
State of South Carolina
Department of Revenue
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SC INFORMATION LETTER #03-20

SUBJECT: Tax Legislative Update for 2003

DATE: September 17, 2003

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

SCOPE: An Information Letter is a written statement issued to the public by the Department to announce general information useful in complying with the laws administered by the Department. **An Information Letter has no precedential value, and is not binding on the public or the Department.**

Attached is a brief summary of most of the significant changes in laws that were enacted by the General Assembly during the past legislative session. The summary is divided into five categories of legislation and can be found as indicated below.

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The law changes are summarized by subject matter. There are several instances where more than one bill with related subject matters was enacted. In such case, these summaries are cross referenced. Further, some laws have not been assigned act numbers as of the date of this publication and this is indicated in the summary.

Also, attached is a brief summary of several bills that have not been signed or vetoed by the Governor as of the date of this publication and a general summary of the Fee in lieu of property taxes that incorporates the 2003 legislative changes. This additional information can be found as indicated below.

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INCOME TAXES AND WITHHOLDING

Senate Bill 274, Section 3.E.1 (Act No. 69)

Income Tax Conformity

Code Section 12-6-40(A)(1) has been amended to update South Carolina's income tax laws to conform to the Internal Revenue Code of 1986 as amended through December 31, 2002, and includes its effective date provisions. Note: See Code Section 12-6-50 for a listing of Internal Revenue Code sections specifically not adopted by South Carolina.

Effective Date: June 18, 2003

Senate Bill 274, Section 3.E.2 (Act No. 69)

Federal "Bonus Depreciation" Not Adopted

Code Section 12-6-50, listing Internal Revenue Code sections not adopted by South Carolina, has been amended to provide that Internal Revenue Code Section 168(k) has not been adopted. Code Section 168(k) provides for a 30% additional first year depreciation allowance for qualifying property under the Job Creation and Worker Assistance Act of 2002 and provides for an increased 50% additional first year depreciation allowance for qualifying property under the Jobs and Growth Tax Relief Reconciliation Act of 2003. See SC Information Letter #03-17 for additional information.

Effective Date: June 18, 2003

Senate Bill 28, Section 1.A (Act No. 79)

SC Law Enforcement Assistance Program Check Off

Code Section 12-6-5090 has been added to provide for a designation on South Carolina's individual income tax form enabling a taxpayer to make a contribution to the South Carolina Law Enforcement Assistance Program ("SCLEAP"). The funds are to be used by the State Law Enforcement Division only for the SCLEAP program as provided in Code Section 23-3-65.

Effective Date: For individual income tax returns filed for taxable year 2003 and thereafter.

Senate Bill 274, Section 3.XX (Act No. 69)
(See also Senate Bill 28, Section 1.B (Act No. 79))

SC Litter Control Enforcement Program Check Off

Code Section 12-6-5085 has been added to provide for a designation on South Carolina's individual income tax form enabling a taxpayer to make a contribution to the South Carolina Litter Control Enforcement Program ("SCLCEP"). The funds are to be used by the Governor's Task Force on Litter only for the SCLCEP program.

Effective Date: For individual income tax returns filed for taxable year 2003 and thereafter.

House Bill 3749, Part IB, Section 63, Proviso 63.53 (Act No. 91)

Military Estimated Tax Payment Relief

This 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.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2003 through June 30, 2004. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2004.

Senate Bill 274, Section 3.S (Act No. 69)

"Consolidated" Income Tax Returns – S Corporations Cannot Participate

Code Section 12-6-5020, providing the conditions for filing a "consolidated" corporate income tax return, has been amended to clarify that an S Corporation cannot join in the filing of a South Carolina "consolidated" income tax return.

Effective Date: June 18, 2003

Senate Bill 274, Section 3.A (Act No. 69)

Use of Tax Credits Administered by the Department

Chapter 2 of Title 12 contains general taxation provisions. Code Section 12-2-100 has been added to the general provisions in Title 12 to clarify that a tax credit administered by the Department must be used in the year it is generated and must not be refunded, unless otherwise

provided by law. A similar provision exists in Chapter 6 of Title 12 (the Income Tax Act) that applies to tax credits in Article 25 of Chapter 6. This amendment clarifies the use of tax credits administered by the Department that are contained in other chapters of Title 12, such as Chapter 14, containing the credit for investing in an economic impact zone and Chapter 20, containing the infrastructure credit against the corporate license fee.

Effective Date: June 18, 2003

Senate Bill 274, Section 3.N (Act No. 69)

General Pass Through Provisions of Certain Income Tax Credits

Code Section 12-6-3310 contains the general rules applicable to credits in Article 25 of Chapter 6, Title 12, and provides that all credits allowed in this article are nonrefundable and may be used only in the year generated unless otherwise provided. This amendment adds the following general provisions concerning the use of credits in Article 25 of Chapter 6, Title 12 concerning pass through entities:

1. Unless specifically prohibited, an S corporation, limited liability company taxed as a partnership, or partnership that qualifies for a credit pursuant to Article 25 may pass through the credit earned to each shareholder of the S corporation, member of the limited liability company, or partner of the partnership. Note: The statutory language of a particular tax credit controls whether a credit generated by an entity may be used by a partner, shareholder, or member. For example, the corporate headquarters credit specifically states that the credit is claimed against corporate income taxes imposed under Code Section 12-6-530 or corporate license fees imposed under Code Section 12-20-50; therefore, it cannot be used by an individual against individual income taxes imposed under Code Section 12-6-510.
2. Any credit earned by an S corporation owing corporate level income tax must first be used at the entity level. Only the remaining credit passes through to the shareholders of the S corporation.
3. The amount of the credit allowed a shareholder, partner, or member is equal to the percentage of the shareholder's stock ownership, partner's interest in the partnership, or member's interest in the limited liability company for the taxable year multiplied by the amount of the credit earned by the entity and available for pass through. Limitations upon reduction of income tax liability by use of a credit are computed based on the shareholder's, partner's, or member's tax liability. The credit is allowed against the type of tax or taxes specifically provided for by the applicable credit in Article 25.

Effective Date: June 18, 2003

Corporate Tax Moratoriums – Various Amendments

South Carolina has two similar 10 or 15 year corporate tax moratoriums available to corporations making a substantial investment and creating a minimum number of new, full time jobs in certain economically depressed South Carolina counties. The moratorium in Code Section 12-10-35 is available to corporations that qualify for South Carolina job development or job retraining credits in Chapter 10 of Title 12. The moratorium in Code Section 12-6-3365 is available for a corporate taxpayer at a manufacturing, processing, warehousing, distribution, research and development, corporate office, tourism, qualifying service related, or technology intensive facility, as defined in Code Section 12-6-3360(M).

The following amendments have been made to the moratoriums:

1. Code Section 12-6-3365(A) has been amended to expand the applicability of the corporate income tax moratorium to insurance premium taxes. Note: The Act refers to insurance premium taxes imposed pursuant to Code Section 12-6-530 (corporate income taxes); insurance premium taxes, however, are imposed pursuant to Chapter 7 of Title 38. Questions concerning the insurance premium tax should be directed to the South Carolina Department of Insurance.
2. Code Section 12-6-3365(A) has been amended to add a requirement that a taxpayer seeking to qualify for the corporate moratorium may petition the Department using the procedure in Code Section 12-6-2320(B), Applying for an Alternative Allocation/Appportionment Method, in order to obtain approval to claim the moratorium. The procedure under Code Section 12-6-2320(B) is contained in SC Revenue Procedural Bulletin #02-4 and includes the Department of Commerce's Coordinating Council for Economic Development certifying that the facility will have a significant beneficial economic effect on the region for which it is planned and that its benefits to the public exceed the costs.
3. The original repeal date of the moratorium in Code Section 12-10-35 has been postponed from July 1, 2003, to tax years beginning after 2003. The repeal, however, does not affect a moratorium in effect on that date.

Effective Date: June 18, 2003

Data Used for County Designations for the Job Tax Credit and Corporate Moratorium

Code Section 12-6-3360 allows a job tax credit to qualifying businesses that create and maintain a required minimum number of new, full time jobs at the time a taxpayer's new facility or expansion is initially staffed. The amount of the credit that a business may receive for each job created is determined, in part, by the county where the business's facility is located. The 46

counties are ranked and designated annually by the Department as “distressed,” “least developed,” “under developed,” “moderately developed,” or “developed.” Code Section 12-6-3360(B) has been amended to clarify that counties are ranked using the last three completed calendar years of per capita income data and the last 36 months of unemployment rate data available on November 1st. The county rankings are effective for tax years that begin in the calendar year following the year of designation by the Department.

Code Section 12-6-3365 allows a 10 or 15 year corporate income tax moratorium to corporations making a substantial investment and creating a minimum number of new, full time jobs in certain economically depressed South Carolina counties. The moratorium counties are designated annually by the Department. Code Section 12-6-3365(B) has been amended to provide that a corporate moratorium county must have an average annual unemployment rate of at least twice the state average during the last 24 months, based on the unemployment rate data on November 1st, or that is one of the three lowest per capita income counties, based on the average of the three most recent completed calendar years of per capita income data that are available on November 1st. Further, Code Section 12-6-3365(D) has been added to provide that the Department shall designate the moratorium counties by December 31st each year using data from the South Carolina Employment Security Commission and the United States Department of Commerce. The designations are effective for taxable years that begin in the following calendar year.

Effective Date: June 18, 2003

Senate Bill 274, Section 3.VV (Act No. 69)

Job Tax Credit - NAICS Manual Classification Used for Qualified Service Related Facility

Code Section 12-6-3360(M)(13), containing the definition of “qualified service related facility” for job tax credit purposes, has been amended to change a reference from Standard Industrial Classification (“SIC”) Manual 80 (which includes hospitals and other types of health related facilities) to references in the North American Industry Classification System (“NAICS”) Manual.

A “qualified service related facility” now means a business that: (1) is an establishment engaged in an activity or activities listed in Section 62 of the NAICS Manual, subsectors 621(ambulatory health care services), 622 (hospitals), and 623 (residential care facilities), or (2) a business that creates 30 to 250 new full-time jobs at a single location based upon statutorily prescribed average cash compensation amounts.

Effective Date: January 1, 2005

Historic Rehabilitation Credits – Amended

Code Section 12-6-3535 was added by Act No. 229 in 2002 to enact two similar income tax credits for taxpayers making historic rehabilitation expenditures in South Carolina. Since Act 229 was not effective until taxable years beginning after 2002, for property placed in service after June 30, 2003, the following is a brief summary of the credits provided in Code Section 12-6-3535, as amended by Act No. 69 this year.

1. Credit for Rehabilitation of a Certified Historic Structure. A taxpayer is allowed a credit equal to 10% of the qualified rehabilitation expenditures for a certified historic structure located in South Carolina that qualify for the federal rehabilitation credit provided in Internal Revenue Code Section 47. The credit is claimed in equal amounts over a 5 year period beginning with the year that the property is placed in service. Any unused credit may be carried forward for the succeeding 5 years. To claim this credit, the taxpayer must attach to his South Carolina income tax return a copy of the appropriate federal forms showing the amount of federal rehabilitation credit claimed.

Further, an S corporation, limited liability company, or partnership that qualifies for the credit for rehabilitation of a certified historic structure may pass the credit earned through to each shareholder, member, or partner. The amount of the credit allowed a shareholder, member, or partner is equal to the shareholder's percentage of stock ownership, member's interest in the limited liability company, or partner's interest in the partnership for the taxable year multiplied by the amount of the credit earned by the entity. The credit earned pursuant to Code Section 12-6-3535(A) by an S corporation owing corporate level income tax must be used first at the entity level. Only the remaining credit passes through to each shareholder.

Definitions. The terms "qualified rehabilitation expenditures" and "certified historic structure" have the same meaning as provided in Internal Revenue Code Section 47 and the applicable treasury regulations.

2. Credit for Rehabilitation of a Certified Historic Residential Structure. A taxpayer is allowed a credit equal to 25% of the rehabilitation expenses for a certified historic residential structure located in South Carolina. The rehabilitation expenses must, within a 36 month period, exceed \$15,000. To claim this credit, the taxpayer must attach a copy of the certification received from the State Historic Preservation Officer (*i.e.*, the Director of the Department of Archives and History or the director's designee who administers the historic preservation programs within South Carolina) verifying that the completed project was rehabilitated in accordance with the standards for rehabilitation. The credit is claimed in equal amounts over a 5 year period beginning with the year that the certified rehabilitation is completed. Any unused credit may be carried forward for the 5 succeeding years. A taxpayer shall not take more than one credit on the same certified historic residential structure within 10 years.

Definitions. The term “certified historic residential structure” is defined in Code Section 12-6-3535(B)(1) as an owner-occupied residence that is:

- (a) listed individually in the National Register of Historic Places;
- (b) considered by the State Historic Preservation Officer to contribute to the historic significance of a National Register Historic District;
- (c) considered by the State Historic Preservation Officer to meet the criteria for individual listing in the National Register of Historic Places; or
- (d) an outbuilding of an otherwise eligible property considered by the State Historic Preservation Officer to contribute to the historic significance of the property.

The term “certified rehabilitation” is defined in Code Section 12-6-3535(B)(2) as repairs or alterations consistent with the Secretary of the Interior’s Standards for Rehabilitation and certified as such by the State Historic Preservation Officer before commencement of the work. The review by the State Historic Preservation Officer shall include all repairs, alterations, rehabilitation, and new construction on the certified historic residential structure and the property on which it is located.

The term “rehabilitation expenses” is defined in Code Section 12-6-3535(B)(3) as expenses incurred by the taxpayer in the certified rehabilitation of a certified historic residential structure, that are paid before the credit is claimed including preservation and rehabilitation work done to the exterior of a certified historic residential structure, repair and stabilization of historic structural systems, restoration of historic plaster, energy efficiency measures except insulation in frame walls, repairs or rehabilitation of heating, air-conditioning, or ventilating systems, repairs or rehabilitation of electrical or plumbing systems exclusive of new electrical appliances and electrical or plumbing fixtures, and architectural and engineering fees. The term “rehabilitation expenses” does not include the cost of acquiring or marketing the property, the cost of new construction beyond the volume of the existing certified historic residential structure, the value of an owner’s personal labor, or the cost of personal property.

The term “owner occupied residence” is defined in Code Section 12-6-3535(B)(5) as a building or portion of a building in which the taxpayer has an ownership interest, in whole or in part in fee, by life estate, or as the income beneficiary of a property trust, that is, after being placed in service, the residence of the taxpayer and is not: (a) actively used in a trade or business, (b) held for the production of income, or (c) held for sale or disposition in the ordinary course of the taxpayer’s trade or business.

Additional Provisions of the Credits

1. Additional work done by the taxpayer while the credit is being claimed, for a period of up to 5 years, must be consistent with the Secretary of the Interior’s Standards for Rehabilitation. During this period, the State Historic Preservation Officer may inspect and review additional

work to the certified historic structure or certified historic residential structure. If this work is not consistent with the Standards for Rehabilitation, the taxpayer and Department must be notified in writing and any unused portion of the credit, including carry forward, is forfeited.

2. The South Carolina Department of Archives and History will develop applications and promulgate regulations to administer the certification process. A taxpayer may appeal a decision of the State Historic Preservation Officer to a committee of the State Review Board.

Effective Date: For taxable years beginning after 2002, for property placed in service after June 30, 2003, for costs paid in taxable years beginning after 2002.

Senate Bill 274, Section 3.M.2 (Act No. 69)

Research and Development Credit – Technical Correction

Code Section 12-6-3415, allowing a tax credit for research and development expenses, has been amended to refer to the term “qualified research expense” that is defined in Internal Revenue Code Section 41. Prior to this amendment, the statute erroneously referred to the defined term in Section 41 as “qualified research and development expenditures” or “qualified expenditures for research and development.”

Effective Date: June 18, 2003

Senate Bill 274, Section 3.M.3 (Act No. 69)

Credit for Hiring Family Independence Recipient – Technical Correction

Code Section 12-6-3470(A), allowing the “basic” part of the family independence credit to employers who hire persons who received family independence payments in South Carolina for three months immediately before becoming employed, has been amended to include a cross reference that was made in the 2002 legislative session to Code Section 12-6-3360(N), the job tax credit statute, that was not included in the amendment to the family independence credit. The addition of the cross reference clarifies that the total amount claimed per employee under both the job tax credit (Code Section 12-6-3360) and the “basic” part of the family independence credit (Code Section 12-6-3470(A)) that is computed based on a percentage of wages paid to qualifying employees, is limited to \$5,500 for all taxpayers not located in a “distressed county.” The statute continues to provide that notwithstanding the \$5,500 limitation amount, employers located in a county designated as “distressed” or “least developed” may be able to receive the “additional” part of the family independence credit in Code Section 12-6-3470(B). Subsection (B) allows an additional \$175 credit per qualifying employee for each full month during the first 36 months of employment, up to an additional \$2,100 for each qualifying employee.

Effective Date: Tax years beginning after 2003.

Senate Bill 274, Section 3.E.3 (Act No. 69)

Homeowner’s Associations Taxable Income – Clarification

Code Section 12-6-540, providing a 5% income tax rate on the taxable income of certain exempt organizations, has been amended to clarify that the taxable income of homeowner’s associations described in Internal Revenue Code Section 528 is computed under Internal Revenue Code Section 528(d), subject to applicable South Carolina modifications, and allocation and apportionment provisions.

Effective Date: June 18, 2003

Senate Bill 274, Section 3.R (Act No. 69)

Small Business Trust Tax Rate – Technical Correction

Code Section 12-6-535 has been added to clarify that for purposes of Internal Revenue Code Section 641(c), an electing small business trust is taxed at the highest rate provided in Section 12-6-510. Internal Revenue Code Section 641(c) provides that an electing small business trust is taxed at the highest rate of tax set forth in the estate and trust tax tables in Internal Revenue Code Section 1(e); the highest federal marginal rate is currently 39.6%. The addition of Code Section 12-6-535 clarifies that for South Carolina tax purposes, such trust is taxed only at 7%, the highest rate of tax set forth in South Carolina’s income tax laws for individuals, estates, and trusts.

Effective Date: June 18, 2003

Senate Bill 274, Section 3.QQ (Act No. 69)

Credit Against License Fee for Infrastructure - Expanded to Include All Fees in Lieu

Code Section 12-20-105, allowing a taxpayer subject to the license fee imposed on South Carolina property and gross receipts under Code Section 12-20-100, such as a power company, water company, gas company, or telephone company, a credit against its license fee liability for 100% of the amount paid in cash for infrastructure for an eligible project of another taxpayer, has been amended to expand the definition of “eligible project.”

Subsection (B)(1) provides that to be an eligible project, the project must qualify for income tax credits under Chapter 6 of Title 12, withholding tax credit under Chapter 10 of Title 12 (job development or job retraining benefits), income tax credits under Chapter 14 of Title 12 (economic impact zone investment tax credit), or fees in lieu of property taxes under either

Chapter 12 of Title 4 (Little Fee), Chapter 29 of Title 4 (Big Fee), or Chapter 44 of Title 12 (Simplified Fee). Prior to this amendment, the statute did not refer to the fees in lieu of property taxes under the “Big Fee” or the “Simplified Fee.”

Effective Date: June 18, 2003

Senate Bill 274, Section 3.F (Act No. 69)

Building and Loan Associations Income Tax – Technical Correction

Code Section 12-13-50, imposing an income tax on savings and loan associations, has been corrected by replacing a reference to the documentary stamp tax with a reference to the deed recording fee. The documentary stamp tax was repealed and replaced with the deed recording fee in 1996. The income tax on savings and loan associations is in lieu of all other taxes, except use taxes, deed recording fees, and taxes on real property.

Effective Date: June 18, 2003

Senate Bill 274, Section 3.RR (Act No. 69)

Job Retraining Credit – Use of Funds Expanded

Code Section 12-10-95, authorizing the use of job retraining credit benefits for certain purposes by a qualifying business entering into a retraining agreement with the Coordinating Council for Economic Development at the Department of Commerce, has been expanded to add subsection (H) to allow the retraining credit to be used for the following purposes:

1. Apprenticeship programs.
2. Retraining for all relevant employees that enable a company to export or increase its ability to export its products, including training for logistics, regulatory, and administrative areas connected to its export process and other export process training that allows a qualified company to maintain or expand its business in South Carolina.

Effective Date: June 18, 2003

Nonresident Seller Withholding - Amendments

Code Section 12-8-580(B)(2)(b), concerning sales not subject to withholding by the buyer of real and associated tangible property from a nonresident seller, has been added to clarify that the sale of a principal residence where the entire gain is excluded under Internal Revenue Code Section 121 is not subject to withholding. The statute continues to require that tax must be withheld on the portion of the gain, if any, not excluded for federal purposes.

In addition, Code Section 12-8-580(B)(3), allowing the Department to exempt certain other classes of transactions from the nonresident seller withholding provisions when it determines that the benefits to the State are insufficient to justify the burdens imposed on the buyer and seller, has been amended to make this exemption consistent with similar withholding exemption provisions in Chapter 8 of Title 12. This amendment provides that the Department may revoke the exemption granted if it determines that the nonresident is not cooperating with the Department in the determination of the nonresident taxpayer's correct South Carolina liability. The revocation does not revive the duty of a person purchasing real property or associated tangible personal property from a nonresident seller to withhold until the person receives notice of the revocation.

Effective Date: June 18, 2003

REENACTED TEMPORARY PROVISOS

The following temporary provisions were enacted in prior legislative sessions and were reenacted by the General Assembly in 2003. Temporary provisos are effective for the State fiscal year July 1, 2003 through June 30, 2004, and will expire June 30, 2004, unless reenacted by the General Assembly in the next legislative session.

House Bill 3749, Part IB, Section 64, Proviso 64.10 (Act No. 91)

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 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 3749, Part IB, Section 27, Proviso 27.15 (Act No. 91)

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. The Council is also authorized to establish an annual renewal fee of \$500 for qualifying businesses receiving job development credits 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.

REMINDERS

The following provisions were enacted in 2002, but are effective in 2003. They are summarized below for informational purposes.

Senate Bill 852, Section 19 (Act No. 334)

South Carolina College Investment Program - Amendments

The South Carolina College Investment Program was added in Chapter 2 of Title 59 in 2001 (effective January 1, 2002). The program allows South Carolina residents to participate in an investment trust fund whereby contributions and investment earnings are used to pay for qualified higher education expenses of designated beneficiaries at eligible educational institutions, as defined in Internal Revenue Code Section 529. The program is under the direction of the Office of the State Treasurer.

Code Section 59-2-80 provides for the income tax treatment of fund contributions and earnings and has been amended as follows:

1. Contributions to each investment trust account and funds transferred to an investment trust account from another qualified plan are deductible from South Carolina income subject to tax up to the limit of maximum contributions allowed under Internal Revenue Code Section 529 and to the extent that the transferred funds were not permitted a state income tax deduction previously under South Carolina law. The statute continues to provide that any interest, dividends, gains, or income accruing are not included in South Carolina income of the account owner, contributor, or beneficiary if they remain in the fund or are withdrawn as a qualified withdrawal.
2. State income tax deductions as provided for in Code Section 59-2-80 may be taken in any taxable year for contributions and rollovers made during that taxable year, and up to April 15th of the succeeding year, or the due date of the taxpayer's state income tax return, excluding extensions, whichever is longer. Previously, the statute provided that funds transferred from another qualified college investment account were deductible in the year the funds were transferred if the funds were not previously allowed a state income tax deduction.
3. Withdrawals of the principal amount of contributions that are not qualified withdrawals must be recaptured into South Carolina income to the extent the contributions were previously deducted from South Carolina taxable income. The statute continues to provide that the earnings portion withdrawn that are not qualified withdrawals are included in South Carolina income of the resident recipient in the year of withdrawal.
4. Defines the term "qualified plan" to mean any plan qualified under Code Section 529 of the Internal Revenue Code of 1986, as amended. Previously, the statute referred to a "qualified investment account."

In addition, an amendment was made to Title 12 (Taxation) to add a provision in Code Section 12-6-1140(11) that contributions to the South Carolina College Investment Program are deductible from South Carolina income to the extent provided in Code Section 59-2-80.

Effective Date: Tax years beginning after 2002.

House Bill 4337, Section 3 (Act No. 363)

Volunteer Hazardous Materials Response Team – New Individual Income Tax Deduction

Code Section 12-6-1140(10) has been amended to add an individual income tax deduction of an amount to be determined by the Board of Economic Advisors, but not more than \$3,000, for a volunteer member of a Hazardous Materials Response Team (HAZMAT) who earns a minimum number of performance points set by the State Fire Marshall pursuant to Code Section 23-9-190.

Further, Code Section 23-9-190(C) provides that the county emergency services director must provide written records to each member and the Department by January 31 of the year following the applicable tax year that shows the points obtained. Each member's social security number must be included in the copies forwarded to the Department.

Effective Date: Taxable years beginning after 2002.

Senate Bill 852, Section 8.A (Act No. 334)

(See also House Bill 4337, Section 1.B (Act No. 363))

Corporate Estimated Tax Payments – Payment Date Change and License Fee Payments

Code Section 12-6-3910(A)(3), providing for calculation and due dates of corporate estimated tax payments, has been amended to provide that the due date of the first installment payment for calendar year corporations is April 15th and the 15th day of the fourth month for fiscal year corporations. Previously, the due date was March 15th for calendar year corporations and the 15th day of the third month for fiscal year corporations.

Code Section 12-6-3910(B) has been expanded to provide that estimated tax payments are considered payments on account of income taxes imposed by Chapter 6 and license fees imposed by Chapter 20 for the tax year designated.

Code Section 12-6-3910(D) has been added to provide that for corporate taxpayers, estimated tax payments will be deemed first to apply to income taxes and then apply to license fees.

Effective Date: Applies for estimated taxes due after 2002.

House Bill 3163 (Act No. 229)

Historic Rehabilitation Credits – New Income Tax Credits

Note: Code Section 12-6-3535 was added by Act No. 229 in 2002 to enact two similar income tax credits for taxpayers making historic rehabilitation expenditures in South Carolina. Since Act 229 was not effective until taxable years beginning after 2002, for property placed in service after June 30, 2003, and Code Section 12-6-3535 was amended by Act No. 69 in 2003, a revised summary is provided in the summary of current legislation above.

PROPERTY TAXES AND FEES IN LIEU OF PROPERTY TAXES

Senate Bill 71 (Act No. 9)

Tax Relief for Military Serving in a Hazard Duty Zone

Code Section 12-39-360 has been added to allow a county to extend the date for filing returns and paying property taxes for taxpayers serving with the United States Armed Forces or National Guard in or near a hazard duty zone.

Effective Date: April 21, 2003

Senate Bill 274, Section 1 (Act No. 69)

Leased Private Passenger Motor Vehicles – New Exemptions

Code Section 12-37-220(B), providing property tax exemptions, has been amended to add the following exemptions from property taxes:

1. A private passenger motor vehicle leased by a member of the United States armed forces stationed in South Carolina when the service member's home of record is in another state and the leased vehicle is registered and licensed in that state.
2. A private passenger motor vehicle leased to a governmental entity that would be exempt under Code Section 12-37-220(A)(1) if the governmental entity owned the vehicle.

Effective Date: June 18, 2003

Senate Bill 274, Sections 2 and 3.JJ (Act No. 69)

Low Income Housing Exemption – Effective Date Clarified

In 2002, Act No. 334 added Code Section 12-37-220(B)(11)(e) to exempt from ad valorem property taxes all property of nonprofit housing corporations or solely owned instrumentalities of these corporations which are devoted to providing housing for low or very low income residents. A nonprofit housing corporation must satisfy the safe harbor provisions of Internal Revenue Service Revenue Procedure 96-32 to qualify for the exemption. The amendment this year clarifies the effective date of this exemption.

Effective Date: Property tax years beginning after 2001.

Senate Bill 274, Section 3.SS.2 (Act No. 69)

“NAICS” Manual – Classification of Merchants, Manufacturers, and Other Property Assessed by the Department

Code Section 12-43-335, providing classifications of property, has been amended to provide that for purposes of assessing the property of merchants and related businesses, manufacturers, railroads, private airlines, carlines, and water, power, telephone, television, sewer, and pipeline companies, the Department will follow the most recent classification in the North American Industry Classification System (“NAICS”) Manual. Previously, the classifications in the Standard Industrial Classification (“SIC”) Manual were used.

Effective Date: January 1, 2005

Senate Bill 274, Section 3.UU (Act No. 69)

NAICS Manual – Personal Property Assessed by the County Auditor

Code Section 12-39-70, concerning classifications for purposes of appraising and assessing personal property of businesses and other entities under the jurisdiction of the county auditor, has been amended to reflect categories developed in the North American Industry Classification System (“NAICS”) Manual. Previously, the statute referred to categories in the Standard Industrial Classification (“SIC”) Manual.

Effective Date: January 1, 2005

Senate Bill 274, Section 3.SS.1 (Act No. 69)

Postponement of Reassessment of Values

A county that postponed the implementation of a scheduled reassessment from 2002 until 2003, under Code Section 12-37-217(B), may postpone, by ordinance, the implementation for one additional property tax year.

Note: The original bill referred to Code Section 12-37-217(B). It is our understanding that the Code Commissioner has determined that this was a scrivener’s error and will be corrected to read Code Section 12-43-217(B).

Effective Date: June 18, 2003

House Bill 3941

Colleton County Reassessment Postponed - Vetoed

This joint resolution provides that notwithstanding the provisions of Code Section 12-43-217(B), implementation of the revised values determined in the countywide appraisal and equalization program conducted in Colleton County in 2001 is postponed until property tax years beginning after 2003. The Governor, however, vetoed this bill on August 8, 2003. Note: If the General Assembly overrides the Governor's veto when it returns in January 2004, the Department will inform taxpayers of this change.

House Bill 4118 (Act No. Unassigned)

Dillon County Millage

This joint resolution provides that Dillon County may increase its millage for school purposes by 11 mills for the fiscal year beginning July 1, 2003 and ending June 30, 2004, with 8 mills used for school operating costs and 3 mills for debt service.

Effective Date: June 4, 2003

Senate Bill 497 (Act No.30)

Counties May Reduce Assessment Ratio on General Aviation Aircraft

Code Section 12-43-360 has been added to allow the governing body of a county, by ordinance, to reduce the assessment ratio of general aviation aircraft subject to property tax in the county to not less than 4% of the fair market value. The ordinance must be applied uniformly to all general aviation aircraft subject to property tax in the county.

Effective Date: May 14, 2003

Senate Bill 274, Sections 3.YY, 3.ZZ, and 3.AAA (Act No. 69)
(See also Senate Bill 274, Sections 3.P and 3.Q (Act No. 69))

Big Fee, Little Fee, and Simplified Fee Amendments

South Carolina has three Fee in lieu statutes commonly referred to as the “Little Fee” (Chapter 12 of Title 4), the “Big Fee” (Code Section 4-29-67), and the “Simplified Fee” (Chapter 44 of Title 12.) Special Fee in lieu provisions exist for very large investments and are known as the “Super Fee” with respect to the Big Fee and Little Fee, and the “Enhanced Investment Fee” with respect to the Simplified Fee.

The Fee statutes permit a company to negotiate to pay a Fee instead of paying property taxes. The 10.5% assessment ratio can be, and often is, negotiated to 6% (4% for very large investments under the Super Fee or Enhanced Fee). In addition, the company and a county can agree to freeze the millage rate applicable to the property at a set millage, or adjust the millage every 5 years, for the period the Fee is in effect. During the period of the Fee, the value of the real property remains constant and the value of the personal property is deemed to decrease each year by the depreciation allowable for property tax purposes subject to a floor on the value.

This year substantial changes were made to the Fee statutes. The changes were made to bring more consistency to the Fee statutes and to address technical problems that have arisen. This summary begins with a discussion of changes that were made to all three Fee statutes and then discusses changes that are specific to the Little Fee, the Big Fee, or the Simplified Fee. A “Fee in Lieu of Property Taxes – General Summary” that incorporates the 2003 Fee amendments is included as a reference tool at the end of this publication.

Amendments to All Fee Statutes

1. The term “Sponsor” is used to describe the company entering into the relevant agreements and making the primary investment in the Fee. The term “Sponsor affiliate” is used to describe a secondary party investing in the Fee. Previously, the Big Fee used the terms “Investor” and “Investor affiliate,” respectively. The definition of “Project” in the Big Fee has been amended so it conforms to the definition of “project” in the Little and Simplified Fees. As a result, public utilities may now qualify for the Big Fee.
2. Code Sections 4-12-30(B)(2)(b), 4-29-67(B)(2)(b), and 12-44-40(G)(2) have been amended to provide that if a project is located in two or more counties, the millage rate is set by the agreement. Previously, the millage rate for the county in which the greatest amount of investment occurred was used.
3. Code Sections 4-12-30(B)(3), 4-29-67(B)(3) and 12-44-30(14) have been amended to clarify and conform what date is used to designate those counties that qualify for the reduced \$1 million investment. The statutes provide that the rankings are based upon the last 24 months of average unemployment data available on November 1st. The Department will designate the reduced investment counties by December 31st of each year using data from the South Carolina Employment Security Commission and the United States Department of Commerce.

The designations are effective for inducement agreements and fee agreements, as applicable, signed in the calendar year following the county designation.

4. Code Sections 4-12-30(B)(4)(b) and 12-44-30(18) have been amended to provide that if a project consists of a manufacturing, research and development, corporate office, or distribution facility, as defined in Code Section 12-6-3360(M), then each sponsor or sponsor affiliate is not required to invest \$5 million if the total investment at the project exceeds \$10 million. Code Section 4-29-67(B)(4)(a) in the Big Fee has been amended to allow the pooling of investments for manufacturing, research and development, corporate office, or distribution facilities if the total investment at the project exceeds \$45 million.
5. Code Sections 4-12-30(B)(4)(c) and (d), 4-29-67(B)(4)(b)(i), and 12-44-130(A) have been amended to provide that the inducement agreement, the lease agreement, or the fee agreement, as applicable, may provide a process for approval of sponsor affiliates and that the qualifying investments by the sponsor affiliate must be at the same project as the sponsor.
6. Code Sections 4-12-30(C)(2), 4-29-67(C)(2)(b), and 12-44-140(D) have been amended to provide that to the extent necessary to determine if a sponsor or sponsor affiliate has met its minimum investment requirements, the applicable statute of limitations in Code Section 12-54-85 is suspended during the period allowed for making the investment.
7. Code Sections 4-12-30(D)(2)(a)(i), 4-29-67(D)(2)(a)(iii)A, and 12-44-50(A)(1)(c)(i) have been clarified to provide that if real property is received by a sponsor as a gift or in a bargain sale transaction, the property must be reported at fair market value as determined by appraisal. This value remains the same for the life of the Fee and the sponsor must use this value in calculating its Fee.
8. Code Sections 4-12-30(D)(4)(a)(v), 4-29-67(D)(4)(a)(iv), and 12-44-30(8)(d), allowing a Super Fee or an Enhanced Investment Fee for investments totaling \$400 million in counties classified as least developed or underdeveloped by a limited liability company and its members and which contained certain job requirements, have been repealed.
9. Code Sections 4-12-30(D)(5), 4-29-67(D)(5), and 12-44-100(B) have been amended to provide that agreements may provide for different assessment ratios for different levels of investment by the sponsor.
10. Code Sections 4-12-30(F)(1)(b), 4-29-67(F)(1), and 12-44-50(B)(1) have been clarified to provide that property is not considered subject to the Fee when it is removed from a project, but it will be considered subject to property taxes if it remains in South Carolina.

11. Code Sections 4-12-30(G)(2), 4-29-67(G)(2), and 12-44-50(A)(1)(d) have been amended to provide that the millage rate may be no lower than the cumulative millage rate in effect for all taxing entities in which the project is located on either:
 - a. June 30th of the year preceding the year in which the millage rate agreement or Fee agreement is executed or the initial lease agreement is executed if no millage rate agreement is executed; or,
 - b. June 30th of the year in which the millage rate agreement or Fee agreement is executed or if there is no millage rate agreement, the year in which the lease agreement is executed.
12. Code Sections 4-12-30(I), 4-29-67(I), and 12-44-40(C) previously provided that in order to qualify for the Fee, all expenditures had to be incurred within a time period that began 60 days before the project was identified and ended at the end of the time period for making the required investment, or alternatively, at the end of the time period to complete the project if an extension to complete the project had been granted. The requirement that the expenditures be incurred no more than 60 days prior to project identification has been eliminated, so even expenditures for property incurred before this time period may qualify for the Fee, however, all expenditures still must be incurred prior to the end of the time period for making the required investment, or if an extension is granted, the time period for completing the project. Additionally, the property which is the subject of the incurred expenditure generally must not have been subject to property taxes.
13. Code Sections 4-12-30(K)(1), 4-29-67(L)(1), and 12-44-80(A) have been amended to provide that for a project outside a multicounty park, the distribution of the Fee is made in the same manner and proportion that the millage would be distributed if the property were taxable, but without regard to any exemption available to the project under Code Section 12-37-220 for that year.
14. Code Sections 4-12-30(K)(3), 4-29-67(L)(3), and 12-44-70(A) have been amended to provide that if a county allows a sponsor an infrastructure credit against its Fee, the credit is nonrefundable and may not result in a direct payment of cash to the sponsor.
15. Code Sections 4-12-30(K)(4), 4-29-67(L)(4), and 12-44-80(C) has been amended to provide that if there has been a misallocation of a distribution of Fee monies in a previous year, a claim for adjustment must be made within one year of the distribution.
16. Code Sections 4-12-30(M), 4-29-67(O), and 12-44-120 have been amended to provide that if an inducement agreement, lease agreement or a Fee agreement is transferred to a new party, the transferee assumes the transferor's current basis in the property subject to the Fee for purposes of calculating the Fee. These sections have also been amended to provide that the county and the Department must receive written notice within 60 days of a transfer of the identity of any transferee in connection with a financing transfer. Further, a sponsor may transfer an agreement or the assets associated with an agreement if it gets the prior approval, or subsequent ratification, of the county to the transfer.

17. Under Code Sections 4-12-30(O), 4-29-67(S), and 12-44-90(I), to the extent that a Fee form is filed with the Department, a copy must now also be filed with the county auditor, assessor and treasurer where the project is located. If the project is located in a multicounty park, the county auditor where the project is physically located must make copies of these forms available to any county auditor of a county participating in the multicounty park.
18. Code Sections 4-12-45, 4-29-67(W), and 12-44-55 providing for a recapitulation of the Fee provisions and a schedule of distribution of the Fee, have been amended to provide that the county and the sponsor and sponsor affiliates may agree to waive any or all items that are part of the recapitulation and schedule.
19. A transitional rule provides that if a sponsor has been granted a 2 year extension to complete its project and the extension period has not expired, the sponsor may request an additional 3 years to complete the project in order to obtain a total of an additional 5 years to complete the project. There is no extension of the time period for making the minimum investment.

Little Fee Amendments

1. Code Section 4-12-20(5) has been amended to delete the definition of “Title to the property,” and to add a new definition of “Lease Agreement.” A “Lease Agreement” is an agreement between the county and the sponsor leasing the property at the project from the county to the sponsor.
2. Code Section 4-12-30(A) has been amended to delete the following: “All references in this section to a lease agreement also are considered to refer to a lease purchase agreement.”
3. Code Section 4-12-30((B)(4)(f)(ii) has been amended to provide that unless an agreement allows a reduction from the Super Fee to a \$5 million Little Fee, the sponsor must maintain the applicable level of investment, without regard to depreciation, to remain eligible for the Fee.
4. Code Sections 4-12-30(B)(5) and (6) have been amended to revise the findings that must be made by the county to grant the Fee, including adding a requirement that the county set forth in an ordinance its determinations and findings. See the “Fee in Lieu of Property Taxes – General Summary”, Little Fee Section titled “County Must Make Findings of Public Purpose,” for further information about what findings need to be made.
5. Code Section 4-12-30(C)(3) has been added to provide that if a sponsor qualifies for the Super Fee and has more than \$500 million in capital invested and employs more than 1,000 people in South Carolina, it has 10 years to make its minimum investment and 15 years to complete its project.
6. Code Section 4-12-30(C)(4) has been amended to provide that property at a project can be subject to the Little Fee for 30 years, and 40 years for those projects subject to the Super Fee.

7. Code Section 4-12-30(D)(4)(a)(iv), which allowed the Super Fee for a sponsor and sponsor affiliate that together invested \$400 million in South Carolina, created at least 200 jobs at the project, and met certain other requirements with respect to the sponsor affiliate, has been repealed.
8. Code Section 4-12-30(G)(3) has been repealed. This provision provided that millage imposed by a municipality would not be included in the millage rate if the taxing entity deannexed the subject property before the execution of the initial lease agreement.
9. Code Section 4-12-30(H)(3) has been amended to provide that an inducement agreement or lease agreement may allow a sponsor that has committed to a Super Fee to continue the benefits of the Little Fee if it makes the minimum investment required by the Little Fee. However, the sponsor will only receive a 6% assessment ratio or such other ratio provided by the agreement and any single piece of property at the project may only be subject to the Fee for 20 years. To the extent that the Sponsor had already obtained the benefit of a 4% assessment ratio, the Fee must be recalculated using a 6% assessment ratio or such other ratio as provided by the agreement and the difference, plus interest, must be paid to the county.
10. Code Section 4-12-30(I) has been amended to require that an inducement agreement be executed within 2 years of when the county adopts an inducement resolution or similar resolution identifying the project, otherwise only investment expenditures made or incurred after the date of the inducement agreement are subject to the Fee. Prior to this amendment, the inducement agreement had to be executed within 2 years of identification of the project.
11. Code Section 4-12-30(M)(2) has been amended to allow counties and sponsors to enter into lending, financing, security, lease, or similar arrangements.
12. Certain transitional rules contained in Code Section 4-12-40 have been repealed.

Big Fee Amendments

1. Code Section 4-29-67(A)(1) has been amended to add definitions of “Department,” “Lease agreement,” “Sponsor,” and “Sponsor affiliate.” In addition, the definition of “project” has been moved from Code Section 4-29-10 and has been revised. See “Amendments to All Fee Statutes,” Item 1, above for more information.
2. Code Section 4-29-67(A)(2) has been amended to provide that the sponsor does not have to request the county to issue bonds to finance the property subject to the Fee.
3. Code Section 4-29-67(A)(2) has been amended to delete the following language: “All references in this section to a lease agreement also are considered to refer to a lease purchase agreement.”
4. Code Section 4-29-67(B)(4)(a) has been amended to provide that each sponsor or sponsor affiliate must make the minimum level of investment, unless the pooling rules discussed above in “Amendments to All Fee Statutes,” Item 4, applies.

5. Code Section 4-29-67(B)(4)(b)(ii) has been amended to provide that the Department must be notified in writing of all sponsor affiliates that have investments subject to the Big Fee on or before 90 days after the end of the calendar year during which the project or a phase of the project is placed in service. Prior to this amendment, notification had to occur within 30 days after the execution of the lease agreement.
6. Code Sections 4-29-67(B)(4)(b)(iii)B and C have been amended to provide that unless the agreement allows a reduction from the Super Fee or an investment above the minimum investment to a \$5 million Fee, the sponsor must maintain the applicable level of investment, without regard to depreciation, to remain eligible for the Fee. The provision in Code Section 4-29-67(B)(4)(a) that required each business to invest at least \$5 million has been deleted.
7. Code Section 4-29-67(C)(1) has been amended to provide that the sponsor has 5 years from the date of the inducement agreement to execute a lease agreement. Previously, this period was 7 years.
8. Code Section 4-29-67(C)(3) has been amended to provide that property at a project can be subject to the Big Fee for 30 years, and 40 years for projects subject to the Super Fee.
9. Code Section 4-29-67(D)(4)(a)(v), allowing a Super Fee in the case of a sponsor and sponsor affiliate that together were investing \$400 million in South Carolina, creating at least 200 jobs at the project, and which met certain other requirements with respect to the sponsor affiliate, has been repealed.
10. Code Section 4-29-67(I) has been amended to require that an inducement agreement be executed within 2 years of when the county adopts an inducement resolution or similar resolution identifying the project in order for all expenditures for property to qualify for the Fee. Prior to this amendment, the inducement agreement had to be executed within 2 years of when the county identified the project.
11. Code Section 4-29-67(O)(2) has been amended to allow counties and sponsors to enter into lending, financing, security, leasing, or similar arrangements.
12. Code Section 4-29-67(O)(3)(a) has been amended to reduce the penalty that may be imposed if the sponsor fails to notify, or is late in notifying, the Department about a financing transaction from up to \$120,000 to up to \$50,000.
13. Code Section 4-29-67(V) has been amended to provide that the Big Fee is available for up to 40 years (instead of 37) for a qualified recycling facility.
14. Code Sections 4-29-10(9), (10), and (11) defining “Investor,” “Investor affiliate,” and “Business,” respectively, have been repealed.

Simplified Fee Amendments

1. Code Section 12-44-30(8) has been amended to define “Exemption period” as “the period beginning on the first day of the property tax year after the property tax year in which an applicable piece of economic development property is placed in service and ending on the termination date. For projects which are completed and placed in service during more than one year, the exemption period applies to each year’s investment made by a sponsor during the investment period.”
2. Code Section 12-44-30(9) has been added to define “Fee” as “the amount paid in lieu of ad valorem property tax as provided in the Fee agreement.”
3. Code Section 12-44-30(13), defining “investment period,” has been amended to add that if a sponsor has qualified for the Enhanced Investment Fee and has more than \$500 million in capital invested and employs more than 1,000 people in this State, the investment period ends 10 years after the commencement date.
4. Code Section 12-44-30(18), defining “Sponsor,” has been amended to provide that “Sponsor” means one or more entities which sign the Fee agreement with the county each of which makes the minimum investment as provided in Section 12-44-30(13) and also includes a sponsor affiliate unless the context clearly indicates otherwise.
5. Code Section 12-44-40(H) regarding findings that the county must make before granting the Fee, has been amended to provide that the benefits of the project must exceed the costs of the project. Previously, the statute provided that the benefits of the project to the public exceed the costs. Additionally, the statute specifies that the determinations and findings required by this section must be set forth in an ordinance.
6. Code Sections 12-44-50(B)(2) and 12-44-140(A) have been amended to provide that if a sponsor has to pay a differential between the Fee as calculated under the net present value method and the Fee as calculated under the standard method for calculating the Fee, the sponsor must also pay interest as provided in Code Section 12-54-25 on this amount.
7. Code Section 12-44-140(C) has been added to provide a general rule that if a sponsor or a sponsor affiliate does not maintain the minimum investment, or the enhanced investment, respectively, it will no longer qualify for the Simplified Fee. However, Code Section 12-44-100 has also been amended to provide that the Fee agreement may provide that a sponsor that has agreed to an investment above the minimum, including an enhanced investment, may continue to receive the benefits of the Simplified Fee even if it fails to maintain the larger investment. The provision in Code Section 12-44-100(C) which provided that a Fee agreement may provide that replacement property will not be allowed under the agreement if the sponsor fails to make the level of investment specified in the Fee agreement, has been deleted.

8. Code Section 12-44-130(A) has been amended to provide that for an Enhanced Investment Fee, a single sponsor must make the investment except in the case of projects that consist of certain gas-fired combined-cycle power facilities.
9. Code Section 12-44-130(B) has been amended to provide that the Department must be notified in writing of all sponsor affiliates that have investments subject to the Fee on or before 90 days after the end of the calendar year during which the project or a phase of the project is placed in service. Prior to this amendment, notification had to occur within 60 days after the execution of the Fee agreement.
10. Code Section 12-44-130(B) has been amended to provide that a \$50,000 penalty may be imposed if the sponsor fails to notify, or is late in notifying, the Department of all sponsors and sponsor affiliates that are subject to the Fee. The penalty used to be up to \$120,000.

Effective Date: January 1, 2003, except that the provisions may not impair applicable rights under agreements or other writings with respect to which the effective date would constitute an impairment of contractual rights under applicable law.

REMINDER

The following provision was enacted in 2002, but is effective in 2003. It is summarized below for informational purposes.

House Bill 3601 (Act No. 336)

Primary Residence Vacation Property - 4% Assessment Ratio

Code Section 12-43-220(c)(6) has been added to provide that a purchaser who purchases residential property with the intent that it shall become his primary residence, but the property is subject to vacation rentals as provided in Title 27, Chapter 50, Article 2 for no more than 90 days, may apply for the 4% assessment ratio when the purchaser actually occupies the property. If the owner actually occupies the property within 90 days of acquiring ownership and otherwise qualifies, the 4% ratio will apply retroactively to the date ownership was acquired.

Effective Date: January 1, 2003, and applies to covered residential transactions entered into on or after January 1, 2003.

SALES AND USE TAXES

Senate Bill 274, Section 3.PP (Act No. 69)

Prescription Medicines Used To Prevent Respiratory Syncytial Virus Exempt

Code Section 12-36-2120(28)(a), providing exemptions for various types of prescription medicines, has been amended to add a new exemption for prescription medicines used to prevent respiratory syncytial virus.

For additional information on this exemption and other exemptions for medicine, prosthetic devices and other medical supplies, see SC Revenue Ruling #03-2.

Effective Date: June 18, 2003

Senate Bill 274, Section 3.OO (Act No. 69)

Sales Tax on Communications - Bundled Transactions

Code Section 12-36-910(B)(3), which imposes the sales tax on certain charges for communication, has been amended to address the taxation of “bundled transactions.” A “bundled transaction” is “a transaction consisting of distinct and identifiable properties or services, which are sold for one nonitemized price but which are treated differently for [sales] tax purposes.”

Under the amendment, for customer bills that include telecommunications services in a bundled transaction, where the nonitemized price is attributable to properties or services that are taxable and nontaxable, the portion of the price attributable to any nontaxable property or service is subject to tax unless the provider can reasonably identify that portion from its books and records kept in the regular course of business for purposes other than sales taxes.

Effective Date: For bills rendered on or after January 1, 2004.

Senate Bill 274, Sections 3.WW.1 and 3.WW.2 (Act No. 69)

Rentals of Portable Toilets - Partial Exemption Added and Refund Request Procedure

Code Section 12-36-2120(62) has been added to exempt from sales and use tax 70% of the gross proceeds of the rental or lease of portable toilets.

Note: The Department, in SC Revenue Advisory Bulletin #01-5, concluded that a charge by a business for temporarily providing portable toilets to another person was a rental of tangible personal property subject to the sales and use tax, and that any additional charges for servicing the toilets, whether optional or mandatory, that were made in conjunction with, or as part of the rental of, portable toilets were a part of gross proceeds of sales and also subject to sales and use tax. In this amendment, the General Assembly provided that any sales tax paid as a result of an audit of a company leasing or renting portable toilets shall be refunded by the Department upon application by the company requesting a refund. This provision applies for audits showing additional taxes due on and after June 25, 2001, up to July 1, 2003. Such refund requests should be mailed to: SC Department of Revenue, Audit Services – Portable Toilet Rental Audit Refunds, P.O. Box 125, Columbia, South Carolina, 29214.

Effective Date: July 1, 2003

Senate Bill 274, Section 3.W (Act No. 69)

Credit for Sales and Use Tax Paid in Another State – Technical Change

Code Section 12-36-1310(C), which allows a credit against the South Carolina use tax for sales and use tax paid on a purchase in another state, has been amended to delete the requirement that the credit would only be allowed if the other state allowed a substantially similar credit. This statute continues to provide that the credit is available against state and local sales and use tax due and paid in another state on purchases of tangible personal property in other states.

Effective Date: Applies to purchases of tangible personal property made on or after June 18, 2003.

House Bill 3749, Part IB, Section 19, Proviso 19.10 (Act No. 91)

State Museum - Exemption from Admissions Tax Reenacted and Vetoed

The General Assembly reenacted a temporary proviso to exempt the State Museum from remitting admissions tax to the Department. The Governor, however, vetoed this on June 18, 2003. Note: If the General Assembly overrides the Governor's veto when it returns in January 2004, the Department will inform taxpayers of this change.

Effective Date: July 1, 2003

REENACTED TEMPORARY PROVISIO

The following temporary provision was enacted in prior legislative sessions and was reenacted by the General Assembly in 2003. Temporary provisos are effective for the State fiscal year July 1, 2003 through June 30, 2004, and will expire June 30, 2004, unless reenacted by the General Assembly in the next legislative session.

House Bill 3749, Part IB, Section 72, Proviso 72.74 (Act No. 91)

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.

MISCELLANEOUS

ADMINISTRATIVE AND PROCEDURAL MATTERS (Summarized by Subject Matter)

Senate Bill 274, Sections 3.B and 3.C (Act No. 69)

Definitions Applicable to All Titles Providing for Taxes Administered by Department

Code Section 12-2-20, defining “person,” and Code Section 12-2-25(A), defining “partnership,” “partner,” “corporation,” and “shareholder,” have been amended to clarify that these definitions apply to other titles of the South Carolina code of laws which provide for taxes administered by the Department, unless otherwise required by the context. Previously, the statutes referred only to Title 12 (Taxation).

Effective Date: June 18, 2003

Senate Bill 274, Sections 3.CC, 3.DD, 3.EE, 3.FF, and 3.HH (Act No. 69)

Revenue Procedures Act Changes

The South Carolina Revenue Procedures Act, Chapter 60 of Title 12, sets forth a procedure for handling all disputes with the Department. It addresses the issuance of proposed assessments by the Department, protests by the taxpayer, and appeals of a decision adverse to a taxpayer. The amendments made to the Revenue Procedures Act are summarized below.

1. Definitions. The following definitions in Code Section 12-60-30 have been amended as described below:
 - a. Code Section 12-60-30(7) has been amended to delete an obsolete code reference and clarify that “the county board of assessment appeals” or “county board” means the board of assessment appeals which considers appeals of property tax assessments issued by the property tax assessor for the county and which also hears appeals of refund claims of property as determined by the majority of the county assessor, county auditor, and county treasurer.
 - b. Code Section 12-60-30(13) added a definition of “division decision.” It means a decision by a division of the Department that affects the rights or obligations of a person for which no specific appeals rights are provided by the Revenue Procedures Act. It includes the refusal by the Department to expunge or satisfy a lien.

- c. Section 12-60-30(16) added a definition of “Internal Revenue Code.” It means the Internal Revenue Code as defined in Code Section 12-6-40(A).
 - d. Code Section 12-60-30(24) has been amended to clarify that a protest includes a written appeal of a division decision, as well as a written appeal of a proposed assessment, in accordance with the Revenue Procedures Act.
2. Declaratory Judgments. Code Section 12-60-80(B) has been added to provide that if the only issue is whether a statute is unconstitutional then a declaratory judgment action can be brought in circuit court without the taxpayer having to exhaust the prehearing remedies under the Revenue Procedures Act. This exception does not apply to a claim that the statute is unconstitutional as applied to a person or a limited class of persons.
 3. Class Action Lawsuits. Code Section 12-60-80(C) has been added to provide that a class action lawsuit for a refund of taxes may not be brought in the Administrative Law Judge Division or any court in this State, and the Department, political subdivisions, or their instrumentalities may not be named as a defendant in a class action lawsuit brought in South Carolina.
 4. Representation of Taxpayers. Code Section 12-60-90, addressing the administrative tax process in South Carolina, has been clarified as follows:
 - a. Subsection (F) provides that U.S Treasury Department Circular No. 230 (the primary document that the Department follows in determining who can practice before the Department and the ethical obligations of those who do practice before the Department) must be given the meanings necessary to carry out the purpose of state law. Also, this subsection provides that references to tax return in Circular 230 mean appropriate return, including property tax returns filed with the Department, and references to federal tax obligations mean all South Carolina taxes, including property taxes and property tax assessments administered by the Department.
 - b. Under subsection (D), a taxpayer’s representative may be disbarred from practice for incompetence. A provision has been added which provides that incompetence is as defined in Section 10.51 of Circular 230. This subsection also has been amended to allow the Department to consider a petition for reinstatement filed by a taxpayer’s representative as provided in Section 10.81 of Circular 230.
 5. Division Decisions. Code Section 12-60-420, which addresses the Department’s requirements in issuing a proposed assessment, has been amended to provide that the Department must follow the rules provided in Code Section 12-60-420 in issuing division decisions.
 6. Time Period to Assess Deficiencies. Code Section 12-60-440(A) has been amended to provide that the Department may not assess a deficiency until 90 days after a proposed assessment has been issued or if the taxpayer appeals, until a taxpayer’s appeal is finally

decided. Prior to this amendment, the Department could assess a deficiency after 30 days if the taxpayer did not file an appeal.

7. Time Period For Appeal Increased for Certain Actions. Code Sections 12-60-450(A), 12-60-470(E), 12-60-1310(A), and 12-60-2110 have been amended to increase from 30 days to 90 days the time a taxpayer has to protest the following matters: (a) a proposed assessment, including a property tax assessment where the assessment is determined by the Department, (b) a division decision, (c) the denial of a claim for refund by the Department, (d) the denial of a property tax exemption by the Department, or (e) the denial, suspension, or revocation of a license issued by the Department.
8. Time Period for Issuing Department Determination. Code Section 12-60-450(E)(3) has been added to provide that the Department must issue the final Department determination within 9 months after the date a written protest or claim for refund is filed. If the Department does not issue a timely determination, then the taxpayer may request a contested case hearing before the Administrative Law Judge Division for a determination without having to exhaust his prehearing remedies.
9. Purchaser's Filing of Sales Tax Refund. Code Section 12-60-470, addressing who may file a claim for refund, has been amended to provide that a purchaser who has paid sales tax to a retailer for a specific transaction can file a claim for refund if the retailer who paid the South Carolina sales tax has assigned, in writing, his right to the refund to the purchaser.
10. Jeopardy Assessments. Code Section 12-60-920 has been amended to clarify the appropriate procedures and time periods in connection with a jeopardy assessment and to clarify who has the burden of proof as to issues at the jeopardy hearing. Additionally, subsection (G) has been added to provide that if an Administrative Law Judge ("ALJ") determines that the collection of a tax is in jeopardy, the ALJ will remand the matter to the Department who will issue a Department determination. The Department determination is not limited by the ALJ's finding of the appropriate amount to collect as a jeopardy assessment. The taxpayer can appeal a Department determination as though it were a proposed assessment. At the contested case hearing, the parties may raise issues and arguments previously presented at the jeopardy hearing. Even if the ALJ determines that the collection of a tax is not in jeopardy, the Department may issue a Department determination on the underlying tax matter.
11. Elimination of DMV and Abandoned Property. Applicable references to the Department of Motor Vehicles and abandoned property appeals under Chapter 18, Title 27 have been removed since these matters are no longer under the Department's jurisdiction. Other obsolete code references have been eliminated or updated.

Effective Date: June 18, 2003, except that amendments to Code Sections 12-60-440 and 12-60-450 are effective January 1, 2004.

Senate Bill 274, Section 3.Y (Act No. 69)

Transfer of Assets – Tax Lien Place on Assets; Certificate of Compliance Exception

Code Section 12-54-124 has been added to provide that in the case of the transfer of a majority of the assets of a business, other than cash, whether through sale, gift, devise, inheritance, liquidation, distribution, merger, consolidation, corporate reorganization, lease or otherwise, any tax generated by the business which was due on or before the date of any part of the transfer constitutes a lien against the assets in the hands of a purchaser, or any other transferee, until the taxes are paid. The Department may not issue a license to continue the business to the transferee until all taxes due South Carolina have been paid, and may revoke a license issued to the business in violation of this section.

This provision does not apply if the purchaser receives a certificate of compliance from the Department stating that all tax returns have been filed and all taxes generated by the business have been paid. The certificate of compliance is valid if it is obtained no more than 30 days before the sale or transfer.

Note: South Carolina Form C-268, “Certificate of Compliance Request Form,” may be used to request a certificate of compliance. Generally, the results are sent within 10 business days after receipt of the completed Form C-268 and the \$60 processing fee by the Department’s Tax Compliance Officer.

Effective Date: June 18, 2003

Senate Bill 274, Section 3.X (Act No. 69)

Fees Charged in Recording Tax Liens

Code Section 12-53-40 provides that notwithstanding another provision of law, that certain fees are deducted from the proceeds of sale before payment of prior liens or claims. These fees include: (a) the greater of 5% of the total warrant or tax lien or \$3 and (b) the fee provided in Code Section 8-21-310(20), currently \$10. Prior to this amendment, the statute did not refer to Code Section 8-21-310(20), but provided for a \$5 fee.

Effective Date: June 18, 2003

Senate Bill 274, Section 3.Z (Act No. 69)

Interest Rate on Overpayments and Underpayments – Technical Correction

Code Section 12-54-25(D), providing the interest rate applied to underpayments and overpayments, has been amended to clarify that the rate used by the Department is the same as the underpayment rate provided in Internal Revenue Code Sections 6621(a)(2) and 6622. Prior to this amendment, the statute referred to Internal Revenue Code Sections 6621 and 6622; the Department has never applied the underpayment rate for large corporate underpayments in Internal Revenue Code Section 6621(c).

Effective Date: June 18, 2003

Senate Bill 274, Section 3.WW.2 (Act No. 69)

Notification of Industry Groups

Code Section 12-4-385 has been added to require the Department to notify the appropriate licensing division of the Department of Labor, Licensing and Regulation and any known industry group when the Department proposes a change in policy concerning a particular industry group.

Effective Date: July 1, 2003

Senate Bill 274, Section 3.II (Act No. 69)

Family Privacy Protection Act Amended

Code Section 30-2-30(1), the Family Privacy Protection Act of 2002, requires state entities to develop privacy policies to ensure that the collection of personal information of South Carolina citizens is limited to the information that is necessary to fulfill a legitimate public purpose. Code Section 30-2-30(1) has been amended to provide that “personal information” does not mean names and addresses from any registration documents filed with the Department as a business address, even if it also may be a personal address.

Effective Date: June 18, 2003

Senate Bill 274, Sections 3.AA and 3.BB (Act No. 69)

Disclosure of Information

Code Section 12-54-240(B), concerning disclosure of certain records, reports, and returns filed with the Department, has been amended as follows:

1. Subsection (B)(5) has been amended to correct a cross reference to Code Section 12-7-1690 that was not updated during income tax recodification of Chapter 7 of Title 12 in 1995. The statute permits inspection of returns by officials of other jurisdictions in accordance with Code Section 12-54-220.
2. Subsection (B)(24) has been added to permit disclosure of information pursuant to a subpoena issued by a federal grand jury or the State Grand Jury of South Carolina.

Effective Date: June 18, 2003

Senate Bill 274, Sections 3.KK.2 through 3.KK.6 (Act No. 69)

Debt Set Off Act

The Set Off Debt Collection Act in Chapter 56 of Title 12 allows the Department to assist a claimant agency in the collection of any delinquent account or debt by setting off the debt from any income tax refunds due the debtor by the Department. The changes to the Act are as follows:

1. Code Section 12-56-20(1), the term “political subdivision” as used in the definition of a “claimant agency,” has been amended. “Claimant agency” includes a state agency, board, committee, commission, public institution of higher learning, political subdivision, or any other governmental or quasi-governmental entity of any state or the United States. The term “political subdivision” has been amended to provide that it includes the Municipal Association of South Carolina and the South Carolina Association of Counties when these organizations submit claims on behalf of a county or local governmental or quasi-governmental entity. Prior to this amendment, a “political subdivision” included the Municipal Association of South Carolina and the South Carolina Association of Counties when these organizations submit claims on behalf of their members, other political subdivisions, or other claimant agencies.
2. Code Section 12-56-60(A) has been amended to provide that a claimant agency shall promptly notify the Department of a reduction in a debtor’s delinquent debt. Also, the amendment deleted the provision concerning the claimant agency’s notification to the Department on a date specified by the Department and deleted the provision stating that the notification was effective only to initiate setoff for claims against refunds that would be made in the calendar year subsequent to the year in which notification was made to the Department.

3. Code Section 12-56-60(B) has been amended to provide that if the debtor is due a refund of more than a tolerance amount determined by the Department, the Department shall set off the delinquent debt against the amount of the refund. Previously, the statute provided for setoff if the debtor was due a refund exceeding \$25. Further, the amendment clarified that the Department may add up to \$25 to the debt for administrative costs.
4. Code Section 12-56-62 has been amended to provide that the notice of intention to setoff shall include the amount of interest applicable, in addition to the debt amount, and state that the debtor's individual income tax refunds will be used to set off the debt until the debt is paid in full.
5. Code Section 12-56-63(A) allows a taxpayer to protest a debt set off by filing a written protest with the agency that made the original claim that the taxpayer owed money within 30 days of any notice of intention to set off. This subsection has been amended to provide that a written protest must include the debtor's tax identification number. Previously, the statute provided it include the debtor's social security number.
6. Code Section 12-56-63(B) has been amended to provide that the Municipal Association of South Carolina and the South Carolina Association of Counties may charge an administrative fee not to exceed \$25 if they submit a debt for collection to the Department pursuant to Chapter 56 of Title 12 and Code Section 12-4-580. This amount will be added to any debt owed by the debtor.
7. Code Section 12-56-65(H) has been added to provide that a debtor may make a claim for refund with the original agency that claimed that the taxpayer owed the money for any amount collected under The Setoff Debt Collection Act within 1 year from the date the amount is collected, in the same manner as seeking relief from a hearing officer's determination under Code Sections 12-56-65 or 12-56-67.

Effective Date: June 18, 2003

Senate Bill 274, Section 3.KK.1 (Act No. 69)

Outstanding Debts of Governmental Entities Collected by the Department

Code Section 12-4-580 allows the Department to contract with other governmental entities to collect any outstanding liabilities owed those governmental entities. If the Department is able to collect, it is entitled to retain a fee for its efforts. Code Section 12-4-580 has been amended to make the following changes:

1. Subsection (B) has been amended to provide that if the Department is able to collect all or a portion of the debt owed, the debtor must be given full credit toward the satisfaction of the debt for the amount of the fee collected by the Department.

2. Subsection (C) has been amended to provide that entities whose debts are submitted for collection through an association shall indemnify the Department for collection actions taken.
3. Subsection (D)(1), defining “governmental entity” as including a state agency, board, committee, department, public institution of higher learning, political subdivisions of the State and all federal agencies, boards, and departments, has been amended to expand this definition to include federal commissions, and a federal, state, county or local governmental or quasi-governmental entity.
4. Subsection (D)(2) has been amended to define “liabilities owed the governmental entity” as having the same meaning as “delinquent debt” as defined in Code Section 12-56-20(4), the Debt Set Off Act. Previously, the term was defined as “a debt which is certified by the governmental entity to be owed it for which all rights of administrative or judicial appeal have been exhausted or all time limits for these appeals have expired.”
5. Subsection (E) has been added to provide that the governmental entity shall notify the debtor of its intention to submit the liability to the Department for collection and must inform the debtor of his right to protest the liability not less than 30 days before the liability is submitted to the Department for collection. The notice, hearing, appeals, and other provisions contained in Code Sections 12-56-50 through 12-56-120 of the Debt Set Off Act apply to such appeal with additional language in the notice letter as specified by the Department.

Effective Date: June 18, 2003

Senate Bill 274, Section 3.L (Act No. 69)

Summons Statute Expanded

Code Section 12-54-110(B) has been expanded to provide that the Department may summon a person to answer questions concerning any matter administered by the Department. Prior to this amendment, this section permitted the Department to summon a person concerning income tax matters.

Effective Date: June 18, 2003

House Bill 274, Section 3.NN (Act No. 69)

Affect of Repeal or Amendment of Statutes in Act No. 69

This section provides that the repeal or amendment by Act No. 69 of any temporary, permanent, civil, or criminal law, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After June 18, 2003, the effective date of this act, all laws repealed or amended by this

act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Effective Date: June 18, 2003

MISCELLEANEOUS TAXES

Senate Bill 274, Section 3.BBB (Act No. 69)

Motor Fuel Tax – Renamed a User Fee

The General Assembly has directed the Code Commissioner to substitute “user fee” for “tax” and “motor fuel subject to the user fee” for “taxable motor fuel” in Title 12, Chapter 28.

Effective Date: June 18, 2003

Senate Bill 274, Section 3.MM (Act No. 69)

Accommodations Oversight Provision – Repealed Statute

Title 6, Chapter 4 addresses the allocation and expenditure of funds from the 2% state accommodations tax. Code Section 6-4-30, requiring the Department to serve as a resource to advisory committees and local governments in the implementation of the accommodations tax and to arrange continuing education programs or workshops for local governmental officials and advisory committee members, has been repealed.

Effective Date: June 18, 2003

OTHER ITEMS (including local taxes)

House Bill 3259 (Act No. Unassigned)

Darlington County School District Sales and Use Tax

The School District of Darlington County School Bond Property Tax Relief Act has been enacted. The 1% sales and use tax within Darlington County authorized by this Act may be imposed upon (1) the adoption of an approving resolution by the board of trustees of the school district and (2) the subsequent approval of the imposition of the tax by referendum open to all

qualified electors residing in Darlington County. The approving resolution must specify the projects; the maximum time, stated in calendar years or calendar quarters, or a combination of them, not to exceed 26 years; the date on which the referendum is held; and the maximum principal amount of the bonds to be issued and repaid with the proceeds of the tax.

The tax terminates on the final day of the maximum time specified in the imposition (but not more than 26 years) or, if earlier, upon payment of the final maturing installments of principal of the bonds, or upon payment of the final maturing installments of principal of general obligation bonds issued to refund the bonds.

This tax must be administered and collected by the Department in the same manner that other sales and use taxes are collected. The tax is in addition to all other local sales and use taxes. It applies to the gross proceeds of sales in the applicable jurisdiction which are subject to the tax imposed by Chapter 36, Title 12, and the collection and enforcement provisions of Chapter 54, Title 12. The gross proceeds of the sale of food which may lawfully be purchased with food stamps and items subject to a maximum tax are exempt from this tax.

Those persons required to pay the use tax must identify the county in which the tangible personal property purchased at retail is stored, used, or consumed. Utilities are required to report sales in the county in which consumption of the tangible personal property occurs. Taxpayers subject to the sales tax on accommodations who own or manage rental units in more than one county must separately report the gross proceeds from business done in each county.

Sales of tangible personal property delivered after the imposition date of the tax, either under the terms of a construction contract executed before the imposition date, or a written bid culminating in a construction contract entered into before or after the imposition date, are exempt from this tax provided a verified copy of the construction contract is filed with the Department within six months after the imposition date of the tax. With respect to services regularly billed on a monthly basis, the tax is to be billed beginning on the first day of the billing period beginning on or after the imposition date.

The Department will furnish data to the State Treasurer and to the school district for the purpose of calculating distributions and estimating revenues.

Effective Date: February 21, 2003

House Bill 3630 (Act No. Unassigned)

Newberry County School District Sales and Use Tax

The Newberry County School District School Bond Property Tax Relief Act has been enacted. The 1% sales and use tax within Newberry County authorized by this Act may be imposed upon (1) the adoption of an approving resolution by the board of trustees of the school district and (2) the subsequent approval of the imposition of the tax by referendum open to all qualified electors residing in Newberry County. The approving resolution must specify the improvements to be

financed through the issuance of general obligation bonds of the school district; the maximum time, stated in calendar years or calendar quarters, or a combination of them, not to exceed 30 years; and the maximum principal amount of the bonds to be issued and repaid with the proceeds of the tax.

The tax terminates on the final day of the maximum time specified in the imposition (but not more than 30 years) or, if earlier, upon payment of the final maturing installments of principal of the bonds, or upon payment of the final maturing installments of principal of general obligation bonds issued to refund the bonds.

This tax must be administered and collected by the Department in the same manner that other sales and use taxes are collected. The tax is in addition to all other local sales and use taxes. It applies to the gross proceeds of sales in the applicable jurisdiction which are subject to the tax imposed by Chapter 36, Title 12, and the enforcement provisions of Chapter 54, Title 12. The gross proceeds of the sale of food which may lawfully be purchased with food stamps and items subject to a maximum tax are exempt from this tax.

Those persons required to pay the use tax must identify the county in which the tangible personal property purchased at retail is stored, used, or consumed. Utilities are required to report sales in the county in which consumption of the tangible personal property occurs. Taxpayers subject to the sales tax on accommodations who own or manage rental units in more than one county must separately report the gross proceeds from business done in each county.

Sales of tangible personal property delivered after the imposition date of the tax, either under the terms of a construction contract executed before the imposition date, or a written bid culminating in a construction contract entered into before or after the imposition date, are exempt from this tax provided a verified copy of the construction contract is filed with the Department within six months after the imposition date of the tax. With respect to services regularly billed on a monthly basis, the tax is to be billed beginning on the first day of the billing period beginning on or after the imposition date.

The Department will furnish data to the State Treasurer and to the school district for the purpose of calculating distributions and estimating revenues.

Effective Date: June 2, 2003

House Bill 3652 (Act No. Unassigned)

Hampton County Capital Projects Sales Tax Act – Effective May 1, 2003

The local capital projects sales and use tax is authorized under Code Section 4-10-300 et. seq. 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. This tax is imposed specifically to defray the debt service on bonds issued for various capital projects in the counties that impose it. Pursuant to a favorable referendum vote held in November 2002, Hampton County may begin imposing the capital

project sales tax effective May 1, 2003. The tax is collected by the Department on behalf of Hampton County.

Effective Date: March 13, 2003

Senate Bill 550 (Act No. Unassigned)

Local Option Sales Tax Collections – Adjust Miscalculations of County Allocations

The Department administers and collects local option sales taxes on behalf of the counties. Under this joint resolution, the Department is allowed to adjust miscalculations of fiscal year 2001 - 2002 local option sales tax collections and distributions within a county area during fiscal year 2002 - 2003, or fiscal year 2003 - 2004.

Effective Date: June 2, 2003

Senate Bill 274, Section 3.TT (Act No. 69)

NAICS Manual – Classification of Telecommunication Services

Code Section 58-9-2200(1), concerning a business license tax levied by a municipality upon retail telecommunications services, has been amended to provide that to the extent not otherwise provided, “telecommunications service” is those services described in the North American Industry Classification System (“NAICS”) Manual 5171, 5172, 5173, 5174, and 5179, except satellite services exempted by law. Previously, the statute referred to Standard Industrial Classification 481 and NAICS 5133.

Effective Date: January 1, 2005

Senate Bill 552 (Act No. Unassigned)

Fees for Certain License Plates

Under Code Section 56-3-2332, a manufacturer of vehicles who withdraws vehicles to be used in an employee benefit program or for testing, distribution, evaluation, or promotion, must pay an annual registration fee and receive a standard license plate for each of the vehicles. This joint resolution provides that notwithstanding the annual fee prescribed pursuant to Code Section 56-3-2332 (\$880), for years 2003 and 2004, the registration fee will be \$766, \$20 of which will be credited to the general fund and the remainder being given to local governments.

Effective Date: May 14, 2003

Senate Bill 508 (Act No.17)

Continuance in Court Case for Reserve Duty

Code Section 25-1-2260, relating to judge's duty to grant a continuance in a court case when a party to it or his leading attorney is absent from court when the case is reached because he is on active duty as a member of the National Guard, has been expanded to provide that this duty to grant a continuance also applies to a party or leading attorney who is absent from court by reason of his attendance on active duty as a member of the reserves.

Effective Date: April 21, 2003

Senate Bill 204 (Act No. 39)

Administrative Law Judge – May Authorize Mediation

A taxpayer receiving an adverse determination from the Department has the right to request a hearing from an independent body, the South Carolina Administrative Law Judge Division. Code Section 1-23-630, providing for the powers of an administrative law judge, has been amended to provide that an administrative law judge may authorize the use of mediation in a manner that does not conflict with other provisions of law and is consistent with the Division's Rules of Procedure.

Effective Date: June 2, 2003

REGULATORY MATTERS

House Bill 3749, Part IB, Section 56DD, Proviso 56DD.37 (Act No. 91)

Class Two Coin-Operated Devices Licenses - Fees Increased

This 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.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2003 through June 30, 2004. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2004.

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

This 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.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2003 through June 30, 2004. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2004.

Senate Bill 228 (Act No. 40)

Alcoholic Beverage Licensing – Various Amendments

The provisions concerning the regulation of the sale and consumption of alcoholic liquors, beer and wine are contained in Title 61 and Title 12 of the South Carolina Code of Laws. The various amendments are summarized below.

Amendments pertaining to a special food manufacturer’s license include:

1. Code Section 61-6-710 has been added to require a person who manufactures in this State food items such as sauces and marinades in which there is an alcoholic beverage ingredient and who does so under an agreement with the alcoholic beverage manufacturer to apply for a special food manufacturer’s license from the Department, in accordance with Code Section 61-2-100, in order to purchase the alcoholic beverage directly from the manufacturer in containers holding greater quantities of liquor than are sold to a retail consumer.
2. Code Section 12-33-210 has been amended to add a \$1,000 biennial license for special food manufacturers.
3. Code Section 61-2-175(A) has been amended to allow alcoholic beverages to be shipped directly to a South Carolina resident who holds a valid special food manufacturer’s license.
4. Code Section 61-6-2900, which concerns the shipping of alcoholic liquor into this State, has been amended to allow the shipment of alcoholic liquors to a person who holds a valid special food manufacturer’s license.
5. Code Section 61-6-4050, which makes it unlawful to purchase or procure alcoholic liquors from anyone other than a licensed retail dealer, has been amended to allow the purchase of alcoholic liquors pursuant to a special food manufacturer’s license authorized by Code Section 61-6-710.

Note: The above amendments pertaining to a special food manufacturer's license apply to special food manufacturing licenses applied for after June 30, 2002.

Amendments to Code Sections 61-4-745, 61-6-747, and 12-21-1610, concerning the sale of wine by manufacturers directly to individuals, include:

1. Code Section 61-4-745 has been added to allow a person who is at least 21 and who is a legal South Carolina resident to receive from a manufacturer of wine up to 24 bottles of wine each month for his own consumption or use, and not for resale, without the necessity of acquiring any permits or licenses or other forms of public or private authorization, except for the payment of appropriate taxes.
2. Code Section 61-6-747 has been added to allow a manufacturer of wine located within and without this State that holds a wine producer and blenders basic permit issued in accordance with the Federal Alcohol Administration Act and obtains an out-of-state shipper's license to ship up to 24 bottles of wine each month directly to a resident of this State who is at least 21 for such resident's personal use and not for resale.

Before sending a shipment to a resident of this State, an out-of-state shipper first must file an application with the Department; pay a \$400 biennial license fee; provide to the Department a true copy of its current wine producer and blenders basic permit issued in accordance with the Federal Alcohol Administration Act; and obtain from the Department an out-of-state shipper's license.

Each out-of-state shipper licensee must not ship more than 24 bottles of wine each month to a person; ensure that all containers of wine shipped directly to a resident in this State are labeled conspicuously with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY"; report to the Department annually, by August 31, the total amount of wine shipped into South Carolina the preceding year; annually, pay all sales taxes and excise taxes due on sales to South Carolina residents in the preceding calendar year, with the amount of the taxes to be calculated as if the sale were in this State at the location where delivery is made; permit the Department to perform an audit of the out-of-state shipper's records upon request; and be deemed to have consented to the jurisdiction of the Department or another state agency and the courts of South Carolina concerning enforcement of this section and any related laws.

The out-of-state shipper must pay a \$400 license renewal fee and provide the Department a true copy of its current alcoholic beverage license issued in another state on or before August 31 of each applicable year.

A shipment of wine from out-of-state direct to consumers in this State from persons who do not possess a current out-of-state shipper's license is prohibited and a person who knowingly makes, participates in, transports, imports, or receives such a shipment from out-of-state is guilty of a misdemeanor and, upon conviction, must be fined \$100. A shipment of wine which violates any provision of this item is contraband. Without limitation on any punishment or remedy, criminal or civil, a person who knowingly makes, participates in,

transports, imports, or receives a shipment from out-of-state from a person who does not possess a current out-of-state shipper's license has committed an unfair trade practice.

3. Code Section 12-21-1610 has been amended to delete the provision that allowed an individual to import up to ten cases of beer or wine into South Carolina for personal use and consumption, and not for resale. The importation of beer or wine for personal use or consumption is now authorized and regulated under Code Sections 61-4-745 and 61-4-747.

Various other amendments include:

1. Code Section 61-6-1500, which establishes certain restrictions on the sale of alcoholic liquors by retail dealers, has been amended to allow a retail dealer to sell alcoholic liquors in 100 milliliter containers provided that such containers are packaged together into a single unit of not less than four 100 milliliter containers.
2. Code Section 61-2-80 has been amended to change the first paragraph to state: "The State, through the department, is the sole and exclusive authority empowered to regulate the operation of all locations authorized to sell beer, wine, or alcoholic liquors, is authorized to establish conditions or restrictions which the department considers necessary before issuing or renewing a license or permit, and occupies the entire field of beer, wine, and liquor regulation except as it relates to hours of operation more restrictive than those set forth in this title."

Effective Date: June 2, 2003, unless otherwise noted.

Senate Bill 407 (Act No. 70)

Alcoholic Beverage Licensing – Various Amendments

Various amendments to the alcoholic liquor and beer and wine laws are summarized as follows:

1. Code Section 61-6-1640 has been added to allow establishments licensed under Article 5 of Chapter 6 of Title 61 (*e.g.*, restaurants, hotels, and nonprofit clubs) to conduct samplings of wines in excess of 16% alcohol, cordials, and distilled spirits, if the sampling is conducted as follows:
 - a. The establishment must have a permanent seating capacity of 50 or more persons
 - b. Samples may not be offered from more than four products at any one time
 - c. The sampling must be held in the bar area of a licensed establishment and all open bottles must be visible at all times. All open bottles must be removed at the conclusion of the tasting.
 - d. Samples must be less than one-half ounce for each product sampled

- e. A person may not be served more than one sample of each product
 - f. Sampling may not be offered for more than four hours
 - g. At least five days before the sampling, a letter detailing the specific date and hours of the sampling must be mailed first class to the South Carolina Law Enforcement Division
 - h. A sample may not be offered to, or allowed to be consumed by, an intoxicated person or a person under the age of 21
 - i. A licensed establishment may not offer more than one sampling each day, and
 - j. The sampling must be conducted by the manufacturer or wholesaler or an agent of the manufacturer or wholesaler.
2. Code Section 12-21-1040, which established a different tax rate for domestic wines, has been repealed. This statute has been ruled unconstitutional by a South Carolina Circuit Court and similar statutes have been held to be unconstitutional by the U.S. Supreme Court. The definition for “domestic wine” in Code Section 12-21-1010(5) has been deleted since it was unnecessary.
 3. Code Section 61-2-135 has been added to provide that when a person licensed to sell alcoholic liquor or beer and wine moves his business to a new location in the same county that was licensed in the same manner within 90 days of the time of the move, the person may use his current license and is not required to initiate a new application upon approval by the Department.
 4. Code Section 61-4-120, concerning the restriction as to the hours of operation for the sale of beer and wine, has been amended to eliminate the provision that municipal ordinances in conflict with Code Section 61-4-120 are unenforceable. This change was necessary to conform to the amendment of Code Section 61-2-80 in Senate Bill 228 (Act No. 40) that allows municipalities and counties to establish hours of operation more restrictive than those set forth in the alcoholic beverage laws of Title 61.
 5. Code Section 61-6-2010, which allows counties and municipalities to hold referendums concerning Sunday sales of alcoholic liquor in minibottles at licensed locations, has been amended to allow the county or municipality to present for the voters’ approval one of two proposals. One proposal, if approved by the voters, would allow the Sunday possession, sale, and consumption of alcoholic liquors in minibottles at locations of bona fide nonprofit organizations and restaurants and hotels licensed to sell alcoholic liquors in minibottles. The second proposal, if approved by the voters, would allow the Sunday possession, sale, and consumption of alcoholic liquors in minibottles at locations of bona fide nonprofit organizations and restaurants and hotels licensed to sell alcoholic liquors in minibottles and the Sunday sale of beer and wine for off-premises consumption at permitted off-premises locations, such as grocery stores and convenience stores. In addition, a technical correction

was made to Code Section 61-4-510(A) to comply with the changes made in Code Section 61-6-2010.

6. Code Sections 61-4-520(9)(d) and 61-6-180(B)(4), which concern the application requirement for obtaining a beer and wine permit and an alcoholic liquor license, have been amended to increase the size of the sign posted to give notice to the general public about the type of permit or license being sought and protest information. The sign must cover a space at least 12 inches high and 18 inches wide.
7. Code Section 61-6-500, concerning the possession and consumption of beer, wine, or alcoholic liquors at publicly-owned auditoriums, coliseums, and armories, has been amended to no longer require a permit from the Department in order to possess or consume beer, wine, or alcoholic liquors at these facilities. Beer, wine, or alcoholic liquors may no longer be possessed or consumed at these facilities unless the authority in charge of the facility specifically approves such possession and consumption.
8. Code Section 61-6-1510, which established design and advertising restrictions for retail liquor stores, has been amended to eliminate all previous advertising restrictions and to only prohibit advertising addressed to and intended to encourage persons under 21 to purchase or drink alcoholic liquors or wine.
9. Code Section 61-6-1600, concerning nonprofit organizations licensed to sell alcoholic liquors in minibottles to members and their guests, has been amended to state that an employee or agent of an establishment licensed as a nonprofit organization is prohibited from selling, making available for sale, or permitting the consumption of alcoholic liquors on the licensed premises between the hours of 2:00 a.m. and 10:00 a.m. In addition, a violation of this provision is a violation against the organization's license.
10. Code Section 61-6-1610(B), concerning sales of alcoholic liquors in minibottles at licensed restaurants, has been amended to allow the licensed premises of a restaurant to extend to any portion of the premises designed as or used as the deck of a swimming pool. The statute continues to prohibit the extension of the licensed premises to any portion of the premises designed as or used for a parking area.
11. Code Section 61-6-1610(D) has been added to prohibit a licensed restaurant or hotel from selling, making available for sale, or permitting the consumption of alcoholic liquors on the licensed premises between the hours of 2:00 a.m. and 10:00 a.m. In addition, a licensed restaurant or hotel is prohibited from selling, making available for sale, or permitting the consumption of alcoholic liquors on Sunday unless the establishment has been issued for that Sunday a temporary permit pursuant to the provisions of Code Section 61-6-2010. A violation of this subsection is a violation against the establishment's license.
12. Code Section 61-6-2010, concerning temporary permits that authorize the Sunday sale of alcoholic liquors in minibottles at the licensed premises of nonprofit organizations, restaurants and hotels, has been amended to require the State Treasurer to distribute the fees collected from the issuance of these temporary permits to the municipalities and counties in

which the retailers who paid the fees are located. Previously, the Department distributed these fees.

13. Code Section 61-6-4010, concerning the unlawful manufacture and possession of alcoholic liquors, has been amended to provide an exception for alcoholic liquors manufactured, stored, acquired, possessed transported, sold, transferred or delivered in accordance with the provision of the alcoholic liquor laws of Title 61.
14. Code Section 61-6-4170, concerning unlawful advertising of alcoholic liquors by means of billboards along public highways and streets, has been amended to allow such advertising except when such advertising uses any subject matter, language, or slogan addressed to and intended to encourage persons under 21 to purchase or drink alcoholic liquors.

Effective Date: June 25, 2003

REENACTED TEMPORARY PROVISOS

The following temporary provisions were enacted in prior legislative sessions and were reenacted by the General Assembly in 2003. Temporary provisos are effective for the State fiscal year July 1, 2003 through June 30, 2004, and will expire June 30, 2004, unless reenacted by the General Assembly in the next legislative session.

Administrative and Procedural Matters

House Bill 3749, Part IB, Section 64, Proviso 64.10 (Act No. 91)

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 3749, Part IB, Section 64, Proviso 64.11 (Act No. 91)

20% Collection Assistance Fee Imposed on Unpaid Tax Debt

Under this temporary proviso, tax debts that are at least 120 days old will be assessed a 20% collection fee. This 20% fee is imposed on the overdue tax. The Department may waive the fee to the same extent as if it was a penalty. This proviso applies to all tax debts incurred before December 1, 2002, which remain outstanding on December 1, 2002, and all tax debts incurred after December 1, 2002.

House Bill 3749, Part IB, Section 64, Proviso 64.12 (Act No. 91)

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 3749, Part IB, Section 8, Proviso 8.28 (Act No. 91)

Hospital Tax Revenue

Code Section 12-23-810 imposes a tax on every hospital licensed as a general hospital by the Department of Health and Environmental Control. This temporary proviso requires that the total annual revenues from this tax must equal \$49.5 million, rather than the \$29.5 million provided for by Code Section 12-23-810(C).

House Bill 3749, Part IB, Section 8, Proviso 8.35 (Act No. 91)

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.

REMINDER

The following provision was enacted in 2002, but is effective in 2003. It is summarized below for informational purposes.

Senate Bill 297, Sections 3, 4, and 5 (Act No. 200)

Deed Recording Fee – Portion Credited to SC Conservation Bank Trust Fund

The South Carolina Conservation Bank is established in Chapter 59 of Title 48 for the purpose of making grants and loans to public and private entities to acquire interests in real property worthy of conservation.

Chapter 24 of Title 12 imposes a deed recording fee on transfers of realty, a portion of which is credited to the State's general fund. This Act requires that 25 cents of the State portion of the fee that is credited to the State general fund be credited the South Carolina Conservation Bank Trust Fund. However, in a fiscal year when the General Assembly in the annual general appropriations act provides less appropriations than what was provided for the previous year to at least one-half of the state agencies or departments contained in the budget or in any year when the Budget and Control Board orders across the board cuts to state agencies and departments in the manner provided by law, no further transfer of deed recording fees may be credited to the trust fund for the fiscal year or balance of the fiscal year.

Effective Date: July 1, 2003; however, transfers of deed recording fees to the South Carolina Conservation Bank Trust Fund begin on July 1, 2004, and are repealed effective July 1, 2013, unless reenacted or otherwise extended by the General Assembly. The South Carolina Conservation Bank may continue to operate until the trust fund is exhausted or until July 1, 2016, whichever occurs first.

REGULATIONS

The General Assembly approved 6 documents to amend, add, or repeal various tax and regulatory regulations. The documents are:

Document No. 2809	Income Tax Regulations Reorganization
Document No. 2780	Administrative Regulations Reorganization
Document No. 2781	Miscellaneous Tax Regulations Reorganization
Document No. 2751	Repeal of Tax Board of Review Regulation
Document No. 2807	Alcoholic Beverage Licensing Reorganization
Document No. 2808	New Alcoholic Beverage Licensing Protest Regulation

The following provides a detailed listing of all regulations amended, added, or repealed in each document. The final notice concerning each document, including the text of the new regulations, was published in the State Register on June 27, 2003. A copy of these regulations can be found at www.lpittr.state.sc.us/regnsrch.htm by regulation document number.

In addition, a cross reference table is provided of the recodified regulations by tax type.

Income Tax Regulations Reorganization

The General Assembly approved the repeal of Article 5 of Chapter 117 of the SC Code of Regulations (SC Regulations 117-60 through 117-95.1) and the creation of Articles 12, 18, and 20. Under this reorganization, 15 new regulations concerning income tax, withholding tax, and the corporate license fee and annual reports in Articles 12 (Income Tax), 18 (Withholding) and 20 (Corporate License Fee and Annual Reports) were created. The regulations are combined so that all regulations concerning one subject matter can be found in one place in the regulation code.

Income Tax Regulations Chapter 117, Article 12, Sections 117-600 through 117-899

New Regulation Section	Subject Matter
117-620	General Rules in Determining Legal Residency
117-640	Taxable Income Calculation of Military Personnel, Military Retirees, and their Families
117-670	Reporting Final Income when Planning to Cease Doing Business in State
117-700	Definitions Used in Allocation and Apportionment Provisions
117-705	Allocation of Out of State Income by Resident
117-710	General Allocation and Apportionment Provisions
117-740	Specific Apportionment Provisions
117-750	Definitions Used in the Credit Provisions
117-755	Credit for Individuals for Taxes Paid in Other States
117-850	Specifications for Forms and Other Information Submitted to the Department
117-855	Requirements for Information Returns and Withholding Statements
117-870	Requirements and Liability for Filing of Returns when Ceasing to do Business in SC

Withholding Tax Regulations
Chapter 117, Article 18, Sections 117-900 through 117-999

New Regulation Section	Subject Matter
117-910	Specific Withholding Requirements

Corporate License Fee and Annual Reports Regulations
Chapter 117, Article 20, Sections 117-1000 through 117-1199

New Regulation Section	Subject Matter
117-1000	General Annual Report Provisions
117-1075	Items Included in Gross Receipts

Effective Date: June 27, 2003

**Cross Reference Table
Income Tax Regulations, Withholding Tax Regulations, and
Corporate License Fee and Annual Report Regulations**

Repealed/Former Regulation	New Regulation	Subject Matter
117-61	117-870.1	Stockholders Liable For Tax When Business Operates After Charter Cancelled
117-73	117-700.1	Definition of Related Expense as Used For Allocation
117-74	117-705.1	Allocation of Out-Of-State Income and Losses
117-78	117-850.1	Income Tax Forms and Acceptable Reproductions
117-80.5	117-750.1	Facility Defined
117-81	117-755.2	Tax Credit to Residents of This State Upon Income From a Partnership Taxed in Another State
117-83	117-855.1	Withholding Statements Required with Paper Return
117-87.5	117-705.2	Personal Service Income of a Resident
117-87.9	Repealed	Trucking and Bus Companies
117-87.10	117-1000.1	What Constitutes an Officer of a Corporation
117-87.17	117-710.1	Proper Allocation and Apportionment of Income
117-87.20	117-855.2	Information Returns Not Required to be Given to Certain Entities
117-87.31	117-755.1	Credit for Taxes Paid to a Political Subdivision of a State
117-87.32	117-640.1	Military Pay, Nonservice Income, and Income Earned by Military Spouses
117-87.63	117-640.3	National Guard or Reserve Pension or Retirement Income

Repealed/Former Regulation	New Regulation	Subject Matter
117-87.71	Repealed	Commercial Fishermen
117-87.73	117-740.1	Apportionment of Gain/Losses from Asset Retirement
117-87.77 (part)	117-620.1 and 117-640.2	Legal Residence when Domiciled in a Foreign Country and Legal Residence When Military Personnel is Domiciled in a Foreign Country
117-89.1	117-1075.1	Items Included in Gross Receipts
117-89.2	Repealed	Franchise Tax – Decrease of Capital Stock
117-91.1	Repealed	Nonresident Employees Operating Common Carriers
117-91.7	117-910.1	Determination of Withholding when Receiving Taxable Wages and Exempt Compensation
117-91.10	117-850.2	Rules and Specifications for Nonpaper Methods of Submitting Tax Information
117-93	117-670 and 117.870.2	Reporting Final Income when Planning to Cease Doing Business in State

Note: As part of this regulation reorganization project, the following bank tax regulations and savings and loan tax regulations have been moved to “Miscellaneous” regulations in Article 24, Sections 117-1500 and 117-1550 of the SC Code of Regulations. See Document Number 2781 below.

Repealed/Former Regulation	New Regulation	Subject Matter
117-88.1	117-1550.1	Determining Net Income of Building and Loan Associations
117-88.2	117-1550.2	Earnings Paid to Shareholders
117-88.3	117-1550.3	Measure of Tax
117-92.1	117-1500.1	Entire Net Income
117-92.2	117-1500.2	Method of Reporting
117-92.3	117-1500.3	Federal Income Tax Deduction
117-92.5	117-1500.4	Mergers

Administrative Regulations Reorganization

The General Assembly approved the repeal of Article 1 of Chapter 117 of the SC Code of Regulations and the creation of Article 10. Under this reorganization, 3 new administrative regulations were created. The regulations were combined so that all regulations concerning one subject matter can be found in one place in the regulation code. For example, all issues concerning recordkeeping are in Regulation 117-200 under “subsections” 117-200.1, 117-200.2, and so on.

**Administrative Regulations
Chapter 117, Article 10, Sections 117-200 through 117-299**

New Regulation Section	Subject Matter
117-200	Recordkeeping
117-201	Supplying of Identifying Numbers
117-202	Definitions; Reimbursement for Costs Incurred in Complying with Summons

Effective Date: June 27, 2003

**Cross Reference Table
Administrative Regulations**

Repealed/Former Regulation	New Regulation	Subject Matter
117-1	117-201	Supplying of Identifying Numbers
117-2	117-200.1	Retention of Books and Records and Use of Microfilm Reproduction of Books and Records
117-6	117-202	Definitions; Reimbursement for Costs Incurred in Complying with Summons
117-7	117-200.2	Model Recordkeeping and Retention

Miscellaneous Tax Regulations Reorganization

The General Assembly approved the repeal of Articles 2, 3, and 4 of Chapter 117, the repeal of SC Regulations 117-92.1, 117-92.2, 117-92.3, 117-92.5, 117-88.1, 117-88.2 and 117-88.3, and the creation of Article 24. Under this reorganization, 8 new miscellaneous tax regulations were created. The regulations were combined so that all regulations concerning one subject matter can be found in one place in the regulation code. For example, all issues concerning bank taxes can be found in one regulation under Regulation 117-1500 under “subsections” 117-1500.1, 117-1500.2, and so on.

**Miscellaneous Tax Regulations
Chapter 117, Article 24, Sections 117-1200 through 117-1600**

New Regulation Section	Subject Matter
117-1200	Alcoholic Liquor Taxes
117-1250	Beer and Wine Taxes
117-1300	Coin-operated Devices
117-1350	Deed Recording Fee
117-1400	Electric Power Tax
117-1450	Motor Fuel Tax
117-1500	Bank Tax
117-1550	Building and Loan Association Tax

Effective Date: June 27, 2003

**Cross Reference Table
Miscellaneous Tax Regulations**

Repealed/Former Regulation	New Regulation	Subject Matter
117-10	117-1200.1	Alcoholic Liquors - Sales to Government Reservations
117-11	117-1200.2	Alcoholic Liquors - Purchases by Retail Liquor Dealers
117-12	117-1200.3	Alcoholic Liquors - Collection and Payment of Tax and the Maintaining of Records
117-20	117-1250.1	Beer and Wine - Sales or Exchanges with other Wholesalers
117-21	117-1250.2	Beer and Wine - Change in Distributors
117-30	117-1300.1	Coin Operated Devices
117-31	117-1300.2	Coin Operated Devices
117-38	Repealed	Soft Drink Tax - Exemptions
117-45.2	117-1350	Deed Fee - Assumption of a Mortgage in the Conveyance of Real Property
117-49	117-1400	Electric Power - Classification of Industrial Customers
117-51	117-1450	Road Tax - LP Gas
117-92.1	117-1500.1	Bank Tax - Entire Net Income
117-92.2	117-1500.2	Bank Tax - Method of Reporting
117-92.3	117-1500.3	Bank Tax - Federal Income Tax
117-92.5	117-1500.5	Bank Tax- Merger
117-88.1	117-1550.1	Building and Loan - Determining Net Income of Building and Loan Associations
117-88.2	117-1550.2	Building and Loan - Earnings Paid to Shareholders
117-88.3	117-1550.3	Building and Loan - Measure of Tax

Document Number 2751

Repeal of Outdated Tax Board of Review Regulation 129-1

The General Assembly approved the repeal of Chapter 129 of the Code of Regulations containing only SC Regulation 129-1 concerning the Tax Board of Review. This regulation is not needed since the Tax Board of Review no longer exists due to changes in the law.

Effective Date: June 27, 2003

Document Number 2807

Alcoholic Beverage Licensing Regulations Reorganization

The General Assembly approved the repeal of Articles 1 through 5 of Chapter 7 of the SC Code of Regulations (SC Regulations 7-1 through 7-99) and the creation of Articles 6, 7, 8, and 9 of Chapter 7. Under this reorganization, 19 new alcoholic beverage licensing regulations were created. The regulations were combined so that all regulations concerning one subject matter can be found in one place in the regulation code.

In addition, most regulations have several “subsections” numbered in a manner to allow future issues concerning the subject matter to be added in the same place in the regulation code as other similar issues. For example, all issues concerning the requirements for a retail location licensed to sell minibottles for on-premise consumption can be found in one regulation under Regulation 7-401. This regulation has several “subsections” numbered 117-401.1, 117-402.2, and so on.

This reorganization also combined several regulations that dealt with the same subject matter for each type of alcoholic beverage (liquor, beer or wine) and placed this single regulation in a “General Provisions” article. For example, the proposal combines all regulations concerning applications for permits and licenses into one regulation applicable to liquor licenses and beer and wine permits.

Regulation 7-200.1(D) and Regulation 7-701.5 were changed to reflect recent legislation concerning the issuance of licenses and permits to publicly traded corporations and the increase in the alcoholic content of natural wine. Provisions prohibiting any inducements to purchase liquor, now found in Regulation 7-43, have been deleted to reflect recent legislation. In addition, Regulations 7-300.5, 7-400(D), 7-401.3(B)(2), and 7-404 include longstanding Department policy regarding removal of liquor from a retail liquor store after closing, the definition of “luggage compartment,” the amount of refrigerated space in a kitchen, the requirement of having a stove in a kitchen and the disposal of empty or broken sealed minibottles. Requirements for the storage space in a retail liquor store, now found in SC Regulation 7-58, have been deleted as outdated.

Alcoholic Beverage Licensing Regulations
Chapter 7, Articles 6, 7, 8, and 9, Sections 7-200 through 7-800

New Article Number	New Regulation Section	Subject Matter
Article 6:		General Provisions
	7-200	General Provisions
Article 7:		Alcoholic Liquors
Subarticle 1		General Provisions Applicable to Alcoholic Liquors
	7-300	Purchases, Transfers, and Deliveries
	7-301	Restrictions
	7-302	Underage Violations
	7-303	Measurements from Location to School, Church, or Playground
Subarticle 2		Minibottles
	7-400	Definitions
	7-401	Requirements for Premises
	7-402	Purchases of Minibottles
	7-403	Private Functions
	7-404	Destruction of Two-Ounce Container
Subarticle 3		Retail Liquor Stores
	7-500	Requirements of Premises
	7-501	Open Containers of Wine as well as Alcoholic Liquors in Retail Liquor Stores
Subarticle 4		Food Preparation License
	7-600	Definitions
	7-601	Storage and Inventory
	7-602	Violations
Article 8:		Beer and Wine
	7-700	Definition of Licensed Premises
	7-701	Restrictions on Sales
	7-702	Purchases, Transfers, and Deliveries to and from Retail Locations
Article 9:		Hospitality Cabinets in Hotel Rooms
	7-800	Hospitality Cabinets

Effective Date: June 27, 2003

**Cross Reference Table
Alcoholic Beverage Licensing Regulations**

Repealed/Former Regulation	New Regulation	Subject Matter
7-1	7-400	Definitions
7-2	7-200.1	Applications
7-5	7-200.3	Display of Licenses
7-6	7-401.1	Licensed Premises
7-7	7-200.2	Maintenance of Records
7-9	7-200.4	Purchase or Possession by Person Under Twenty-One Years of Age
7-10	7-200.1	Retail Liquor Dealers
7-11	7-303	Measurements
7-12	7-401.2	Lighting of Licensed Establishments
7-13	7-404	Destruction of Two-Ounce Containers
7-14	7-403	Private Functions
7-15	7-402	Purchase from Retailers by Agents
7-16	7-402	Purchase of Minibottles from Retail Liquor Dealers
7-17	7-401.4	Sale and Consumption at Nonprofit Organizations
7-19	7-401.3	Restaurants
7-20	7-600	Definitions
7-21	7-200.1	Application
7-22	7-200.3	Display of License
7-23	7-601.1	Storage
7-24	7-601.2	Inventory
7-26	7-602	Violations
7-27	7-201.1	Stipulations
7-31	7-200.4	Possession or Consumption of Alcoholic Liquors by Person Under Twenty-One Years of Age
7-33	7-200.2	Records to be Maintained on Licensed Premises
7-35	7-300.4	Transfer of Alcoholic Liquor Between Retail Stores
7-36	7-300.2	Purchases by Retail Dealer from Licensed Wholesaler Only; Purchases for Exclusive Use Prohibited
7-37	7.301.1	Retail License by Wholesaler Prohibited - No Interest in Retail Store
7-38	7-300.5	Liquor Not to be Removed During Restricted Hours
7-40	7-701.5	Removal from Licensed Premises to Customer's Vehicle
7-43	Repealed	Inducement to Purchase Liquor Prohibited

Repealed/Former Regulation	New Regulation	Subject Matter
7-47	7-701.1	Beer Containing Over 5% Alcohol Prohibited
7-50	7-200.1	Corporate Change of Officers Does Not Require New License
7-52	7-302	Underage Violations - Multiple Offenses
7-53	7-300.1	Delivery by Wholesaler to Licensed Retailer Only
7-55	7-303	Measurements from Location to School, Church, or Playground
7-56	7-300.6	Credit Cards Allowed for the Purchase of Liquor
7-58	Repealed	Storage Areas in Retail Stores
7-60	7-500	Merchandise Other Than for Wines or Alcoholic Liquors Cannot be Advertised or Displayed
7-61	Repealed, see Section 61-6-1500	Time of Sale
7-62	7-501	Open Containers of Wine as well as Alcoholic Liquors in Retail Liquor Stores
7-63	7-300.3	Dishonored Checks to Wholesalers
7-64	7-800	Hospitality Cabinets
7-70	7-200.4	Person Under 21- Violation to Allow Possession and Consumption of Alcoholic Liquors on Premises
7-71	7-200.4	Person Under 21- Violation to Allow Possession and Consumption of Beer or Wine on Premises
7-72	7-701.4	Wines Sold by Beer and Wine Wholesalers
7-74	7-200.1	Partnership - Change to Corporation Must Have New Permit
7-77	7-701.1	Beer Not to Exceed 5% Alcohol by Weight
7-78	7-200.1	Change of Corporate Officers Does Not Require a New Permit
7-79	7-200.3	Beer and Wine Permits Must be Displayed
7-81	7-700	Definition of Licensed Premises
7-83	7-702.2	Beer and Wine Must be Delivered to Licensed Premises by Wholesaler
7-85	7-701.3	Vending Machines for Beer Prohibited
7-86	7-702.1	Delivery or Removal of Beer and Wine During Restrictive Hours Prima Facie Evidence of Sale
7-88	7-200.1	Stipulations, Acceptance of
7-89	7-701.2	USDA Food Stamps Not Accepted in Payment for Beer or Wine
7-91	7-702.3	When Beer Sold on Credit, Dishonored Check, etc.

Repealed/Former Regulation	New Regulation	Subject Matter
7-92	7-702.4	Sales by Retailer to Another Retailer for Resale
7-93	7-200.1	Beer and Wine Permit and Sale and Consumption License Must be in the Same Name
7-95	7-200.1	Refund on Permit Applications
7-98	Repealed, see Section 61-2-170	Drive-In/Drive-Thru Establishments Prohibited
7-99	7-200.5	Sign Required Under Sections 61-4-70 and 61-6-1530; Size and Lettering

Document Number 2808

Alcoholic Beverage Licensing Protests – New Regulation 7-201

The General Assembly approved Regulation 7-201 concerning the requirements for protesting the issuance or renewal of beer or wine permits or alcoholic liquor licenses, including, but not limited to, the information a protest must contain and what constitutes a timely protest.

Effective Date: June 27, 2003

WARNING: THE GOVERNOR HAS NOT SIGNED OR VETOED SENATE BILL 516 or HOUSE BILL 3641, THEREFORE, THESE BILLS ARE NOT IN EFFECT. THESE BILLS HAVE BEEN SUMMARIZED FOR YOUR REFERENCE ONLY.

Senate Bill 516, Section 1

Job Tax Credit – “New Job” Includes Certain Transfers to a Manufacturing Facility

Code Section 12-6-3360, providing a job tax credit to a qualifying business creating and maintaining new, full time jobs in South Carolina at the time a new facility or expansion is initially staffed, has been amended. Subsection (M)(3), defining the term “new job,” has been amended to add the following provision to the definition:

Notwithstanding any other provision of law, “new job” includes jobs created by a taxpayer when the taxpayer hires more than 500 full time individuals: (1) at a manufacturing facility located in a county classified as least developed; (2) immediately before their employment by the taxpayer, the individuals were employed by a company operating under Chapter 11 of the United States Bankruptcy Code; and (3) the taxpayer, as an unrelated entity, acquires as of July 10, 2002, substantially all of the assets of the company operating under Chapter 11 of the United States Bankruptcy Code.

The effective date of this bill is for taxable years beginning after 2002, where the job tax credit was earned after June 1, 2002.

Senate Bill 516, Section 2

License Fee Base Modified for Certain Holding Companies

Code Section 12-20-50, imposing an annual license fee on the capital and paid in surplus of a corporation, has been amended. Subsection (C) has been added to provide that a holding company may reduce its paid in capital by the portion of contributions to capital received from its parent corporation that is directly or indirectly used to finance a subsidiary’s expansion costing in excess of \$100 million, which on the date construction is started is located in an Economic Impact Zone as defined in Code Section 12-14-30. A reduction is only allowed for the paid in capital of the holding company attributable to this contribution to capital for expansion.

No reduction is allowed unless the expansion is completed within 3 years of the first contribution to capital received by the holding company. This limitation may be extended by the Department upon written application and for good cause. Amounts previously excluded in paid in capital

under this subsection must be included in the first license tax year beginning after the period allowed for the expansion if the expansion is not timely completed.

This bill applies to increases in capital over the prior year's capital on January 1, 2003, and thereafter.

House Bill 3641

South Carolina Community Economic Development Act and Community Development Corporation Investment Credit

The South Carolina Community Economic Development Act was added to Chapter 43 of Title 12 in the 2000 legislative year and was effective for tax years beginning after 2000. Code Section 12-6-3530 was also added to provide an income tax, bank tax, or insurance premium tax credit equal to 33% of an investment (subject to certain exceptions) in a community development corporation or community development financial institution. These provisions were scheduled to terminate on June 30, 2005, and the laws governing, authorizing, and otherwise dealing with community development corporations and community development financial institutions were deemed repealed on June 30, 2005. This amendment extends the repeal date of these provisions until June 30, 2010.

FEE IN LIEU OF PROPERTY TAXES GENERAL SUMMARY

1. INTRODUCTION

General Information. Under Article X of the South Carolina Constitution, manufacturing real or personal property is assessed at 10.5% of its fair market value. Commercial personal property is assessed at 10.5%, while commercial real property is assessed at 6%. To promote the growth of manufacturing within this State, the Legislature enacted three Fee in lieu of property tax statutes (referred to as “Fee in lieu” or “Fee”).

The first Fee in lieu statute was enacted in South Carolina Code §4-29-67 and is commonly referred to as the “Big Fee.” The second statute is contained in Chapter 12 of Title 4 and is commonly referred to as the “Little Fee.” The third statute is contained in Chapter 44 of Title 12 and is referred to as the “Simplified Fee.” Special Fee in lieu provisions exist for very large investments. These provisions are known as the “Super Fee” with respect to the Little and Big Fee and as the “Enhanced Investment Fee” with respect to the Simplified Fee.

Property subject to the Fee usually consists of land, improvements to land, and/or machinery and equipment (excluding some mobile property) located at a project. See South Carolina Revenue Rulings #93-7 and #97-21. The Fee statutes permit a company to negotiate to pay a Fee instead of paying property taxes. The 10.5% assessment ratio can be, and often is, negotiated to 6% (4% for very large investments under the Super Fee or Enhanced Investment Fee.) In addition, the company and the county can agree to freeze the millage rate applicable to the property at a set millage rate, or adjust the millage rate every five years, for the period the Fee is in effect. During the period of the Fee, the value of personal property is deemed to decrease each year by the depreciation allowable for property tax purposes subject to a floor on the value. The value of real property remains constant, and therefore, is not subject to inflation. The period of the Fee generally is 20 years for each item of property (30 years for the Super and Enhanced Investment Fee) with an overall limit for the project of 30 years (or 40 years for the Super and Enhanced Investment Fee).

Calculations of the Fee must incorporate any property tax exemptions for which the property may be eligible, except for the five year exemptions from county property taxes allowed for manufacturing property (Section 3(g) of Article X of the South Carolina Constitution and South Carolina Code §12-37-220(A)(7)), corporate headquarters and corporate office or distribution facilities (South Carolina Code §12-37-220(B)(32)), and research and development facilities (South Carolina Code §12-37-220(B)(34)). South Carolina Code §§4-12-30(E), 4-29-67(E), and 12-44-50(A)(2).

Example. The following example shows the savings from reducing the assessment ratio from 10.5% to 6%. Savings are also available from freezing the millage rate and the value of real property.

	NORMAL CALCULATION	FEE IN LIEU CALCULATION
Total Investment in Equipment	\$100,000,000	\$100,000,000
Total Investment less Depreciation	\$ 89,000,000	\$ 89,000,000
Assessment Ratio	x 10.5%	x 6%
Assessment Value	\$ 9,345,000	\$ 5,340,000
Millage	x .250	x .250
Tax Due	\$ 2,336,250	\$ 1,335,000
Savings		\$ 1,001,250

This synopsis begins with a general summary of the Little Fee, and is followed by a summary of the Big Fee, the Simplified Fee, the Super and Enhanced Investment Fees, and Special Source Revenue Bonds. Since this summary is necessarily a simplification, interested taxpayers and their representatives should review the statutes. For example, many transitional rules applicable to some projects that are already paying the Fee in lieu of property taxes under prior statutes are not included.

Please note, due to statutory changes and transitional rules, pre-existing agreements may not be subject to some, or all, of the provisions discussed below and may be affected by other provisions.

2. LITTLE FEE

Steps in the Little Fee Process. In connection with the Little Fee, there are a series of steps and/or agreements which must be completed:

1. Project identification – The county must identify the project or proposed project. This may be accomplished by the adoption of an inducement resolution or similar resolution by county council.
2. Inducement agreement – The company and the county must enter into an inducement agreement. This agreement establishes that a company will receive the Fee as an inducement for locating in the county. The company entering into the Fee is known as the “sponsor.”

3. Millage rate agreement – The sponsor and the county may enter into a millage rate agreement which fixes the millage rate for the entire Fee period or fixes it for the first 5 years and provides that it will be revised every 5 years. If the sponsor and the county do not execute a millage rate agreement, the millage rate is usually fixed in the inducement agreement or the lease agreement.
4. Transfer of the property to the county – Title to the property must be transferred to the county.
5. Lease or lease purchase agreement – The sponsor and the county may enter into one or more lease agreements. This agreement leases the property from the county back to the sponsor and usually provides for the sale of the property to the sponsor at the end of the Fee period for a nominal sum. If there is a series of these agreements, the first is referred to as the initial lease agreement. A definition of “lease agreement” is provided in South Carolina Code §4-12-10(5).
6. Financing agreement – There may be one or more financing agreements, which may include special source revenue bonds issued pursuant to South Carolina Code §4-29-68. (See the discussion of special source revenue bonds in Section 6 below.)

Some of these steps are often combined and there may be a number of transfers and lease agreements for one project.

Location of Project. The project must be located in a single county, in a multi-county industrial park, or if certain agreements are made with the counties, the property may straddle contiguous counties. South Carolina Code §4-12-30(B).

County Must Make Findings of Public Purpose. Before a project may qualify for the Little Fee, the county council must make all of the following findings:

1. The project is anticipated to benefit the general public welfare of the locality by providing services, employment, recreation, or other public benefits not otherwise provided locally.
2. The project gives rise to no pecuniary liability of the county or any municipality or a charge against its general credit or taxing power.
3. The purposes to be accomplished by the project are proper governmental and public purposes and the benefits of the project are greater than the costs. The county may seek the assistance and advice of the Board of Economic Advisors or the Department in making its findings. South Carolina Code §4-12-30(B)(5).

Every lease agreement must contain a provision obligating a sponsor to maintain the project and carry insurance on the project. South Carolina Code §4-12-30(B)(6).

Required Investment and Timing of Investment. Generally, the required investment must be made by a sponsor. In many instances, a sponsor affiliate may also qualify for the Fee. A “sponsor” is defined as “one or more entities which sign the inducement agreement with the county and also includes a sponsor affiliate unless the context clearly indicates otherwise.” South Carolina Code §4-12-10(3). “Sponsor affiliate” is defined as “an entity that joins with or is an affiliate of a sponsor and that participates in the investment in, or financing of, a project.” South Carolina Code §4-12-10(4).

To qualify for the Little Fee, the minimum investment in the project by a sponsor is \$5 million. However, this investment amount is reduced to \$1 million for a sponsor investing in a county with an average annual unemployment rate of at least twice the state average during the last 24 months based on data available on November first. (The Department publishes an information letter annually listing the qualifying counties.) Additionally, the \$1 million investment is deemed met if a sponsor is a nonresponsible party in a voluntary cleanup on the property pursuant to Article 7, Chapter 56 of Title 44, the Brownfields Voluntary Cleanup Program, where the cleanup costs are at least \$1 million and the South Carolina Department of Health and Environmental Control has issued a certificate of completion of the cleanup. South Carolina Code §4-12-30(B)(3).

Each sponsor and sponsor affiliate must invest the minimum investment. South Carolina Code §4-12-30(B)(4)(a). However, in the case of a manufacturing, research and development, corporate office, or distribution facility, as defined in South Carolina Code §12-6-3360(M), each sponsor or sponsor affiliate does not have to invest the \$5 million if the total investment at the project exceeds \$10 million. South Carolina Code §4-12-30(B)(4)(b).

A sponsor must complete its required investment in the project within 5 years of the end of the property tax year in which the sponsor and the county execute the initial lease agreement. If the sponsor does not expect to complete the project within this 5 year period, it may apply to the county before the end of the 5 year period for an extension of up to 5 years to complete the project. Even if an extension to complete the project is granted, the required minimum investment must be made before the end of the initial 5 year period. Any relevant statute of limitations is suspended during the time period allowed to make the minimum investment. If the sponsor does not make the required investment within the required time period, all property covered by the Fee will be retroactively subject to a Fee equal to the general property tax. The sponsor must provide to the county the total amount invested in the project for each year during the 5 year investment period. South Carolina Code §4-12-30(C).

A sponsor affiliate that does not originally join in the Fee may later qualify for the Fee if the county approves the addition of the sponsor affiliate for the Fee and the sponsor affiliate invests the minimum investment and agrees to be bound by those portions of the agreement that affect the county. South Carolina Code §4-12-30(B)(4). An agreement may provide for a process of approval of sponsor affiliates. However, all qualifying investments must be made at the same project.

If the property is otherwise eligible for the Little Fee, investment expenditures incurred during the investment period by an entity whose investments are not being counted towards the minimum investment can qualify for the Fee if :

- a. the expenditures are part of the original cost of the property;
- b. the property is transferred to one or more entities which are sponsors or sponsor affiliates whose investments are being considered for minimum investment purposes, and,
- c. the property would have qualified for the Fee if it had been acquired by the sponsor or sponsor affiliate receiving the property.

The income tax basis of the property immediately after the transfer must equal the income tax basis immediately before the transfer, except that if after the transfer, the income tax basis of the property unintentionally exceeds the income tax basis before the transfer, the excess will be subject to a Fee equal to the property tax which would be due without the Fee. South Carolina Code §4-12-30(J).

Period Property May be Subject to Fee. Generally, each piece of Fee property may be subject to the Fee for 20 years. For projects that are completed and placed in service during more than 1 year, each year's investment may be subject to the Fee for 20 years, and the maximum time that all property at the project may be subject to the Fee is 30 years for a project which has been granted an extension. South Carolina Code §4-12-30(C)(4).

Property Eligible for Fee. Property which has been previously subject to property taxes in South Carolina does not qualify for the Fee except for:

1. Land, excluding improvements on the land, on which the new project is to be located, and
2. Property which has never been placed in service in South Carolina.

Repairs, alterations, or modifications to real or personal property which are not subject to the Fee are not eligible for the Fee, even if they are capitalized expenditures. An exception is made for modifications to existing real property improvements which constitute an expansion of the improvements. South Carolina Code §4-12-30(J).

Disposal of Property and Replacement Property. The inducement agreement may provide that when property is scrapped, sold or removed from the project, the Fee will be reduced by the amount of the Fee applicable to the property. If property is removed from the project, but remains within South Carolina, the property becomes subject to property taxes.

The inducement agreement may also provide that any property which is placed in service as a replacement for property that is subject to the Fee will become part of the Fee payment. The following rules apply to replacement property:

1. Title to the property must be held by the county.
2. The replacement property does not have to serve the same function as the property it is replacing.
3. The replacement property qualifies for the Fee only up to the original income tax basis of the Fee property which is being disposed of in the same property tax year. To the extent that the income tax basis of the replacement property exceeds the original income tax basis of the property which it is replacing, the excess is subject to Fee payments equal to regular property taxes.
4. More than one piece of replacement property can replace a single piece of original Fee property.
5. Replacement property is deemed to replace the oldest property subject to the Fee, whether real or personal, which is disposed of in the same property tax year that the replacement property is placed in service.
6. Replacement property is entitled to the Fee payment for the period of time remaining on the Fee period for the property which it is replacing.

If there is no provision in the inducement agreement dealing with replacement property, any property placed in service after the period allowed for investment is subject to Fee payments equal to property taxes under South Carolina Code §4-12-20 or to property taxes if title to the property is held by the sponsor. South Carolina Code §4-12-30(F).

Rollback Taxes. Any property subject to the Fee is not subject to agricultural rollback taxes. South Carolina Code §12-43-220(d)(6).

Timing Investment Expenditures and Purchases. Investment expenditures incurred by a sponsor qualify as expenditures subject to the Fee if the inducement agreement is executed within the time period described below and the property has not previously been subject to property tax in South Carolina. Unless the sponsor has an agreement regarding replacement property, to qualify for the Fee all expenditures must be incurred either: a) prior to the end of the applicable investment period; or, b) if an extension is granted, before the expiration of the additional time allowed to complete the project (usually 5 additional years after the investment period has ended). South Carolina Code §4-12-30(I). Note, the minimum investment must be completed within 5 years.

Inducement Agreement – Timing. Once the project has been identified, the county and sponsor should enter into an inducement agreement. The sponsor and the county have 2 years after the date the county adopts an inducement or similar resolution identifying the project to enter into an inducement agreement. If an agreement is not reached within this 2 year period, any of the property purchased before the inducement

agreement is entered into will not be subject to the Fee. South Carolina Code §4-12-30(I).

Inducement Agreement – Substance. The inducement agreement is the major document of the transaction. It details the responsibility of each party and contains the negotiated assessment ratio and the millage rate, unless a separate millage rate agreement is desired. The sponsor and county may negotiate to use different yearly assessment ratios or different assessment ratios for different levels of investment. Thus, a sponsor may be subject to a 7% assessment ratio in its first year, but may be subject to a 6% assessment ratio in later years. However, the lowest assessment ratio allowed is the lowest assessment ratio for which the sponsor may qualify under the statute. South Carolina Code §4-12-30(D)(5).

Millage Rate Agreement. The millage rate agreement may either fix the millage rate for the entire term of the Fee or increase or decrease the millage rate every 5 years in step with the average actual millage rate applicable in the district where the project is located based on the preceding 5 year period. The initial millage rate used must be no lower than the cumulative property tax millage legally levied by, or on behalf of, all taxing entities within which the subject property is to be located that is applicable either on: a) June 30th of the year preceding the year in which the millage rate agreement is executed or if a millage rate agreement is not executed, when the lease agreement is executed; or, b) June 30th of the year in which the millage rate agreement is executed, or if a millage rate agreement is not executed, when the lease agreement is executed. The millage rate agreement may be executed at any time up to the date the initial lease agreement is executed. South Carolina Code §§4-12-30(D)(2)(b) and (G).

Timing of the Initial Lease Agreement. Property must be transferred to the county and made subject to a lease agreement before the end of the property tax year in which the property is placed in service. The sponsor and county have 5 years from the end of the property tax year in which the inducement agreement is entered into to enter into an initial lease agreement. South Carolina Code §4-12-30(C).

Valuation for Fee Purposes. Generally, for real property, value is the original income tax basis for South Carolina income tax purposes without regard to depreciation, however, in certain instances, fair market value is determined by appraisal. For personal property, the original tax basis for South Carolina income tax purposes less depreciation allowable for property tax purposes is used for valuation without regard to any extraordinary obsolescence of that property. South Carolina Code §4-12-30(D)(2)(a).

Financing Agreements. A sponsor, sponsor affiliate, or a county may enter into any lending, leasing, or financing arrangement with any financing entity concerning all or part of the project (including any lease) regardless of the identity of the income tax owner of the property which is subject to the Fee. South Carolina Code §4-12-30(M).

Amendment of Agreements. The inducement agreement, the millage rate agreement, or both may be amended or terminated and replaced with regard to all matters,

including, but not limited to, the addition or removal of sponsors or sponsor affiliates. However, the millage rate, assessment ratio, and length of the agreement cannot be changed once a millage rate agreement, an inducement agreement that sets the millage rate, or a lease agreement has been executed. South Carolina Code §4-12-30(H).

Transfers of Fee Agreements or Property Subject to the Fee. A sponsor may transfer an inducement agreement, millage rate agreement, lease agreement, or the assets subject to the lease agreement, if it obtains the approval of the county before the transfer or the subsequent ratification of the transfer by the county. However, county approval is not required in connection with transfers to sponsor affiliates since sponsor affiliates must have already received county approval to join in the Fee transaction. County approval is also not required for financing related transactions. To the extent an agreement is transferred, the transferee assumes the current basis that the transferor sponsor had in the real and personal property subject to the Fee for purposes of calculating the Fee. South Carolina Code §§4-12-30(M)(1) and (4).

Recordkeeping Requirements. Any sponsor that engages in a Fee transaction must file all returns, contracts, or other information the Department may require. Also, a copy of the inducement agreement and the lease agreement must be filed with the Department and appropriate county auditors and assessors within 30 days of execution. Fee payments and returns are due at the same time as property tax payments and returns would be due if the property was subject to property tax. The Department may, for good cause, allow up to a 60 day extension of time for filing Fee returns. However, the written request for an extension must be filed on or before the due date of the return. Penalties and interest may apply if a sponsor is late in making a Fee payment or in filing a required return. South Carolina Code §4-12-30(O). To the extent that any Fee form or return is filed with the Department, a copy must also be filed with the county auditor, assessor, and treasurer for the county where the project is located.

Previously, for each Fee transaction, a recapitulation that, included schedules showing the amount and calculation of the Fee for each year of the agreement and the amount to be distributed annually to each of the affected taxing entities, was required. The recapitulation has now been made optional. South Carolina Code §4-12-45.

Termination of Fee and Lease Agreement. If a sponsor fails to make its lease payments, then upon 90 days notice the county may terminate the Fee and lease agreement and sell the property to which the county has title free from any claims of the entity. South Carolina Code §4-12-30(O)(6).

Expiration of Fee Period and Maintaining the Minimum Investment. After the Fee period has expired, the real property that was originally subject to the Fee will be subject to property tax based on the fair market value of the property as of the latest reassessment date for similar taxable property. Personal property will be subject to property taxes based on the then depreciated value applicable to the property under the Fee, and thereafter continuing with the property tax depreciation schedule. South Carolina Code §4-12-30(D)(3). If the sponsor's investment in the property falls below

the minimum investment (based on income tax basis without regard to depreciation) the Fee is no longer available and the sponsor must pay a Fee equivalent to property tax on the property. South Carolina Code §4-12-30(B)(4)(f).

Credit Against the Fee. A county, municipality, or special purpose district that receives proceeds from a Fee may allow a sponsor a credit against the Fee. However, any credit must be used to pay for eligible infrastructure that qualifies under South Carolina Code §4-29-68, *i.e.*, infrastructure and improved and unimproved real estate. A direct payment of cash may not be made to the sponsor for a credit. South Carolina Code §4-12-30(K)(3).

3. BIG FEE

Steps in the Big Fee Process. In connection with the Big Fee, these are the steps and agreements which must be completed:

1. Project identification – The county must identify the project or proposed project. This may be accomplished by the adoption of an inducement resolution or similar resolution by county council.
2. Inducement agreement – The company and the county must enter into an inducement agreement. In the Big Fee, the company or companies that enter into the inducement agreement are referred to as the “sponsor.” This agreement establishes that a sponsor will receive the Fee as an inducement for locating in the county.
3. Millage rate agreement – The sponsor and the county may enter into a millage rate agreement which fixes the millage rate for the entire Fee period or fixes it for the first 5 years and provides that it will be revised every 5 years. If the sponsor and the county do not execute a millage rate agreement, the millage rate is usually provided for in the inducement agreement or the lease agreement.
4. Transfer of the property to the county – Title to the property must be transferred to the county.
5. Lease or lease purchase agreement – The sponsor and the county may enter into one or more lease agreements. This agreement leases the property from the county back to the sponsor and usually provides for the sale of the property to the sponsor at the end of the Fee period for a nominal sum. If there is a series of these agreements, the first one is called the initial lease agreement. A definition of “lease agreement” is in South Carolina Code §4-29-67(A)(1)(b).
6. Financing agreement – There may be one or more financing agreements, which may include the issuance of industrial revenue bonds (which are often purchased by the sponsor leasing the project) and the issuance of special source revenue

bonds pursuant to South Carolina Code §4-29-68. (See the discussion of special source revenue bonds in Section 6 below.)

Some of these steps are often combined and there may be a number of transfers and lease agreements for one project.

Definition and Location of Project. A “project” is any land, building, and other improvements on the land, including water, sewage, and pollution control improvements and all other machinery, apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, and useful by a sponsor. South Carolina Code §4-29-67(A)(1)(c).

The project must be located in a single county, in a multi-county industrial park, or if certain agreements are made with the counties, the project may straddle contiguous counties. South Carolina Code §4-29-67(B).

Required Investment and Timing of Investment. Generally, the required investment must be made by a “sponsor.” A “sponsor affiliate” may also qualify for the Fee. A “sponsor” is defined as “one or more entities which sign the inducement agreement with the county and also includes an sponsor affiliate unless the context clearly indicates otherwise.” South Carolina Code §4-29-67(A)(1)(d). A “sponsor affiliate” means “an entity that joins with, or is an affiliate of, a sponsor and that participates in the investment in, or financing of, a project.” South Carolina Code §4-29-67(A)(1)(e).

To qualify for the Big Fee, the minimum level of investment at the project is \$45 million. However, this investment amount is reduced to \$1 million for a sponsor investing in a county with an average unemployment rate of at least twice the State average during the last 24 months based on data available on November 1st. (The Department publishes an information letter annually listing the qualifying counties.) Additionally, the \$45 million investment is deemed met if a sponsor is a nonresponsible party in a voluntary cleanup on the property pursuant to Article 7, Chapter 56 of Title 44, the Brownfields Voluntary Cleanup Program, where the cleanup costs are at least \$1 million and the South Carolina Department of Health and Environmental Control has issued a certificate of completion of the cleanup. South Carolina Code §4-29-67(B)(3).

Each sponsor or sponsor affiliate must invest at least the minimum investment at the project. However, if a project consists of a manufacturing, research and development, corporate office, or distribution facility as defined in South Carolina Code §12-6-3360(M) and the total investment at the project exceeds \$45 million, each entity may invest less than \$45 million and still qualify for the Fee. South Carolina Code §4-29-67(B)(4).

A sponsor has 5 years to complete its investment and the project from the end of the property tax year in which the initial lease agreement is executed. Any applicable statute of limitations is suspended during the 5 year period to make the minimum investment. If the sponsor does not expect to complete the project within this 5 year

period, it may apply to the county before the end of the 5 year period for an extension of up to 5 years to complete the project. The county's agreement to grant an extension must be in writing and a copy must be delivered to the Department within 30 days of the date the extension is granted. If the minimum investment is not made within the required 5 years, all property covered by the Fee will be retroactively subject to a Fee equal to the property tax. The sponsor must provide to the county the total amount invested in the project for each year during the 5 year investment period. South Carolina Code §4-29-67(C).

A sponsor affiliate that does not originally join in the Fee may later qualify for the Fee if the county approves the sponsor affiliate and the sponsor affiliate agrees to be bound by the agreements, or the relevant portions of the agreements, that affect the county. An agreement may provide for a process of approval of sponsor affiliates, however, all investments must be at the sponsor's project. The Department must be notified in writing of all sponsors and sponsor affiliates that have investments subject to the Fee, within 30 days of execution of a lease agreement. The time period may be extended upon written request. Failure to comply with this requirement will not adversely affect the Fee, but may result in a penalty being imposed. South Carolina Code §4-29-67(B)(4).

Period Property May be Subject to Fee. Generally, each piece of Fee property may be subject to the Fee for 20 years. For projects that are completed and placed in service during more than 1 year, each year's investment may be subject to the Fee for 20 years, and the maximum time that all property at the project may be subject to the Fee is 30 years for a project which has been granted an extension. South Carolina Code §4-29-67(C)(3).

Property Eligible for Fee. Property which has been previously subject to property taxes in South Carolina does not qualify for the Fee except for:

1. Land, excluding improvements on the land, on which the new project is to be located, and
2. Property which has never been placed in service in South Carolina.

Repairs, alterations, or modifications to real or personal property which are not subject to the Fee are not eligible for the Fee, even if they are capitalized expenditures. An exception is made for modifications to existing real property improvements which constitute an expansion of the improvements.

Additionally, property which has been placed in service in South Carolina and subject to South Carolina property taxes and which is purchased in a transaction (other than a transaction between related taxpayers as determined under Internal Revenue Code §267(b)) may qualify for the Big Fee provided the sponsor invests at least an additional \$45 million in the project. South Carolina Code §4-29-67(K).

Disposal of Property and Replacement Property. Under the Big Fee, replacement property can replace original property subject to the Fee, provided the inducement agreement includes a provision allowing for replacement property. The inducement agreement must provide that when property is scrapped, sold, or removed from the project, the Fee will be reduced by the amount of the Fee applicable to the property. If property is removed from the project but remains in South Carolina it becomes subject to property taxes. If there is no provision in the inducement agreement dealing with the disposal of property, the Fee remains fixed. South Carolina Code §4-29-67(F)(1).

The inducement agreement may also provide that any property which is placed in service as a replacement for property that is subject to the Fee will become part of the Fee payment. The following rules apply to replacement property:

1. Title to the property must be held by the county.
2. The replacement property does not have to serve the same function as the property it is replacing.
3. The replacement property qualifies for the Fee only up to the original income tax basis of the Fee property which is being disposed of in the same property tax year. To the extent that the income tax basis of the replacement property exceeds the original income tax basis of the property which it is replacing, the excess is subject to Fee payments equal to regular property taxes.
4. More than one piece of replacement property can replace a single piece of original Fee property.
5. Replacement property is deemed to replace the oldest property subject to the Fee, whether real or personal, which is disposed of in the same property tax year that the replacement property is placed in service.
6. Replacement property is entitled to the Fee payment for the period of time remaining on the Fee period for the property which it is replacing.

If there is no provision in the inducement agreement dealing with replacement property, any property placed in service after the period allowed for investment is subject to Fee payments equal to property taxes, or to property taxes if title to the property is held by the sponsor. South Carolina Code §4-29-67(F)(2).

If the sponsor disposes of property and the sponsor is using the net present value method for determining its Fee, the Fee on the property which is disposed of must be recomputed using the standard Fee method contained in South Carolina Code §4-29-67(D)(2)(a) and to the extent that the amount that would have been paid by the sponsor with respect to the disposed property exceeds the amount it paid under the net present value method, the sponsor must pay the county the difference with the next Fee payment. If the sponsor used the 5 year adjustable millage provision as part of its Fee,

that millage rate must be used in determining the amount that the sponsor would have paid under the standard Fee method. South Carolina Code §4-29-67(F)(1).

Rollback Taxes. Any property subject to the Fee is not subject to agricultural rollback taxes. South Carolina Code §12-43-220(d)(6).

Timing Investment Expenditures and Purchases. Investment expenditures incurred by a sponsor qualify as expenditures subject to the Fee if the inducement agreement is executed within two years of the date the county adopts an inducement resolution; otherwise, only expenditures made after the inducement agreement qualify. Unless the sponsor has an agreement regarding replacement property, to qualify for the Fee all expenditures must be incurred either: a) prior to the end of the applicable investment period; or, b) if an extension is granted, before the expiration of the additional time allowed to complete the project (usually 5 additional years after the investment period has ended). South Carolina Code §4-29-67(I). Note, the minimum investment must be completed within 5 years.

Also, if the property is otherwise eligible for the Big Fee, investment expenditures incurred during the investment period by an entity whose investments are not being counted towards the minimum investment can qualify for the Fee if :

- a. the expenditures are part of the original cost of the property;
- b. the property is transferred to one or more sponsors or sponsor affiliates whose investments are being counted towards the minimum investment; and,
- c. the property would have qualified for the Fee if it had been acquired by the transferee entity (a sponsor or sponsor affiliate) receiving the property.

The income tax basis of the property immediately after the transfer must equal the income tax basis immediately before the transfer, except that if after the transfer, the income tax basis of the property unintentionally exceeds the income tax basis before the transfer, the excess will be subject to a Fee equal to the property tax which would be due without the Fee. To have property that is transferred in this manner qualify for the Fee, the county must agree to its inclusion. South Carolina Code §4-29-67(J).

Inducement Agreement. The inducement agreement is the major document of the transaction. It details the responsibility of each party and contains the negotiated assessment ratio and the millage rate, unless a separate millage rate agreement is desired. The sponsor and county may negotiate to use different yearly assessment ratios or different assessment ratios for different levels of investment. Thus, a sponsor may be subject to a 7% assessment ratio in its first year, but may be subject to a 6% assessment ratio in later years. However, the lowest assessment ratio allowed is the lowest assessment ratio for which the investor may qualify under the statute. South Carolina Code §4-29-67(D)(5).

Millage Rate Agreement. The millage rate agreement may either fix the millage rate for the entire term of the Fee or increase or decrease the millage rate every 5 years in

step with the average actual millage rate applicable in the district where the project is located based on the preceding 5 year period. The initial millage rate used must be no lower than the cumulative property tax millage legally levied by, or on behalf of, all taxing entities within which the subject property is to be located that is applicable either on: a) June 30th of the year preceding the year in which the millage rate agreement is executed, or if no millage rate agreement is executed, the lease agreement; or b) June 30th of the year in which the millage rate agreement is executed, or if no millage rate agreement is executed, the lease agreement. The millage rate agreement may be executed at any time up to the date the initial lease agreement is executed. South Carolina Code §§4-29-67(D)(2) and 4-29-67(G).

Timing of the Initial Lease Agreement. Property must be transferred to the county and made subject to a lease agreement before the end of the property tax year in which the property is placed in service. The sponsor and the county have 5 years from the end of the property tax year in which they enter into an inducement agreement to enter into an initial lease agreement. South Carolina Code §4-29-67(C).

Valuation for Fee Purposes. Generally, for real property, value is the original income tax basis for South Carolina income tax purposes, without regard to depreciation, however, in certain instances, the value is determined by appraisal. For personal property, the original tax basis for South Carolina income tax purposes, less depreciation allowable for property tax purposes, is used for valuation without regard to any extraordinary obsolescence of that property. South Carolina Code §4-29-67(D)(2).

Additional Method of Calculating Fee. Unlike the Little Fee, the Big Fee allows the use of a net present value method of calculating the Fee. The county and the sponsor may provide for an annual payment based on an alternative arrangement yielding a net present value of the sum of the Fees for the life of the agreement that is not less than the present value of the Fee schedule calculated using the equivalent of a 6% (or 4% if applicable) assessment ratio and a fixed millage rate. Net present value calculations must use a discount rate equivalent to the yield in effect for new or existing Treasury bonds of similar maturity as published during the month in which the inducement agreement is executed. Special rules are provided if no yield or bonds of appropriate maturity are available for that month. South Carolina Code §4-29-67(D)(2)(b).

Financing Agreements. A sponsor, sponsor affiliate, or county may enter into any lending, leasing, or financing arrangement with any financing entity concerning all or part of the project, including a sale-leaseback transaction, an assignment, a sublease, or similar arrangement, regardless of the identity of the income tax owner of the property which is subject to the Fee. South Carolina Code §4-29-67(O).

Amendment of Agreements. The inducement agreement, the millage rate agreement, or both, may be amended or terminated and replaced with regard to all matters, including but not limited to, the addition or removal of sponsors or sponsor affiliates. However, the millage rate, assessment ratio, discount rate, and length of the agreement cannot be changed once a millage rate agreement, an inducement agreement that sets

the millage rate, or a lease agreement has been executed. South Carolina Code §4-29-67(H).

Transfers of Fee Agreements or Property Subject to the Fee. A sponsor may transfer an inducement agreement, millage rate agreement, lease agreement, or the assets subject to the lease agreement, if it obtains the approval of the county before the transfer or the subsequent ratification of the transfer by the county. However, county approval is not required in connection with financing related transactions or for transfers to sponsor affiliates. If a Fee agreement is transferred, the transferee assumes the basis that the transferor sponsor had in the real and personal property subject to the Fee for purposes of calculating the Fee. South Carolina Code §4-29-67(O).

Recordkeeping Requirements. A sponsor or sponsor affiliate in a Fee transaction must file all returns, contracts, or other information the Department may require. Also, a copy of the inducement agreement and the lease agreement must be filed with the Department and appropriate county auditors and assessors within 30 days of execution. Fee payments and returns are due at the same time as property tax payments and returns would be due if the property was subject to property tax. The Department may, for good cause, allow up to a 60 day extension of time for filing Fee returns. The written request for an extension must be filed on or before the due date of the return. Penalties and interest may apply if a sponsor or sponsor affiliate is late in making a Fee payment or in filing a required return. To the extent that any Fee form or return is filed with the Department, a copy must be filed with the auditor, assessor, and treasurer for the county where the project is located. South Carolina Code §4-29-67(S).

Previously, for each Fee transaction, a recapitulation that included schedules showing the amount and calculation of the Fee for each year of the agreement, and the amount to be distributed annually to each of the affected taxing entities, was required. The recapitulation has now been made optional. South Carolina Code §4-29-67(W).

Expiration of Fee Period. After the Fee period has expired, the real property that was originally subject to the Fee will be subject to property taxes based on the fair market value of such property as of the latest reassessment date for similar taxable property. Personal property will be subject to property taxes based on the then depreciated value applicable to such property under the Fee, and thereafter continuing with the South Carolina property tax depreciation schedule. South Carolina Code §4-29-67(D)(3).

If a sponsor's investment at the project ever falls below \$45 million, or such greater amount as specified in the inducement agreement or lease agreement, the sponsor or sponsor affiliate will no longer qualify for the Fee. South Carolina Code §4-29-67(B)(4)(b)(iii). However, the sponsor and the county may agree in the agreement that if the sponsor fails to make the required \$45 million investment required for the Big Fee, the sponsor may elect to use the provisions of the Little Fee, including the reduced investment requirement. South Carolina Code §4-29-67(Q).

Except for a failure to meet the minimum investment requirement, any loss of Big Fee benefits is prospective only from the date of noncompliance and only with respect to that portion of the project to which the Fee relates. Certain rules are provided relating to the Fees that can be collected. South Carolina Code §4-29-67(T).

Credit Against the Fee. A county, municipality, or special purpose district that receives proceeds from a Fee may allow a sponsor a credit against the Fee. However, any credit must be used to pay for eligible infrastructure that qualifies under South Carolina Code §4-29-68, *i.e.*, infrastructure and improved and unimproved real estate. A direct payment of cash may not be made to the sponsor for a credit. South Carolina Code §4-12-30(K)(3).

Special Rules for Qualified Recycling Facilities. “Qualified recycling facilities,” as defined in South Carolina Code §12-6-3460(A)(3) (previously South Carolina Code §12-7-1275(A)), may qualify for a Fee equivalent to a 3% assessment ratio. The Fee is available for each item of property for 30 years (for projects placed in service in more than one year, the Fee is available for a maximum of 40 years). If the qualified recycling facility elects to use the net present value calculation, it must use the discount rate equivalent to the yield in effect for new or existing Treasury bonds of similar maturity as published on any day selected by the qualified recycling facility during the year in which the assets are placed in service or in which the inducement agreement is executed. South Carolina Code §4-29-67(V).

4. SIMPLIFIED FEE

Steps in the Simplified Fee Process. In connection with the Simplified Fee, there are fewer steps and agreements which must be completed than those described above for the Little and Big Fee. They are:

1. Project identification – The county must identify the project or proposed project. This may be accomplished by the adoption of an inducement or similar resolution by county council.
2. Inducement resolution – The county council passes an inducement resolution if it was not done when the project was identified. This resolution sets forth the commitment of the county to enter into a Fee agreement concerning the project.
3. Fee agreement – The county and the company must enter into a Fee agreement setting forth the terms of the Fee. The company that enters into the Simplified Fee agreement is the “sponsor.”
4. Financing agreement – There may be one or more financing agreements executed in connection with the transaction.

Location of the Project. The project must be located in a single county, in a multi-county industrial park, or if certain agreements are made with the counties, the property may straddle contiguous counties. South Carolina Code §12-44-40(G).

County Must Make Findings of Public Purpose and Evaluate Project. Before a project may qualify for the Simplified Fee, the county council must make all of the following findings:

1. The project is anticipated to benefit the general public welfare of the locality by providing services, employment, recreation, or other public benefits not otherwise provided locally.
2. The project gives rise to no pecuniary liability of the county or any municipality or a charge against their general credit or taxing power.
3. The purposes to be accomplished by the project are proper governmental and public purposes and the benefits of the project are greater than the costs.

These findings may be determined with the assistance and advice from the Board of Economic Advisors or the Department and the findings must be set forth in an ordinance. South Carolina Code §12-44-40(H).

Required Investment and Timing of the Investment. The required investment must be made by a sponsor. A “sponsor” is defined as “one or more entities which sign the Fee agreement with the county, subject to the provisions of South Carolina Code §12-44-40.” (South Carolina Code §12-44-40 is the general statutory provision granting the Fee.) A “sponsor affiliate” is an entity that joins with, or is an affiliate of, a sponsor, and that participates in the investment in, or financing of, a project. South Carolina Code §§12-44-30(18) and (19).

To qualify for the Simplified Fee, each sponsor must invest \$5 million. This investment, however, is reduced to \$1 million for a sponsor investing in a county with an average annual unemployment rate of at least twice the state average during the last 24 months based on the data available on November 1st. (The Department publishes an information letter annually listing the qualifying counties.) Additionally, the investment requirement is deemed met if a sponsor is a nonresponsible party in a voluntary cleanup on the property pursuant to Article 7, Chapter 56 of Title 44, the Brownfields Voluntary Cleanup Program, where the cleanup costs are at least \$1 million and the South Carolina Department of Health and Environmental Control has issued a certificate of completion of the cleanup. South Carolina Code §§12-44-30(14) and (18).

Also, if a project consists of a manufacturing, research and development, corporate office, or distribution facility, as defined in South Carolina Code §12-6-3360(M), each sponsor is not required to invest \$5 million if the total investment at the project exceeds \$10 million. South Carolina Code §12-44-30(18).

For the Simplified Fee, the investment period begins with the first day that economic development property is purchased or acquired and ends 5 years after the last day of the property tax year in which the first property covered by the Fee is placed in service. The minimum investment must be completed within the investment period. Any relevant statute of limitations is suspended during the time period for making the minimum investment. If the sponsor does not expect to complete the project within this period, it may apply to the county before the end of the period for an extension of up to 5 years to complete the project. An extension of time in which the sponsor must meet the minimum investment requirement is not allowed. The first piece of property must be placed in service no later than the last day of the property tax year that is 3 years from the year in which the county and the sponsor enter into the Fee agreement. South Carolina Code §§12-44-30, 12-44-40, and 12-44-140.

If the minimum investment is not made within the required time period, all property covered by the Fee will be retroactively subject to property taxes as of the commencement date and the sponsor must pay the county a Fee equal to the difference between the Fee actually paid and the taxes that would have been paid if the property had been subject to property tax. South Carolina Code §12-44-140(B). If a sponsor or sponsor affiliate fails to maintain the minimum investment, without regard to depreciation, it will no longer qualify for the Fee. South Carolina Code §12-44-140(C).

The statute allows a “safety net” to a sponsor who commits to an investment above the minimum investment, including an enhanced investment. Even if the sponsor fails to make or maintain the level of investment agreed to in the Fee agreement, the Fee agreement may allow property at the project to continue the benefits of the Fee provided that the minimum investment requirement is met. However, the assessment ratio and exemption period for property must be consistent with those available to a sponsor making the minimum investment. The Fee agreement may also allow for different yearly assessment ratios or different assessment ratios for different levels of investment with limitations on the lowest assessment ratio allowable. South Carolina Code §12-44-100.

If a sponsor or sponsor affiliate is not part of the original Fee transaction but later joins in the Fee transaction, it may do so provided that it invests the minimum investment requirement, it is approved by the county, and it agrees to be bound by those parts of the Fee agreement that affect the county. An agreement may provide for a process for approval of sponsor affiliates, however, all investments must be made at the sponsor’s project. South Carolina Code §12-44-130.

Period Property May be Subject to Fee. To be subject to the Fee, all property must be placed in service during the 10 year period in which a sponsor has to complete the project. Any single piece of property may be subject to the Fee for 20 years. The maximum time that all property at the project may be subject to the Fee is 30 years. South Carolina Code §§12-44-30(2), (8), (13), and (20).

Property Eligible For the Fee. Property which has been previously subject to property taxes in South Carolina does not qualify for the Fee except for:

1. Land, excluding improvements on the land, on which the new project is to be located, and
2. Property which has never been placed in service in South Carolina.

Repairs, alterations, or modifications to real or personal property which are not subject to the Fee are not eligible for the Fee, even if they are capitalized expenditures. An exception is made for modifications to existing real property improvements which constitute an expansion of the improvements.

Additionally, property which has been placed in service in South Carolina and subject to South Carolina property taxes and which is purchased in a transaction (other than a transaction between related taxpayers as determined under Internal Revenue Code §267(b)) may qualify for the Simplified Fee provided the sponsor invests at least an additional \$45 million in the project. South Carolina Code §12-44-110.

Disposal of Property and Replacement Property. Unlike the Little Fee and the Big Fee, title to replacement property under the Simplified Fee is not held by the county, but is held by the sponsor or sponsor affiliate. The Fee must be reduced by the amount of the Fee applicable to property scrapped, sold, or removed from the project. Property which has been removed from the project but which remains in South Carolina is subject to property taxes. South Carolina Code §12-44-50.

The Fee agreement may provide that any property which is placed in service as a replacement for property that is subject to the Fee will become part of the Fee payment. The following rules apply to replacement property:

1. The replacement property does not have to serve the same function as the property it is replacing.
2. The replacement property qualifies for the Fee only up to the original income tax basis of the Fee property which is being disposed of in the same property tax year. To the extent that the income tax basis of the replacement property exceeds the original income tax basis of the property which it is replacing, the excess is subject to payments as if the Fee was not allowed.
3. More than one piece of replacement property can replace a single piece of original Fee property.
4. Replacement property is deemed to replace the oldest property subject to the Fee, whether real or personal, which is disposed of in the same tax year that the replacement property is placed in service.

5. Replacement property is entitled to the Fee payment for the period of time remaining on the Fee period for the property which it is replacing.

If there is no provision in the Fee agreement dealing with replacement property, any property placed in service after the period allowed for investment is subject to property taxes. South Carolina Code §12-44-60.

If the sponsor disposes of property and the sponsor is using the net present value method for determining its Fee, the Fee on the property which is disposed of must be recomputed using the standard Fee method contained in South Carolina Code §12-44-50(A)(1) and to the extent that the amount that would have been paid by the sponsor with respect to the disposed property exceeds the amount it paid under the net present value method, the sponsor must pay the county the difference with its next Fee payment. South Carolina Code §§12-44-50 and 12-44-60.

Rollback Taxes. Any property subject to the Fee is not subject to agricultural rollback taxes. South Carolina Code §12-43-220(d)(6).

Timing Investment Expenditures and Purchases. If the county adopts an inducement resolution within 2 years of the date the county takes action reflecting or identifying the project, then all expenses for property for the Fee may be subject to the Fee. If the inducement resolution is adopted after the 2 year period, then only those expenses incurred after the date of adoption of the inducement resolution qualify for the Fee. South Carolina Code §12-44-40.

The Inducement, Millage Rate, and Lease Agreements. These documents, which are used for the Little and Big Fee, are replaced by the Fee agreement in the Simplified Fee.

Inducement Resolution. The inducement resolution sets forth the commitment of the county to enter into a Fee agreement.

The Fee Agreement. The Fee agreement is the major document of the Simplified Fee transaction. It details the responsibility of each party and contains the negotiated assessment ratio and the millage rate. It is approved by the county through an ordinance and must be executed within 5 years of the inducement resolution in order to have property at the project become property subject to the Fee. Once executed, all property to be covered by the Fee is subject to the Fee for the exemption period. South Carolina Code §§12-44-30(10) and 12-44-40.

The Fee agreement may either fix the millage rate for the entire term of the Fee or increase or decrease the millage rate every 5 years in step with the average actual millage rate applicable in the district where the project is located based on the preceding 5 year period. The initial millage rate must be a cumulative property tax millage legally levied by, or on behalf of, all millage levying entities within which the project is to be located that is applicable either on: a) June 30th of the year preceding the calendar year in which the Fee agreement is executed; or b) June 30th of the calendar year in which

the Fee agreement is executed. South Carolina Code §§12-44-30, 12-44-40, and 12-44-50.

Valuation for Fee Purposes. Generally, for real property, value is the original income tax basis for South Carolina income tax purposes without regard to depreciation. However, in certain instances, the value must be determined by appraisal. For personal property, the original tax basis for South Carolina income tax purposes less depreciation allowable for property tax purposes is used for valuation without regard to any extraordinary obsolescence of that property. South Carolina Code §12-44-50(A)(1)(c).

Additional Method of Calculating Fee. The Simplified Fee may allow the use of a net present value calculation in determining the Fee if the proper investment level is met. A sponsor investing more than \$45 million at the project and the county may agree that the Fee will be based on an “alternative payment method” which is the equivalent of the net present value method in the Big Fee. This method yields a net present value of the Fee schedule as calculated using the methods described in the Big Fee using a fixed millage rate. South Carolina Code §12-44-50.

Financing Agreements. A sponsor may enter into any lending, leasing, or financing arrangement with any financing entity concerning all or part of the project, including any lease concerning all or part of the project, regardless of the income tax owner of the property which is the subject of the Fee. South Carolina Code §12-44-120.

Amendment of Agreements. A Fee agreement may be amended or terminated and replaced with regard to all matters, including, but not limited to, the addition or removal of sponsors and sponsor affiliates; however, the millage rate, discount rate, assessment ratio, and length of the Fee agreement cannot be changed once the Fee agreement is executed. Additionally, if the county council has by contractual agreement provided for a change in the Fee conditioned on a future legislative enactment, a new enactment will not bind the original parties to the Fee agreement unless the change is ratified by the county council. South Carolina Code §12-44-40.

Transfers of Fee Agreements or Property Subject to the Fee. A sponsor may transfer a Fee agreement or the assets subject to the Fee agreement if it obtains the approval of the county before the transfer or the subsequent ratification of the transfer by the county. However, county approval is not required in connection with financing related transactions or transfers to sponsor affiliates. If a Fee agreement is transferred, the transferee assumes the basis that the sponsor transferor had in the real and personal property subject to the Fee for purposes of calculating the Fee. South Carolina Code §12-44-120.

Recordkeeping Requirements. A company who engages in a Fee transaction must file all returns, contracts, and other information the Department may require. Also, a copy of the Fee agreement must be filed with the Department and all appropriate county auditors and assessors within 30 days of execution. Fee payments and returns are due at the same time as property tax payments and returns would be due if the property was

subject to property tax. The Department may allow up to a 60 day extension of time for filing Fee returns. The written request must be filed on or before the due date of the return. Penalties and interest may apply if a company is late in making a Fee payment or filing a required return. The provisions of Chapters 49, 51, and 53 of South Carolina Code Title 12 are applicable to the Fee agreement and for purposes of those chapters the Fee is considered a property tax. To the extent that any form or return is filed with the Department, a copy must also be filed with the county auditor, assessor, and treasurer for the county in which the project is located. South Carolina Code §§12-44-55 and 12-44-90.

Previously, for each Fee transaction, a recapitulation, included schedules showing the amount and calculation of the Fee for each year of the agreement, and the amount to be distributed annually to each of the affected taxing entities, was required. The recapitulation has now been made optional. South Carolina Code §12-44-55.

Termination of the Fee and Fee Agreement. The county and the sponsor may agree to terminate the Fee agreement at any time. If a sponsor fails to make the minimum investment or any other investment or job requirements set forth in the Fee agreement within the applicable time period, the Fee agreement will terminate. Once terminated, all property that was subject to the Fee will be retroactively subject to property tax, subject to the provision described in the “Required Investment and Timing of Investment” section above which may allow a sponsor that has committed to an investment exceeding the minimum investment to retain the benefits of the Fee, even if it does not meet its original agreed to investment.

If the agreement is terminated by agreement or by law and the sponsor was using the net present value method to compute the Fee at the time of termination, the sponsor must pay to the county the difference between the Fee that would have been paid on the property if the Fee had been calculated using the standard fee method and the amount of Fees that were actually paid to the county under the net present value method. South Carolina Code §12-44-140.

Infrastructure Fee Credit. A county can agree to allow the sponsor an “infrastructure improvement credit” against the Fee in an amount not to exceed the lesser of the infrastructure improvement costs of the project or the amount of Fee that the county would otherwise receive. A municipality or special purpose district may also consent to allow a credit against their portion of the Fee.

If the project is located in a multi-county industrial park, the credit cannot exceed the lesser of the improvement costs of the project or the total amount of fees the county is entitled to retain under the multi-county park agreement.

A direct payment of cash may not be made to the sponsor for the credit. South Carolina Code §§12-44-30(12) and 12-44-70.

Transitional Rules for Projects Under Existing Fee. Transitional rules are provided for projects that may be covered by pre-existing Fee arrangements. If the county approves, an entity that has a pre-existing Fee arrangement may transfer property from the existing Fee arrangement and have the property covered by the Simplified Fee provided that there is a continuation of the same Fee payments for any time remaining for the Fee and the appropriate documents are executed. Any new Fee arrangement must continue the provisions and limitations of the prior arrangement. South Carolina Code §12-44-170.

If all or part of the Simplified Fee is declared illegal or unconstitutional, a sponsor has 180 days to transfer title to all Fee property to the county and have it qualify for the Little Fee. South Carolina Code §12-44-160.

5. SUPER AND ENHANCED INVESTMENT FEES

Both the Little and Big Fee contain a provision that allows certain entities to apply for a Super Fee. The Simplified Fee contains an equivalent provision, but calls it an Enhanced Investment Fee. The Super or Enhanced Investment Fee may be equal to what the property tax would have been if the property was assessed at 4%. In addition, if a company qualifies for the Super Fee, the company has 8 years from the end of the property tax year in which the lease agreement is executed to make the required investment and may obtain 10 years to complete the project. If the company is under the Enhanced Investment Fee, the company has from the date it purchases economic development property for the project until 8 years from the last day of the property tax year in which the first piece of Fee property is placed in service to make the required level of investment and may obtain up to 10 years to complete the project. Under the Enhanced Investment Fee, the first piece of property must be placed in service no later than 3 years from the end of the property tax year in which the sponsor and the county enter into a Simplified Fee agreement.

Businesses who have more than \$500 million in capital investment in this State and employ more than 1,000 people in this State, have 10 years to meet the minimum investment requirements of the Super Fee and 15 years to complete their project.

If the property is subject to the Super or Enhanced Investment Fee, qualifying property may be subject to the Fee for 30 years. For those projects placed in service in more than one year, the Fee is available for a maximum of 40 years. South Carolina Code §§4-12-30(C)(3) and (4), 4-29-67(C)(2), (3) and (D)(4), and 12-44-30(8), (13) and (20).

If a business qualifying under the “Big Fee” Super Fee or “Little Fee” Super Fee has more than \$500 million invested in capital in this State and employs more than 1,000 employees in this State, that business will be eligible to have its property at a project subject to the Fee for a total of 45 years.

The following types of companies may qualify for the Super or Enhanced Investment Fee:

1. A single sponsor which invests at least \$200 million, which when added to the previous investments, results in a total investment of at least \$400 million, and which is creating at least 200 new full-time jobs at the project. South Carolina Code §§4-12-30(D)(4)(a)(i), 4-29-67(D)(4)(a)(i), and 12-44-30(7)(a).
2. A single sponsor which invests at least \$400 million and creates at least 200 new full-time jobs at the project. South Carolina Code §§4-12-30(D)(4)(a)(ii), 4-29-67(D)(4)(a)(ii), and 12-44-30(7)(b).
3. A business, including a corporation, its subsidiaries, and its limited liability company members, that build a gas-fired combined-cycle power facility, and invests at least \$400 million at the project and creates at least 25 full-time jobs, as defined in South Carolina Code §12-6-3360(M), at the facility, if they invest an additional \$500 million in this State. South Carolina Code §§4-12-30(D)(4)(a)(iv), 4-29-67(D)(4)(a)(v), and 12-44-30(7)(d).
4. A single sponsor which is investing at least \$600 million in South Carolina. South Carolina Code §§4-12-30(D)(4)(a)(iii), 4-29-67(D)(4)(a)(iii), and 12-44-30(7)(c).

For purposes of all the Fees, the new full-time job requirements described in items 1- 3 above do not apply to any taxpayer which for more than 25 years ending on the date of the agreement paid more than 50% of all property taxes actually collected in the county where it is seeking the Fee. South Carolina Code §§4-12-30(D)(4)(b), 4-29-67(D)(4)(b), and 12-44-30(7).

6. SPECIAL SOURCE REVENUE BONDS

In connection with a Little or Big Fee, a county (or municipality or special purpose district) where the project will be located may issue special source revenue bonds. These special source revenue bonds allow the political subdivision to finance infrastructure projects usually at or surrounding the project that enhance its economic development, and then pay back the bonds with money it receives from the Fee payments from the project. The rules regarding special source revenue bonds are contained in South Carolina Code §4-29-68. Special source revenue bonds cannot be used with the Simplified Fee.

To issue special source revenue bonds, the governing body of the issuer must adopt an ordinance calling for the issuance of the special source revenue bonds, hold a public hearing, and then pass a resolution authorizing the issuance of the bonds. The bonds must be issued solely for the purpose of providing infrastructure that benefits the

issuer's economic development. Bonds may be issued for improved and unimproved real property on which the project will be located.

The face of the bonds must provide that they are payable solely from the proceeds of the Fee, are not secured by the full faith and credit of the issuer, are not payable from any tax or license, and are not a pecuniary liability of the issuer or a charge against the issuer's general credit or taxing power. The bonds can be issued as a single issue or several issues. The bonds can be payable in installments. The bonds may be sold at public or private sale, and the expenses of the issuance of the bonds may be paid out of the bond proceeds.

If the special source revenue bonds are issued to a third party, and the project should fail to generate the necessary Fee payments to pay off the bonds, the company that is subject to the Fee must make up any shortfall.

A county, municipality, or special purpose district that receives and retains revenues from a Fee can also use a portion of the revenue received from the Fee for the purposes of providing infrastructure or unimproved or improved real estate for the project without the requirement of issuing special source revenue bonds.