidated rules, Corporation A files two short period returns – (1) a 6 month return for the period April 1, 2003 through September 30, 2003, and (2) a 3 month return for the period October 1, 2003 through December 31, 2003. Although South Carolina has not adopted the federal consolidated return rules, South Carolina Code Section 12-6-4410 requires that a taxpayer's tax year must be the same for South Carolina purposes as it is for federal purposes; South Carolina also requires income tax returns and pro-rated license fees be filed for the two short periods. For purposes of this example, it is assumed that the capital stock and paid in capital amounts increase as indicated.

1. Full Year Computation – Pre Acquisition. Corporation A files a March 31, 2003, income tax return on June 15, 2003, and pays a license fee of \$315 for the fiscal year April 1, 2003 through March 31, 2004 ( $\$300,000 \times .001 + \$15$ ).
  
2. Short Year 1 Computation – Time of Acquisition. On September 30, 2003, Corporation A is acquired and required to join the federal consolidated group of Corporation X. As a result, Corporation A files a 6 month short period income tax return for April 1, 2003 through September 30, 2003, on December 15, 2003, along

with a prorated license fee of \$170 based on the capital stock and paid in capital of the corporation on October 1, 2003, of \$325,000, and the number of full months in the short period. The \$170 license fee due with the short period return is calculated as follows:  $(\$325,000 \times .001 + \$15) \times 6/12$ . Although not statutory, it could be thought of as the license fee for April 1, 2004 through September 30, 2004.

3. Short Year 2 Computation – Change to New Consolidated Group X’s Year End. Corporation A’s tax year changed to December 31<sup>st</sup> as a result of change in ownership. Corporation A’s short period income tax return for October 1, 2003 through December 31, 2003, is filed March 15, 2004, along with a prorated license fee of \$91 based on the capital stock and paid in capital of the corporation on January 1, 2004, of \$350,000, and the number of full months in the short period. The \$91 license fee due with the short period return is calculated as follows:  $(\$350,000 \times .001 + \$15) \times 3/12$ . Although not statutory, it could be thought of as the license fee for October 1, 2004 through December 31, 2004.
4. Full Year Computation – Post Acquisition. Corporation A files an income tax return for the calendar year ended December 31, 2004 on March 15, 2005, and pays a license fee of \$415 for the 2005 calendar year, based on its capital of \$400,000 as of January 1, 2005. The \$415 is calculated as follows:  $(\$400,000 \times .001 + \$15)$ .

**Example 7: Capital Contribution/Issuance of Common or Preferred Stock on the First Day of Tax Year.** The stock of Corporation X is acquired by Corporation Y on September 30, 2004. Corporation X is required to join the new consolidated group of Corporation Y. Both corporations are fiscal year end October 30<sup>th</sup> taxpayers. Corporation Y does not have nexus with South Carolina. For federal purposes, Corporation X is required to file two short period returns for the following periods: (1) November 1, 2003 through September 30, 2004 and (2) October 1, 2004 through October 31, 2004. On October 1, 2004, Corporation X issues 100,000 shares of preferred stock to Corporation Y thereby increasing the total capital stock and paid in capital of Corporation X from \$700,000 to \$800,000. Note: The capital structure on which the license fee is based (*i.e.*, the capital stock and paid in or capital surplus amount as of the first day of the taxable year (October 1, 2004) is greater than the capital reported in the applicable financial statement as of the end of the taxable year (September 30, 2004) that is on Form 1120, “U. S. Corporation Income Tax Return,” Schedule L, “Balance Sheet Per Books.” Accordingly, a schedule reflecting the October 1, 2004 balance and the reasons for the difference should be attached to South Carolina Form 1120.

1. Short Year 1 Computation – Time of Acquisition. On September 30, 2004, Corporation X is acquired and required to join the new consolidated group of Corporation Y. As a result, Corporation X files a short period income tax return for November 1, 2003 through September 30, 2004, on December 15, 2004, along with a prorated license fee of \$747 based on the capital stock and paid in capital of the corporation on October 1, 2004, of \$800,000 (not \$700,000), and the number of full months in the short period. The \$747 license fee due with the short period return is calculated as follows:  $(\$800,000 \times .001 + \$15) \times 11/12$ .

2. Short Year 2 Computation – New Consolidated Group Y. Corporation X’s tax year did not change as a result of change in ownership. Corporation X’s short period income tax return for October 1, 2004 through October 31, 2004, is filed January 15, 2005, along with a prorated license fee of \$68 based on the capital stock and paid in capital of the corporation on November 1, 2004 of \$800,000, and the number of full months in the short period. The \$68 license fee due with the short period return is calculated as follows:  $(\$800,000 \times .001 + \$15) \times 1/12$ .

## **F. Credits Against License Fees**

### **1. Headquarters Credit**

The headquarters credit<sup>79</sup> may be used to reduce either the corporate license fee imposed under SC Code §12-20-50 based upon capital stock and paid in surplus that is imposed on most corporations or the license fee imposed under SC Code §12-20-100 based upon South Carolina property and gross receipts that is imposed on certain enumerated businesses.<sup>80</sup>

### **2. Infrastructure Credit**

#### **a. General Provisions**

A company subject to the license fee imposed on South Carolina property and gross receipts,<sup>81</sup> such as a power company, water company, gas company, or telephone company, may claim a credit against its license fee liability for 100% of the amount paid in cash for infrastructure for an eligible project of another taxpayer.<sup>82</sup> A company is not allowed a credit for actual expenses it incurs in the construction and operation of any building or infrastructure it owns, leases, manages, or operates.

The maximum credit that may be earned in any tax year by a single company is \$300,000, however, the credit cannot reduce the license fee liability of the taxpayer below zero. Any unused credit can be carried forward to the next succeeding year. A company that claims this credit may not claim the credit for infrastructure construction in SC Code §12-6-3420.<sup>83</sup>

The term “infrastructure” means improvements for water, sewer, gas, steam, electric energy, and communication services made to a building or land which are considered necessary, suitable, or useful to an eligible project. These improvements include, but are not limited to:

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<sup>79</sup>SC Code §12-6-3410. See Section .06 B. 6. of this portfolio for a discussion of the headquarters credit.

<sup>80</sup>SC Code §12-20-175 and SC PRO #01-1.

<sup>81</sup>SC Code §12-20-100 specifically enumerates the types of companies that qualify.

<sup>82</sup>SC Code §12-20-105.

<sup>83</sup>See Section .06 B. 7. of this portfolio for a discussion of this credit.

1. Improvements to both public or private water and sewer systems.
2. Improvements to both public or private electric, natural gas, and telecommunications systems including, but not limited to, ones owned or leased by an electric cooperative, electric utility, or electric supplier, as defined by Title 58 of Chapter 27.
3. Fixed transportation facilities including highway, road, rail, water, and air.
4. Industrial shell buildings and the purchase of land for an office, business, commercial, or industrial park which is constructed by a county or political subdivision of South Carolina.

To be considered an eligible project, the project must qualify for income tax credits under Chapter 6 of Title 12, withholding tax credits under Chapter 10 of Title 12 (job development benefits), income tax credits under Chapter 14 of Title 12 (economic impact zone investment tax credit), or fee in lieu of property taxes under Chapter 12 of Title 4 (Little Fee), Chapter 29 of Title 4 (Big Fee), or Chapter 44 of Title 12 (Simplified Fee). A project consisting of an office, business, commercial, or industrial park which is constructed by a county or political subdivision of South Carolina qualifies as an eligible project whether or not it qualifies for any other tax benefit.

#### **b. Qualification**

The Department has addressed the following issues concerning the qualification for and the claiming of this credit.<sup>84</sup> Guidelines include:

1. A project that qualifies under any one of the provisions listed (*i.e.*, qualifies for an income tax credit, job development benefits, fee in lieu, etc.) will be considered an eligible project providing a project is able to meet all the requirements of the appropriate section or chapter, even though any required approval has not been received.
2. A qualifying project may be located in any South Carolina county.
3. The infrastructure committed to the project must serve the public purpose of economic development and its scope and cost must be reasonable considering the scope and cost of the project. For example, a manufacturing company is placing in service “economic impact zone qualified manufacturing and productive equipment property” in accordance with Chapter 14 of Title 12 that costs \$5,000 and infrastructure for a helicopter pad that costs \$200,000. The equipment placed in service that meets the requirements of Chapter 14, Title 12 is eligible for the credit, however, the infrastructure for the helicopter pad is not eligible for the credit since it is not considered necessary, suitable, or useful to the project.

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<sup>84</sup>This guidance is contained in SC Rev. Rul. #96-11 pertaining to the license tax credit for infrastructure that was contained in SC Code §12-6-3490. In 1997, SC Code §12-6-3490 was repealed and replaced by a similar provision in SC Code §12-20-105.

4. A eligible project does not have to be within the service area of the taxpayer claiming the credit (*i.e.*, the water company, electric company, etc.). A company subject to license tax under SC Code §12-20-100 may contribute cash to any project that meets the statutory requirements. For example, a water company may qualify for this credit for cash contributions to build an electrical system. However, a company cannot claim this credit for infrastructure it owns, manages, leases, or operates. Further, two or more companies subject to this license tax may jointly contribute to a single project and claim the credit, if all the infrastructure provided to the project satisfies a public purpose.
5. The credit is available for amounts paid in cash to provide infrastructure for an eligible project. There is no requirement that the infrastructure must be in place or under construction in the year in which the amounts are paid.
6. The credit is claimed on Form SC1120U, “Public Utility Tax Return” or Form CL-4, “Annual Report of Electric Cooperative Corporation.” A schedule must be attached to the return setting forth the name of the person completing the project, a description of the project, the statutory section(s) under which the project qualifies, the cash amounts paid, the names of the persons payment was made to, the payment dates, a description of the infrastructure, and the date the infrastructure was completed or is expected to be completed.
7. If the infrastructure has not been substantially constructed, the taxpayer eligible to claim the credit must confirm that the amount paid will be used for infrastructure at the project in order to claim the credit. To meet this requirement, the taxpayer claiming the credit must execute a waiver of the time limitations under SC Code §12-54-85 allowing the Department the right to assess the tax for a period commencing with the filing date of the return on which the credit is claimed and ending three years after the Department is notified that the infrastructure has been built. The waiver of the time limitations should accompany the return on which the credit is claimed.

**Comment:** A business often requests an informal, nonbinding letter from the Department concerning eligibility for the credit. A \$35 fee is imposed on the issuance of such letter.<sup>85</sup>

### c. Examples

The Department has provided guidance as to items which may or may not qualify as eligible infrastructure.<sup>86</sup> Examples include:

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<sup>85</sup>Unless this temporary proviso is re-enacted by the General Assembly in the next legislative session, the \$35 fee imposed will expire on June 30, 2005. See Act No. 248, Part IB, Section 64, Proviso 64.7 (2004).

<sup>86</sup>SC Rev. Rul. #99-6.

1. A manufacturing company is building an eligible project in a county that requires a public water company to run pipe from the nearest water tap located a mile from the project in order to provide water to the project. Three-quarters of the pipe will be embedded in public land and the remainder will be embedded on the company's land and will extend to the building where operations will be conducted. The water system serves to benefit the eligible project and serves to provide a line that will allow other citizens and businesses within the general area to tap into the water system. The electric company's cash contribution for the costs incurred in designing, laying, and constructing the water pipes are eligible for this credit. The water company, however, would not be eligible to claim this credit since it may not claim a credit for expenses it incurs in the construction and operation of any infrastructure it owns, leases, manages, or operates.
2. Site grading of land for a manufacturing plant that is an eligible project does not qualify for the credit. Site grading is not an improvement to land or building for water, sewer, gas, steam, electric energy, or communication systems, nor is it a fixed transportation facility.
3. A stone sign built by the county at the front entrance to an eligible project located in a county industrial park is not an expense eligible for this credit. The sign is not an improvement to land or building for water, sewer, gas, steam, electric energy, or communication systems, nor is it a fixed transportation facility.
4. An impact fee for sewer paid on behalf of an eligible project does not qualify for the credit since it is a fee that the political subdivision or a company may charge because of the additional stress that the project may put on the current system; it is not an improvement for a sewer system.
5. An electric cooperative donates cash to a county to build an electrical system in a rural area that does not currently have power. The electrical system will serve a manufacturing company that is building an eligible project in the county and will serve as an inducement for others to locate in that area. The electric cooperative operates an electrical system in another county and may claim the credit for the donated cash since it does not intend to have any connection with the electrical system in that county.
6. Improvements to a shell of a building, such as the addition of floors, walls, or other structural additions for an eligible project do not qualify for the credit. Such improvements are not improvements to land or building for water, sewer, gas, steam, electric energy, or communication services.