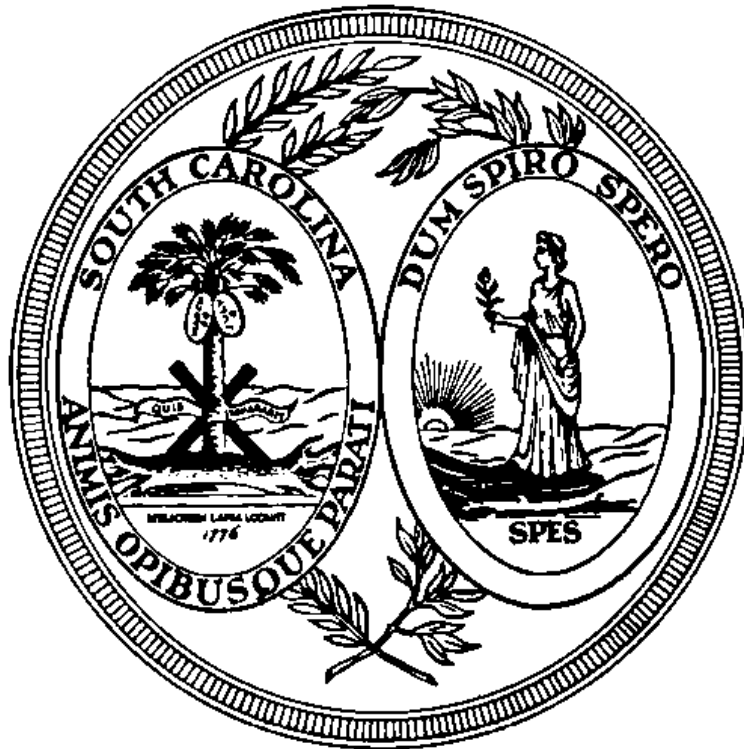


**South Carolina
Department of Revenue
Legislative Update
for 2006**



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

This publication is written in general terms for widest possible use. It is intended as a guide only, and the application of its contents to specific situations will depend on the particular circumstances involved. This publication may not be relied on as a substitute for obtaining professional advice and researching original sources of authority. Nothing in this publication supersedes, alters or otherwise changes provisions of the South Carolina code, regulations or Department's advisory opinions. The Department would appreciate any comments or notifications of any errors. Such comments should be sent to:

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TAX LEGISLATIVE UPDATE FOR 2006

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

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There are several instances where more than one bill with related subject matters was ratified by the General Assembly. In such cases, these summaries are cross referenced. In addition, there are several instances of apparent inconsistencies in some legislation which will be considered and may be resolved by the Code Commissioner.

DISCLAIMER:

This is intended to be a summary of the main points of the legislation. It is not an interpretation by the Department. Please refer to the full text of the legislation for specific details and requirements.

There are several instances where some tax or incentive related legislation briefly summarized is under the jurisdiction of another state agency or political subdivision, and not the Department of Revenue. In such cases, questions concerning these provisions should be made directly to the agency or political subdivision having primary responsibility for the administration of these acts.

TEXT OF LEGISLATION:

A complete copy of the legislation discussed in this publication can be obtained from the South Carolina Legislative Council's website at <http://www.scstatehouse.net/html-pages/legpage.html>.

INCOME TAXES, CORPORATE LICENSE FEES, AND WITHHOLDING

Senate Bill 1245, Section 4 (Act No. 386)

Internal Revenue Code Conformity

Code Section 12-6-40(A)(1)(a) has been amended, except as otherwise provided, to update South Carolina’s income tax laws to conform to the Internal Revenue Code of 1986, as amended through December 31, 2005, and includes the effective date provisions contained in it.

Effective Date: June 14, 2006

Senate Bill 1245, Sections 5 and 42 (Act No. 386) and Senate Bill 1283 (Act No. 282)

Active Trade or Business Income from a Pass Through Business – Optional Tax Rate

Code Section 12-6-545, as clarified during this legislative session, permits individuals, estates, or trusts to use an “optional” income tax rate to compute the tax on active trade or business income received from a pass through business in lieu of the “standard” income tax rate under Code Section 12-6-510. Code Section 12-6-510 imposes an income tax rate upon South Carolina taxable income of individuals, estates, and trusts at graduated rates ranging from 2.5% to a maximum rate of 7%. The new reduced income tax rates applicable to active trade or business income are phased in as follows:

<u>Tax Year Beginning In</u>	<u>Tax Rate</u>
2006	6.5%
2007	6.0%
2008	5.5%
2009 and thereafter	5.0%

Code Section 12-6-545(A)(1) defines “active trade or business income or loss” as income or loss of an individual, estate, trust, or any other entity except those taxed or exempted from tax pursuant to Code Sections 12-6-530 (corporate income tax), 12-6-540 (income tax rates for exempt organizations and cooperatives), and 12-6-550 (corporations exempt from taxes imposed by Code Sections 12-6-530 and 12-6-540), resulting from the ownership of an interest in a pass through business.

Active trade or business income or loss does not include:

1. Capital gains and losses;
2. Amounts reasonably related to personal services;
3. Guaranteed payments for services referred to in Internal Revenue Code §707(c); and
4. Passive investment income and expenses as defined in Internal Revenue Code §1362(d) generated by a pass through business and income of the same type, regardless of the type of pass through business generating it.

Additional provisions of Code Section 12-6-545 include:

1. A “pass through business” is defined as a sole proprietorship, partnership, S corporation, or limited liability company taxed as a sole proprietorship, partnership, or S corporation.
2. A taxpayer may elect annually to have the income taxed at the new phased in tax rate. For joint returns, the election is effective for both spouses.
3. If a taxpayer owns an interest in one or more pass through businesses that have a total gross income of less than \$1 million and taxable income of less than \$100,000, then the taxpayer may elect, instead of determining the actual amount of active trade or business income related to his personal services, to treat 50% of his active trade or business income as not related to his personal services. For purposes of this safe harbor provision, taxpayer includes both taxpayers who file a joint return.
4. The Department may provide other methods that may be used to determine an amount that is considered to be unrelated to the owner’s personal services if it determines that the benefits to the State are insufficient to justify the burdens imposed on the taxpayer.
5. Active trade or business loss must first be deducted, dollar for dollar against active trade or business income. Any remaining active trade or business loss is deductible from income taxed under Code Section 12-6-510 if otherwise allowable.
6. An income tax credit available to offset taxes due pursuant to Code Section 12-6-510 also applies against taxes imposed by Code Section 12-6-545.

Effective Date: Tax years beginning on or after January 1, 2006.

House Bill 4707 (Act No. 382)

Financial Literacy Trust Fund Check off

Code Section 12-6-5060, providing for various income tax check offs on South Carolina's individual income tax form, has been amended to provide for a designation for a taxpayer to make a contribution to the Financial Literacy Trust Fund. The Financial Literacy Trust Fund was established by the Financial Literacy Trust Act in Title 59, Chapter 29 to improve financial literacy through grants to school districts for financial literacy instruction among students in kindergarten through 12th grade.

Effective Date: June 14, 2006

House Bill 4810, Part IB, Section 36, Proviso 36.14 (Act No. 397)

Subsistence Allowance for Law Enforcement, Firefighting, and Emergency Medical Service Personnel – Amount Increased

Code Section 12-6-1140(6) provides a subsistence allowance deduction to federal, state, and local law enforcement officers paid by a political subdivision or the government of South Carolina or the federal government, and to full time firefighters and emergency medical service personnel for each regular work day in the taxable year. This temporary proviso increases the subsistence deduction allowed under Code Section 12-6-1140(6) to \$8.00 for each regular work day.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2006 through June 30, 2007. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2007.

House Bill 3580 (Act No. 242)

State Guard Member – New Income Tax Deduction

Code Section 12-6-1140(10), providing an individual income tax deduction of up to \$3,000 for a volunteer firefighter, rescue squad member, volunteer member of a Hazardous Materials Response Team, reserve police officer, or Department of Natural Resources deputy enforcement officer who complies with certain training or performance requirements, has been amended to expand the deduction to include a member of the State Guard.

This deduction is allowed only if the State Guard member completes a minimum of 16 hours of training or drill each month, equating to 192 hours a year, and the member's commanding officer certifies to the member on Department of Revenue Form I-332,

“Certificate for Reserve Police Officer, DNR Deputy Enforcement Officer, or Member of the State Guard,” that the member has met all the requirements. Form I-332 must be filed with the member’s tax return.

Effective Date: Tax years beginning after 2005.

Senate Bill 1245, Section 11 (Act No. 386)

Tuition Tax Credit – Credit Period Suspended upon Withdrawal for Active Military Service

Code Section 12-6-3385, providing a tuition tax credit for a student enrolled in a qualifying institution of higher learning, has been amended. Prior to its amendment, the statute provided that the credit may not be claimed for more than 4 consecutive years after the student enrolls in an eligible institution, except for medical necessity.

Code Section 12-6-3385(A)(2)(b) has been added to provide that the 4 consecutive year credit period requirement is suspended for a qualifying student required to withdraw from an institution of higher learning to serve on active military duty if the service member re-enrolls in an eligible institution within 12 months upon demobilization and provides official documentation from the Armed Forces to verify the dates of active duty military service.

Effective Date: Applies to qualifying students required to withdraw from a qualifying institution to serve on active military duty on or after January 1, 2000.

Senate Bill 1045 (Act No. 291)

Premarital Course – New Individual Income Tax Credit

Code Section 12-6-3381 has been added to provide a nonrefundable individual income tax credit of \$50 for taxpayers married during the taxable year who are certified by the probate judge or clerk of court when applying for a South Carolina marriage license to have completed a qualifying premarital course as provided in Code Section 20-1-230. Regardless of the federal filing status, each spouse may only receive one \$25 income tax credit.

Code Section 20-1-230 provides that a man and a woman who successfully complete a qualifying premarital preparation course, and who have a South Carolina marriage license which attests the completion of the course, are entitled to a one time \$50 income tax credit. Code Section 20-1-230(B) provides that for the course to qualify, the couple must attend at least 6 hours of instruction, complete the course within 12 months prior to application for a marriage license, complete the course together, and attend a course

taught by a professional counselor licensed pursuant to Chapter 75 of Title 40 or by an active member of the clergy or designee, trained and skilled in premarital preparation.

The credit cannot be applied to the fee credited to the Domestic Violence Fund provided in Code Section 20-1-375.

Effective Date: May 31, 2006

House Bill 4594 (Act No. 248)

Like-Kind Exchange Treatment for Certain Timber Deeds

Code Section 12-6-5595 has been added to provide that, for purposes of the nonrecognition of gain under Internal Revenue Code Section 1031 (“Exchange of Property Held for Productive Use or Investment”) and comparable provisions of state law, the conveyance by timber deed of the right to cut standing timber for a period of time exceeding 30 years is considered a conveyance of a real property interest, and is a like-kind exchange with other similar conveyances of a real property interest or with conveyances of similar investment real property owned in fee simple.

Effective Date: March 17, 2006

House Bill 4874, Section 3 (Act No. 384)

Businesses Dealing in Tangible Personal Property – Single Factor Apportionment Phase In

Code Section 12-6-2250 before Amendment. This section provides that a taxpayer whose principal business in South Carolina is (a) manufacturing or any form of collecting, buying, assembling, or processing goods and materials within South Carolina or (b) selling, distributing, or dealing in tangible personal property within South Carolina apportions its income by multiplying its income remaining after allocation by a fraction, the numerator is the property ratio, plus the payroll ratio, plus twice the sales ratio, and the denominator is four. If the sales ratio does not exist, the denominator of the fraction is the number of existing ratios. If the sales ratio exists but the payroll ratio or the property ratio does not exist, the denominator of the fraction is the number of existing ratios plus one. The property, payroll, and sales ratios must be determined in accordance with Code Sections 12-6-2260, 12-6-2270, and 12-6-2280, respectively.

Code Section 12-6-2250 after Amendment. Effective for tax years beginning after 2006, Code Section 12-6-2250 provides that the above taxpayer’s income is apportioned to South Carolina by multiplying the net income remaining after allocation pursuant to Code Sections 12-6-2220 and 12-6-2230 by a fraction, the numerator of which is the number of sales made in South Carolina, and the denominator of which is the total number of sales

for the taxpayer. However, if a sales ratio does not exist, the denominator of the fraction is the number of existing ratios, and where the sales ratio exists but the payroll ratio or the property ratio does not exist, the denominator of the fraction is the number of existing ratios plus one. The sales ratios must be determined in accordance with Code Section 12-6-2280.

Phase-In of Amended Statute. For taxable years beginning in 2007 through 2010 only, a taxpayer allocating income pursuant to Code Section 12-6-2250 shall apportion income by using the method provided in Code Section 12-6-2250 before amendment and the method provided in Code Section 12-6-2250 after amendment. If the calculation under the amended statute results in a reduction in income allocated to South Carolina, the reduction is allowed as follows:

Taxable Year beginning in	Percentage of reduction allowed
2007	20%
2008	40%
2009	60%
2010	80%

Effective Date: Taxable years beginning after 2006.

House Bill 4312 (Act No. 312)

Alternative Motor Vehicle Credit

Code Section 12-6-3377 has been added to allow a South Carolina resident taxpayer who is eligible for, and claims, the federal credit allowed under Internal Revenue Code Section 30B a credit against income taxes imposed under Chapter 6 of Title 12 for 20% of the federal income tax credit. If the amount of the credit exceeds the taxpayer's liability for the tax year, any unused credit may be carried forward and claimed in the 5 succeeding tax years. Note: The credit allowed is calculated without regard to the phaseout period limits of Internal Revenue Code Section 30B(f), and the provisions of Internal Revenue Code Section 30B are deemed permanent law for purposes of the credits allowed under Code Section 12-6-3377.

Internal Revenue Code Section 30B provides an alternative motor vehicle credit equaling the total of the: (1) qualified fuel cell motor vehicle credit, (2) advanced lean burn technology motor vehicle credit, (3) qualified hybrid motor vehicle credit, and (4) qualified alternative fuel motor vehicle credit.

Effective Date: Applies for taxable years beginning after 2005.

Senate Bill 1245, Section 37 (Act No. 386)

Credit for the Installation of a Solar Energy Heating and/or Cooling System

Code Section 12-6-3587 has been added to provide an income tax credit against the taxes imposed by Chapter 6 of Title 12 equal to 25% of the costs incurred by the taxpayer in the installation of a solar energy heating or cooling system, or both, in a building owned by the taxpayer. The credit may not be claimed before the completion of the installation, and must be claimed for the year that the costs are incurred. The amount of the credit may not exceed \$3,500 or 50% of the taxpayer's tax liability for that taxable year, whichever is less. If the amount of the credit exceeds \$3,500, the taxpayer may carry forward the excess for up to 10 years.

Code Section 12-6-3587(B) provides that a "system" includes all controls, tanks, pumps, heat exchangers, and other equipment used directly and exclusively for the conversion of solar energy for heating or cooling. It does not include any land or structural elements of the building such as walls and roofs or other equipment ordinarily contained in the structure.

Effective Date: Applies to installation costs incurred in taxable years beginning on or after January 1, 2006.

House Bill 3841 (Act No. 285)

Retail Facilities Revitalization Act – New Income Tax or Property Tax Credit

The South Carolina Retail Facilities Revitalization Act was enacted in Title 6, Chapter 34 to create an incentive for the renovation, improvement, and redevelopment of abandoned retail facility sites in South Carolina. It provides that a taxpayer who improves, renovates, or redevelops an abandoned retail facility at an eligible site may elect one of the following tax credits:

1. An "income tax credit" provided in Code Section 6-34-40(A)(2) against any state income taxes equal to 10% of the rehabilitation expenses; or
2. A "property tax credit" provided in Code Section 6-34-40(A)(1) against real property taxes levied by local taxing entities equal to 25% of the rehabilitation expenses made to the eligible site times the local taxing entity ratio for each local taxing entity that has consented to the credit (limited to 75% of the taxpayer's property taxes due.) (See the "Property Taxes and Fees in Lieu of Property Taxes" section of this publication for a brief summary of the property tax credit.)

The taxpayer must elect whether to claim the income tax credit or the property tax credit by providing written notification to the Department of Revenue before the date the eligible site is placed in service. If the taxpayer does not obtain the county approvals required for the property tax credit or fails to affirmatively make the election before the date the eligible site is placed in service, the taxpayer is deemed to have elected the income tax credit, without the need for a written election.

Income Tax Credit - Code Section 6-34-40(C). If the taxpayer elects the income tax credit, the credit must be taken in equal installments over an 8 year period beginning with the year in which the property is placed in service. Any unused credit may be carried forward to the succeeding 5 years. The credit earned by an “S” corporation must be first used at the corporate level and any remaining credit passes through to each shareholder in a percentage equal to each shareholder’s percentage of stock ownership. The credit earned by a general partnership, limited partnership, limited liability company, or any other entity taxed as a partnership must be passed through to its partners and may be allocated among any of its partners in any manner agreed to by the partners, including an allocation of the entire credit to one partner.

The income tax credit in Code Section 6-34-40(A)(2) is in addition to, and does not offset, the state historic tax credit under Code Section 12-6-3535 that an eligible site may be eligible to claim. The owner of the eligible site may transfer, devise, or distribute any unused credit to the tenant of the eligible site, provided the Department receives written notification of, and approves, the transfer, devise, or distribution.

Definitions. Code Section 6-34-30 provides a list of definitions of terms that are used in the statute. Some of the relevant terms are defined as follows:

1. An “eligible site” is a shopping center, mall, or free standing site whose primary use was as a retail sales facility with at least one tenant or occupant located in a 40,000 square foot or larger building or structure that has been abandoned. However, during the abandonment, the eligible site may serve as a wholesale facility for no more than one year.
2. “Abandoned” means that at least 80% of the eligible site’s building or structure has been continuously closed to business or has been otherwise nonoperational for at least one year immediately preceding the time at which the determination is to be made. The eligible site’s facilities only include the site’s building or structure.
3. “Rehabilitation expenses” are the expenses incurred in the rehabilitation of the eligible site, excluding the cost of acquiring the eligible site or the cost of personal property maintained at the eligible site.
4. “Placed in service” means the date on which the eligible site is suitable for occupancy for the purposes intended.

Repeal of Act. The South Carolina Retail Facilities Revitalization Act in Title 6, Chapter 34 is repealed on July 1, 2016.

Effective Date: Applies for rehabilitation expenses incurred, without regard to the date these expenses were incurred, for eligible sites placed in service on or after July 1, 2006.

Senate Bill 1245, Section 36.A (Act No. 386)

Ethanol or Biodiesel Production Credits

Code Section 12-6-3600 has been added to Article 25 of Chapter 6, Title 12 to provide 3 credits against income taxes imposed under Chapter 6 for a facility that produces ethanol or biodiesel at a plant in South Carolina at which all fermentation, distillation, and dehydration takes place. A credit is not allowed for ethanol or biodiesel produced or sold for use in the production of distilled spirits.

For purposes of these credits, an “ethanol facility” is a plant or facility primarily engaged in the production of ethanol or ethyl alcohol derived from grain components, coproducts, or byproducts. A “biodiesel facility” is a plant or facility primarily engaged in the production of vegetable or animal based fuels used as a substitute for diesel fuel.

The new credits available to a producer of ethanol or biodiesel are briefly discussed below.

1. Credit for Production. Code Section 12-6-3600(A) provides a tax credit of 20¢ per gallon of ethanol or biodiesel produced to an ethanol or biodiesel facility placed in use after 2006 that produces over 25% of its name plate design capacity by December 31, 2009. The credit only may be claimed if the facility maintains an average production rate of at least 25% of its name plate design capacity for at least 6 months after the first month it is eligible to receive the credit. The credit is allowed for 60 months, beginning with the first month the facility is eligible to receive the credit and ending not later than December 31, 2014.

“Name plate design capacity” is defined as the original designed capacity of an ethanol or biodiesel facility. Capacity may be specified as bushels of grain ground or gallons of ethanol or biodiesel produced a year.

2. Credit for Increased Production Resulting from Facility Expansion. Code Section 12-6-3600(C) provides that a facility eligible for the tax credit under Code Section 12-6-3600(A) is also eligible for a tax credit of 20¢ a gallon of ethanol or biodiesel produced in excess of the original name plate design capacity that results from expansion of the facility completed after 2006 and before 2009. The credit is allowed for 60 months beginning with the first month for which production from the expanded facility is eligible to receive the tax credit and ending not later than 2014.

Note: Credit Limitations for Above Credits. The amount of ethanol or biodiesel produced annually at an ethanol or biodiesel facility qualifying for the credits in Code Sections 12-6-3600(A) and 12-6-3600(C) is limited to 25 million gallons. Further, not more than 125 million gallons of ethanol or biodiesel produced at an ethanol or biodiesel facility by the end of the 60 month eligibility period is eligible for the credit.

3. Credit for Qualified New Production Beginning January 1, 2014. Code Section 12-6-3600(D) provides a tax credit of 7.5¢ a gallon of ethanol or biodiesel (before denaturing) for “new production” by an ethanol or biodiesel facility beginning January 1, 2014. The credit is allowed for a period not to exceed 36 consecutive months, and may not be claimed for more than 10 million gallons of ethanol or biodiesel produced during a 12 consecutive month period at an ethanol or biodiesel facility. Further, if a facility receives a credit under Code Section 12-6-3600(A) or Code Section 12-6-3600(C), it is not eligible for the credit in Code Section 12-6-3600(D) until its eligibility to receive the credits in Code Sections 12-6-3600(A) or (C) has been completed.

“New production” means production that results from a new facility, a facility that has not received credits before 2014, or the expansion of the capacity of an existing facility by at least 2 million gallons first placed into service after 2014, as certified by the design engineer of the facility to the Department of Revenue. The amount of the credit based on new production must be approved by the Department based on the ethanol or biodiesel production records as may be necessary to reasonably determine the level of new production. If the credit is based on the expansion of the capacity of an existing facility, “new production” means annual production in excess of 12 times the monthly average of the highest 3 months of ethanol or biodiesel production at the facility during the 24 month period immediately preceding certification by the design engineer. A credit is not allowed for an expansion of the capacity of an existing facility until production exceeds 12 times the 3 month average amount determined pursuant to Code Section 12-6-3600(D) during any 12 consecutive month period beginning no sooner than January 1, 2014.

Effective Date: See summary above.

House Bill 4810, Part IB, Section 72, Proviso 72.113(C) (Act No. 397)

Biodiesel Motor Fuel Production Credits

This temporary proviso provides two credits against individual income taxes imposed under Code Section 12-6-510 and corporate income taxes imposed under Code Section 12-6-530 for the production of biodiesel motor fuel. The credits are summarized below.

Credit for Soybean-Based Biodiesel Motor Fuel. Temporary proviso 72.113(C)(1) provides for a tax credit of 20¢ a gallon of biodiesel motor fuel produced mostly from soybean oil and sold, up to a maximum of 3 million gallons per year from each facility,

for a maximum of 5 years for each facility. Credits are available for not more than one facility in each county in any calendar year, with priority given to the first facility in a county that produces biodiesel motor fuel using soybean oil as the feedstock. Credits are available to individuals or businesses producing motor fuel mostly from soybean oil for internal use without regard to the per county limitation. The credit may be carried forward for up to 3 years. Payment of the credits is made upon compliance with verification procedures set forth by the Department of Agriculture.

Credit for Nonsoybean-Based Biodiesel Motor Fuel. Temporary proviso 72.113(C)(2) provides for a tax credit of 30¢ cents a gallon of biodiesel motor fuel, a majority of which is produced from feedstock other than soybean oil and sold, up to a maximum of 3 million gallons per year, for a maximum of 5 years. Credits are available for not more than one facility in each county in any calendar year, with priority given to the first facility in a county that produces biodiesel motor fuel using a feedstock other than soybean oil. Credits are available to individuals or businesses producing biodiesel motor fuel for internal use, a majority of which is derived from feedstock other than soybean oil, without regard to the per county limitation. The credit may be carried forward for up to 3 years. Payment of the credits is made upon compliance with verification procedures set forth by the Department of Agriculture.

Effective Date: The proviso states that the credits apply to tax years beginning after December 31, 2005. This temporary proviso is effective for the State fiscal year July 1, 2006 through June 30, 2007. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2007.

Senate Bill 1245, Section 36.B (Act No. 386)

Credit for Cost of Constructing and Installing Facilities for Distribution, Dispensing, or Processing Renewable Fuels

Code Section 12-6-3610 has been added to Article 25 of Chapter 6, Title 12 to provide tax credits against income taxes imposed under Chapter 6 for commercial facilities that distribute or dispense renewable fuel and for commercial facilities that process renewable fuel. As used in this statute, “renewable fuel” means liquid nonpetroleum based fuels that can be placed in motor vehicle fuel tanks and used as a fuel in highway vehicles, including all forms of fuel commonly or commercially known or sold as biodiesel and ethanol. The credits are briefly discussed below.

1. Credit for Distribution or Dispensing Facility. Code Section 12-6-3610(B) provides that a taxpayer that constructs and installs and places in service in South Carolina a qualified commercial facility for the distribution or dispensing of renewable fuel is allowed a credit equal to 25% of the cost of constructing and installing the part of the distribution facility or dispensing facility, including pumps, storage tanks, and related equipment, that is directly and exclusively used for distribution, dispensing, or storing

renewable fuel. A facility is qualified if the equipment used to store, distribute, or dispense renewable fuel is labeled for this purpose and clearly identified as associated with renewable fuel. The credit must be taken in 3 equal annual installments beginning with the taxable year the facility is placed in service. If, in one of the years in which the installment of a credit accrues, the portion of the facility directly and exclusively used for distributing, dispensing, or storing renewable fuel is disposed of or taken out of service, the credit expires and the taxpayer may not take any remaining installment of the credit.

2. Credit for Processing Facility. Code Section 12-6-3610(C) provides that a taxpayer that constructs and places in service in South Carolina a commercial facility for processing renewable fuel is allowed a credit equal to 25% of the cost of constructing and equipping the facility. The credit must be taken in 7 equal annual installments beginning with the taxable year in which the facility is placed in service. However, if, in one of the years in which the installment of a credit accrues, the facility with respect to which the credit was claimed is disposed of or taken out of service, the credit expires and the taxpayer may not take any remaining installment of the credit.

Other requirements of the credits are:

1. A taxpayer that claims any other credit in Article 25 of Chapter 6, Title 12 with respect to the costs of constructing and installing a facility may not take the credit allowed in this section with respect to the same costs.
2. The unused portion of an unexpired credit may be carried forward for not more than 10 succeeding taxable years.

Note Repeal: Code Section 12-6-3610 is repealed effective for facilities placed in service after 2011.

Effective Date: Applies for facilities placed in service after 2006.

House Bill 3922 (Act No. 296)

Disposal of Mercury Switches – Credit against Corporate Income Taxes or License Fees

Code Section 44-96-185 has been added to create the End-of-Life Vehicle Solutions (“ELVS”) Program designed, in part, to advance environmental efforts in the areas of vehicle recyclability and the proper collection and disposal of mercury switches from end-of-life vehicles.

In conjunction with the ELVS Program, Code Section 12-6-3525 has been added to provide that a vehicle recycler or scrap recycling facility participating in the ELVS Program is entitled to a \$2.50 tax credit against its corporate income tax liability under

Code Section 12-6-530 or corporate license fee liability under Code Section 12-20-50 for each mercury switch collected and submitted for disposal in accordance with the ELVS Program. Any unused credits may be carried forward until used.

Code Section 44-96-185(A) provides a list of definitions of terms that are used in the statute. Some of the defined terms are:

1. “Mercury switch” means a mercury-containing capsule, commonly known as a “bullet,” that is part of a convenience light switch assembly.
2. “End-of-life vehicle” means a vehicle that is sold, given, or otherwise conveyed to a vehicle recycler or scrap recycling facility for the purpose of recycling.
3. “Vehicle” means a passenger automobile or passenger car, station wagon, truck, van, or sport utility vehicle with a gross vehicle weight rating of less than 12,000 pounds.
4. “Vehicle recycler” means an individual or entity engaged in the business of acquiring, dismantling, or destroying 6 or more end-of-life vehicles in a calendar year for the primary purpose of resale of their parts.
5. “Scrap recycling facility” means a fixed location where machinery and equipment are utilized for processing and manufacturing scrap metal into prepared grades and whose principal product is scrap iron, scrap steel, or nonferrous metallic scrap for sale for remelting purposes.

Note Repeal: Unless reinstated by the General Assembly, the provisions of Code Sections 44-96-185 and 12-6-3525 terminate on June 30, 2013, and these sections and all other laws and regulations governing, authorizing, or otherwise dealing with the removal of mercury switches from vehicles are deemed repealed on that date.

Effective Date: Applies to mercury switches removed from vehicles after December 31, 2005, and the credits authorized pursuant to Code Section 12-6-3525 apply to taxable periods beginning after December 31, 2005.

House Bill 4874, Section 2 (Act No. 384)

Credit for Costs by Manufacturing Facility in Complying with Whole Effluent Toxicity Testing

Code Section 12-6-3589 has been added to provide that a manufacturing facility may claim a credit against corporate income taxes imposed by Code Section 12-6-530 for 25% of the costs it incurs in complying with whole effluent toxicity testing. Unused credits may be carried forward for 10 years. For purposes of this credit, “manufacturing facility”

has the meaning used in Code Section 12-6-3360(M)(5) of the job tax credit, *i.e.*, an establishment where tangible personal property is produced or assembled.

Effective Date: June 14, 2006

Senate Bill 1245, Section 38 (Act No. 386)

Credit for Costs Incurred for Use of Methane Gas Taken from a Landfill to Provide Power for a Manufacturing Facility

Code Section 12-6-3620 has been added to provide a corporate income tax credit for 25% of the costs incurred by a taxpayer for use of methane gas taken from a landfill to provide power for a manufacturing facility. The credit may not exceed 50% of the taxpayer's corporate tax liability imposed under Code Section 12-6-530. Unused credits may be carried forward for 10 years. For purposes of this credit, "manufacturing facility" has the meaning used in Code Section 12-6-3360(M)(5) of the job tax credit, *i.e.*, an establishment where tangible personal property is produced or assembled.

Effective Date: Applies to taxable years beginning after 2006.

House Bill 4840, Section 3 (Act No. 319)

Industry Partnership Fund Tax Credit

The Industry Partnership Fund ("Fund") will be established at the South Carolina Research Authority ("SCRA") or an SCRA-designated affiliate, or both, to accept contributions to fund targeted programs of excellence as provided in Code Section 13-17-88. In conjunction with the establishment of the Fund, Code Section 12-6-3585 has been added to allow a taxpayer to claim a credit against income taxes under Chapter 6 of Title 12, license fees under Chapter 20 of Title 12, or insurance premium taxes under Chapter 7 of Title 38, or any combination of them, for contributions it makes to the Fund.

A taxpayer is defined as an individual, corporation, partnership, trust, bank, insurance company, or any other entity having a state income or insurance premium tax or license fee liability who makes a qualified contribution. A contribution is not a qualified contribution if it is subject to conditions or limitations regarding the use of the contribution. The credit is equal to 100% of the taxpayer's qualified contributions to the Industry Partnership Fund, subject to the following limitations discussed below.

1. For tax year 2006, no individual taxpayer may receive more than \$650,000 and the total amount that can be claimed by all taxpayers is \$2 million.
2. For tax year 2007, no individual taxpayer may receive more than \$1.3 million and the total amount that can be claimed by all taxpayers is \$4 million.

3. For tax years beginning after December 31, 2007 and thereafter, no individual taxpayer may receive more than \$2 million and the total amount that can be claimed by all taxpayers is \$6 million.

For purposes of determining a taxpayer's entitlement to the credit in years the maximum amount for all taxpayers is exceeded, those taxpayers that made contributions intended to be qualified contributions earlier in the applicable tax year than other taxpayers must be given priority entitlement to the credit. The SCRA is required to certify to taxpayers who express a bona fide intention of making qualified contributions as to whether the taxpayer will be entitled to priority.

The use of the credit is limited to the taxpayer's applicable income, license, or premium tax for the tax year after the application of all other credits. Any unused credit may be carried forward for 10 tax years from the end of the tax year in which the qualifying contribution is made. The credit is not refundable. A taxpayer who claims this credit may not take a deduction for the qualified contribution which gives rise to the credit.

The taxpayer will claim the credit on its return and shall attach a copy of a form furnished by the SCRA identifying the taxpayer's qualified contributions. The Department of Revenue may require additional information or submissions in connection with the claiming of the credit.

Special rules are provided concerning transferring or assigning the credit in the event of a merger, consolidation, or reorganization of a corporation, or in the case of the sale of substantially all the assets of a partnership or corporation, or the assets of a trade, business, or operating division of a corporation or partnership.

Effective Date: Tax years beginning on or after January 1, 2006.

Senate Bill 1245, Section 7 (Act No. 386)

Job Tax Credit – Taxpayers Creating 10 or More Jobs

Code Section 12-6-3360 allows a job tax credit to qualifying taxpayers who create and maintain a required minimum number of new, full-time jobs. Act No. 157 of 2005, effective for taxable years beginning on or after January 1, 2006, amended the rules of the original job tax credit for taxpayers that create at least 10 jobs to add that the provisions in Code Section 12-6-3360(C)(1) applied to taxpayers "with 100 or more employees." Act No. 386 of 2006, also effective for tax years beginning on and after January 1, 2006, deleted the phrase "with 100 or more employees" from Code Section 12-6-3360(C)(1). Accordingly, the job tax credit provided in Code Section 12-6-3360(C)(1) is available to qualifying taxpayers, regardless of size, that increase employment by 10 or more full time jobs.

Effective Date: Tax years beginning on and after January 1, 2006.

Job Tax Credit for Small Businesses – Optional Manner to Claim Credit

General Overview. Code Section 12-6-3360 allows a job tax credit to qualifying taxpayers who create and maintain a required minimum number of new full-time jobs. The basic credit amount for each new job is \$1,500 to \$8,000, depending in part on the South Carolina county where a taxpayer's facility is located. Act No. 157 of 2005, effective for taxable years beginning on or after January 1, 2006, added to the job tax credit statute new rules for small businesses. Act No. 389 of 2006, effective June 14, 2006, provides an optional method for small businesses to claim the job tax credit. The job tax credit provisions of both Acts applicable to a small business are briefly summarized below.

Act No. 157 of 2005. Code Section 12-6-3360(C)(2)(a) was added to provide that a taxpayer with 99 or fewer employees is entitled to a job tax credit if: (1) a monthly average of 2 or more new full-time jobs is created in a single taxable year; and, (2) the gross wages of the full-time new jobs are a minimum of 120% of the county or state average per capita income, whichever is lower. The amount of the job tax credit is \$8,000 per job created in a distressed county, \$4,500 per job created in a least developed county, \$3,500 per job created in an underdeveloped county, \$2,500 per job created in a moderately developed county, and \$1,500 per job created in a developed county.

Code Section 12-6-3360(C)(2)(b) provides that a taxpayer with 99 or fewer employees is allowed a reduced job tax credit if the taxpayer creates a monthly average of 2 or more full-time new jobs in a single taxable year, but the gross wages for those jobs does not meet the minimum 120% per capita income requirements above. The amount of the job tax credit for these taxpayers is \$4,000 per job created in a distressed county, \$2,250 per job created in a least developed county, \$1,750 per job created in an underdeveloped county, \$1,250 per job created in a moderately developed county, and \$750 per job created in a developed county.

For information about the job tax credit requirements, see Code Section 12-6-3360 and SC Revenue Ruling #05-17. The Department annually publishes an information letter ranking each of South Carolina's counties for job tax credit purposes.

Act No. 389 of 2006. Code Section 12-6-3362* has been added to provide that a small business taxpayer eligible for the job tax credit in Code Section 12-6-3360(C)(2) has the option of claiming the credit as follows:

1. Over a 5 year period, beginning in the year following the creation of the jobs, or
2. Beginning with the first full month wages are paid for the new full time jobs created, the taxpayer is allowed a job tax credit in an amount equal to 8.33% of the maximum credit amount each month, for not more than 60 consecutive months, multiplied by the number of new full time jobs for which wages are paid for the full month.

A credit is not allowed for any month in which the new employment increase falls below the minimum level of 2. To claim the credits allowed pursuant to Code Section 12-6-3360(C)(2)(a), the minimum gross wages requirement is met if the gross wages paid for the month, when annualized, meet the minimum requirement.

The amendment also provides that except where altered by Code Section 12-6-3362(B), the provisions of Code Section 12-6-3360 are incorporated into Code Section 12-6-3362.

*Note: Act No. 389 and Act No. 297 both added Code Section 12-6-3367. The Code Commissioner has informed us that the job tax credit provision in Section 3 of Act No. 389 will be redesignated as Code Section 12-6-3362.

Effective Date: June 14, 2006

Senate Bill 1175, Section 4 (Act No. 389)

Job Tax Credit for Small Business – Future Repeal Repealed

Act No. 157 of 2005 provided that each tax incentive, including credits and exemptions, enacted by Act No. 157 are repealed for tax years beginning after June 9, 2010, (*i.e.*, for tax years beginning after 5 years from the date of enactment.) This amendment provides that the repealing provision in Act No. 157 does not apply to the portion of the job tax credit allowed to small businesses pursuant to Code Section 12-6-3360(C)(2), as amended by Act No. 389.

Effective Date: June 14, 2006

House Bill 4874, Sections 4 and 5 (Act No. 384) and House Bill 4800, Section 1 (Act No. 335)

Job Tax Credit – Eligibility of Banks and General Contractors

Code Section 12-6-3360, providing a job tax credit to qualifying businesses, has been amended to expand its applicability to banks and general contractors as provided below.

Amendments Pertaining to Banks.

1. Code Section 12-6-3360(A), concerning taxpayers eligible for, and the taxes against which, the job tax credit may be used; Code Section 12-6-3360(K)(2)(a), concerning the taxes against which the credit may be used by a shareholder, partner, or member to whom the credit is passed through; and Code Section 12-6-3360(M)(1), defining the term “taxpayer,” have been amended to provide that the job tax credit may be claimed against, or by a taxpayer subject to, bank taxes imposed pursuant to Chapter 11 of Title 12.

2. Code Section 12-6-3360(M)(9), defining “research and development facility,” has been amended to add that the term does not include an establishment engaged in “banking.”
3. Code Section 12-6-3360(M)(13), defining “qualifying service-related facility” has been amended to add that the term does not include a business engaged in “banking.”

Amendment Pertaining to General Contractors.

Code Section 12-6-3360(A), providing for the types of taxpayers that may qualify for the job tax credit, such as manufacturing, tourism, processing, and corporate office facilities, has been amended to provide that as used in this section, “corporate office” includes general contractors licensed by the South Carolina Department of Labor, Licensing and Regulation.

Note: The Code Commissioner has informed us that the amendments to Code Section 12-6-3360(A) in Section 1.A of Act 335 and in Section 4.A of Act 384 are not in conflict and therefore he intends to read these Acts together in determining the legislative intent.

Effective Date: June 6, 2006, except the amendment applicable to general contractors applies to taxable years beginning after December 31, 2006.

House Bill 4800, Section 4.A (Act No. 335)

Job Tax Credit – “Technology Intensive Facility” Definition Expanded

Code Section 12-6-3360(M)(14), defining “technology intensive facility” for purposes of the job tax credit, has been amended to provide that the term means “a facility at which a firm engages in the design, development, and introduction of new products or innovative manufacturing processes, or both, through the systematic application of scientific and technical knowledge.” The amendment also adds Code Section 12-6-3360(M)(14)(b) to include in the definition “a facility primarily used for one or more activities listed under the 2002 version of the NAICS Codes 51811 (Internet Service Providers and Web Search Portals).”

Effective Date: June 6, 2006

Senate Bill 1175, Section 1 (Act No. 389) and Senate Bill 1245, Section 8 (Act No. 386)

Job Tax Credit – Distribution Facility Definition Revised

Code Section 12-6-3360(M)(8), defining the term “distribution facility” for job tax credit purposes, has been revised. The statute continues to define “distribution facility” as an

establishment where shipments of tangible personal property are processed for delivery to customers. The term does not include an establishment where retail sales of tangible personal property are made to retail customers on more than 12 days a year except for a facility which processes customer sales orders by mail, telephone, or electronic means, if the facility also processes shipments of tangible personal property to customers and if at least 75% of the dollar amount of goods sold through the facility are sold to customers outside of South Carolina.

The amendment adds to the above definition that retail sales made inside the facility to employees working at the facility are not considered for purposes of the 12 day and 75% limitation. For purposes of this definition, “retail sale” and “tangible personal property” have the meaning provided in Chapter 36 of Title 12 (Sales and Use Tax Act).

Effective Date: June 14, 2006

Senate Bill 1245, Sections 48.A and 48.B (Act No. 386) and House Bill 4874, Sections 22.A and 22.B (Act No. 384)

Job Tax Credit – Extraordinary Retail Establishment

Code Section 12-6-3360(A), allowing a job tax credit to certain types of businesses, has been amended to add “extraordinary retail establishment” to the list of qualifying businesses. Code Section 12-6-3360(M)(15) has been added to provide that “extraordinary retail establishment” has the meaning as defined in Code Sections 12-21-6520 and 12-21-6590.

Code Section 12-21-6520(14), defining the term “tourism or recreational facility” in the Tourism Infrastructure Admissions Tax Act, was added and defines “extraordinary retail establishment” as a single store located in a county with at least 3.5 million visitors a year, and it must be a destination retail establishment which attracts at least 2 million visitors a year with at least 35% of those visitors traveling at least 50 miles to the establishment. The extraordinary retail establishment must have a capital investment of at least \$25 million including land, buildings and site prep, and one or more hotels must be built to service the establishments with 3 years of occupancy. Only establishments which receive a certificate of occupancy after July 1, 2006 qualify. The Department of Parks, Recreation and Tourism shall determine and annually certify whether a retail establishment meets these criteria and its judgment is conclusive. The extraordinary retail establishment annually must collect and remit at least \$2 million in sales taxes but is not required to collect or remit admission taxes. Code Section 12-21-6590 was also added and provides, in part, that the Department of Parks, Recreation and Tourism may designate no more than 4 extraordinary retail establishments as defined in Code Section 12-21-6520(14).

Effective Date: June 14, 2006

House Bill 4874, Section 21 (Act No. 384) and House Bill 4491 (Act No. 394)

Job Tax Credit – Qualifying Service Related Facility Compensation Amounts Revised

Code Section 12-6-3360(M)(13), providing a qualifying service related facility must create 30, 75, or 125 jobs at a single location based upon certain average cash compensation levels of 1.5, 2, or 2.5 times the per capita income of the county average to qualify for the job tax credit, has been amended. The statute has been expanded to provide that the required average cash compensation level is the lower of state per capita income or per capita income in the county where the jobs are located. Previously, the required average cash compensation level was based on the per capita income in the county where the jobs were located.

Effective Date: June 14, 2006

House Bill 4951(Act No. 390), Senate Bill 1175, Section 5 (Act No. 389) and House Bill 4874, Section 18 (Act No. 384)

Job Tax Credit – Special County Ranking

For job tax credit purposes, South Carolina’s counties are ranked as “distressed,” “least developed,” “under developed,” “moderately developed,” or “developed.” Rankings are done annually with equal weight given to unemployment and per capita income and then adjusted in accordance with special rules in Code Section 12-6-3360(B)(5) and 12-6-3360(L), as applicable.

Code Section 12-6-3360(B)(5)(g) has been added to provide that for a county which is at least 1000 square miles in size and which has had an unemployment rate greater than the state average for the past 10 years and an average per capita income lower than the average state per capita income for the past 10 years, and which is not included in any of the county classifications contained in Code Section 12-6-3360(B)(5)(a) - (f), the credit allowed is 2 tiers higher than the credit for which the county otherwise would qualify.

Note: The provisions of these three bills are identical, except House Bill 4874, Section 18 (Act No. 384) does not have the word “square” modifying miles. The Code Commissioner has informed us in determining the legislative intent the intent is to read these three Acts together and include the phrase “1000 square miles” in the amendment to Code Section 12-6-3360(B)(5)(g).

Effective Date: Applies for taxable years beginning after 2005 and for any company which applied for job development credit benefits pursuant to Code Section 12-6-3360 after 2005.

Senate Bill 1245, Section 53 (Act No. 386)

Job Tax Credit – Special County Ranking

Code Section 12-6-3360(B)(5)(h) has been added to provide that in a county in which one employer has lost at least 1,500 jobs in calendar year 2006, the credit allowed is three tiers higher than the credit for which the county would otherwise qualify. This three tier higher credit is allowed for taxable years beginning in 2007 and 2008. It does not apply to a job created in a county eligible for a higher tier pursuant to another provision of this section.

Effective Date: For taxable years beginning in 2007 and 2008.

Senate Bill 572, Sections 58 and 62 (Act No. 376) and Senate Bill 1245, Section 6 (Act No. 386)

Credit for State Contractors Subcontracting with Socially and Economically Disadvantaged Small Businesses (Formerly the Minority Business Credit)

Code Section 12-6-3350 and Code Section 11-35-5230(B)(2) provide that contractors awarded state contracts are eligible for an income tax credit equal to 4% of their payments to minority subcontractors for work pursuant to the state contracts. The amendments to these sections include:

1. Code Section 12-6-3350 has been amended to refer to the credit as a credit for subcontracts with “socially and economically disadvantaged small businesses.” Previously, the reference was to a credit for subcontracts with “minority firms.”
2. Code Sections 12-6-3350(B) and 11-35-5230(B)(2) have been amended to increase the annual limit of the tax credit to \$50,000 from \$25,000.
3. Code Sections 12-6-3350(B) and 11-35-5230(B)(2) have been amended to increase the amount of time the credit can be claimed from 6 years to 10 years from the date the first income tax credit is claimed.
4. Code Section 12-6-3350(C), requiring that a taxpayer claiming the credit maintain evidence of work performed for the contract by the subcontractor, has been amended to delete the requirement that the taxpayer is required to present this evidence at the time of filing its state income tax return.

Definitions. Code Section 11-35-5010 provides definitions to terms used in the statute. Some of the relevant definitions are:

1. “Socially and economically disadvantaged small business” is any small business concern that (a) is at least 51% owned by one or more citizens of the United States who are determined to be socially and economically disadvantaged. (b) In the case of a concern which is a corporation, 51% of all classes of voting stock of such corporation must be owned by an individual determined to be socially and economically disadvantaged. (c) In the case of a concern which is a partnership, 51% of the partnership interest must be owned by an individual or individuals determined to be socially and economically disadvantaged and whose management and daily business operations are controlled by individuals determined to be socially and economically disadvantaged. Such individuals must be involved in the daily management and operations of the business concerned.
2. “Minority person” is “a United States citizen who is economically and socially disadvantaged.”
3. “Socially disadvantaged individuals” are those individuals who have been subject to racial or ethnic prejudice or cultural bias because of their identification as members of a certain group, without regard to their individual qualities. Such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts and Native Hawaiians), Asian Pacific Americans, and other minorities to be designated by the State Budget and Control Board or designated agency.
4. “Economically disadvantaged individuals” are “those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.”

Note: Senate Bill 572 (Act No. 376) and Senate Bill 1245 (Act No. 386), which were ratified the same day, have different language for Code Section 12-6-3350(B). Senate Bill 1245 (Act No. 386) retained the \$25,000 annual limit on the credit and the 6 year period. Senate Bill 572 (Act No. 376) increased the annual limit to \$50,000 and the credit period to 10 years and made corresponding changes to Code Section 11-35-5230(B)(2). The Code Commissioner has informed us in determining the legislative intent the intent is to read them together and include Code Section 12-6-3350(A) and (C) as amended in Section 6.A of Act 386, and Section 12-6-3350(B) as amended in Section 62 of Act 376.

Effective Date: June 13, 2006 for amendments to Code Sections 12-6-3550(B) and 11-35-5230(B)(2) and applies to taxable years beginning after December 31, 2006 for Code Sections 12-6-3350(A) and (C).

House Bill 4800, Section 3 (Act No. 335)

Infrastructure Credit - Use Against Bank Taxes

Code Section 12-6-3420, providing a corporation may claim a credit for the construction or improvement of an infrastructure project against corporate income taxes due under Code Section 12-6-530, has been expanded to allow the credit to be used by a corporation against bank taxes due under Code Section 12-11-20.

Effective Date: June 6, 2006

House Bill 4874, Section 7 (Act No. 384)

Corporate Headquarters Credit - Definition Expanded

Code Section 12-6-3410 provides a corporate income tax credit or bank tax credit to taxpayers establishing a corporate headquarters in South Carolina that meets the staffing and other statutory requirements. Code Section 12-6-3410(J)(1), defining “corporate headquarters,” has been amended to provide that in addition to a regional or national headquarters, a global headquarters may qualify as a corporate headquarters, and to allow the headquarters of a business unit of a company to qualify as a corporate headquarters. A “company business unit” is defined as an “organizational unit of a corporation or bank and is defined by the particular product or category of product it sells.”

Effective Date: June 14, 2006

Senate Bill 1245, Section 54 (Act No. 386)

Corporate Headquarters Credit -Transferability

Code Section 12-6-3410(F), providing for the carryforward of any unused corporate headquarters credit, has been amended to provide that a taxpayer may assign its rights to any unused credit to a succeeding taxpayer if the original taxpayer transfers all or substantially all of its assets or all or substantially all of the assets of a trade, business, or operating division to another taxpayer who maintains the corporate headquarters and continues to meet the employment requirements. Further, the term “corporation” used in Code Section 12-6-3410(F) has been changed to “taxpayer.”

Effective Date: June 14, 2006

House Bill 4800, Section 2 (Act No. 335)

Corporate Headquarters Credit - Available to Banks

Code Section 12-6-3410, the corporate headquarters credit, has been amended to allow the headquarters credit to be used against bank taxes imposed under Code Section 12-11-20. Previously, the credit could only be used against corporate income taxes imposed by Code Section 12-6-530 or corporate license fees imposed by Code Section 12-20-50. The following conforming amendments have also been made.

1. Code Section 12-6-3410(J)(6), which defines “research and development” for purposes of the headquarters credit, has been amended to specifically exclude banking from the definition.
2. Code Section 12-6-3410(J)(9) has been amended to allow the headquarters credit passed through to certain members of qualifying limited liability companies to be used to offset bank taxes imposed by Chapter 11 of Title 12.
3. Code Section 12-6-3410(J)(1) has been amended to provide that to qualify as a “corporate headquarters,” a bank’s headquarters must qualify as a regional corporate headquarters. Further, the definition of “regional” contained in (b) of this subsection has been amended to provide that “region” or “regional” is a geographic area comprised of either: (a) 5 states, including South Carolina; or (b) 2 or more states, including South Carolina, if the entire business operations of the corporation are performed within fewer than 5 states. However, for purposes of this item, if the taxpayer is a bank subject to tax under Chapter 11, Title 12, and all the branches of the bank are physically located in fewer than 5 states, then the bank must operate in 2 or more states and must have 2 or more branches, as that term is defined in Code Section 34-25-10(8), in each state within its region.

Effective Date: June 6, 2006

Senate Bill 1245, Section 10 (Act No. 386) and House Bill 4874, Section 6 (Act No. 384)

Port Cargo Volume Increase - Credit Amended

Code Section 12-6-3375, providing a credit for certain taxpayers increasing shipments through a South Carolina port facility, was added in 2005. The credit has been substantially amended and is briefly summarized below.

Eligible Taxpayer. To be eligible to claim the credit in Code Section 12-6-3375, the taxpayer must meet the following requirements:

1. Be engaged in manufacturing, warehousing, or distribution;

2. Use South Carolina port facilities;
3. Own the cargo at the time the port facilities are used; and
4. Increase its port cargo volume at these facilities in single calendar year by at least 5% over its “base year port cargo volume.” To determine its initial base year, a taxpayer must determine the total amount of net tons of noncontainerized cargo or TEUs of cargo actually transported by waterborne ship through a port facility during the period January 1 - December 31, 2005. An eligible taxpayer’s base year port cargo volume transported must be at least 75 net tons of noncontainerized cargo or 10 loaded TEUs in the base year to qualify. If the taxpayer does not meet these cargo requirements for the year ending December 31, 2005, including a taxpayer who locates in South Carolina after December 31, 2005, the base year is the first January 1- December 31 period in which the taxpayer does meet the cargo requirements. Base year port cargo volume must be recalculated for each calendar year after the initial base year.

Definitions. A “port facility” is defined as any publicly or privately owned facility located in South Carolina through which cargo is transported to or from South Carolina by way of waterborne ship or vehicle and which handles cargo owned by third parties in addition to cargo owned by the port facility’s owner.

“Port cargo volume” is the total amount of net tons of noncontainerized cargo or TEUs of cargo transported by way of a waterborne ship or vehicle through a port facility.

A “TEU” is a 20 foot equivalent unit, a volumetric measure based on the size of a container 20 feet long, by 8 feet wide, by 8 feet 6 inches high.

Credit Amount. The amount of the credit is determined by the Coordinating Council for Economic Development (“Council”) at the Department of Commerce. A qualifying taxpayer generally may not be allocated more than a \$1 million credit for a calendar year. The maximum amount of credits allowed to all taxpayers for a calendar year may not exceed \$8 million. However, if on March 15th, the \$8 million maximum amount has not been fully allocated, then those taxpayers who have been allocated the maximum \$1 million credit must be allowed a pro rata share of the remaining unallocated credit.

Application Process. For every year a taxpayer claims the credit, the taxpayer must submit an application to the Council by March 1st of the calendar year after the calendar year the increase in port cargo volume occurs. With its application, the taxpayer must attach a schedule which includes: (1) a description of how the base year port cargo volume and the increase were determined; (2) the amount of the base year port cargo volume; (3) the amount of the increase in port cargo volume for the taxable year over the prior year stated as a percentage increase and as a total increase, including information which demonstrates that it has met the base year port cargo volume requirements and the 5% increase requirements; (4) any credit used in prior years; and (5) the amount of any credit carried over from prior years.

Claiming the Credit. A taxpayer who qualifies for, and is allocated a credit under this section, must claim the credit on its income tax return in the manner prescribed by the Department of Revenue. The Department may require the taxpayer to include a copy of the certification form issued to the taxpayer by the Council with its return. If the credit exceeds the taxpayer's tax liability for the taxable year, the excess amount may be carried forward and claimed against income taxes in the next 5 succeeding tax years.

Sharing of Information. Code Section 12-54-240(B)(25) has been added to allow the Department of Revenue and the Department of Commerce to exchange information submitted by the taxpayer without violating the confidentiality provisions of Code Section 12-54-240.

Effective Date: Taxable years beginning after 2004.

Senate Bill 1245, Section 12 (Act No. 386)

Credit for Rehabilitation of Certified Historic Structures – Technical Correction

South Carolina Code Section 12-6-3535, providing an income tax credit for rehabilitation of certified historic structures, has been amended as follows:

1. Code Section 12-6-3535(A) has been amended to clarify the use of the credit against individual income taxes imposed by Code Section 12-6-510, corporate income taxes under Code Section 12-6-530, and corporate license fees under Chapter 20 of Title 12. Previously, the statute provided the credit was used against income or license tax imposed pursuant to this title.
2. Code Section 12-6-3535(C)(2), allowing the pass through of the credit earned by a general partnership, limited partnership, or any other entity taxed as a partnership to its partners in any manner agreed to by the partners, has been amended to clarify that the allocation must be consistent with Subchapter K of the Internal Revenue Code.

Effective Date: Tax years beginning in 2006.

Senate Bill 1245, Sections 31 and 43 (Act No. 386)

Charitable Contribution Rules and Conservation Credit – Golf Provisions Amended

Code Section 12-6-1130(12) permits a South Carolina income tax deduction for a charitable contribution allowed by Internal Revenue Code Section 170 only if the contribution meets the requirements of both Code Section 12-6-5590 and Internal Revenue Code Section 170. Code Section 12-6-5590(E) has been deleted; it provided that a contribution of an otherwise qualified conservation contribution as defined in Internal Revenue Code Section 170(h) is deemed not to have the requisite donative intent if the

underlying property is used for, or association with, the playing of golf, or is planned to be so used or associated.

Code Section 12-6-3515 allows a taxpayer who is entitled to and claims a charitable deduction for a gift of land for conservation or for a qualified conservation contribution on a qualified real property interest located in South Carolina to claim a South Carolina income tax credit equal to 25% of the deduction. Code Section 12-6-3515(B)(1)(c), providing that the conservation credit will not be allowed unless the contribution meets the requirements of Code Section 12-6-3515, Code Section 12-6-5590, and Internal Revenue Code Section 170, has been amended to further add that property used for or associated with the playing of golf, or is planned to be so used or associated, is not eligible for the conservation credit in Code Section 12-6-3515.

Effective Date: June 14, 2006

Senate Bill 1245, Section 13 (Act No. 386)

Composite Income Tax Return by Partnership or S Corporation - Amended

Code Section 12-6-5030, allowing a partnership or S corporation to file a composite return on behalf of qualifying nonresidents, has been amended. A composite return is a single return for two or more taxpayers having the same tax year in which each participant's share of the partnerships or S corporations tax is computed separately and added together to arrive at the total tax due on the composite return. The amendments to Code Section 12-6-5030(B) include:

1. Clarifying the filing methods in which the tax may be computed on a composite return by a partnership or S corporation to determine each participant's tax due as follows:

Method A: For a participant who provides an affidavit to the Department through the entity stating that he has no income other than the income from the entity. Compute the participant's South Carolina income tax as follows: (1) using the pro rata share of the standard deduction or itemized deduction and personal exemptions for each participant pursuant to Code Section 12-6-1720(2) in the same manner as if it were being separately reported, or (2) without regard to any deductions or exemptions in the same manner as if it were being separately reported.

Method B: For a participant who does not provide an affidavit to the Department through the entity stating that he has no income other than the income from the entity. Compute each participant's share of South Carolina income tax without regard to deductions or exemptions by using the active trade or business income rate provided in Code Section 12-6-545 on his active trade or business income, and using the highest marginal rate in Code Section 12-6-510 for other income.

2. Clarifying that the composite return is signed by an authorized partner, an authorized officer of the S corporation, or an authorized member of a limited liability company taxed as a partnership or S corporation.

Effective Date: Taxable years beginning after 2005.

House Bill 4446 (Act No. 297)

Tax Moratorium – New Provision

Overview. Code Section 12-6-3367 has been added to grant a 10 year, or in some cases a 15 year, moratorium on corporate income taxes or insurance premium taxes to a qualifying taxpayer that makes a substantial investment and creates at least 100 new, full time jobs, within 5 years from the date it creates the first qualifying job in certain economically depressed South Carolina counties.

The moratorium begins the first taxable year after the taxpayer qualifies and ends at the earlier of (a) 10 years from that date or (b) the year when the taxpayer's number of full time jobs falls below 100. The moratorium applies to that portion of the taxpayer's corporate income tax or insurance premium tax that represents the ratio of the company's new investment in the qualifying county to its total South Carolina investment.

Examples of the type of facilities that may qualify for the moratorium include manufacturing, processing, warehousing, distribution, research and development, corporate office, tourism, and qualifying service related facilities. A general overview of the tax moratorium requirements for a taxpayer creating jobs at a facility of the type listed in Code Section 12-6-3360(M) (the job tax credit provision) and the moratorium requirements for a manufacturing facility investing and creating jobs in two counties are provided below.

Requirements for a Facility of the Type in Code Section 12-6-3360(M). To qualify for the moratorium in Code Section 12-6-3367(B)(1)(a), a taxpayer must:

1. Create and maintain at least 100 full time new jobs as defined in Code Section 12-6-3360(M) within 5 years from the date it creates the first new full time job;
2. Create and maintain the new full time jobs at a facility identified in Code Section 12-6-3360(M) that is located in (a) a county with an average annual unemployment rate of at least twice the state average during each of the last 2 completed years (based on the most recent unemployment rates available), or (b) one of the 3 lowest per capita income counties (based on the average of the 3 most recent years of available average per capita income data); and
3. Invest at least 90% of its total investment in South Carolina in the moratorium county.

If a taxpayer creates and maintains at least 200 new full time jobs within 5 years from the date the taxpayer creates the first new full time job at the facility, the moratorium is extended to 15 years. However, if a taxpayer's number of full time jobs falls below 200 during the 15 year period, but maintains 100 or more jobs at the facility, then the moratorium may be continued for the balance of the 10 year period.

Requirements for a Manufacturing Facility Investing and Creating Jobs in Two Counties.

To qualify for the moratorium in Code Section 12-6-3367(B)(1)(b), a taxpayer must:

1. Create at least 100 new full time jobs and invest at least \$150 million at a manufacturing facility in a county (a) with an average annual unemployment rate of at least twice the state average during each of the last 2 completed years (based on the most recent unemployment rates available), or (b) that is one of the 3 lowest per capita income counties (based on the average of the 3 most recent years of available average per capita income data);
2. Create at least 100 new full time jobs and invest at least \$150 million at a manufacturing facility in a second county which is designated as "distressed," "least developed," or "underdeveloped" as provided in the job tax credit statute; and
3. Invest at least 90% of its total investment in South Carolina in one or both of the counties described in items (1) and (2).

For purposes of the moratorium in Code Section 12-6-3367(B)(1)(b), the 10 (or 15) year moratorium periods are determined separately for income from each facility. The moratorium is not affected if the taxpayer changes its form of business organization within the time period the moratorium is in effect. The term "taxpayer" means a single taxpayer or, collectively, a group of one or more affiliated taxpayers.

Procedure. A taxpayer must petition, using the procedures in Code Section 12-6-2320(B), to obtain approval to claim the moratorium.

A taxpayer seeking approval for the corporate income tax moratorium must obtain certification from the Coordinating Council for Economic Development at the Department of Commerce that the project will have a significant beneficial economic effect on the region for which it is planned and that the benefits to the public exceed the costs; and the taxpayer must enter into an agreement with the Department of Revenue to claim the moratorium.

A taxpayer seeking approval for the insurance premium tax moratorium must petition, and receive the approval of, the Director of the Department of Insurance.

The Department of Revenue will provide a certification procedure to ensure that a qualifying taxpayer can continue to claim the moratorium even if a county no longer qualifies as a moratorium county.

Effective Date: May 31, 2006

House Bill 4874, Section 10 (Act No. 384)

Community Development Entities – Not Subject to Corporate License Fee

Code Section 12-20-110(8) has been added to provide that a community development entity certified by the United States Department of the Treasury through the Community Development Financial Institution Fund as a company established to distribute allocations received as a part of the New Market Tax Credit Program is not subject to the corporate license fee and annual report provisions in Chapter 20 of Title 12. See Internal Revenue Code Section 45D for more information on the New Markets Tax Credit.

Effective Date: June 14, 2006

House Bill 4874, Section 9 (Act No. 384)

Job Development Credit – Eligible Relocation Expenses

Code Section 12-10-80(C)(1)(f), which allows job development credits to be used to reimburse certain relocation expenses, has been expanded to include relocation expenses associated with a regional or global headquarters as defined in Code Section 12-6-3410(J)(1)(a) that qualify for the enhanced corporate headquarters credit pursuant to Code Section 12-6-3410(D), or relocation expenses associated with an expanded research and development facility, including personnel and laboratory research and development equipment.

Effective Date: June 14, 2006

House Bill 4874, Section 8 (Act No. 384)

Job Development Credit - Offset for Taxes

Code Section 12-10-80(A)(2), which requires that a qualifying business be current with respect to all taxes due and owing the State in order to receive its job development credits, has been amended to provide that if a qualifying business is not current with respect to all taxes as of the date it claims its job development credit, any refund of withholding resulting from the claiming of a job development credit will be used to offset

the delinquent taxes. Prior to amendment, if the qualifying business owed delinquent taxes, it was not permitted to receive any of its job development credit for that quarter.

Effective Date: June 14, 2006

Senate Bill 1245, Section 14 (Act No. 386)

Job Development Credit - Waiver of Limits Clarified

Code Section 12-10-80(D)(2), which allows a qualifying business that is making a significant investment in capital and jobs at a new project to retain 95% of its eligible job development credits, has been clarified to provide that the Coordinating Council for Economic Development at the Department of Commerce may approve a waiver of 95% of the county designated limits on job development credits for a qualifying business making a significant capital investment as defined in Code Section 12-44-30(7). Code Section 12-44-30(7) generally requires a \$400 million investment and the creation of 200 jobs, with certain exceptions, to qualify for a 4% fee in lieu under the Simplified Fee. Previously, Code Section 12-10-80(D)(2) provided that a significant capital investment was as defined in Code Sections 4-12-30(D)(4), 4-29-67(D)(4), or 12-44-30(8), all of which are 4% fee in lieu provisions.

Effective Date: June 14, 2006

Senate Bill 1245, Section 40 (Act No. 386)

Redevelopment Fee Forms - Extension of Time

Code Section 12-10-88(B), setting forth filing requirements that a redevelopment authority must comply with in order to receive redevelopment fees from qualifying businesses (federal government employers) within the redevelopment authority area, has been amended. Code Section 12-10-88 requires the redevelopment authority to submit the required statement within 30 days of the later of the date that the federal employer's South Carolina withholding tax return is due or the date that the federal employer files the withholding tax return. Under the amendment, the Department now has the discretion to extend the time for the submission of the required statement.

Effective Date: June 14, 2006

INCOME TAX REGULATION

Regulation Document No. 2958

Voluntary Check-Off

SC Regulation 117-875, concerning voluntary income tax check off funds, has been added to provide that all voluntary contributions designated on the individual income tax return must be determined at least annually by the Department and that the total amount shall be credited to the appropriate check off fund at the earliest possible time.

Effective Date: February 24, 2006

REENACTED TEMPORARY PROVISOS

The following temporary provisos were enacted in prior legislative sessions and were reenacted by the General Assembly in 2006. Temporary provisos are effective for the State fiscal year July 1, 2006 through June 30, 2007, and will expire June 30, 2007, unless reenacted by the General Assembly in the next legislative session.

House Bill 4810, Part IB, Section 1A, Proviso 1A.33 (Act No. 397)

Teacher Supplies - Reimbursement Amount Not Taxable

This temporary proviso allows for a \$250 reimbursement designed to offset expenses for teaching supplies and materials incurred by all certified public school teachers, certified special school classroom teachers, certified media specialists, and certified guidance counselors who are employed by a school district or a charter school as of November 30 of the current fiscal year. This reimbursement is not considered taxable income by South Carolina.

House Bill 4810, Part IB, Section 64, Proviso 64.14 (Act No. 397)

Military Estimated Tax Payment Relief

This temporary proviso provides that no interest, penalties, or other sanctions may be imposed on the active duty income of members of the National Guard and Reserves activated as a result of the conflict in Iraq and the war on terrorism with respect to payment of South Carolina estimated quarterly individual income tax payments of the active duty income if the federal government is unable to properly withhold South Carolina income taxes on their active duty pay.

House Bill 4810, Part IB, Section 64, Proviso 64.7 (Act No. 397)

Fee Charged for Infrastructure Credit Comfort Letter

This temporary proviso allows the Department to impose a \$35 fee for each informal, nonbinding letter concerning eligibility for the infrastructure credit under Code Section 12-20-105. A qualifying company subject to the license tax imposed on the value of South Carolina property and gross receipts, such as a power company, gas company, or telephone company, may claim an infrastructure credit for 100% of the amount paid in cash, up to \$300,000 a year, for qualifying infrastructure for an eligible project.

House Bill 4810, Part IB, Section 27, Proviso 27.14 (Act No. 397)

Job Development Credit – Fees

This temporary proviso allows the Coordinating Council for Economic Development at the Department of Commerce (“Council”) to increase the application fee for qualification for job development credit benefits from \$2,000 to \$4,000, \$500 of which must be shared with the Department of Revenue. The Council is also authorized to establish an annual renewal fee of \$500 for qualifying businesses receiving job development credits and \$500 for qualifying businesses receiving job retraining credits, each of which is to be shared equally with the Department for the purposes of meeting administrative, data collection, credit analysis, cost benefit analysis, reporting, and other statutory obligations.

House Bill 4810, Part IB, Section 27, Proviso 27.26 (Act No. 397)

Job Development Credit – January 2005 Approved Projects – Optional County Designation

This temporary proviso states that any company that received approval for job development credits in January 2005 shall have the option of using the prior year’s county classification for purposes of obtaining the job development credit.

REMINDER

The following provisions were enacted in 2005, but are effective in 2006. They are summarized below for informational purposes.

House Bill 3767, Section 22 (Act No. 161)

Deduction for Accrual of Expense or Interest – Disallowed for Certain Related Taxpayers

Code Section 12-6-1130(14) has been added to provide that a deduction from South Carolina taxable income is not allowed for the accrual of an expense or interest if the payee is a related person and the payment is not made in the taxable year of accrual or before the payer's income tax return is due, without regard to extensions, for the taxable year of accrual. Except as provided in Code Section 12-6-1130(12)(b) as discussed below, the disallowed deduction is allowed when the payment is made. The holder will include the payment in income in the year the debtor is entitled to take the deduction.

Code Section 12-6-1130(14)(b) provides that an interest deduction is not allowed for the accrual or payment of interest on obligations issued as a dividend or paid instead of paying a dividend unless the Director is satisfied that tax avoidance is not a significant purpose of the transaction. This interest must be treated as a dividend to the debtor's shareholders when it is paid, and if the holder of the obligation is not a shareholder at that time, a payment from the shareholders to the holder at that time.

Code Section 12-6-1130 does not apply to payments deemed to be made by application of South Carolina's adoption of Internal Revenue Code Section 482, 7872, a similar provision of the Internal Revenue Code or state law.

The term related person includes a person that bears a relationship to the taxpayer as described in Internal Revenue Code Section 267, "Losses, Expenses, and Interest with Respect to Transactions between Related Taxpayers."

Effective Date: Applies to taxable years beginning after 2005.

House Bill 3006, Sections 1 and 5 (Act No. 157)

Nexus for Income Tax or License Fee Purposes - Distribution Facility

Code Section 12-6-60 has been added to provide that whether or not a person has nexus with South Carolina for income tax and corporate license fee purposes is determined without regard to whether the person:

1. Owns or uses a distribution facility in South Carolina;

2. Owns or leases property at a distribution facility in South Carolina that is used at, or distributed from, that facility; or
3. Sells property shipped or distributed from a distribution facility within South Carolina.

The distribution facility is not considered to be a fixed place of business in South Carolina for the purposes of nexus. For purposes of this provision, a distribution facility is defined in Code Section 12-6-3360, the job tax credit statute, as an establishment where shipments of tangible personal property are processed for delivery to customers. The term does not include an establishment where retail sales of tangible personal property are made to retail customers on more than 12 days a year except for a facility which processes customer sales orders by mail, telephone, or electronic means, if the facility also processes shipments of tangible personal property to customers and if at least 75% of the dollar amount of goods sold through the facility are sold to customers outside of South Carolina.

Note Repeal: The provisions of Code Section 12-6-60 are repealed for tax years beginning after June 9, 2010.

Effective Date: Taxable years beginning January 1, 2006.

House Bill 3768, Section 16 (Act No. 145)

Nonresident Individual Filing Requirement - Threshold Revised

Code Section 12-6-4910(1)(d) has been amended to provide that a nonresident individual with South Carolina gross income greater than the personal exemption amount provided in Internal Revenue Code Section 151(d) must file an income tax return. Previously, a nonresident individual with any South Carolina gross income was required to file.

Effective Date: Taxable years beginning after 2005.

House Bill 3768, Section 19 (Act No. 145)

Wages Subject to Withholding - Minimum Amount Revised

Code Section 12-8-520(A) has been amended to increase the minimum dollar amount of wages on which an employer must withhold from wages paid at the rate of \$800 or more per year to wages paid to an employee, if at the time of payment, the wages are expected to equal \$1,000 or more during the year.

Effective Date: Taxable years beginning after 2005.

House Bill 3768, Section 19 (Act No. 145)

Nonresident Personal Service Income - Withholding Requirements Revised

Code Section 12-8-520(D)(3), concerning when to withhold on personal service income, has been amended to provide that withholding is not required for remuneration paid for personal services performed in South Carolina by nonresident employees in connection with their regular employment outside of South Carolina when the gross South Carolina wages are equal to or less than the personal exemption amount provided in Internal Revenue Code Section 151(d). Previously, withholding was not required on wages paid for personal services performed on “occasional, sporadic or casual visits” to South Carolina by a nonresident in connection with regular employment outside South Carolina.

Code Section 12-8-520(D)(3) continues to provide that it does not apply to employees performing construction, installation, engineering, or similar services where the situs of the job is in South Carolina.

See the summary of House Bill 3768, Section 16 (Act No. 145) above for a related amendment concerning the filing requirement threshold for a nonresident individual.

Effective Date: Taxable years beginning after 2005.

House Bill 3768, Section 20.B (Act No. 145)

Withholding Deposits May be Required to be Paid by Immediately Available Funds

Code Section 12-8-1520, providing for withholding agents’ duties to deposit and pay withholdings, has been amended. Code Section 12-8-1520(D) has been added to provide that any withholding agent making at least 24 payments in a year must do so as provided in Code Section 12-54-250. Code Section 12-54-250 concerns the payment of certain tax liabilities in funds immediately available to the State.

Effective Date: Payments due after January 1, 2006.

PROPERTY TAXES AND FEES IN LIEU OF PROPERTY TAXES

Senate Bill 1175, Section 2 (Act No. 389) and Senate Bill 1245, Section 9 (Act No. 386)

Distribution Facility - Defined

Code Section 12-37-220(B)(32)(7), which provides a 5 year property tax exemption from county property taxes for corporate headquarters, corporate office facilities, and distribution facilities, has been amended to provide that the term “distribution facility” has the same meaning as provided in Code Section 12-6-3360(M)(8), which defines that term for job tax credit purposes.

Code Section 12-6-3360(M)(8) defines “distribution facility” as an establishment where shipments of tangible personal property are processed for delivery to customers. The term does not include an establishment where retail sales of tangible personal property are made to retail customers on more than 12 days a year except for a facility which processes customer sales orders by mail, telephone, or electronic means, if the facility also processes shipments of tangible personal property to customers and if at least 75% of the dollar amount of goods sold through the facility are sold to customers outside of South Carolina. Under the amendment, retail sales made inside the facility to employees working at the facility are not considered for purposes of the 12 day and 75% limitation. For purposes of this definition, “retail sale” and “tangible personal property” have the meaning provided in Chapter 36 of Title 12 (Sales and Use Tax Act).

Effective Date: June 14, 2006

Senate Bill 205 (Act No. 276)

Marine Corps League

Code Section 12-37-220(B)(5), which provides a property tax exemption for all property of certain veterans organizations, has been amended to include the Marine Corps League.

Effective Date: May 23, 2006

House Bill 4307, Section 2 (Act No. 333)

Exemption for Antique Motor Vehicles

Code Section 12-37-220(B) has been amended by adding a property tax exemption for a motor vehicle licensed and registered as an antique motor vehicle pursuant to Article 23, Chapter 3 of Title 56.

Effective Date: Applies with respect to motor vehicle antique property tax years beginning after June 30, 2006.

Senate Bill 1245, Section 41 (Act No. 386)

Exemption for Vehicles Leased by Certain Service Members and Registered in South Carolina

Code Section 12-37-220(B)(45), which provides a property tax exemption for a private passenger motor vehicle leased by a member of the armed forces of the United States who is stationed in South Carolina, but whose home of record is in another state, has been amended to provide that the exemption applies to vehicles registered in South Carolina. Previously, the exemption applied to vehicles registered and licensed in the state of service member's home of record.

Effective Date: June 14, 2006

House Bill 4426 (Act No. 360)

Exemption for Certain Leased Property

As previously enacted, Code Section 12-37-220(A)(4) provides a property tax exemption for all property of all charitable trusts and foundations used exclusively for charitable and public purposes, but not real property other than the buildings and premises actually occupied by the owners of the real property.

Also as previously enacted, Code Section 12-37-220(B)(16)(a) provides a property tax exemption for the property of any religious, charitable, eleemosynary, educational, or literary society, corporation, or other association, if the property is used by the owner primarily for holding its meetings and the conduct of its business, and if no profit or benefit inures to the benefit of any private stockholder or individual.

Code Section 12-37-220(E) has been added to provide that, if an entity owns property a portion of which qualifies for an exemption under subsection (A)(4) or (B)(16)(a), and a portion of which is leased to one or more separate entities and that property would be exempt under subsections (A)(4) or (B)(16) if the entity leasing the property owned the

property, then any portion of the property that is leased to such entity is exempt from property taxes.

Effective Date: For property tax years beginning after 2005.

House Bill 4449, Part I, Section 3 (Act No. 388)

Owner-Occupied Residential Property – Exemption from School Operating Millage

Code Section 12-37-220(B)(47) has been added to create a new exemption for owner-occupied residential property. For property tax years beginning after 2006, and to the extent not already exempt pursuant to Code Section 12-37-250 (the homestead exemption for taxpayers 65 and older, legally blind, or totally and permanently disabled), 100% of the fair market value of owner-occupied residential property that qualifies under Code Section 12-43-220(c) for the 4% assessment ratio is exempt from the school operating portion of millage. The exemption does not apply to millage imposed for general obligation debt.

Property exempt pursuant to this new exemption is considered taxable property for purposes of bonded indebtedness under Section 15, Article X of the South Carolina Constitution.

Effective Date: For property tax years beginning after 2006.

House Bill 4449, Part IV, Section 1 (Act No. 388)

“Cap” on Real Property Values

Article 25, Chapter 37, Title 12 has been added to create the “South Carolina Real Property Valuation Reform Act” (“Act”). The Act limits the increase in the fair market value of real property attributable to the countywide appraisal and equalization program pursuant to Code Section 12-43-217 to 15% within a 5 year period. However, this limit does not apply to the fair market value of additions or improvements to real property or to the fair market value of real property when an assessable transfer of interest occurs in the year that the transfer value is first subject to tax. However, before the Act can take effect, certain amendments must be made to the South Carolina Constitution. The proposed amendments and referendum are described in the discussion of House Bill 4450.

Under Code Section 12-37-3140, for property tax years beginning after 2006, the fair market value of real property is its fair market value as of the later of:

1. Property tax year 2007;
2. When an “assessable transfer of interest” has occurred;
3. As determined on appeal; or
4. After an adjustment has been made to the value due to a countywide reassessment program under Code Section 12-43-217, but limited by the 15% discussed above.

The 15% value limitation increase does not apply to the fair market value of any additions and improvements to the property and the fair market value of those additions or improvements must be added to the fair market value of the property as determined above in the year in which the additions or improvements are subject to property tax. For purposes of the Act, an “addition” or “improvement” means an increase in the value of an existing parcel of real property because of either: (a) new construction; (b) reconstruction; (c) major additions to the boundaries of the property or a structure on the property; (d) remodeling; or (e) renovation and rehabilitation, including installation. It does not include minor construction or ongoing maintenance or repair of existing structures. Special rules are provided for repair or reconstruction necessary as a result of certain natural disasters, construction defects or defective materials, or to make a structure handicap assessable.

The 15% value limitation increase also does not apply if there is an “assessable transfer of interest” of property. Under Code Section 12-37-3130(4), an “assessable transfer of interest” is transfer of an existing interest in real property, including a life estate or certain beneficial use of the property, that subjects the property to appraisal. “Beneficial use” and ‘appraisal’ are defined in Code Section 12-37-3130. As described in Code Section 12-37-3150, a transfer that would result in an appraisal includes:

1. A conveyance by deed;
2. A conveyance by land contract;
3. A conveyance to a trust, except if the settlor or the settlor’s spouse, or both, conveys the property to the trust and the sole present beneficiary or beneficiaries are the settlor or the settlor’s spouse, or both;
4. A conveyance by distribution from a trust, except if the distributee is the sole present beneficiary or the spouse of the sole present beneficiary, or both;
5. A change in the sole present beneficiary or beneficiaries of a trust, except a change that adds or substitutes the spouse of the sole beneficiary;

6. A conveyance by distribution under a will or by intestate succession unless the distribution is to a decedent's spouse;
7. A conveyance by lease if: (a) the lease is for 20 years or more, or (b) the lease grants the lessee a bargain purchase option;
8. A change of more than 50% of the ownership interest, in a single transaction or as a part of a series of related transactions, in a corporation, partnership, sole proprietor, limited liability company, limited liability partnership, or other legal entity over a 25 year period. An entity is required to notify the applicable property tax assessor on a form provided by the Department no more than 45 days after the conveyance of an ownership interest that triggers an assessable transfer of interest under this provision;
9. A change in the use of the property from agricultural use to some other use that subjects it to rollback taxes;
10. A change in the use of the property when classification of the property changes because of a local zoning change; or
11. The passage of 20 years from 2007 or the last assessable transfer of interest in the property, if the real property is owned by a publicly-held entity.

An "assessable transfer of interest" does not include certain transfers not subject to federal income tax such as transfers occurring pursuant to the following Internal Revenue Code Sections: 1033 (fire and insurance proceeds to rebuild), 1041 (transfers between spouses or incident to divorce), 351 (transfer to a corporation controlled by the transferor), 355 (distributions by a controlled corporation), 368 (corporate reorganizations), or 721 (nonrecognition on transfers to partnerships). The Internal Revenue Code is as defined in Code Section 12-6-40.

Other items that are not considered "assessable transfer of interests" include:

1. A transfer of that portion of property subject to a life estate or life lease retained by the transferor, until the life estate or lease expires or terminates;
2. A transfer through foreclosure or forfeiture in lieu of foreclosure until the redemption period expires;
3. A redemption of the property by a person whose property was previously sold for delinquent taxes;
4. A conveyance to a trust if the settlor or the settlor's spouse, or both convey the property to the trust and the sole present beneficiary of the trust is the settlor or the settlor's spouse, or both;
5. A transfer for security or assignment or discharge of a security interest;

6. Transfers among members of an affiliated group as that term is defined in Internal Revenue Code Section 1504, subject to certain proof requirements; and,
7. A transfer among entities that are commonly controlled, subject to certain proof requirements. For purposes of the Act, “commonly controlled” means persons having relationships as described in Internal Revenue Code Section 267(b).

Under Code Section 12-37-3160, the Department may promulgate regulations to implement the provisions of the Act. The Department also is allowed to examine the substance of a transfer and surrounding transfers and may use the step transaction, economic reality, quid pro quo, personal benefit, and other judicially developed doctrines in determining whether a change in “beneficial ownership” or an “assessable transfer of interest” has occurred.

Each real property tax notice must contain a certificate in a form prescribed by the Department which must be signed and returned by the property owner or his agent certifying the details of the ownership of the property. If the owner or his agent knowingly falsifies any details of the certificate, they are subject to civil penalty. The amount of the penalty must not be less than twice, and no more than three times, the taxes lawfully due on the property. The penalty is enforceable and collectable in the same manner as a property tax.

The provisions of the Act are in addition to any other provision of law concerning the valuation of real property for purposes of property taxes, but if the provisions of the Act are inconsistent with other relevant property tax provisions, the provisions of the Act control. Note with respect to agricultural use property, that except for a change in a use which is subject to rollback taxes (which triggers an ‘assessable transfer of interest’), nothing in the Act affects the provisions of Code Section 12-43-220(d) which defines “fair market value for agricultural purposes,” nor does it affect the eligibility of property for agricultural use classification or the imposition of rollback taxes when the use is changed. Further, nothing in the Act affects the appropriate methods of appraising real property for purposes of the property tax by county assessors, assessors appointed to handle multiple county assessments pursuant to an intergovernmental agreement, and officials of the Department, as applicable.

Effective Date: This Act is effective upon ratification of an amendment to Article X of the Constitution of this State allowing its terms as proposed to the qualified electors of this State at the 2006 General Election.

Fair Market Value Defined For Assessment Purposes

Code Section 12-43-220, which provides the assessment ratios for different classes of property and also provides what constitutes fair market value for agricultural purposes, has been amended. A new subsection will be added to the end of Code Section 12-37-220 which provides that as used in the section, fair market value for real property is as determined in the manner provided in Article X of the South Carolina Constitution, Section 12-37-930, and Article 25, Chapter 37, Title 12.

Effective Date: This change is effective upon ratification of an amendment to Article X of the Constitution of this State allowing its terms as proposed to the qualified electors of this State at the 2006 General Election.

Proposed Property Tax Constitution Amendments

This joint resolution proposes amendments to the South Carolina Constitution necessary to fully implement the 15% cap on value contained in the new “South Carolina Real Property Valuation Reform Act” discussed above. These proposed amendments will be submitted to the qualified electors at the next general election for representatives. The proposed amendments are as follows:

1. It is proposed that Section 29, Article III be amended so that taxes on personal property be determined based upon the actual value of the property taxed, as ascertained by an assessment made for the purpose of laying the tax while taxes on real property must be ascertained by the methods provided by the General Assembly by General Law as prescribed in Article X of the South Carolina Constitution. Currently this section of the Constitution provides that all taxes on real and personal property be laid upon the actual value of the property taxed as determined by an assessment made for the purpose of imposing the tax.
2. Section 6 of Article X would retain the provision that the General Assembly may provide political subdivisions, including counties, municipalities, special purpose districts, public service districts, and school districts with the power to assess and collect taxes. The provision in the section that provides that property tax levies must be uniform as to persons and property within the jurisdiction of the body imposing the tax, subject to certain limited exceptions for certain special levies, would be retained as would the provisions relating to the levy of taxes when there is a merger of governments authorized by Section 12, Article VIII of the South Carolina Constitution. However, the section would be amended to provide that for the tax year beginning 2007, each parcel of real property in the State would have a maximum value for property tax purposes that does not exceed its fair market value. The

General Assembly would be authorized to define “fair market value” and to define when property has been improved or when losses have occurred to change the value of the property.

Further, a new paragraph would be added to the section to provide that the General Assembly, through the enactment of general law, may provide the method of assessment of real property by each political subdivision within the State. Each political subdivision would value real property by a method in which the value of each parcel of real property, adjusted for improvements and losses, does not increase by more than 15% every 5 years, unless an assessable transfer of interest occurs. The General Assembly will define what constitutes an “assessable transfer of interest.”

Lastly, new language is added to provide that notwithstanding any other provision of law, for purposes of calculating the limit on bonded indebtedness for political subdivisions and school districts in Sections 14 and 15 of Article X, the assessed value of all taxable property for such entity shall be no lower than the assessed values for tax year 2006.

Ratified: June 7, 2006

House Bill 4449, Part I, Sections 4.B and C (Act No. 388)

Property Tax Provisions Related to New Exemption Amended or Repealed

As a result of the exemption for owner-occupied residential property added to Code Section 12-37-220(B)(47) (see above), certain conforming amendments were made to related property tax provisions. These changes include:

1. Code Section 12-37-223A which provided for a 15% cap on value of real property at the discretion of a county has been repealed, but see House Bill 4450 and House Bill 4449, Part IV.
2. Code Sections 12-37-251(A) - (D) and (F), concerning the \$100,000 exemption for owner occupied residential property, have been repealed, thereby eliminating the original \$100,000 value exemption for owner occupied residential property and the reimbursement of revenues to counties for the lost revenues attributable to the exemption. Code Section 12-37-251(E), which addresses rollback millage in a year of reassessment, remains.

Effective Date: June 10, 2006

Millage Limitation Revised

Code Section 6-1-320 only allows a local governing body to increase millage under certain circumstances. This code section has been amended to provide that in addition to increasing millage to reflect the average yearly increase in the consumer price index (“CPI”), beginning in 2007, a local governing body may increase millage by the percentage increase in the population of the entity for the previous year. Consistent with the law prior to amendment, in a year of reassessment, the rollback millage as determined under Code Section 12-37-251(E) must be used in lieu of the previous year’s millage rate.

In addition to increasing millage for CPI changes and population increases, upon two-thirds vote of the membership of the governing body, the millage may be increased:

1. To erase any deficiency attributable to the preceding year;
2. For any catastrophic event outside the control of the governing body;
3. To comply with a court order or decree;
4. To replace revenues lost as a result of a taxpayer closure due to circumstances outside the control of the governing body that decreases by 10% or more the revenue payable to the taxing jurisdiction in the preceding year; or
5. To comply with a regulation promulgated, or statute enacted, by federal or state government for which an appropriation or method of obtaining an appropriation is not provided.

If the governing body decides to increase the millage for any of the reasons listed above, the amount of tax attributable to each increase must be listed separately on the tax bill. Each separate increase must have an explanation of the reason for the increase, and the increase must be continued only for those years necessary to pay for the deficiency, for the catastrophic event, or for compliance with the court order or decree.

The limitations do not apply to revenues, fees, or grants not attributable to property millage or to the receipt or expenditures of state funds. Additionally, the restrictions do not apply to millage that is levied to pay for bonded indebtedness or payments for real property purchased using a lease-purchase agreement or used to maintain a reserve account. Further, the limitations are not intended to prohibit the use of energy-saving performance contracts under Code Section 48-52-670. Code Section 6-1-320 is not to be construed to amend or repeal the rights of a legislative delegation to set or restrict school district millage, and Article 3, Chapter 1, of Title 6 is not to be construed to amend or

repeal any caps on school millage provided by current law, statute, or limitation on the fiscal autonomy of the school district as currently existing in law.

Effective Date: January 1, 2007

Senate Bill 1245, Section 59 (Act. No. 386)

Delayed Implementation of Reassessment

This uncodified provision provides that notwithstanding any other provision of law, new values that result from a countywide reassessment scheduled to be implemented in the current tax year, may not be implemented until property tax year 2007 unless the county council adopts an ordinance choosing to implement the new values for the current property tax year. The provisions of this section do not affect the index of taxing ability under Code Section 59-20-20(3).

Effective Date: June 14, 2006

Senate Bill 1245, Section 60 (Act No. 386) and Senate Bill 1024 (Act No. Unassigned)

Implementation of Values for Countywide Reassessment Conducted in 2004

This uncodified provision provides that notwithstanding any other provision of law, a county that postponed the implementation of values determined from a countywide reassessment conducted in 2004, may not implement the new values until property tax year 2007, unless the county council for the county adopts an ordinance affirmatively implementing the new values. In connection with this provision, Ratification No. 227 of 2006 (Senate Bill 1024), a joint resolution allowing a postponement of values until property tax year 2007 for Greenville County, is repealed.

Effective Date: June 14, 2006

House Bill 5065 (Act No. Unassigned)

Dillon County School Taxes

This joint resolution provides that the taxes imposed in Dillon County for school purposes for fiscal year 2005-2006 are reimposed for fiscal year 2006-2007.

Effective Date: May 25, 2006

Senate Bill 1136 (Act No. Unassigned)

Lexington County School District Property Tax Credit

This uncodified provision amends Section 7(C)(1) of 2004 Act No. 378, the Lexington County School District Property Tax Relief Act. It provides that the credit against school property tax liability from the 1% sales and use tax allowed by 2004 Act No. 378 is nonrefundable. It also clarifies that the first \$50,000 of fair market value exempted in Code Section 12-37-250 is not to be excluded in the computation of the credit.

Effective Date: Real property tax years beginning January 1, 2006, and later.

Senate Bill 1245, Section 33 (Act No. 386)

Homestead Exemption for Seniors, the Disabled and Blind – Age Requirement Removed for Surviving Spouse to Retain Homestead Exemption

Code Section 12-37-250, which provides a homestead exemption for certain persons over age 65, and certain disabled or legally blind persons, has been amended to remove the requirement that a surviving spouse be at least 50 years old at the time of the death of the eligible spouse to receive the homestead exemption.

Effective Date: June 14, 2006

House Bill 3841 (Act No. 285)

Retail Facilities Revitalization Act – New Property Tax or Income Tax Credit

The South Carolina Retail Facilities Revitalization Act was enacted in Title 6, Chapter 34 to create an incentive for the renovation, improvement, and redevelopment of abandoned retail facility sites in South Carolina. It provides that a taxpayer who improves, renovates, or redevelops an abandoned retail facility at an eligible site may elect one of the following tax credits:

1. A “property tax credit” provided in Code Section 6-34-40(A)(1) against real property taxes levied by local taxing entities equal to 25% of the rehabilitation expenses made to the eligible site times the local taxing entity ratio for each local taxing entity that has consented to the credit (limited to 75% of the taxpayer’s property taxes due as discussed below); or
2. An “income tax credit” provided in Code Section 6-34-40(A)(2) against any state income taxes equal to 10% of the rehabilitation expenses. (See the “Income Taxes, Corporate License Fees, and Withholding” section of this publication for a brief summary of the income tax credit.)

The taxpayer must elect whether to claim the property tax credit or the income tax credit by providing written notification to the Department of Revenue before the date the eligible site is placed in service. If the taxpayer does not obtain the required county approvals or fails to affirmatively make the election before the date the eligible site is placed in service, the taxpayer is deemed to have elected the income tax credit, without the need for a written election.

Property Tax Credit - Code Section 6-34-40(B). If the taxpayer elects the property tax credit, the municipality or the county (if the site is located in an unincorporated area) by resolution shall determine the eligibility of the site and the eligibility of the proposed project seeking the credit. For a project beginning after July 1, 2006, a majority vote of the local governing body must approve the project. The determinations and the approval must be by public hearing and ordinance. The ordinance shall allow the credit to be taken against up to 75% of the real property taxes dues on the site each year for up to 8 years. Before determining the eligibility of the site, the municipality or county must find that the credit will not violate any covenant, representation, or warranty in any of its tax increment financing transactions.

Not less than 45 days before holding the public hearing, the governing body of the municipality or county must give notice to all affected local taxing entities where the eligible site is located of its intention to grant a property tax credit to the eligible site and the amount of credit proposed to be granted. If a local taxing entity does not file an objection to the tax credit on or before the date of the public hearing, the local taxing entity is considered to have consented to the tax credit, provided that the actual tax credit granted is equal to, or less than, the amount stated in the notice of public hearing. The tax credit shall vest in the taxpayer in the year in which the eligible site is placed in service and may be carried forward up to 8 years following that date. The owner of the eligible site may transfer, devise, or distribute any unused credit to the tenant of the eligible site, provided the Department receives written notification of, and approves, the transfer, devise, or distribution.

Definitions. Code Section 6-34-30 provides a list of definitions of terms that are used in the statute. Some of the relevant terms are defined as follows:

1. An “eligible site” is a shopping center, mall, or free standing site whose primary use was as a retail sales facility with at least one tenant or occupant located in a 40,000 square foot or larger building or structure that has been abandoned. However, for purposes of the property tax credit, the governing body of a county or municipality where the site is located may, by resolution, reduce the 40,000 square foot eligibility requirement by not more than 15,000 square feet.
2. “Abandoned” means that at least 80% of the eligible site’s building or structure has been continuously closed to business or has been otherwise nonoperational for at least one year immediately preceding the time at which the determination is to be made. However, during the abandonment, the eligible site may serve as a wholesale facility

for no more than one year. The eligible site's facilities only include the site's building or structure.

3. "Rehabilitation expenses" are the expenses incurred in the rehabilitation of the eligible site, excluding the cost of acquiring the eligible site or the cost of personal property maintained at the eligible site.
4. A "local taxing entity" is a county, municipality, school district, special purpose district, and any other entity or district with the power to levy ad valorem property taxes against the eligible site.
5. The "local taxing entity ratio" is the percentage computed by dividing the millage rate of each local taxing entity by the total millage rate for the eligible site.
6. "Placed in service" means the date on which the eligible site is suitable for occupancy for the purposes intended.

Repeal of Act. The South Carolina Retail Facilities Revitalization Act in Title 6, Chapter 34 is repealed on July 1, 2016.

Effective Date: Applies for rehabilitation expenses incurred, without regard to the date such expenses were incurred, for eligible sites placed in service on or after July 1, 2006.

House Bill 4449, Part V, Section 2 (Act No. 388)

Taxation of Improvements - Revised

Code Section 12-37-670, which provides for when a new structure is to be listed for taxation, has been amended. Under the general rule, an owner of land on which a new structure is erected that has not been appraised for taxation, has to list the structure for taxation on or before March 1 after the property has become subject to taxation.

However, a new structure may not be listed or assessed until it is completed and fit for the use for which it is intended.

However, now as a result of the amendment, a governing body of a county may, by ordinance, require that a new structure be listed with the county auditor by the first day of the month after the month in which the certificate of occupancy is issued for the structure. A new structure is not required to be listed or assessed until it is completed and fit for the use for which it is intended as evidenced by the issuance of the certificate of occupancy.

If such an ordinance is enacted, any additional property tax attributable to the improvement must be paid as follows:

1. If the improvements are listed on or before June 30, the taxes due attributable to the improvements for the period from July 1 to December 31 of that year are payable when taxes are due on the property for that property tax year.
2. If the improvements are listed after June 30, the taxes are due and payable when taxes are due on the property for the next property tax year.

If a governing body of a county elects by ordinance to adopt this special provision, the election is also binding on all municipalities in the county which impose property taxes.

In connection with the amendments made to Code Section 12-37-670, Code Section 12-37-680 which contains similar, but not identical language to the new language inserted in Code Section 12-37-670, has been repealed.

Effective Date: June 10, 2006

Senate Bill 1245, Section 26 (Act No. 386)

Classification of Assessed Property of Certain Utilities and Transportation Providers

Code Section 12-43-335(C) provides for the use of the North American Industry Classification System Manual in assessing property of railroads, private carlines, airlines, water, power, telephone, cable television, sewer and pipeline companies. An erroneous reference to Sector 57 has been changed to Sector 51 in Code Section 12-43-335(C)(7).

Effective Date: June 14, 2006

Senate Bill 1245, Section 39.A (Act No. 386)

Counties May Choose To Assess Certain Boats as Residential Real Property

Code Section 12-37-224, which provides that certain motor homes are treated as real property and a primary or secondary residence for purposes of ad valorem taxation, has been amended to allow the governing body of a county to extend its provisions to boats that qualify for deduction of the interest expense on a qualified primary or secondary residence pursuant to the Internal Revenue Code, namely, boats that have sleeping, cooking and toilet facilities.

Effective Date: For property tax years beginning after 2005.

Senate Bill 1245, Sections 34.A and 39.B (Act No. 386)

Property Taxation of Boats with a Situs in this State

Code Section 12-37-714 has been added to provide an apportionment formula for the ad valorem taxation of boats used in interstate commerce having a tax situs in this state and at least one other state. Under this formula, the fair market value of the boat is multiplied by a fraction, the numerator of which is the number of days the boat was present in this state, and the denominator of which is 365. A boat used in interstate commerce must be physically present in this state for 30 days in the aggregate in a property tax year to become subject to ad valorem taxation.

Boats not used exclusively in interstate commerce are subject to ad valorem taxation if they are present in this state for 60 consecutive days or 90 days in the aggregate in a property tax year. The owner must provide documentation relating to the boat's whereabouts when a tax official makes a written request, and failure to produce the requested documents creates a rebuttable presumption that the boat in question is taxable within this state.

Note: Senate Bill 1245, Section 39.B states that this provision is added to new Code Section 12-37-712. However, Code Section 12-37-712, an existing code section, pertains to access to marina records. The Code Commissioner has informed us that he will recommend Code Section 12-37-714 be used for both enactments.

Effective Date: June 14, 2006; For property tax years beginning after 2005.

Senate Bill 1245, Section 45 (Act No. 386)

Access to Certain Marina Records for Assessment Purposes

Code Section 12-37-712, which provides that a marina must provide immediate access to its business records and premises to city, county, and state tax authority employees for the purpose of making a property tax assessment, has been amended. A new definition limits "business records" to only the name and billing address of the person leasing or renting space for a boat in a marina, as well as the boat's make, model, and year, if available.

Effective Date: June 14, 2006

House Bill 4307, Section 1 (Act No. 333)

Definition of Private Passenger Motor Vehicle for Purposes of Determining the Appropriate Property Tax Assessment Ratio

Code Section 12-37-2645 has been added to provide a definition of “private passenger motor vehicle” for purposes of determining the appropriate assessment ratio used in the calculation of the assessed value of a motor vehicle and for defining those motor vehicles subject to the assessment ratios for passenger motor vehicles and pickup trucks provided in Section 1(8)(B)(1) of Article X of the State Constitution. The definition provided in Code Section 56-3-630 applies, except that in the case of pickup trucks, the empty weight and gross weight limits provided in that definition are increased respectively to 9,000 pounds or less and 11,000 pounds or less. In addition, the definition is deemed to include motorcycles.

Therefore, the assessment ratios for passenger motor vehicles and pickup trucks provided in Section 1(8)(B)(1) of Article X of the State Constitution apply to every motor vehicle that is designed, used, and maintained for the transportation of 10 or fewer persons, including motorcycles, and trucks having an empty weight of 9,000 pounds or less and a gross weight of 11,000 pounds or less.

Effective Date: Applies with respect to motor vehicle tax years beginning after August 31, 2006.

Senate Bill 1245, Section 24 (Act No. 386)

Failure to Pay Personal Property Tax on a Vehicle

Code Section 12-37-2740, which provides for suspension of the driver’s license and registration of a person who fails to pay personal property tax on a vehicle, has been amended. Under Code Section 12-37-2740(b)(3), the maximum penalty is a fine not to exceed \$500, or imprisonment not to exceed 30 days, or both, for a third or subsequent offense of driving under suspension, when the suspension is solely for failure to pay personal property tax on a vehicle or the required reinstatement fee. Previously, the statute had provided that the penalty must not exceed the general criminal jurisdiction of a magistrate’s court. Other technical changes include clarification of references to the Department of Motor Vehicles.

Effective Date: June 14, 2006

Senate Bill 1245, Section 25 (Act No. 386)

Motor Carrier Property Tax – License and Registration Suspensions

Code Section 12-37-2890, which provides for suspension of the driver's license and vehicle registration of a person who fails to file or pay a motor carrier property tax on a vehicle as provided in Article 23, Chapter 37 of Title 12, has been amended. The amendments include the following:

1. A grammatical change in Code Section 12-37-2890(A) clarifies that the Department may request suspension of a taxpayer's driver's license and vehicle registration for failure either to file or to pay a motor carrier tax.
2. Code Section 12-37-2890(B) has been amended to provide penalties for the offense of driving under suspension, when the suspension is solely for failure to file or pay a motor carrier property tax. The penalties are a fine not to exceed: (a) \$50 for a first offense, (b) \$250 for a second offense, and (c) \$500, or imprisonment not to exceed 30 days, or both, for a third or subsequent offense.
3. Code Section 12-37-2890(C) provides that a charge of driving under suspension issued solely as a result of this section must be dismissed if the taxpayer provides proof on the taxpayer's court date that the personal property taxes on the vehicle which resulted in the charge being issued have been paid.
4. Code Section 12-37-2890(D) provides that a \$50 fee must be paid to the Department of Motor Vehicles before reinstatement of the suspended driver's license or vehicle registration. Fees go to defray the direct costs of suspension incurred by the Department of Motor Vehicles; fees in excess of actual departmental costs go to the general fund.

Effective Date: June 14, 2006

House Bill 4737 (Act No. 383)

Low Income Housing - Effect of Deed Restrictions or Tax Credits on Valuation of Real Property for Property Tax Purposes

Code Section 12-37-225 has been added to exclude federal or state income tax credits for low income housing from consideration with respect to the valuation of real property for property tax purposes. It further provides that the income approach must be the method of valuation used for properties that have deed restrictions in effect that promote or provide for low income housing. Low income housing is defined as housing intended for occupancy by households with incomes not exceeding 80% of area median income,

adjusted for household size, as determined by the United States Department of Housing and Urban Development.

Effective Date: Applies to the 2006 property tax year and thereafter.

House Bill 4449, Part V, Section 3 (Act No. 388)

Payment of Property Taxes Under Installment Method Revised

Code Section 12-45-75, which allows taxpayers to pay ad valorem property taxes on their property on an installment basis if allowed by the county, has been substantially modified.

Code Section 12-45-75 has been amended to provide that the governing body of a county, through ordinance, may allow a taxpayer to pay property tax due on an installment basis. Taxes paid through an escrow account may not be paid on an installment basis. A taxpayer who wants to pay on an installment basis, or who wishes to elect out of installment payments, must notify the county treasurer of the county in which the property is located in writing by January 15th of the tax year for which the installment payments are applicable. The notification can be made no earlier than December 1st of the preceding tax year. If a timely notification is not received by the county treasurer, the taxpayer must pay ad valorem taxes in the same manner as the previous taxable year.

Once notice is received from the taxpayer, the county treasurer has to notify the county auditor and assessor of each taxpayer electing the installment payment option, or electing out of the installment payment option. If the assessor determines that the property has diminished in value, an estimated property tax obligation must be adjusted and sent to the taxpayer to reflect the reduced value and the estimated property tax payments must be adjusted accordingly.

If the taxpayer elects the installment payment method, then the tax notice must contain a calculation of any estimated property tax due and a payment schedule and return envelopes for these payments. An installment payment is based on the total property tax due for the previous year after applying all applicable credits and adjustments. For taxpayers paying on the installment method, an amount equal to 16 and two-thirds of the estimated property tax obligations must be paid in 5 installments. The 5 installments are due on or before February 15, April 15, June 15, August 15, October 15, of the year respectively. The county treasurer is required to notify the county auditor between October 15 and November 15 of the amount of the property owner's payments received. A notice of the remaining tax due and any other charges must be mailed to the property tax owner and the balance of the tax due must be paid on or before January 15th of the following tax year. If the taxpayer fails to make timely installment payments, the county may refuse to accept all other installment payments and the remaining balance will be due on the normal due date for such payment under Code Section 12-45-70 (between September 30th and January 15th).

All installment payments must be credited against the property tax due by the taxpayer and the installment payments must be deposited in an interest bearing account with any interest accumulating on the funds being used to offset the administrative expenses of the county in administering the installment payments. Any overpayment must be refunded to the taxpayer together with the actual interest earned as a result of the taxpayer's payments, the interest running from the later of: (a) the due date of the installment resulting in an overpayment or (b) the actual date the overpayment was received by the county treasurer, to the date the refund is issued. However, if the refund is issued to taxpayer within 45 days of the installment payment, no interest has to be paid to the taxpayer.

Once final payment is made, but no later than January 15th of the following tax year, the installment payments must be credited to the accounts of property taxing entities in the county in the same proportion that millage was imposed by such entities in the previous tax year with the necessary adjustments made to reflect current tax year millage impositions when taxes for the current year are paid. Each county treasurer is required to report certain information to the General Assembly on the impact and implementation of the installment payment provision.

This section in no way alters the due date, penalty schedule and enforced collections of property taxes as provided by law.

Effective Date: For property tax years beginning after 2006.

House Bill 4449, Part IV, Section 2.B (Act No. 388)

Real Property Assessment Notice - Appeal Procedure Revised

Code Section 12-60-2510, which sets forth information to be provided in an assessment notice issued by the county assessor and the manner in which a taxpayer may appeal an assessment notice, has been amended as follows.

1. The assessor must now include in the notice the value of the real property owned by the taxpayer, as limited by Article 25, Chapter 37, Title 12 (the 15% cap on valuation).
2. In years in which there is no notice of property tax assessment given to the taxpayer, the taxpayer has 90 days after the tax notice is mailed to appeal an assessment. The failure to appeal within that time period is a waiver of the right to protest, and the

assessor may not review any appeal filed after that date. Prior to amendment, the taxpayer had until March 1st of each year to appeal a property tax assessment.

Effective Date: This change is effective upon ratification of an amendment to Article X of the Constitution of this State allowing its terms as proposed to the qualified electors of this State at the 2006 General Election.

Senate Bill 1245, Section 30 (Act No. 386)

Appeals Procedure for Department Property Tax Assessments - Repealed

Code Section 12-4-770, concerning the appeal of a proposed assessment issued by the Department's property tax division, has been repealed. This code section was no longer needed as a result of the appeal procedures established for property taxes assessments issued by the Department in the Revenue Procedures Act found in Title 12, Chapter 60, Article 9, Subarticle 5.

Effective Date: June 14, 2006

Senate Bill 490, Section 3 (Act No. 238)

Time in which to Contest a Tax Deed

Code Section 12-51-90 provides that a defaulting taxpayer or other interested person may redeem real property within 12 months of the delinquent tax sale. Code Section 12-51-90(C) has been added to provide that a tax deed issued after the redemption period expires becomes incontestable after the passing of an additional 12 months.

In addition, technical corrections have been made to Code Section 12-51-160, which provides a two-year limitation period for suits to recover land sold in a delinquent tax sale. A cross-reference to Code Section 12-51-90(C) has been added.

Effective Date: March 15, 2006

Senate Bill 1245, Section 35 (Act No. 386)

(See also Senate Bill 1245, Section 49.D (Act No. 386))

Actual Interest Earned Included if Successful Bidder's Payment Is Refunded in Voided Tax Sale

Code Section 12-51-150 provides that, on discovery of an omission of a required action in the tax sale procedure before a tax title has passed, the official in charge may void the tax sale and refund the amount paid by the successful bidder. This section has been

amended to allow the successful bidder to receive actual interest earned on the amount refunded. Previously, the statute was silent as to interest.

Effective Date: June 14, 2006

Senate Bill 1245, Sections 44 and 49.C (Act No. 386)

Costs for Title Paid by Purchaser at Tax Sale

Code Section 12-51-130, concerning execution and delivery of tax title for a delinquent tax sale, has been amended to require a successful purchaser or assignee at a delinquent tax sale to pay the actual cost of preparing the tax title plus documentary stamps and recording fees. Before June 7, 2005, the amount was \$15 for the cost of the tax title plus documentary stamps and recording fees.

Effective Date: This provision was effective June 14, 2006, but an identical revision was enacted in 2005 Act No. 145, Section 52, effective June 7, 2005.

Senate Bill 490, Section 2 (Act No. 238)

Tax Sale Proceeds Applied to Outstanding Municipal Tax Liens

Code Section 12-51-130 sets out the procedure to be followed once the redemption period has expired after a tax sale for the collection of delinquent property tax. It has been amended to provide that any cash resulting from the tax sale over the amount required to satisfy county taxes, assessments, penalties and costs must be applied to outstanding municipal tax liens on the property. Any remaining overage then belongs to the owner of record immediately before the end of the redemption period.

Effective Date: March 15, 2006

Senate Bill 490, Section 4 (Act No. 238)

Rights of Real Property Mortgagees with Respect to a Tax Sale

Article 9 was added to Chapter 49, Title 12 concerning the enforced collection of property taxes, to clarify the rights of real property mortgagees when the real property is levied on for property taxes. The provisions include:

1. Code Section 12-49-1120 provides a procedure by which a tax collector must give 45 days written notice to a real property mortgagee appearing on a mortgagee list filed by the mortgagee with the tax collector, as provided in Code Section 12-49-1150.

2. Code Section 12-49-1130 sets out the form of notice.
3. Code Section 12-49-1140 sets out recordkeeping requirements for notices sent by tax collectors to mortgagees.
4. Code Section 12-49-1150 provides that a mortgagee is entitled to notice only if the mortgagee files with the tax collector by March 15 of each year a mortgagee list containing specified information about each mortgage in the county.
5. Code Section 12-49-1160 sets out the form of the mortgagee list.
6. Code Section 12-49-1170 provides that the mortgagee list may be delivered to the tax collector through any medium acceptable to both the sender and receiver, which may include e-mail. The mortgagee must maintain sufficient proof of sending.
7. Code Section 12-49-1180(A) provides that a tax sale and deed of conveyance do not affect the rights of a mortgagee that has filed a mortgagee list in compliance with Code Section 12-49-1150, unless the tax collector has given 45 days written notice according to the procedure in Code Section 12-49-1120.
8. Code Section 12-49-1180(B) provides that the rights and remedies of a mortgagee granted elsewhere in Title 12 are not affected by the filing or not filing of the mortgagee list.

Effective Date: March 15, 2006

Senate Bill 1245, Sections 49.A and 49.B (Act No. 386)

Rights of Lienholders with Respect to a Tax Sale of Mobile or Manufactured Homes

Article 9 was added by 2006 Act No. 238 to Chapter 49, Title 12 concerning the enforced collection of property taxes, to clarify the rights of real property mortgagees when the real property is levied on for property taxes. This amendment to Article 9 clarifies the rights of lienholders when mobile or manufactured homes are levied on for property taxes, as follows:

1. Code Section 12-49-1190 requires a tax collector to give 45 days written notice of the date of a tax sale to lienholders.
2. Code Section 12-49-1200 sets out two forms of notice to be used, depending on the date the lien was created.
3. Code Section 12-49-1210 sets out recordkeeping requirements for the notices.

4. Code Section 12-49-1220 provides procedures by which a tax collector must notify lienholders according to date of the lien and source of lienholder information. If the lienholder has different mailing addresses, notice must be sent to each address.
5. Code Section 12-49-1230 provides that a lienholder may provide a written collateral list to the tax collector of each county in which the lienholder's collateral is located. A collateral list provided after July 1 of each year is considered a supplemental collateral list.
6. Code Section 12-49-1240 sets out the form of the lienholder's collateral list.
7. Code Section 12-49-1250 provides that the lienholder's collateral list may be delivered to the tax collector through any medium acceptable to both the sender and receiver, which may include e-mail. The lienholder must maintain sufficient proof of sending.
8. Code Section 12-49-1260 limits disclosure of information in the collateral lists.
9. Code Section 12-49-1270(A) provides that, except as otherwise provided in Code Sections 12-49-1220 or 12-49-1290, a tax sale and transfer of title do not affect the rights of a lienholder of a mobile or manufactured home unless the tax collector has given 45 days written notice according to the procedure set out in Code Sections 12-49-1190 and 12-49-1220.
10. Code Section 12-49-1270(B) provides that, except as specifically provided by Article 9, the rights and remedies of a lienholder provided by the terms of the security documents or granted elsewhere in Title 12 are not affected by whether the lienholder provides a collateral list to the tax collector or any notification information to the auditor.
11. Code Section 12-49-1280 sets out the circumstances under which a defect in the notice procedure is not grounds to void a tax sale.
12. Code Section 12-49-1290 provides that the lienholder's failure to provide a collateral list for one or more years will not be a defense to the lienholder's effort to void a tax sale if either the most current collateral list provided by the lienholder showed that the lienholder held a lien on the particular property sold, or the county had information about the lienholder and its address pursuant to the licensing and moving permit procedures set out in Title 31, Chapter 17.

Effective Date: June 14, 2006

Senate Bill 490, Section 1 (Act No. 238)

Municipal Tax Liens

Code Section 5-7-300(A), which authorizes municipal tax liens paramount to all other liens except the lien for county and state taxes, has been amended to clarify that a municipal tax lien is not discharged by payment of a lien for county or state taxes. For municipalities that have no agreement with a county to collect their delinquent taxes as of March 15, 2006, the municipal tax lien becomes a first lien on the property when a county or state tax lien is discharged.

Effective Date: March 15, 2006

Senate Bill 1245, Section 55 (Act No. 386)

Property Tax Duties Transferred from the Office of the Comptroller General to the Department of Revenue

Duties with respect to oversight of county auditors, treasurers and tax collectors in the administration and collection of property taxes that were formerly performed by the Office of the Comptroller General have been transferred to the Department of Revenue. Numerous code sections have been amended to reflect this transfer, including provisions concerning the homestead exemptions. The Department now has responsibility for reimbursing political subdivisions for revenues lost due to the homestead exemptions pursuant to Code Sections 12-37-251, 12-37-266, 12-37-270, and 12-37-280, and the business inventory tax exemption pursuant to Code Section 12-37-450. Code Section 12-39-320, concerning the Comptroller General's annual visit to the offices of county auditors and treasurers, has been repealed.

Effective Date: June 14, 2006

House Bill 5064 (Act No. Unassigned)

Richland County Recreation Commission - Authority to Raise Revenue Is Transferred to Richland County Council

This uncodified provision removes the authority of the Richland County Recreation Commission to levy ad valorem property taxes on all taxable property in the district for operating or capital purposes and to issue general obligation bonds or revenue bonds of the district. This authority is transferred in its entirety to the Richland County Council.

Effective Date: June 6, 2006

Investment Requirements for Little Fee Changed - Corresponding Amendments

Code Section 4-12-30, referred to as the Little Fee, allows taxpayers who make a certain level of investment in a project to negotiate with a county to obtain a fee in lieu of taxes. A taxpayer that is granted a fee in lieu of taxes will receive a reduced assessment ratio for that property, and the millage rate that will apply to the fee property will be either a fixed millage rate or a millage rate that adjusts every 5 years. Additionally, if real property is subject to the fee, the value of that property will be fixed for the life of the fee (20 years). If a taxpayer is making a significant capital investment in a project, then the taxpayer may obtain a Super Fee. The Super Fee allows the taxpayer to obtain a 4% assessment ratio for the property and to have the property subject to the fee for a period of 30 years. The following changes have been made to Code Section 4-12-30:

1. Code Section 4-12-30(B)(3) has been amended to provide that a taxpayer must make at least a \$2.5 million investment in order to qualify for the fee. Prior to amendment, the minimum level of investment was \$5 million.
2. Code Section 4-12-30(D)(4)(a), the subsection of the Little Fee statute that sets forth the requirements for qualifying for the Super Fee, has been amended to:
 - a. change item (i) to provide that a single taxpayer who invests at least \$150 million at the project, \$300 million in the State, and creates at least 125 jobs at the project can qualify for the Super Fee. Previously, the investment at the project had to be \$200 million, the total investment in the State had to be \$400 million, and 200 jobs had to be created.
 - b. repeal item (iii) which extended the Super Fee to a business that invested \$600 million in the State;
 - c. change previous item (iv)(now item (iii) in the subsection) that extends the Super Fee to certain gas-fired combined-cycle power facilities to eliminate any requirement that the taxpayer invest \$500 million in the State.
3. Code Section 4-12-30(H)(3) has been amended to change the \$5 million minimum investment amount to \$ 2.5 million.

Effective Date: June 14, 2006

Senate Bill 1245, Section 57 (Act No. 386) and House Bill 4874, Section 19 (Act No. 384)

Little Fee Property Considered Privately Owned for Certain Utility Regulatory Purposes

Code Section 4-12-30(B)(1) provides that title to the property must be held by the county in order for property to qualify for a fee in lieu under Code Section 4-12-30. Code Section 4-12-30(B)(1) has been amended to provide that fee in lieu property titled in the name of the county is considered privately owned for purposes of Code Section 58-3-240. Code Section 58-3-240 provides a definition of a “privately-owned industrial park” for purposes of exempting certain utility services from certain regulatory requirements. Under the amendment, fee in lieu property titled in the name of the county and located in an industrial park will be considered privately owned in determining if the industrial park qualifies as a “privately-owned industrial park.”

Effective Date: June 14, 2006

Senate Bill 1245, Section 58 (Act No. 386) and House Bill 4874, Section 20 (Act No. 384)

Big Fee Property Considered Privately Owned for Certain Utility Regulatory Purposes

Code Section 4-29-67(B)(1) provides that title to the property must be held by the county in order for property to qualify for a fee in lieu under Code Section 4-29-67. Code Section 4-29-67(B)(1) has been amended to provide that fee in lieu property titled in the name of the county is considered privately owned for purposes of Code Section 58-3-240. Code Section 58-3-240 provides a definition of a “privately-owned industrial park” for purposes of exempting certain utility services from certain regulatory requirements. Under the amendment, fee in lieu property titled in the name of the county and located in an industrial park will be considered privately owned in determining if the industrial park qualifies as a “privately-owned industrial park.”

Effective Date: June 14, 2006

House Bill 4874, Section 17 (Act No. 384)

Investment Requirements of Super Fee Under Big Fee - Corresponding Amendments

Code Section 4-29-67, referred to as the Big Fee, allows taxpayers who make a certain level of investment in a project to negotiate with a county to obtain a fee in lieu of taxes. A taxpayer that is granted a fee in lieu of taxes will receive a reduced assessment ratio for that property, and the millage rate that will apply to the fee property will be either a fixed millage rate or a millage rate that adjusts every 5 years. Additionally, if real property is subject to the fee, the value of that property will be fixed for the life of the fee (20 years).

If a taxpayer is making a significant capital investment in a project, the taxpayer may obtain a Super Fee which allows the taxpayer to obtain a 4% assessment ratio for the property and to have the property subject to the fee for a period of 30 years.

Code Section 4-29-67(D)(4)(a), the subsection of the Big Fee statute that sets forth the requirements for qualifying for the Super Fee, has been amended to:

- a. change item (i) to provide that a single taxpayer who invests at least \$150 million at the project, \$300 million in the State, and creates at least 125 jobs at the project can qualify for the Super Fee. Previously, the investment at the project had to be \$200 million, the total investment in the State had to be \$400 million, and 200 jobs had to be created.
- b. repeal item (iii) which extended the Super Fee to a business that invested \$600 million in the State;
- c. change previous item (iv)(now item (iii) in the subsection) that extends the Super Fee to certain gas-fired combined-cycle power facilities to eliminate any requirement that the taxpayer invest \$500 million in the State.

Effective Date: June 14, 2006

PROPERTY TAX REGULATION

Regulation Document No. 2935

Responsibilities of the Department

SC Regulation 117-8, concerning responsibilities of the Department with respect to property taxation and fees in lieu of property taxes, has been repealed since this same regulation was codified on June 25, 2004 as SC Regulation 117-1720.1 as a part of a reorganization of property tax regulations. As a result, SC Regulation 117-8 is no longer needed. For a copy of this regulation document, see SC Information Letter #06-3.

Effective Date: February 24, 2006

REENACTED TEMPORARY PROVISOS

The following temporary provisos were enacted in prior legislative sessions and were reenacted by the General Assembly in 2006. Temporary provisos are effective for the State fiscal year July 1, 2006 through June 30, 2007, and will expire June 30, 2007, unless reenacted by the General Assembly in the next legislative session.

House Bill 4810, Part IB, Section 72, Proviso 72.88 (Act No. 397)

Certain Counties May Postpone Implementation of Reassessment

This temporary proviso provides that a county that postponed the implementation of a scheduled reassessment from 2003 to 2004, under the provisions of Act 69 of 2003, Section 3 SS.1, may postpone, by ordinance, the implementation for one additional property tax year.

House Bill 4810, Part IB, Section 72, Proviso 72.56 (Act No. 397)

Personal Property Tax Relief Fund Not Funded

This temporary proviso provides that the Personal Property Tax Relief Fund established under Code Section 12-37-2735 to help counties fund the reduction of ad valorem taxes on personal motor vehicles is suspended.

This proviso continues to provide that if a county imposes a personal property tax exemption sales tax in an effort to reduce ad valorem taxes on personal motor vehicles and the 2% sales tax rate on gross proceeds of sales is insufficient to offset the property tax not collected, sufficient amounts must be credited to the Trust Fund for Tax Relief established under Code Section 11-11-150 to provide reimbursement to offset the shortfall in the manner provided in Code Section 4-10-540(A).

House Bill 4810, Part IB, Section 36A, Proviso 36A.8 (Act No. 397)

Vehicle License Tax Year – Multiple Tag Transfers

This temporary proviso provides that the Department of Motor Vehicles (“DMV”) must implement changes to its computer system that ensures that after the transfer of a license tag to a vehicle, before any subsequent transfer of a license tag to that same vehicle is processed, it requires a paid tax receipt, based upon the value of the vehicle to which the license tag is being transferred, for the remaining months of the tax year of the license tag being transferred.

This requirement only applies if the owner requesting the transfer has previously transferred a tag to the same vehicle. Should the vehicle from which the tag was transferred be re-registered, the registration cycle for that vehicle shall begin in the month that the new tag is issued.

REMINDER

The following provisions were enacted in 2005, but are effective in 2006. They are summarized below for informational purposes.

House Bill 3767, Section 36 (Act No. 161)

Property Leased to Volunteer Fire Departments and Rescue Squads

Code Section 12-37-220(B)(19), which provides a property tax exemption for all property owned by volunteer fire departments and rescue squads and used exclusively for the purposes of such departments and squads, has been amended to extend the exemption to certain leased property. Specifically, when property is leased to the department or squad by an entity that is itself exempt from property tax, the exemption for the leased property is the same as for property owned by the department or squad.

Effective Date: Property tax years beginning after June 30, 2005.

Senate Bill 589, Section 2 (Act No. 149)

Property Tax Assessment - Valuation of Golf Courses

Code Section 12-43-365 has been added to provide that the valuation of golf course real property for ad valorem tax purposes does not include the value of tangible and intangible personal property, or any income or expense derived from such property, whether directly or indirectly. The term “intangible personal property,” as used in this provision, has the same meaning as in Article X, Section 3(j) of the South Carolina Constitution.

In addition, if the capitalized income approach is used to determine fair market value, the taxpayer is required to provide income and expense data for the entire golf course operation, golf cart rentals, food and beverage services, and pro shop sales. A form for this purpose is to be designed by the county assessors and golf course owners and approved by the Department. The taxpayer’s data so provided is not public data and may

not be disclosed except in the process of a formal appeal involving the subject real property.

Effective Date: Applies as golf courses are valued in countywide assessment and equalization programs implemented after 2005.

House Bill 3767, Section 16 (Act No. 161)

Undervaluation of Business Property - New Penalty

Code Section 12-54-43(L) has been added to provide a civil penalty for undervaluation of property used in, or owned by, a business when the value asserted by the taxpayer for property tax purposes is 50% or more below the property's property tax value. In addition to the property tax due, the taxpayer must pay a penalty equal to 50% of the underpayment that would have resulted if the value asserted had been accepted.

Effective Date: Tax years beginning after December 31, 2005.

SALES AND USE TAXES

House Bill 4449, Part I, Sections 1.A and 1.C (Act No. 388)

General Sales and Use Tax Rate Increase for Property Tax Relief

Code Section 12-36-1110 has been added to increase the general sales and use tax rate from 5% to 6% beginning June 1, 2007. The revenue from this 1% sales and use tax increase must be credited to the Homestead Exemption Fund under Code Section 11-11-155 for the purpose of reducing property taxes.

This rate increase will not apply to:

1. The 7% sales tax imposed on sleeping accommodations under Code Section 12-36-920(A). However, the sales tax imposed on additional guest charges at places providing sleeping accommodations under Code Section 12-36-920(B), and all other sales of tangible personal property at a place providing sleeping accommodations, will increase from 5% to 6% beginning June 1, 2007.
2. The 5% sales and use tax imposed on items subject to the maximum sales and use tax provisions of Code Section 12-36-2110.
3. The 3% sales and use tax imposed under Code Section 12-36-910 on sales of unprepared food which lawfully may be purchased with United States Department of Agriculture food stamps.

The sales and use tax rate on businesses providing 900/976 telephone service will increase from 10% to 11% beginning June 1, 2007.

In addition, sales of tangible personal property delivered after June 1, 2007, either under the terms of a construction contract executed before June 1, 2007, or a written bid submitted before June 1, 2007 culminating in a construction contract entered into before or after June 1, 2007, are exempt from the 1% sales and use tax increase if a verified copy of the contract is filed with the Department by November 30, 2007. Also, with respect to services that are billed regularly on a monthly basis, the 1% sales and use tax increase is imposed beginning on the first day of the billing period beginning on or after June 1, 2007.

Effective Date: June 1, 2007

House Bill 4449, Part I, Section 1.B (Act No. 388)

Sales and Use Tax Rate on Unprepared Food Reduced to 3%

Code Section 12-36-910, which imposes the State sales tax, has been amended to add a provision to reduce the State sales and use tax rate from 5% to 3% on sales of unprepared food which lawfully may be purchased with United States Department of Agriculture food stamps. This new lower rate on unprepared food begins October 1, 2006.

When the general sales and use tax rate increases to 6% on June 1, 2007, the State sales and use tax rate on unprepared food which lawfully may be purchased with United States Department of Agriculture food stamps will remain 3%. Local sales and use taxes that are administered and collected by the Department on behalf of the counties and other jurisdictions apply to sales of unprepared food, unless the local tax law specifically exempts the sales of such food. For information on these local sales and use taxes, see SC Information Letter #06-16.

For a more detailed discussion of the new 3% sales and use tax rate on unprepared food that begins October 1, 2006, see SC Temporary Revenue Ruling #06-5.

Effective Date: October 1, 2006

House Bill 4449, Part I, Section 4.E (Act No. 388)

November 24 - 25, 2006 One-Time Sales Tax Holiday

The General Assembly has established a one-time sales tax holiday for November 24th and November 25th of 2006. During these two days, the State sales and use tax will be suspended with respect to otherwise taxable transactions. The following are important points to remember concerning the one-time sales tax holiday:

1. The one-time sales tax holiday applies to all purchases except accommodations and additional guest charges upon which the tax is imposed under Code Section 12-36-920.
2. The one-time sales tax holiday applies to purchases made by businesses, government agencies, and nonprofit organizations as well as purchases made by individuals.
3. The one-time sales tax holiday only applies to the state sales and use tax, the state casual excise tax and the Catawba Indian tribal sales tax. The one-time sales tax holiday does not apply to sales and use taxes administered and collected by the Department of Revenue on behalf of counties and school districts or to local

hospitality taxes and local accommodations taxes collected directly by any county or municipality.

Effective Date: November 24 - 25, 2006

House Bill 4810, Part IB, Section 72, Proviso 72.113(A) (Act No. 397)

Alternative Fuel Vehicles - Sales Tax Rebate

Purchasers of certain alternative fuel vehicles are entitled to a sales tax rebate of up to \$300. In order to obtain this rebate, the following requirements must be met:

1. The vehicle must be purchased between July 1, 2006 and June 30, 2007.
2. The purchase must be an in-state purchase of the vehicle.
3. The rebate request must be submitted to the Department on a form created by the Department.
4. The vehicle purchased must be one of the following types of alternative fuel vehicles:
 - a. Flex-Fuel Vehicles (FFV) capable of operating on E85 motor fuel. Eligible vehicles for each model year are those models identified by the manufacturer as being flexible-fuel vehicles capable of operating on E85 motor fuel. E85 motor fuel is a fuel comprised of 85% ethanol fuel and 15% gasoline fuel.
 - b. Hydrogen fuel cell vehicles. A hydrogen fuel cell vehicle is any vehicle classified by the United States Department of Energy as a hydrogen fuel cell vehicle.
 - c. Plug-in hybrid gasoline-electric vehicles. A plug-in hybrid gasoline-electric vehicle is a vehicle classified by the United States Department of Energy as a hybrid gasoline-electric vehicle capable of being propelled by both a gasoline-fueled internal combustion engine and an electric motor powered by a battery that can be recharged by being plugged into an external source of electricity.

In addition to the rebate for in-state purchases of the above fuel-efficient automobiles, a rebate of up to \$500 is available for persons who purchase equipment used in the conversion of a conventional hybrid gasoline-electric vehicle to a plug-in hybrid gasoline-electric vehicle. In order to qualify for this rebate, equipment must also be purchased between July 1, 2006 and June 30, 2007, and the rebate request must be submitted to the Department on a form created by the Department. It is not required that the purchase of the equipment be an in-state purchase.

The form for requesting either of these rebates from the Department of Revenue will be available to automobile dealers and the Department of Motor Vehicles as well as the public.

Effective Date: This temporary proviso is effective for State fiscal year July 1, 2006 through June 30, 2007. Unless reenacted by the General Assembly in the next legislative session, the provisions of this proviso expire on June 30, 2007.

House Bill 4800, Section 4.B (Act No. 335)

Technology Intensive Facility - New Exemptions for Computer Equipment and Electricity

Code Section 12-36-2120 has been amended to add the following two new exemptions for qualifying technology intensive facilities. The exemptions are for:

1. Computer equipment used in connection with a technology intensive facility; and
2. Electricity used by a technology intensive facility that qualifies for the computer equipment exemption and equipment and raw materials including, without limitation, fuel used by such qualifying facility to generate, transform, transmit, distribute, or manage electricity for use in the technology intensive facility.

A technology intensive facility is defined in Code Section 12-6-3360(M)(14)(b) as a “facility at which a firm engages in the design, development, and introduction of new products or innovative manufacturing processes, or both, through the systematic application of scientific and technical knowledge.” This definition, by statute, also includes certain listed industries from the North American Industrial Classification Systems (“NAICS”) Manual, as published by the Office of the Management and Budget of the federal government.

In order to qualify for this exemption, the taxpayer must:

1. Invest at least \$300 million in real or personal property or both comprising or located at the facility over a 5 year period;
2. Create at least 100 new jobs at the facility during that 5 year period, and the average cash compensation of at least 100 of the new jobs is 150% of the per capita income of the state according to the most recently published data available at the time the facility’s construction starts; and
3. Spend at least 60% of the \$300 million minimum investment on computer equipment.

Computer equipment is defined to mean “original or replacement servers, routers, switches, power units, network devices, hard drives, processors, memory modules,

motherboards, racks, other computer hardware and components, cabling, cooling apparatus, and related or ancillary equipment, machinery, and components, the primary purpose of which is to store, retrieve, aggregate, search, organize, process, analyze, or transfer data or any combination of these, or to support related computer engineering or computer science research.”

The exemption applies from the start of the investment in or construction of the facility. The exemption also sets forth certain notification requirements to be followed by the taxpayer.

In addition, once the Department certifies that the taxpayer has met the investment and job requirements, all subsequent purchases of or investments in computer equipment, including to replace originally deployed computer equipment or to implement future expansions, shall qualify for the exemption, regardless of when the taxpayer makes the investments. The Department may assess any tax due as a result of the taxpayer’s subsequent failure to meet the investment and job requirements after being granted the exemption.

Effective Date: June 6, 2006

House Bill 4874, Section 11 (Act No. 384)

Construction Material Used to Construct a Single Manufacturing and Distribution Facility

Code Section 12-36-2120 has been amended to add an exemption for construction materials used in the construction of a single manufacturing and distribution facility with a capital investment of at least \$100 million in real and personal property in the State over an 18 month period.

This exemption will be phased in over several years beginning July 1, 2007 and the sale of qualifying construction material will not be fully exempt until July 1, 2011. The exemption will be phased in by reducing the rate of taxation as follows:

- 4% for sales from July 1, 2007, through June 30, 2008,
- 3% for such sales from July 1, 2008, through June 30, 2009,
- 2% for such sales from July 1, 2009, through June 30, 2010, and
- 1% for such sales from July 1, 2010, through June 30, 2011.

The taxpayer must notify the Department in writing before the first month it uses the exemption and must notify the Department in writing that it has met the \$100 million

investment requirement or, after the expiration of the 18 month period, that it has not met the \$100 million investment requirement.

The Department may assess any tax due on construction materials purchased tax-free pursuant to this exemption but due the State as a result of the taxpayer's failure to meet the \$100 million investment requirement. The running of the periods of limitations for assessment of taxes provided in Code Section 12-54-85 is suspended for the time period beginning with taxpayer's notice to the Department that it will use the exemption and ending with taxpayer's notice to the Department that \$100 million investment requirement has or has not been met.

Effective Date: The exemption phase-in begins July 1, 2007.

House Bill 4874, Section 11 (Act No. 384)

Sheriff's Sale

Code Section 12-36-2120 has been amended to add an exemption for the sales of "any property sold to the public through a sheriff's sale as provided by law."

Effective Date: June 14, 2006

Senate Bill 1245, Sections 20, 21, and 23 (Act No. 386)

Warranty, Maintenance and Similar Service Contracts - Amended

In 2005, Code Sections 12-36-910(B) and 12-36-1310(B) were added to impose the sales and use tax on all sales or renewals of warranty, maintenance and similar service contracts for tangible personal property. Previously, such contracts were only subject to the tax if sold in conjunction with tangible personal property or if the main purpose of the contract was to receive tangible personal property. Code Section 12-36-90(1) was also amended to no longer impose the tax upon the withdrawal of tangible personal property for use from inventory for use in replacing a defective part under a warranty, maintenance or similar service contract if tax was paid on the sale or the renewal of the contract and the customer is not charged for any labor or material.

This year, the General Assembly made the following changes with respect to these types of contracts:

1. Code Section 12-36-90(2) has been amended to no longer impose the tax on the purchase at retail of "tangible personal property purchased by a person engaged in the business of servicing a warranty, maintenance, or similar service contract for use in replacing a defective part under the contract if tax was paid on the sale or the renewal

of the contract and the customer is not charged for labor or material when the part is replaced.”

2. Code Section 12-36-2120 has been amended to add an exemption from the tax for the “sale or renewal of a warranty, maintenance, or similar service contract for tangible personal property if the sale or purchase of the tangible personal property covered by the contract is exempt or excluded from the tax imposed by this chapter.”
3. Code Section 12-36-910(B)(6), which imposes the sales tax on these contracts, was amended to make a technical correction in which the term “tangible property” was corrected to refer to “tangible personal property.”

Effective Date: October 1, 2005

Senate Bill 1245, Section 22 (Act No. 386)

Material Handling Systems and Equipment - Exemption Clarified

Code Section 12-36-2120(51), which exempts certain material handling systems and equipment from the sales and use tax purchased by a taxpayer investing \$35 million in South Carolina during a 5 year period, has been amended to clarify that the exemption is only applicable if the material handling systems and equipment will be used in the operation of a distribution facility or a manufacturing facility.

Effective Date: June 14, 2006

House Bill 4810, Part IB, Section 72, Proviso 72.108 (Act No. 397)

Viscosupplementation Therapies - Sales and Use Tax Suspended

For the period of July 1, 2006 through June 30, 2007, the sales and use taxes on viscosupplementation therapies is suspended. No refund or forgiveness of tax may be claimed as a result of this provision.

Effective Date: This temporary proviso is effective for State fiscal year July 1, 2006 through June 30, 2007. Unless reenacted by the General Assembly in the next legislative session, the provisions of this proviso expire on June 30, 2007.

Senate Bill 1245, Section 30 (Act No. 386)

Return of Retail License Required by Code Section 12-36-530 - Repealed

Code Section 12-36-530, which requires retailers to return their retail sales tax license to the Department upon the closing or selling of the business and to remit any unpaid or accrued taxes at that time, has been repealed. This code section was no longer needed as a result of the enactment of a similar provision in Code Section 12-54-126 that applies to all licenses issued by the Department, not just retail sales tax licenses.

Code Section 12-54-126 requires a business that has been issued one or more licenses by the Department to return the license or licenses to the Department after closing, selling or otherwise transferring the business to another person. At this time, the person closing, selling or otherwise transferring the business must also remit all unpaid or accrued taxes. The Department may refuse to issue a license to a person and may revoke one or more licenses held by a person who fails to comply with these provisions. See Senate Bill 1245, Section 1 (Act 386).

Effective Date: June 14, 2006

Senate Bill 1245, Section 34.B (Act No. 386)

Heavy Equipment Rental Surcharge

Code Section 56-31-50 imposes a 5% rental surcharge on rental companies engaged in the business of renting private passenger motor vehicles and other rental vehicles for periods of 31 days or less.

Code Section 12-37-717 has been added to apply the provisions of Code Section 56-31-50 in the same manner to the rental of heavy equipment by a person in the business of renting heavy equipment to the public, except that the rate is 3%.

“Heavy equipment” means vehicles weighing more than 3000 pounds or heavy equipment that is rented without an operator by persons engaged in the heavy equipment business, which equipment or vehicles may be used for construction, mining, industrial, or forestry purposes, including, but not limited to, bulldozers, earthmoving equipment, material handling equipment, well drilling machinery and equipment, and cranes.

Under the provisions of Code Sections 56-31-50 and 12-37-717, a person in the business of renting heavy equipment to the public shall collect a 3% surcharge on each rental contract at the time the heavy equipment is rented in South Carolina. The surcharge must be noted in the rental contract and is computed on the total amount stated in the contract, except that sales and use taxes are not included in this computation. Further, the surcharge is not subject to sales or use taxes.

In general, the surcharges collected must be retained by the person in the business of renting heavy equipment and used for reimbursement of the amount of personal property taxes imposed and paid upon the heavy equipment by the heavy equipment rental company, with any excess remitted to the Department.

On February 15 of each year, all heavy equipment rental companies required to collect these surcharges shall file a report with the Department stating: (1) the total amount of South Carolina personal property taxes on heavy equipment paid in the previous calendar year, (2) the total amount of heavy equipment rentals earned on rentals in South Carolina during the previous calendar year, and (3) the amount by which the total amount of the surcharges for the previous year exceeds the total amount of personal property taxes on heavy equipment paid for the previous calendar year. All surcharge revenues collected in excess of the total amount of personal property taxes on heavy equipment must be remitted to the Department.

Effective Date: June 14, 2006

Senate Bill 1245, Sections 48.C. and 48.D (Act No. 386) and House Bill 4874, Sections 22.C and 22.D (Act No. 384)

Extraordinary Retail Establishments - Rebate of Sales Tax

Article 27, Chapter 21 of Title 12 contains the Tourism Infrastructure Admission Tax Act (“Act”). The Act provides that 25% of the admissions tax collected at certain large tourism or recreation facilities is to be remitted back to the county in which the facility is located and an additional 25% of the admissions tax is to be remitted to a fund that is available to certain counties that are located within 5 miles of the facility which generated the admissions tax, all funds to be used for additional infrastructure improvements. Additional infrastructure improvements include such items as roads, transportation facilities and other types of infrastructure that will benefit the tourism or recreation facility.

Code Section 12-21-6520 which provides definitions that are applicable to the Act has been amended to provide that a “tourism or recreation facility” may now include an aquarium or natural history exhibit or museum located within, or contiguous to, an extraordinary retail establishment. An extraordinary retail establishment is defined as a single store located in a county with at least 3.5 million visitors a year. The establishment must attract at least 2 million visitors a year with at least 35% of those visitors traveling at least 50 miles to the establishment and the establishment must collect and remit at least \$2 million in sales tax each year. Additionally, the establishment must have capital investment of at least \$25 million and one or more hotels must be built to service the establishment within 3 years of occupancy. Only establishments which receive a certificate of occupancy after July 1, 2006 can qualify. The Department of Parks, Recreation and Tourism must certify each year whether the retail establishment

meets the criteria and its judgment is conclusive. An extraordinary retail establishment is not required to collect admissions tax.

Code Section 12-21-6590 has been added to allow the Department of Parks, Recreation, and Tourism to designate up to 4 qualifying facilities as extraordinary retail establishments. A qualifying extraordinary retail establishment will have the sales tax collected at the establishment subject to the Act, as opposed to admissions tax being subject to the Act. For purposes of Code Section 12-21-6590, additional infrastructure improvements include any aquarium or natural history exhibits or museums located within or directly contiguous to the extraordinary retail establishment which are dedicated to public use and enjoyment under terms and conditions as is required by the municipality or county in which they are located. Additional infrastructure improvements also include items such as site prep, construction of real or personal property, parking, roadways, ingress and egress, utilities and other expenditures on the extraordinary retail establishments which directly support or service the aquarium or natural history museum or exhibits. To receive the benefits under the Act, a certification application must be executed by both the extraordinary retail establishment as well as the county or municipality. The additional requirements for the certification application are provided for in the Act.

Effective Date: June 14, 2006

House Bill 4449, Part V, Section 1 (Act No. 388)

General Assembly Review and Study of Sales and Use Tax Exemptions

The General Assembly has enacted legislation requiring it to review the sales tax exemptions in Code Section 12-36-2120 no later than its 2010 session. After the initial review, the General Assembly must review these exemptions as it deems appropriate but not later than its session every 10 years after the first review.

In addition, a seven member Joint Sales Tax Exemptions Review Committee has been authorized to assist the General Assembly in reviewing the sales tax exemptions. The committee must make a detailed and careful study of the exemptions, comparing South Carolina laws to other states; publish a comparison of the exemptions to other states' laws; recommend changes, recommend the introduction of legislation when appropriate; and submit reports and recommendations annually to the Governor and the General Assembly regarding the exemptions.

In carrying out its responsibilities under this Act, the committee may hold public hearings; receive testimony of any employee of the State or any other witness who may assist the committee in its duties; and call for assistance in the performance of its duties from any employee or agency of the State. Professional and clerical services for the

committee must be made available from the staffs of the General Assembly, the State Budget and Control Board, and the Department of Revenue.

Effective Date: June 10, 2006

SALES AND USE TAX REGULATIONS

Regulation Document No. 3033

Interstate Commerce - Goods Shipped into and out of South Carolina

SC Regulation 117-334, concerning the sales and use tax and interstate commerce, has been amended to clarify which tax applies, the sales tax or the use tax, to goods being shipped into South Carolina. This regulation represents the longstanding position of the Department of Revenue and is designed to assist South Carolina purchasers in determining when they are liable for the use tax. For a copy of this regulation, see SC Information Letter #06-15.

Effective Date: June 23, 2006

Regulation Document No. 2936

Machines Used in Manufacturing, Processing, Compounding, Mining, or Quarrying Tangible Personal Property for Sale

SC Regulation 117-302.5, which concerns the sales and use tax exemption for machines used in manufacturing, processing, compounding, mining, or quarrying tangible personal property for sale, has been amended. As a result of two court decisions in 2003, the Department issued an advisory opinion, SC Revenue Ruling #04-7, in 2004. SC Regulation 117-302.5 was amended to combine the guidance provided in the advisory opinion, which was based on the two court cases, with provisions of the former regulation that were still applicable under these two court decisions. For a copy of this regulation, see SC Information Letter #06-3.

Effective Date: February 24, 2006

Regulation Document No. 2983

Communications - Wired Music

SC Regulation 117-328, concerning the sales and use tax and radio and television stations, has been amended to delete the last paragraph of the regulation. This paragraph concerned outdated “wired music.” Such music is now transmitted via satellite and the charges for such transmissions are subject to the tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3) which impose the sales tax and use tax on charges for the ways or means for the transmission of the voice or messages. In addition, the last sentence of the paragraph concerning the proceeds from wired music was in conflict with the provisions of Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3). For a copy of this regulation, see SC Information Letter #06-15.

Effective Date: June 23, 2006

Regulation Document No. 2985

Manufactured and Modular Homes

SC Regulation 117-335, concerning the sales and use tax and manufactured and modular homes, has been amended to address a change in the law in 2004 as to how modular homes are taxed and to address the issue of furniture and appliances sold with manufactured and modular homes.

In 2004, Code Section 12-36-2120(34) was amended to increase the exemption for modular homes regulated pursuant to Chapter 43 of Title 23 from 35% to 50% of the gross proceeds of sale of the modular home, whether the home is an on-frame or off-frame modular home. The law change also requires the manufacturer to collect the tax and remit it to the Department.

In addition, Code Section 12-36-2110(B), concerning the maximum tax on manufactured homes, was amended to state that the maximum tax for manufactured homes does not apply to single-family modular homes regulated pursuant to Chapter 43, Title 23.

The provisions concerning the taxation of furniture and appliances sold with manufactured and modular homes that were incorporated into the regulation are consistent with Department policy. For a copy of this regulation, see SC Information Letter #06-15.

Effective Date: June 23, 2006

Regulation Document No. 2915

Bulk Sales - Regulation Repealed

SC Regulation 117-325, concerning the sales and use tax and the bulk sales statute, has been repealed since the bulk sales statute in Title 36, Chapter 6 of the Commercial Code was repealed effective July 1, 2001 by Act 67 of 2001. As a result, SC Regulation 117-325 is no longer needed.

Effective Date: February 24, 2006

Regulation Document No. 3032

Warranty Agreements - Regulation Repealed

SC Regulation 117-318.1, concerning warranty agreements, has been repealed since this regulation is no longer needed due to a change in the sales and use tax law on warranty agreements that became effective October 1, 2005, as a result of Act 161, Section 19, of 2005. For information concerning the application of the sales and use tax to warranty, maintenance and similar services as a result of the law change in 2005, see SC Revenue Ruling #05-12.

Effective Date: June 23, 2006

REENACTED TEMPORARY PROVISOS

The following temporary provisos were enacted in prior legislative sessions and were reenacted by the General Assembly in 2006. Temporary provisos are effective for the State fiscal year July 1, 2006 through June 30, 2007, and will expire June 30, 2007, unless reenacted by the General Assembly in the next legislative session.

House Bill 4810, Part IB, Section 72, Proviso 72.92 (Act No. 397)

Respiratory Syncytial Virus Medicines Exemption - Effective Date Changed

Act 69, Section 3.PP, of 2003 amended Code Section 12-36-2120(28)(a) to add a sales and use tax exemption for prescription medicines used to prevent respiratory syncytial virus; it was effective for sales on or after June 18, 2003.

This temporary proviso changes the effective date of this exemption to January 1, 1999 and provides that no refund of sales and use taxes may be claimed as a result of this change in the effective date.

House Bill 4810, Part IB, Section 72, Proviso 72.54 (Act No. 397)

Private Schools - “Use Tax” Exemption

This temporary proviso exempts purchases of tangible personal property for use in private primary and secondary schools, including kindergarten and early childhood education programs, from the use tax if the school is exempt from income taxes under Internal Revenue Code Section 501(c)(3). This exemption does not apply to purchases subject to sales tax.

This use tax exemption is also applicable to purchases occurring after 1995; however, no refund is due any taxpayer on purchases exempted by this provision.

REMINDER

The following provisions were enacted in 2005, but are effective in 2006. They are summarized below for informational purposes.

House Bill 3006, Section 2 (Act No. 157)

Nexus - Distribution Facility

Code Section 12-36-2690 has been added to provide that owning or utilizing a distribution facility within South Carolina is not considered in determining whether the person has a physical presence in South Carolina sufficient to establish nexus with South Carolina for sales and use tax purposes.

For purposes of this provision, a “distribution facility” has the meaning as set forth in Code Section 12-6-3360, the jobs tax credit statute. It defines a “distribution facility” as an establishment where shipments of tangible personal property are processed for delivery to customers. The term does not include an establishment where retail sales of tangible personal property are made to retail customers on more than 12 days a year except for a facility which processes customer sales orders by mail, telephone, or electronic means, if the facility also processes shipments of tangible personal property to customers and if at least 75% of the dollar amount of goods sold through the facility are sold to customers outside of South Carolina.

Note Repeal: The provisions of Code Section 12-36-2690 are repealed for tax years beginning after June 9, 2010.

Effective Date: Applies to taxable years beginning January 1, 2006.

House Bill 3768, Section 1 (Act No. 145)

Promotional Maps, Brochures, Pamphlets, or Discount Coupons for Use by Nonprofit Chambers of Commerce or Convention and Visitor Bureaus

Code Section 12-36-2120(58) has been amended to exempt from the sales and use tax promotional maps, brochures, pamphlets, or discount coupons for use by nonprofit chambers of commerce or convention and visitor bureaus, that are exempt from income taxation pursuant to Internal Revenue Code Section 501(c), for delivery at no charge to South Carolina residents by means of interstate carrier, a mailing house, or the United States Post Office from locations both inside and outside South Carolina.

Effective Date: For tax years beginning after 2005, but does not authorize or permit refunds of taxes paid.

Senate Bill 165, Section 4 (Act No. 139)

New 5% Excise Tax on Sale of Alcoholic Liquor - Excluded from Gross Proceeds

Code Section 12-36-90(2), which defines the term “gross proceeds of sales” for sales tax purposes, has been amended to exclude from this term the new 5% excise tax imposed on alcoholic liquors by the drink pursuant to Code Section 12-33-245. As such, the 5% excise tax imposed on alcoholic liquors by the drink is not subject to the sales tax.

Effective Date: January 1, 2006

MISCELLANEOUS

ADMINISTRATIVE and PROCEDURAL MATTERS (Summarized by Subject Matter)

Senate Bill 1245, Section 1 (Act No. 386)

Returning Licenses to the Department upon Closing or Transferring a Business

Code Section 12-54-126 has been added to require a business that has been issued one or more licenses by the Department to return the license or licenses to the Department after closing, selling or otherwise transferring the business to another person. At this time, the person closing, selling or otherwise transferring the business must also remit all unpaid or accrued taxes. The Department may refuse to issue a license to a person and may revoke one or more licenses held by a person who fails to comply with these provisions.

Effective Date: October 1, 2006

Senate Bill 1245, Section 2 (Act No. 386)

Retailer Penalty for Collecting Excess Sales and Use Tax

Code Section 12-36-940 allows a retailer to add to the sales price of the product being sold an amount equal to the sales tax. Code Section 12-36-1350 requires an out-of state retailer to add to the sales price of the product being sold an amount equal to the use tax.

Code Section 12-54-196 has been added to allow the Department to assess a penalty upon a retailer who collects more sales tax or use tax from the customer than allowed or required by the law. The penalty is equal to 150% of the amount collected from the customer that exceeds the amount that the retailer is allowed or required to collect under the law.

The retailer is not subject to this penalty if the retailer (1) made a good faith effort to determine the proper tax rate; (2) made a good faith effort to determine whether or not an exemption or exclusion was applicable; or (3) refunds to the purchaser the amount that exceeded the amount authorized or required to be collected on a particular sale within 90 days of being notified and receiving documentation of the proper tax rate or the applicability of the exemption or exclusion. The Department, at its discretion, may extend the time for issuing a refund to avoid the penalty if the retailer makes a request in writing to the Department.

The imposition of this penalty must be based on the facts and circumstances and is at the sole discretion of the Department. The assessment or remittance of this penalty does not relieve the retailer of an obligation the retailer has to repay the purchaser tax collected that exceeds the amount authorized or required to be collected from the purchaser pursuant to the sales and use tax law.

Effective Date: Applies to taxes collected beginning in tax year 2006.

Senate Bill 1245, Section 27 (Act No. 386)

Penalty for Underpayment Related to Substantial Valuation Misstatement

Code Section 12-54-155 contains a penalty for underpayment of taxes based on a substantial understatement of tax or a substantial valuation misstatement. An understatement of tax is substantial if it exceeds the greater of 10% of the tax required to be shown on a return or \$5,000 (\$10,000 in the case of a corporation other than an S corporation or a personal holding company). This section has been amended to clarify the substantial understatement of tax and to include a penalty for underpayment of taxes based on a substantial valuation misstatement.

Code Section 12-54-155(A) states that the penalty does not apply to a portion of an underpayment attributable to fraud on which a penalty is imposed pursuant to Code Section 12-54-43(G). The penalty also does not apply to a portion of an underpayment on which a penalty for underpayment of property tax on business-related property is imposed pursuant to Code Section 12-54-43(L).

The amendment provides that an understatement of tax is reduced to the extent it is attributable to items that are adequately disclosed on a taxpayer's return and for which the taxpayer has a reasonable basis for its tax treatment. The amendment also adds language providing that a corporation will not be treated as having a reasonable basis for its tax treatment of an item attributable to a multiple-party financing transaction if such treatment does not clearly reflect the income of the corporation. The words "substantial authority" and "adequately disclosed" are to be interpreted in accordance with Treasury Regulation 1.6662-4.

A definition of "substantial valuation misstatement" has been added in Code Section 12-54-155(C). There is a substantial valuation misstatement if the:

1. Value of property or the adjusted basis of property claimed on a return of tax imposed in Title 12 is 200% or more of the amount determined to be the correct amount of the valuation or adjusted basis; or
2. (a) Price for property or services for use of property claimed on the return in connection with a transaction between persons described in Internal Revenue Code Section 482 is 200% or more, or 50% or less, of the amount determined

pursuant to Section 482 to be the correct amount of the price; or (b) net Internal Revenue Code Section 482 transfer price adjustment for the taxable year exceeds the lesser of \$5 million or 10% of the taxpayer's South Carolina gross receipts.

A good faith/reasonable cause exception, similar to Internal Revenue Code Section 6664(c), has been added in Code Section 12-54-155(D). This provides that a penalty will not be imposed with respect to a portion of an underpayment if it is shown that there was a reasonable cause for the portion and that the taxpayer acted in good faith with respect to the portion. The words “reasonable cause” and “good faith” are to be interpreted in accordance with Treasury Regulation 1.6664-4.

However, in the case of any underpayment attributable to a substantial valuation misstatement with respect to charitable deduction property, the good faith/reasonable cause exception in Code Section 12-54-155(D)(1) will not apply if the claimed value of the property was based on a qualified appraisal made by a qualified appraiser, and the taxpayer made a good faith investigation of the value of the contributed property.

“Charitable deduction property” means any property contributed by the taxpayer in a contribution for which a deduction was claimed under Internal Revenue Code Section 170. This does not include any securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

Effective Date: Applies for tax periods beginning after December 31, 2006.

Senate Bill 1245, Section 28 (Act No. 386)

Revenue Procedures Act - “Department Determination” Clarified

Code Section 12-60-30(10) defines “department determination” in the South Carolina Revenue Procedures Act as the final determination within the Department from which a “person” may request a contested case hearing before the Administrative Law Court. Previously, the statute referred to an “individual.”

Effective Date: June 14, 2006

**Refunds - Purchases with Diplomatic Credit Cards
- Reductions as a Result of Taxes Due**

Purchases with Diplomatic Credit Cards. Code Section 12-60-470(C) provides that only the taxpayer legally liable for a tax may claim or receive a refund of that tax; however, it provides certain exceptions that allow others to claim or receive a refund. This code section has been amended to allow an additional exception whereby a credit card or debit card issuer may claim a refund on behalf of a foreign diplomatic mission or a foreign diplomat for purchases exempt from the sales and use tax as a result of treaties signed by the United States. In order to claim the refund on behalf of a foreign diplomatic mission or a foreign diplomat, the following requirements must be met:

1. The credit card or debit card issuer must be authorized by the United States Department of State to participate in a diplomatic tax exemption program allowing the card issuer to seek refunds in accordance with procedures established by the United States Department of State;
2. The sale to the foreign mission or foreign diplomat must be exempt under treaties signed by the United States;
3. The Department of Revenue must approve the refund; and,
4. The credit or debit card issuer must credit the foreign diplomatic mission's or foreign diplomat's credit card or debit card account to reflect the issuance of the refund.

Reductions as a Result of Taxes Due. Code Section 12-60-470(C) was also amended to clarify that if a taxpayer legally liable for the tax assigns in writing the right to the refund or the refund itself to another person as allowed under the provisions of the code section, then the Department may offset the refund claim by any taxes due by the taxpayer legally liable for the tax and any taxes due by the person to whom the right to the refund or the refund were assigned. This provision allowing refunds to be offset by taxes due does not apply to a claim for refund filed by a credit card or debit card issuer on behalf of a foreign diplomatic mission or a foreign diplomat.

In the case of a claim for refund filed by, or a refund assigned to, a person other than the taxpayer legally liable for the tax, the Department may advise the person who filed the claim or who was assigned the refund that, if applicable, the refund was reduced or eliminated as a result of taxes owed by the taxpayer legally liable for the tax and may advise such person of the amount by which the refund was reduced by taxes owed by the taxpayer legally liable for the tax.

Effective Date: July 1, 2006

Senate Bill 1245, Section 3 (Act No. 386)

Payment by Credit Cards – Technical Correction

The provision allowing the Department to accept payments by credit cards has been moved to Code Section 12-4-395 from Code Section 12-4-780 to place it in Article 3 concerning the general powers and duties of the Department.

Effective Date: June 14, 2006

House Bill 3285, Sections 2, 3, 5, 12, 13, 14, and 15 (Act No. 387)

Appeals from the Administrative Law Court

Under former law, a contested case before the Administrative Law Court reviewing a decision of the Department could be appealed to the circuit court. The Administrative Procedures Act has been amended to provide that those decisions of the Administrative Law Court formerly appealed to the circuit court instead will be heard by the Court of Appeals. See Code Sections 1-23-380, 1-23-390, and 1-23-610(B). The legislation also conforms the Revenue Procedures Act to this change in the court of review. See Code Sections 12-60-3370 (requirement to pay tax or post bond on appeal), 12-60-3380 (right of appeal from Administrative Law Court), and 12-60-3390 (appeals erroneously brought in circuit court to be dismissed). Code Section 14-8-200 also has been amended to provide for the jurisdiction of the Court of Appeals in hearing appeals from the Administrative Law Court.

Under amendments to Code Section 1-23-610(B), petitions for review of the Administrative Law Court's decision on a contested case are instituted by filing and serving a notice of appeal within 30 days of receipt of the administrative decision. Code Section 1-23-380(A)(2) has been amended to clarify that the serving or filing of this notice of appeal does not automatically stay the suspension or revocation of a permit or license authorizing the sale of beer, wine or alcoholic liquor.

The final decision of the Court of Appeals is appealed in the same manner as other civil cases, pursuant to the South Carolina Appellate Court Rules. Code Section 1-23-390 and Appellate Court Rule 226.

Note: In response to Act No. 387, on August 14, 2006, the South Carolina Supreme Court issued an order promulgating emergency amendments to the South Carolina Appellate Court Rules, effective on the date of the order. The amendments add several procedural provisions regarding appeals from administrative decisions. The Supreme Court's order also clarified an inconsistency between Sections 2 and 5 regarding when a notice of appeal must be served and filed; the Supreme Court interpreted the General Assembly's intent as requiring the time to appeal to run from the receipt of an administrative decision.

Effective Date: Applies to any actions pending on or after July 1, 2006. However, petitions for judicial review that are pending in the circuit court as of the effective date will be heard by the circuit court.

House Bill 3285, Section 4 (Act No. 387)

Administrative Law Court - Injunctive Relief and Enforcement of Administrative Process

Under Code Section 1-23-630, administrative law judges have the same power at chambers or in open hearing as do circuit court judges, and they may issue remedial writs necessary to give effect to their jurisdiction. Code Section 1-23-600(E) of the Administrative Procedures Act has been amended to clarify that the Department and other agencies authorized to seek injunctive relief may apply to the Administrative Law Court for injunctive or equitable relief.

Code Section 12-54-110(D) provides that an administrative law judge may enforce a summons issued by the Department. An amendment to Code Section 1-23-600(F) clarifies that the Administrative Law Court has the power to review and enforce an administrative law process, such as a subpoena, search warrant, or cease-and-desist order, issued by most executive departments, including the Department.

Effective Date: Applies to any actions pending on or after July 1, 2006.

Senate Bill 1245, Section 32 (Act No. 386)

Submission of Data to Major Credit Reporting Companies - Family Privacy Act

Code Section 30-2-50 of the Family Privacy Protection Act states that a “person or private entity shall not knowingly obtain or use any personal information obtained from a state agency for commercial solicitation directed to any person in this State” and a person knowingly violating this provision “is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed five hundred dollars or imprisoned for a term not to exceed one year, or both.”

Code Section 12-58-160, concerning the release by the Department of tax liens that were erroneously filed and notification of the release to major credit reporting services, has been amended to provide that the submission of data to major credit reporting companies does not violate Code Section 30-2-50.

Effective Date: June 14, 2006

Senate Bill 1082, Sections 50, 93, and 166 (Act No. 318)

Inspection of Tax Returns by the Office of Regulatory Staff

As part of its powers in regulating telephone utilities, electrical utilities and radio carriers, the Public Service Commission was authorized by statute to inspect tax returns and other documents filed with state agencies by these entities. In 2004, the Office of Regulatory Staff (ORS) was created, and certain powers, duties and functions of the Public Service Commission (PSC) were transferred to the ORS. This year, Act No. 318 conformed several statutes relating to this transfer of powers, duties and functions from the PSC to the ORS.

Among those powers transferred is the power to inspect tax returns and other documents filed with state agencies. Specifically, Code Sections 58-9-800 (telephone, telegraph and express companies), 58-11-500 (radio common carriers), and 58-27-200 (electric utilities and electric cooperatives) have been amended to provide that any employee or agent of the ORS may inspect or make copies of all income, property or other tax returns, reports or other information filed by the entity with or otherwise obtained by any other department, commission, board or agency of the state government. All departments, commissions, boards or agencies of the state government must permit this inspection or the making of copies.

Effective Date: May 24, 2006

MISCELLANEOUS TAXES - LEGISLATION

Senate Bill 723 (Act No. 323)

Deeds Transferring Realty to Distributee of an Estate

Chapter 24 of Title 12 imposes a deed recording fee for recording of a deed that transfers realty to another person. This chapter also provides various exemptions from the fee and establishes certain recording requirements. Code Section 12-24-10 has been amended to exempt from the fee an “instrument or deed of distribution assigning, transferring, or releasing real property to the distributee of a decedent’s estate in accordance with Code Section 62-3-907.”

Code Section 12-24-70, which requires an affidavit be filed with a deed either stating the value of the realty being transferred or the reason the deed is exempt from the fee, has been amended to no longer require an affidavit for “an instrument or deed of distribution assigning, transferring, or releasing real property to the distributee of a decedent’s estate in accordance with Code Section 62-3-907.”

Effective Date: June 2, 2006

House Bill 5049 (Act No. 299)

Colleton County Register of Deeds Office Established

Code Section 30-5-10 provides that the duties established by law for the register of deeds must be performed by the clerk of court in all counties of the State, except for certain counties specified by the General Assembly. These specific counties must have a separate register of deeds office to perform these duties.

The provisions of this statute have been amended to add Colleton County to the list of counties that must have a separate register of deeds office. In addition, Code Section 30-5-12 has been amended to require that the register of deeds for Colleton County be appointed by the governing body of Colleton County.

Effective Date: May 31, 2006

House Bill 4800, Section 4.C (Act No. 335)

Electric Power Tax Exemption for Technology Intensive Facility

Code Section 12-23-10 imposes an excise tax on persons selling electric power at wholesale or at retail. This tax is imposed at the rate of five-tenths of one mill upon each kilowatt hour of electric power sold.

Code Section 12-23-20, which sets forth various exemptions from the tax, has been amended to add an exemption for electricity used by a technology intensive facility as defined in Code Section 12-6-3360(M)(14)(b), provided the facility qualifies for the sales tax exemption for computer equipment used in connection with a technology intensive facility. See the summary of House Bill 4800, Section 4.B (Act No. 335) for information concerning the sales tax exemption for computer equipment used in connection with a technology intensive facility.

Effective Date: June 6, 2006

Alternative Fuel Incentives

Retailers of certain alternative fuels are entitled to the following incentive payments for alternative fuel sales:

1. A 5¢ incentive payment for each gallon of E85 fuel sold. In order to qualify for this incentive payment, the E85 fuel must be subject to the South Carolina motor fuel tax and the price of the E85 fuel must be at least 5¢ lower than the price of the lowest selling non-E85 gasoline fuel being sold at the same retail facility.
2. A 5¢ incentive payment for each gallon of B20 fuel sold. In order to qualify for this incentive payment, the B20 fuel must be subject to the South Carolina motor fuel tax and the price of the B20 fuel must be at least 5¢ lower than the price of the lowest selling non-B20 diesel fuel being sold at the same retail facility. B20 fuel is a fuel that is 20% biodiesel fuel and 80% petroleum-based diesel fuel. Biodiesel fuel is a fuel for motor vehicle diesel engines comprised of vegetable oils or animal fats and meeting the specifications of ASTM (American Society of Testing and Materials) D 5761.

Retailers and wholesalers of B20 fuel sold as dyed diesel fuel for “off road” uses are entitled to a 5¢ incentive payment for each gallon of such B20 fuel. In order to qualify for this incentive payment, the price of the B20 dyed fuel must be at least 5¢ lower than the price the lowest selling non-B20 dyed diesel fuel.

In order to qualify for any of these incentive payments, the sale of the qualifying fuel must take place during the period of July 1, 2006 through June 30, 2007.

The payment of these incentives must be made to the retailer upon compliance with verification procedures set forth by the Department of Agriculture.

Effective Date: This temporary proviso is effective for State fiscal year July 1, 2006 through June 30, 2007. Unless reenacted by the General Assembly in the next legislative session, the provisions of this proviso expire on June 30, 2007.

Taxation of Alternative Motor Fuels and Transporter Requirements

Chapter 28 of Title 12 imposes a 16¢ a gallon user fee on motor fuels - primarily gasoline and diesel fuel. In order to address new alternative fuels and new methods of producing and delivering such alternative fuels, various provisions of the motor fuel law have been amended. The changes include:

1. Code Section 12-28-110 has been amended to add definitions for four alternative fuels - “biodiesel,” “biodiesel blends,” “renewable fuels,” and “substitute fuels.” A “substitute fuel” is any liquid that is commonly and commercially known or sold as a fuel that is suitable for use in highway vehicles and a “renewable fuel” is any liquid nonpetroleum based fuel that can be placed in a vehicle fuel tank and used as a fuel in a highway vehicle. Other definitions, such as “motor fuel” and “diesel fuel,” were also amended to include some alternative fuels.
2. Code Section 12-28-310(A), which imposes the user fee on all gasoline used in the South Carolina and on all diesel fuel used in South Carolina to propel a motor vehicle, has been amended to impose the motor fuel user fee on all gasohol or blended fuel containing gasoline used in South Carolina and all substitute fuels, alternative fuels or blended fuels containing diesel fuel used in South Carolina to propel a motor vehicle.
3. Code Section 12-28-970, which imposes a back-up user fee on motor fuel used on the highways that was not taxed through the typical terminal and supplier distribution system, has been amended to add substitute fuels on which the user fee has not been imposed to the list of fuels subject to the back-up user fee.

In addition, this section has been amended to impose the user fee on any liquid or gas imported into South Carolina, or produced and sold in South Carolina, that is commonly or commercially known or sold as a fuel suitable for use in a highway vehicle.

4. Code Section 12-28-990, which requires a person blending a material on which the user fee has not been paid with a motor fuel on which the user fee has been paid to remit the user fee on such material, has been amended to also require remittance of the user fee by a person manufacturing or otherwise producing a substitute or diesel fuel in South Carolina. Persons manufacturing or otherwise producing a substitute or diesel fuel in South Carolina must also be licensed as a manufacturer or a blender.
5. Code Sections 12-28-975(A) and (C), which concern the reporting and payment of the user fee when motor fuel is diverted from its intended out of state destination to an in-state destination, have been amended to delete provisions which permit by mutual agreement a supplier to assume the exporter’s or importer’s liability.

Chapter 28 of Title 12 was also amended to address transporters. Code Section 12-28-110, which defines various terms used in the motor fuel user fee law, has been amended to now define a “transporter” as any person engaged in the business of transporting motor fuels subject to the user fee. Previously, a “transporter” only included any operator of a pipeline, barge, railroad or transport truck engaged in the business of transporting motor fuels subject to the user fee. In addition, Code Sections 12-28-1120 and 12-28-1370 have been amended to require a transporter not licensed as a supplier to obtain a transporter’s license and to require a transporter engaged in interstate commerce to file monthly reports with the Department concerning motor fuel transported from a point outside the State to a point inside the State, from a point inside the State to a point outside the State, and between two points in the State.

Effective Date: July 1, 2006, except the amendments made by Sections 36.C and 36.D are effective June 14, 2006.

Senate Bill 1245, Sections 15, 16 and 17 (Act No. 386)

(See also House Bill 4810, Part IB, Section 8, Proviso 8.20 (Act No. 397))

Tax on Hospitals Increased

Code Section 12-23-810, concerning the imposition of a tax on hospitals, has been amended to increase the total annual revenues from this tax from \$49.9 million to \$264 million.

The initial annual tax of \$264 million must be collected, beginning July 1, 2006, based upon the reconciled account of each general hospital, considering partial payments and the hospital’s uncollected portion of the previous assessment for the fiscal year ending June 30, 2006. On behalf of, and based on, calculations performed by the Department of Health and Human Services, each general hospital will be assessed its portion by the Department of Revenue.

In addition, on behalf of, and based on, calculations performed by the Department of Health and Human Services, each general hospital will also be assessed its portion of the total annual revenue due for State fiscal year of July 1, 2006 through June 30, 2007, and each subsequent State fiscal year, by the Department of Revenue and must remit the balance due on a quarterly basis during the State fiscal year.

Hospitals with questions relating to the calculation of the tax should contact the South Carolina Department of Health and Human Services at (803) 898-1025.

Effective Date: June 14, 2006

MISCELLANEOUS TAXES - REGULATION

Regulation Document No. 2914

Electric Power Tax – Use of North American Industry Classification System Manual

SC Regulation 117-1400, concerning the electric power tax, has been amended to state that the Department will no longer use the Standard Industrial Classification (“SIC”) Manual from 1967 as its guide in classifying “industrial customers” as that term is used in the electric power tax law. The Department will use the North American Industry Classification System (“NAICS”) Manual as its guide in classifying industrial customers under the electric power tax law. The NAICS Manual has replaced the U.S. Standard Industrial Classification (SIC) system as the classification system used by the Census Bureau. For a copy of this regulation, see SC Information Letter #06-3.

Effective Date: February 24, 2006

OTHER ITEMS (Including Local Taxes)

House Bill 4449, Part II, Section 3 (Act No. 388)

Referendum for Counties Imposing Local Option Sales and Use Tax; Reallocation

A county governing body by ordinance, or upon petition signed by 5% of the qualified electors of the county submitted to the county governing body with all signatures verified at least 60 days before the 2006 general election, shall conduct a referendum at the same time as the 2006 general election as to whether or not a local option sales tax presently imposed in that county should be repealed. If the qualified electors of the county vote in favor of repealing the local option sales tax, the tax shall be repealed as of January 1, 2007.

Beginning June 1, 2007, funds derived from a 1% local option sales tax imposed in a county which are used to reduce ad valorem property taxes imposed on owner-occupied residential property for school operating purposes must be thereafter applied on a pro rata basis to reduce ad valorem property taxes levied for other purposes as the county governing body shall provide.

Effective Date: June 10, 2006

House Bill 4449, Part III (Act No. 388)

Local Option Sales and Use Tax for Property Tax Credits

Code Sections 4-10-720 through 4-10-810, the Local Option Sales and Use Tax for Local Property Tax Credits, have been enacted to provide a credit against property tax imposed by a political subdivision for all classes of property subject to the property tax. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax law.

The governing body of the county by a county council ordinance or by an initiated ordinance submitted to the governing body of the county by a petition signed by at least 7% of the qualified electors of the county, may impose a sales and use tax in increments of one-tenth of one percent, not to exceed 1%, subject to referendum approval.

The tax must be administered and collected by the Department in the same manner that other sales and use taxes are collected and is in addition to all other local sales and use tax. The tax does not apply to:

1. Amounts taxed pursuant to Code Section 12-36-920(A), the tax on accommodations for transients;
2. Items subject to a maximum sales and use tax pursuant to Code Section 12-36-2110; and
3. Unprepared food that may be lawfully purchased with United States Department of Agriculture food coupons.

Effective Date: January 1, 2007

House Bill 4758 (Act No. Unassigned)

Lee County School District Tax

The School District of Lee County Bond Property Tax Relief Act has been enacted to provide that, upon ordinance of the Lee County Council, a 1% sales and use tax may be imposed within Lee County for not more than 5 years. The revenue from this sales and use tax is used to defray the cost of capital improvements within the school district, as identified in a resolution by the board of trustees of the school district, by paying such costs directly or by paying debt service on general obligation bonds issued by the school district or debt service on debt issued by a nonprofit corporation on behalf of the school district.

The Lee County Council has enacted the ordinance and the Lee County School District Tax will be imposed effective October 1, 2006. Since May 1, 1996, Lee County has

imposed the 1% Local Option Tax; therefore, beginning October 1, 2006, Lee County charges two local sales and use taxes - the 1% Local Option Tax and the 1% Lee County School District Tax.

Effective Date: June 8, 2006

House Bill 4449, Part IV, Section 2.C (Act No. 388)

Financial Report of Political Subdivisions Receiving Aid to Subdivisions - Amendments

Code Section 6-1-50, which concerns financial reports that must be filed by political subdivisions which receive State Aid to Subdivisions, has been amended. Under the amendment, counties and municipalities that receive revenues from Aid to Subdivisions, must submit a report annually to the Budget and Control Board, Office of Research and Statistics, Economic Research Section, detailing their sources of revenues, expenditures by category, indebtedness, and other information that the Board may require. The report must be submitted to the Board by November 15th of each year. If a county or municipality fails to file the report timely, then the entity will be notified that it has 30 days to comply and file the report. The Director of the Office of Research and Statistics at the Budget and Control Board may, for good cause, grant an extension of time to file the report. Notification by the Director of the Office of Research and Statistics to the Comptroller General that an entity has failed to file the report 30 days after written notification to the chief financial officer of the entity, must result in the withholding of 10% of subsequent payments of State aid to the entity until the report is filed. Prior to amendment, the report was filed with the Comptroller General and there was no 30 day notification and no extension for filing allowed.

Effective Date: June 10, 2006

House Bill 4691 (Act No. 314)

Accommodations Funds Expenditures Expanded

Code Sections 6-1-530(B) and 6-1-730(B), which address how monies received from local accommodations tax and hospitality taxes may be spent, have been amended to provide that in addition to the uses already provided, 20% of the revenues collected from these local taxes may be used to provide police and fire protection, emergency medical services, and emergency preparedness operations to certain tourism related facilities and projects.

Effective Date: June 1, 2006

REGULATORY LEGISLATION

House Bill 4419 (Act No. 359) and House Bill 3949 (Act No. 357)

Bingo - Rate Change

The Bingo Act of 1996 requires bingo operators to obtain their bingo cards or paper by first paying the bingo tax to the Department. Effective July 1, 2006, the tax rate changed as follows:

1. The tax rate for Class AA, B, D, and E bingo licenses has been reduced from 16.5¢ to 10¢ for each dollar of face value for each bingo card.
2. Class C licenses will be subject to a tax of 4¢ for each dollar of face value for each bingo card. Class C licenses were not previously subject to a bingo card tax.

Class F licenses will continue to be subject to a tax of 5¢ for each dollar of face value for each bingo card.

In addition, Code Section 12-21-4200, concerning how revenue derived from the tax on bingo cards is used, has been amended to ensure that the Division on Aging will receive no less than \$600,000.

Effective Date: July 1, 2006

House Bill 4421 (Act No. 259)

Temporary Licenses for the Sale of Beer and Wine

Code Section 61-6-2010, concerning the issuance of temporary liquor-by-the-drink licenses for Sunday sales upon a favorable referendum vote, has been amended to provide that “[t]emporary permits for the sale of beer and wine for off-premises consumption authorized to be issued in a county or municipality pursuant to the referendum provided for at the time may continue to be issued or reissued without the requirement of a further referendum.”

Effective Date: April 8, 2006

Senate Bill 1245, Section 19.A (Act No. 386)
(See also House Bill 4810, Part IB, Section 64, Proviso 64.21 (Act No. 397))

Liquor by the Drink - Temporary Licenses

Code Section 12-33-245, which imposes a 5% excise tax on the gross proceeds of sales of alcoholic liquors by the drink, has been amended as follows:

1. The amendment clarifies that the tax also applies to locations holding a temporary license for the sale of liquor by the drink as well as locations holding a biennial license for on-premises sales and consumption of liquor.
2. The term “gross proceeds of sales,” which is the basis upon which the tax is calculated, also includes, but is not limited to, the retail value of a complimentary or discounted beverage containing alcoholic liquor, an amount charged for ice for a drink containing alcoholic liquor, and an amount charged for a nonalcoholic beverage that is sold or used as a mixer for a drink containing alcoholic liquor.
3. The tax does not apply to nonprofit organizations that are issued a temporary permit to allow possession, sale, and consumption of alcoholic liquors pursuant to Code Section 61-6-510 or subarticle 5, Article 5, Chapter 6, Title 61. (A similar temporary proviso in House Bill 4810, Part IB, Section 64, Proviso 64.21 provides that the tax does not apply to nonprofit organizations that are issued a temporary permit to allow possession, sale, and consumption of alcoholic liquors pursuant to Code Sections 61-6-510 and 61-6-2000.)

Effective Date: June 14, 2006

Senate Bill 1245, Section 19.B (Act No. 386)

Bakery Food Manufacturers - Liquor Used in Food Preparation

Code Section 61-6-720 has been added to allow a person who operates a bakery in South Carolina for the preparation of food items to purchase alcoholic beverages for use in food preparation. In order to purchase alcoholic beverages for food preparation, the bakery must only sell its food items at wholesale and must obtain a special bakery food manufacturer’s license from the Department. The license is a biennial license and costs \$1,000.

A bakery that has been issued the special bakery food manufacturer’s license may purchase alcoholic beverages for use in the preparation of food items from a licensed wholesaler or a licensed retailer. The bakery may also purchase alcoholic beverages from a manufacturer if the containers of alcoholic beverage being purchased from the manufacturer hold greater quantities of alcoholic liquor than wholesalers or retailers have authority to sell.

The Department must revoke the special bakery food manufacturer's license of any operator which permits the consumption of the alcoholic liquor as a beverage or which transfers the alcoholic liquor to any other person.

See Code Section 61-6-710 for another type of food manufacturer's license which was authorized by the General Assembly in 2003.

Effective Date: June 14, 2006

Senate Bill 1245, Sections 46 and 47 (Act No. 386)

Nonprofit Organization Temporary Permit - Criminal Background Check

Code Section 61-6-510 authorizes the issuance of temporary liquor permits to certain nonprofit organizations and to duly certified political parties and their affiliates for a period not to exceed 24 hours. Code Section 61-6-2000 authorizes the issuance of temporary liquor permits to nonprofit organizations for a single social occasion. These code sections have been amended to allow the Department to require applicants to obtain a criminal background check prior to the initial application. The criminal background check must be conducted by the State Law Enforcement Division within 30 days prior to the initial application. Background checks for subsequent applications are not required unless the officers of the nonprofit organization change.

Effective Date: June 14, 2006

Senate Bill 1245, Section 50 (Act No. 386)

Grade A Retail Food Permit

Code Section 61-6-20(2), which defines the term "bona fide engaged primarily and substantially in the preparation and serving of meals" for the purposes of an on-premise consumption liquor license, has been amended to change the reference to a "Class A restaurant license" to a "Grade A retail establishment food permit."

Effective Date: June 14, 2006

Senate Bill 1245, Section 52 (Act No. 386)

Loss of Grade A Retail Food Permit - Suspension of Liquor License

Code Section 61-6-1610, which establishes requirements and restrictions for an on-premises consumption liquor license, has been amended to state:

An establishment licensed pursuant to the provisions of Section 61-6-20(2) as a business that is bona fide engaged primarily and substantially in the preparation and serving of meals is authorized to continue to operate as the licensed establishment so long as the licensed establishment maintains a Grade A retail food establishment permit from the Department of Health and Environmental Control. Upon notice by the Department of Health and Environmental Control to the licensed establishment and to the Department of Revenue that the retail food establishment permit has been reduced to a grade below Grade A, the licensed establishment has thirty days within which to request a subsequent inspection by the Department of Health and Environmental Control. If a subsequent inspection is not requested within thirty days after the reduction in a grade below Grade A, or the subsequent inspection results in a grade below Grade A, then the Department of Revenue shall suspend the license of the licensed establishment until the Department of Health and Environmental Control issues a Grade A retail food establishment permit.

Effective Date: June 14, 2006

Senate Bill 1245, Section 51 (Act No. 386)

Willful Violation of ABC Act

Code Section 61-6-50, which states that the willful violation of any rule or regulation made under the provisions of the ABC Act constitutes a violation of the act, has been amended to state that the determination of what action constitutes a willful violation shall be made pursuant to the terms within the provisions of the ABC Act and no regulation shall be promulgated or enforced that exceeds the requirements of the ABC Act.

Effective Date: June 14, 2006

Senate Bill 1245, Section 56 (Act No. 386)

Sunday Sales of Alcoholic Liquors - Referendum Called by Municipal or County Ordinance

Code Section 61-6-2010, which allows counties and municipalities to hold referendums concerning Sunday sales of alcoholic liquor by the drink at licensed locations, has been amended to allow the referendum to be held upon a county or municipal ordinance. Previously, the referendum could only be held upon petition of at least 10% of, but not more than 7,500, qualified electors of the county or municipality or by order of the governing body of a municipality under certain specific criteria.

If a county or municipality calls for a referendum by ordinance under the provisions of this amendment, a copy of the ordinance must be filed with the county or municipal election commission at least 60 days before the date of the next general election. The election commission must then conduct the referendum in the same manner as a petition referendum at the next general election.

Effective Date: June 14, 2006

REGULATORY REGULATIONS

Regulation Document No. 2937

Alcoholic Beverage Permit or License Applications

SC Regulation 7-200.1, concerning alcoholic beverage permit or license applications, has been amended to delete the cooking license provisions of subsection F and replace those provisions with one stating that the holder of a retail alcoholic beverage permit or license must obtain and maintain a retail sales tax license issued pursuant to Chapter 36 of Title 12.

In addition, the new provisions state that if the retail sales tax license is revoked, then the Department must cancel, suspend or revoke all alcoholic beverage permits and licenses. Another provision, subsection J, was also amended to clarify that the request for refund only applies to the permit or license fee when a timely refund request is received with respect to a permit or license that was not used. For a copy of this regulation, see SC Information Letter #06-3.

Effective Date: February 24, 2006

Purchase Records for Beer, Wine, or Liquor Retail Locations

SC Regulation 7-200.2 was amended to no longer require the holder of a beer, wine or liquor permit or license to maintain the records of purchases of beer, wine or liquor at the location to which these beverages were delivered. This change now requires that such records be maintained for three (3) years within South Carolina. The records must also be available for inspection by an authorized representative of the Department of Revenue or the State Law Enforcement Division upon ten days notice. A person with multiple locations may now consolidate the purchase records in one location within the State instead of having to maintain the purchase records for each location at that location. For a copy of this regulation, see SC Information Letter #06-15.

Effective Date: June 23, 2006

REENACTED TEMPORARY PROVISOS

The following temporary provisos were enacted in prior legislative sessions and were reenacted by the General Assembly in 2006. Temporary provisos are effective for the State fiscal year July 1, 2006 through June 30, 2007, and will expire June 30, 2007, unless reenacted by the General Assembly in the next legislative session.

ADMINISTRATIVE and PROCEDURAL MATTERS

House Bill 4810, Part IB, Section 56DD, Proviso 56DD.39 (Act No. 397)

Reduction on Interest Rate on Tax Refunds

This temporary proviso decreases by 2% the interest rates for tax refunds paid during fiscal year July 1, 2006 through June 30, 2007. The revenue resulting from this reduction must be used for operations of the State's Guardian ad Litem Program.

House Bill 4810, Part IB, Section 64, Proviso 64.7 (Act No. 397)

Fee Charged for Certificate of Compliance

This temporary proviso allows the Department to impose a \$60 fee for the issuance of a certificate of compliance. A certificate of compliance is prima facie evidence that the tax has been paid, the return has been filed, or information has been supplied as required.

Requests are often made for transactions involving bank loans; issuing stock; and purchasing a business, real estate, or assets of a business.

House Bill 4810, Part IB, Section 64, Proviso 64.9 (Act No. 397)

Fee Charged for Installment Agreement

This temporary proviso allows the Department to impose a \$45 fee for entering into installment agreements for the payment of tax liabilities.

MISCELLANEOUS TAXES

House Bill 4810, Part IB, Section 1, Proviso 1.17 (Act No. 397)

Local Government School Buses - Motor Fuel Tax Exemption

This temporary proviso provides that motor fuel used in school buses operated by school districts, other governmental agencies, and “head start” agencies is exempt from the state motor fuel tax. Note: Motor fuel used in school buses owned by the state is exempt from the state motor fuel tax under Code Section 12-28-710(12).

House Bill 4810, Part IB, Section 8, Proviso 8.24 (Act No. 397)

Nursing Home Bed Franchise Fees – Suspension

This temporary proviso reenacts the suspension of the nursing home bed franchise fee imposed on February 1, 2002, but subsequently suspended July 1, 2002.

REGULATORY MATTERS

House Bill 4810, Part IB, Section 56DD, Proviso 56DD.35 (Act No. 397)

Class Two Coin-Operated Devices Licenses - Fees Increased

This temporary proviso assesses an additional fee of \$50 on each Class Two coin operated machine license authorized in Code Section 12-21-2720. These funds will be sent to the State Law Enforcement Division to offset the cost of video gaming enforcement.

House Bill 4810, Part IB, Section 56DD, Proviso 56DD.33 (Act No. 397)

Liquor, Beer and Wine Licenses and Permits (Including Local Option Permits) - Fees Increased

This temporary proviso increases all initial alcoholic liquor, beer and wine license application fees by \$100, all biennial alcoholic liquor, beer and wine beverage fees and licenses by \$200, and all local operation permit fees by \$50. These additional funds are allocated to the State Law Enforcement Division to offset the costs of inspections, investigations, and enforcement.

House Bill 4810, Part IB, Section 64, Proviso 64.11 (Act No. 397)

Local Option Permits - Municipalities

Note: Effective January 1, 2006, the law regarding the sale of alcoholic liquor at a location with an on-premises consumption license changed. These licensees are no longer required to purchase alcoholic liquor in minibottles for sale to customers. The provisions summarized below remain applicable under the new liquor laws that became effective January 1, 2006; see summary of Senate Bill 165 (Act No. 139 of 2005) at the end of this section.

Code Section 61-6-2010 authorizes counties and municipalities to conduct referendums that, if approved, allow Sunday sales of beer, wine, and liquor. Businesses that hold an on-premise consumption license and are located within these counties and municipalities may purchase a local option permit for each Sunday they wish to be open and sell beer, wine and liquor.

If the voters in a county approve the Sunday sale of beer, wine, and liquor via a local option permit, then such sales may be made anywhere in the county, including the portion of any municipality within the county.

The temporary proviso in Act No. 397 states that local option permits “may be issued in all parts of a municipality when any part of the municipality has been approved for issuance of such permits.” Essentially, if a municipality is located in more than one county, then local option permits may be issued for any part of the municipality as long as one of the counties in which the municipality is located has approved the referendum for Sunday sales.

Under the legislation enacted in 2002 (Act No. 353 of 2002), Code Section 61-6-2010 was amended to allow a municipality located in more than one county to order a referendum on the question of the issuance of local option permits in all parts of a municipality when as a result of a favorable vote in a county referendum permits may be issued in only the parts of the municipality located in that county. This allows the

citizens of a municipality to determine, through a referendum, if they want to continue to allow local option permits to be issued for all parts of the municipality.

This referendum is in addition to the referendum method already provided in the statute and an unfavorable vote in the municipal referendum would not affect the authority to issue local option permits in the part of the municipality located in a county where these permits may be issued as a result of the county referendum.

REMINDER

The following provisions were enacted in 2005, but are effective in 2006 or thereafter. They are summarized below for informational purposes.

ADMINISTRATIVE and PROCEDURAL MATTERS

House Bill 3767, Section 20 (Act No. 161)

Tax Return Preparer - Electronic Filing or 2D Barcode Required

Code Section 12-54-250(F) has been added to require a tax return preparer who prepares 100 or more returns for a tax period for the same tax year to submit all returns by electronic means where available. If electronic means are not available, the preparer must use 2D barcode, if available. For purposes of this section, a “tax return preparer” means the business entity and not the individual location or individual completing the return.

Exceptions to the above electronic and 2D barcode requirements are:

1. If a taxpayer checks a box on his return indicating a preference that his return is to be filed by another means, the preparer may submit that return by another means.
2. A tax return preparer may apply in writing to the Department to be exempted if compliance is a substantial financial hardship. The Department may grant an exemption for no more than one year at a time.

A person who fails to comply with these provisions may be penalized \$50 for each return.

Effective Date: Tax years beginning on or after January 1, 2007.

REGULATORY

House Bill 3768, Section 40 (Act No. 145)

Due Date for Wine Taxes on Direct Shipments to Residents

Code Section 61-4-747, which allows the direct shipment of wine by manufacturers to residents of South Carolina under certain circumstances, has been amended to change the annual due date manufacturers must pay the sales and excise taxes to the Department to each January 20th for such sales made in the preceding calendar year. Previously, the due date for paying was August 31st.

Effective Date: Applies for reports due after 2005.

Senate Bill 165 (Act No. 139)

Sale of Alcoholic Liquor by the Drink - New Rules

The statutory provisions for the sale of alcoholic liquor at a location with an on-premises consumption license changed effective January 1, 2006. On-premises consumption licenses are no longer required to purchase alcoholic liquor in minibottles for sale to their customers. Effective January 1, 2006, a location with an on-premises consumption license may purchase alcoholic liquor in any size bottle, except 1.75 liter size bottles, for the purpose of preparing and serving an “alcoholic liquor by the drink” to a customer. An “alcoholic liquor by the drink” is defined as a drink poured from a container of alcoholic liquor, without regard to the size of the container for consumption on the premises of a business licensed pursuant to Article 5 of Chapter 6 of Title 61. The following are the significant changes in the regulation of alcoholic liquors:

1. Code Section 61-6-1636(A) has been added to require that a person licensed for the sale of alcoholic liquors for on-premises consumption (now known as “alcoholic liquor for sale by the drink”) must purchase the alcoholic liquor from a licensed retail dealer with a wholesaler's basic permit issued pursuant to the Federal Alcohol Administration Act in any size bottle, except 1.75 liter size bottles.
2. Code Section 61-6-1636(B) has been added to allow a licensed retail dealer with a wholesaler's basic permit issued pursuant to the Federal Alcohol Administration Act to deliver, in sealed containers, alcoholic liquor in any size bottle, except 1.75 liter size bottles, to a person licensed to sell alcoholic liquors for on-premises consumption.
3. Code Section 61-6-1637 has been added to state that a person licensed for the sale of alcoholic liquors for on-premises consumption, including his agent, may not substitute another brand of alcoholic liquor in place of the brand specified by a

customer unless the licensee or his agent has advised the customer that the desired brand is not available, and received the customer's approval for the substitution.

4. Code Section 12-33-245 has been amended to replace the 25 cent tax on each minibottle that was paid at the wholesale level with a 5% excise tax on the gross proceeds of sales of alcoholic liquors by the drink that will be paid at locations licensed for on-premises consumption. This new excise tax is in addition to the excise taxes, case taxes and the surtax paid at the wholesale level and is also in addition to sales taxes imposed on the sale of alcoholic liquors by the drink.

The new 5% excise tax is based on “gross proceeds of sales” as defined for sales tax purposes; however, sales taxes are not included in “gross proceeds of sales” for purposes of calculating the new excise tax.

5. Code Section 12-36-90(2), which defines the term “gross proceeds of sales” for sales tax purposes, has been amended to exclude from this term the new 5% excise tax imposed on alcoholic liquors by the drink.
6. Code Section 61-6-2430 has been added to allow a wholesale distributor of alcoholic liquor to discount product price based on quantity purchases if all discounts are on price only for each location, appear on the sales records, and are available to all licensed retail dealers with a wholesaler's basic permit issued pursuant to the Federal Alcohol Administration Act or any other alcoholic liquor retail license.
7. Code Section 61-6-20(1)(b) has been added to define “alcoholic liquor by the drink” as a drink poured from a container of alcoholic liquor, without regard to the size of the container for consumption on the premises of a business licensed pursuant to Article 5 of Chapter 6 of Title 61.
8. Code Section 61-6-20(5) has amended the definition for the term “minibottle” to use metric measurements and define a “minibottle” as a sealed container of fifty milliliters or less of alcoholic liquors.
9. Code Section 61-6-1500, which establishes restrictions on retail liquor dealers, has been amended to eliminate various restrictions related to minibottles.
10. Code Sections 61-6-1600 and 61-6-1610, which authorize the sale and on-premises consumption of alcoholic liquors at locations of certain nonprofit organizations, restaurants, and lodging establishments, have been amended to change references to minibottles to “alcoholic liquor by the drink.”
11. Various other code sections in Chapter 4 of Title 61 (Beer and Wine) and Chapter 6 of Title 61 (Alcoholic Liquors) were amended to change references to minibottles, or alcoholic liquors in container of two ounces or less, to “alcoholic liquor by the drink.”

12. Various other code sections in Chapter 6 of Title 61 (Alcoholic Liquors) were amended to provide penalties for licensees who act to avoid payment of the new excise tax on alcoholic liquors sold by the drink.
13. Section 24 of the act creates a study committee to examine the delivery and distribution of alcoholic liquors by licensed retail dealers with a wholesaler's basic permit issued pursuant to the Federal Alcohol Administration Act. The study committee must issue a report on its findings to the President Pro Tempore of the Senate and the Speaker of the House of Representatives no later than the second Tuesday of January 2007. The committee terminates when the report is made. The purpose of the report is to enable the General Assembly to consider the findings of the study committee and to determine if the findings should be adopted and if state laws should be amended.
14. Section 25 of the Act states that all statutes and regulations applicable to minibottle licenses or permits or applications for licenses or permits apply to licenses or permits for alcoholic liquors by the drink. All minibottle licenses or permits in effect before the effective date of this Act are considered to be licenses or permits to sell alcoholic liquors by the drink after January 1, 2006 through the expiration of the license or permit.
15. Section 27 of this Act states that each person licensed to sell or purchase minibottles must take an inventory of minibottles in the licensee's possession as of January 1, 2006 and send within 60 days a certified copy of the inventory to the Department. By no later than January 1, 2006, the Department must devise a method whereby the twenty-five cents excise tax on minibottles previously paid by the licensees is credited to each licensee so that on or after January 1, 2006, the tax rate paid on each minibottle is prorated in accordance with the terms of this Act.

Effective Date: January 1, 2006, except that beginning on June 7, 2005 a licensed retail dealer with a wholesaler's basic permit issued pursuant to the Federal Alcohol Administration Act may deliver, in sealed containers, alcoholic liquor in minibottles to a person licensed for sale for on-premises consumption.