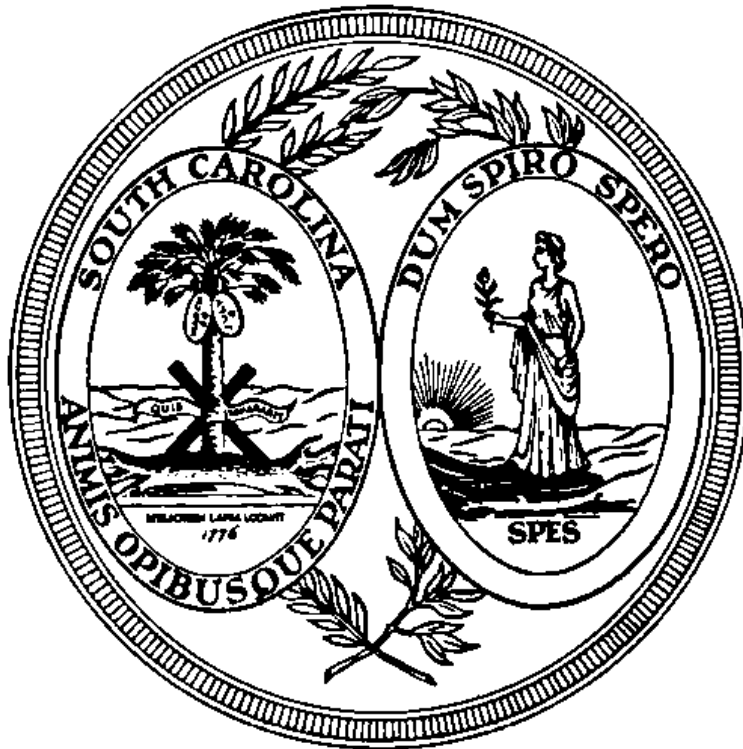


**South Carolina  
Department of Revenue  
Legislative Update  
for 2004**



**Governor Mark C. Sanford  
Burnet R. Maybank III, Director**

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

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South Carolina Department of Revenue  
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# **TAX LEGISLATIVE UPDATE FOR 2004**

Attached is a brief summary of most of the significant changes in tax and regulatory laws and regulations enacted during the past legislative session and a brief summary of pending legislation. The summary is divided into four categories of enacted and pending legislation, by subject matter, as indicated below. There are several instances where more than one bill with related subject matters was ratified by the General Assembly and at this time it is not certain whether one or more will become law. In such cases, 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.

In addition to the tax and regulatory laws summarized below, two other bills that may be of interest to tax professionals are House Bill 4720 (Act No. 279), enacting the “Uniform Electronic Transactions Act” and House Bill 4650 (Act No. 221), an Act in part, adding and amending provisions allowing simple domestication of corporations and mergers and conversions involving multiple types of entities to be easily accomplished. Since many such transactions are not tax exempt, however, the tax consequences should be considered.

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**APPENDIX I:**

**CAUTION:** Also attached for your reference is a brief summary of significant tax and regulatory bills that have not been signed or vetoed by the Governor as of the date of this publication. The Governor is currently reviewing Senate Bill 767, House Bill 1043, House Bill 3065, House Bill 3530, House Bill 4537, House Bill 4709, and House Bill 4735, and has until January 2005 to sign these bills, veto these bills, or let them become law without his signature. Any bills vetoed by the Governor may be overridden by the General Assembly during the upcoming 2005 legislative session. The Department will issue an information letter to inform taxpayers if any of these bills become law. The summary is divided into four categories, by tax type, and can be found as indicated below.

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**APPENDIX II:**

Also attached for your reference is a brief summary of a tax and regulatory bill that has been vetoed by the Governor. The veto of House Bill 5085 may be overridden by the General Assembly during the upcoming 2005 legislative session. The Department will issue an information letter to inform taxpayers if this bill becomes law.

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**DISCLAIMER:**

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

**TEXT OF LEGISLATION:**

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

# INCOME TAXES, CORPORATE LICENSE FEES, AND WITHHOLDING

House Bill 4925, Part IB, Section 73, Proviso 73.19 (Act No. 248)

(See also House Bill 3065, Section 30)

## **Internal Revenue Code Conformity and Exceptions**

This temporary proviso provides that except as otherwise provided, where reference is made to Code Section 12-6-40(A) in Title 12 of the 1976 Code, the section defining Internal Revenue Code, that Internal Revenue Code means the Internal Revenue Code of 1986 as amended through December 31, 2003, and includes the effective date provisions contained in it, for any tax year that ends in 2004 or for estate tax purposes any decedent dying in 2004.

Further, this temporary proviso provides that for purposes of Sections 63 (“Taxable Income Defined”) and 179 (“Election to Expense Certain Depreciable Business Assets”) of the Internal Revenue Code, the amendments made by Sections 103 (“Standard Deduction Marriage Penalty Relief”) and 202 (“Increase Section 179 Expensing”) of the Jobs and Growth Relief Reconciliation Act of 2003, P.L. 108-27 (May 28, 2003) are only effective for taxable years beginning January 1, 2004.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2004 through June 30, 2005. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2005. **Accordingly, this temporary conformity proviso is in effect only for calendar year 2004 income tax returns and for estate tax returns of decedents dying in 2004. Note: See House Bill 3065, Section 30, a pending bill summarized in Appendix I, containing a permanent and codified version of income tax conformity.**

House Bill 4925, Part IB, Section 64, Proviso 64.16 (Act No. 248)

## **K-12 Public Education Contribution Check Off**

This temporary proviso provides for a designation on South Carolina’s individual income tax form enabling a taxpayer to make a contribution toward K-12 public education in South Carolina. The funds are to be used by the Department of Education for use in K-12 education in the manner the General Assembly provides by law.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2004 through June 30, 2005. Unless reenacted by the General Assembly in the

next legislative session, the provisions of this Act expire on June 30, 2005.

House Bill 4925, Part IB, Section 64, Proviso 64.17 (Act No. 248)

**State Park Service Check Off**

This temporary proviso provides for a designation on South Carolina's individual income tax form enabling a taxpayer to make a contribution toward South Carolina State Parks. The funds are to be used by the Department of Parks, Recreation, and Tourism for use in the South Carolina State Park Service in the manner the General Assembly provides by law.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2004 through June 30, 2005. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2005.

House Bill 4925, Part IB, Section 64, Proviso 64.20 (Act No. 248)

**Drug Awareness Resistance Education Check Off – Removed from Tax Form**

This temporary proviso directs the Department to remove the designation on South Carolina's individual income tax form enabling a taxpayer to make a contribution to the Drug Awareness Resistance Education (DARE) Fund. See Code Section 12-6-5080 for information on this fund.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2004 through June 30, 2005. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2005.

House Bill 4925, Part IB, Section 64, Proviso 64.21 (Act No. 248)

**First Steps Check Off – Use of Funds Clarified**

This temporary proviso clarifies that the instructions to the individual income tax form describing the First Steps to School Readiness Fund check off provisions shall be clarified to provide that the funds will be used specifically for children's services from ages 0 to 4. See Code Sections 12-6-5060 and 20-7-9740 for information on this fund.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2004 through June 30, 2005. Unless reenacted by the General Assembly in the

next legislative session, the provisions of this Act expire on June 30, 2005.

House Bill 4925, Part IB, Section 64, Proviso 64.22 (Act No. 248)

**Police Corps Scholarships – Nontaxable for 2003**

This temporary proviso provides that any payments or reimbursements under the Police Corps Scholarship Program shall be deemed to be nontaxable scholarships for South Carolina income tax purposes for the 2003 tax year.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2004 through June 30, 2005. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2005.

House Bill 4527, Section 1 (Act No. 278)

**Reserve Police Officer or Department of Natural Resources Deputy Enforcement Officer – New Individual Income Tax Deduction**

Code Section 12-6-1140(10), providing an individual income tax deduction of an amount to be determined by the Board of Economic Advisors, but no more than \$3,000, for a volunteer firefighter, rescue squad member, or volunteer member of a Hazardous Materials Response Team, has been amended to expand the deduction to include a reserve police officer or Department of Natural Resources deputy enforcement officer.

The following restrictions apply:

1. An individual may receive only one deduction under Code Section 12-6-1140(10).
2. This deduction is allowed to a reserve police officer only if the coordinator-supervisor certifies in writing to the officer that the officer met all requirements of Chapter 28, Title 23 applicable to a reserve police officer for the entire taxable year.
3. This deduction is allowed to a Department of Natural Resources deputy enforcement officer only if the supervisor certifies in writing to the officer that the officer met all requirements of Code Section 50-3-315 for the entire taxable year.
4. The certifications must be on a form approved by the Department that must be filed with the officer's tax return.

Effective Date: Taxable years beginning after 2003.



House Bill 3986, Section 12 (Act No. 172)  
(See also House Bill 3065, Section 3)

### **Tax Moratorium – Technical Correction**

Code Section 12-6-3365 provides a 10 or 15 year moratorium to qualifying taxpayers making a substantial investment and creating a minimum number of new, full time jobs in certain economically depressed South Carolina counties at a type of facility listed in Code Section 12-6-3360(M), the job tax credit statute. The taxpayer must petition, using the procedures in Code Section 12-6-2320(B), to obtain approval to claim the moratorium on corporate income taxes or insurance premium taxes.

This amendment is substantially similar to the amendment made in the 2003 legislative session by Act No. 69 (June 18, 2003) and further clarifies the applicability of the moratorium to insurance premium taxes. Code Section 12-6-3365(C) is amended to provide that the moratorium applies to that portion of the taxpayer's corporate income or premium tax that represents the ratio of the company's new investment in the qualifying county to its total investment in South Carolina.

**Note: See House Bill 3065, Section 3, a pending bill summarized in Appendix I, containing other amendments to the tax moratorium.**

Effective Date: February 18, 2004

Senate Bill 1075, Sections 1 and 2 (Act No. 227)

### **South Carolina Textile Communities Revitalization Act**

The South Carolina Textile Communities Revitalization Act was enacted in Title 6, Chapter 32 to create an incentive for the renovation, improvement, and redevelopment of abandoned textile mills in South Carolina.

The Act provides that a taxpayer who improves, renovates, or redevelops an abandoned textile mill at an eligible site may elect one of the following tax credits:

1. An "income tax credit" provided in Code Section 6-32-40(A)(2) equal to 25% of the rehabilitation expenses; or
2. A "property tax credit" provided in Code Section 6-32-40(A)(1) against real property taxes equal to 25% of the rehabilitation expenses made at the eligible site times the local taxing entity ratio for each local taxing entity that has consented to the credit (limited to 75% of the taxpayer's property taxes due).

The taxpayer must elect whether to claim the income tax credit or property tax credit by providing written notification to the South Carolina Department of Commerce prior to the

date the eligible site is placed in service. If the taxpayer does not obtain the required county approvals or fails to affirmatively make the election before the date the eligible site is placed in service, the taxpayer is deemed to have elected the income tax credit, without the need for a written election.

Income Tax Credit – Code Section 6-32-40(C). If the taxpayer elects the income tax credit, the credit must be taken equally over a 5 year period beginning with the year in which the property is placed in service. Any unused credit may be carried forward to the succeeding 5 years. The credit earned by an “S” corporation must be first used at the corporate level and any remaining credit passes through to each shareholder in a percentage equal to each shareholder’s percentage of stock ownership. The credit earned by a general partnership, limited partnership, limited liability company, or any other entity taxed as a partnership must be passed through to its partners and may be allocated among any of its partners in any manner agreed to by the partners, including an allocation of the entire credit to one partner. The income tax credit in Code Section 6-32-40(A)(2) is in addition to, and does not offset, the state historic tax credit under Code Section 12-6-3535 that an eligible site may be eligible to claim.

Note: A brief summary of the “property tax credit” provisions in Code Section 6-32-40(B) is in the “Property Taxes and Fees in Lieu of Property Taxes” section of this publication.

Definitions. Code Section 6-32-30 provides a list of definitions of terms that are used in the statute. Some of the relevant terms are defined as follows:

1. An “eligible site” is a site that is designed for use or has been used as a textile manufacturing facility or uses ancillary to it and is located in South Carolina.
2. “Abandoned” means that at least 80% of the facilities of the eligible site have been continuously closed to business or nonoperational for at least one year immediately prior to the time the determination is to be made.
3. “Rehabilitation expenses” are the expenses incurred in the rehabilitation of the eligible site, excluding the cost of acquiring the eligible site or the cost of personal property maintained at the eligible site.
4. “Placed in service” means the date upon which the eligible site is suitable for occupancy for the purposes intended.

Repeal of Act. The Textile Communities Revitalization Act in Chapter 32 of Title 6 is repealed on July 1, 2014.

Effective Date: July 1, 2004, and it applies for rehabilitation expenses incurred, without regard to the date such expenses were incurred, for eligible sites placed in service on or after July 1, 2004.

House Bill 4968, Section 3.B (Act No. 299)

**Credit for Production of Commercials**

Code Section 12-6-3560 has been added to provide a nonrefundable credit against state income taxes to a production company that produces a commercial production (*i.e.*, an advertisement, composed of moving images and words, that is recorded on film, videotape, or digital medium in South Carolina) for multi-market distribution by way of television networks, cable, satellite, or motion picture theaters. The credit is not available to a company that produces industrial videos, television broadcasts, cable and satellite networks, and news sporting events.

The credit is earned at the time of the production company's investment in a state certified production. The production company is allowed a tax credit of 10% of the actual South Carolina investment made by it if the total base investment is greater than \$500,000 in the aggregate during the calendar year. Certification by the Department of Commerce must be submitted to the company and the Department of Revenue. Any unused credit can be carried forward for 10 years. A production company applying for the credit must reimburse the Department for any audits required in relation to granting the credit.

The Secretary of the Department of Commerce and the South Carolina Film Commission shall determine the criteria for qualification of a project through adoption of rules and regulations. The State has \$1 million in total tax credits to disburse annually to all eligible companies and it must be distributed in the order an eligible company's application is approved by the Department of Commerce.

Effective Date: July 1, 2004

House Bill 4968, Sections 3.C and 6 (Act No. 299)

**Credits for Investments in a Motion Picture Project or Motion Picture Facility – Repealed/Added**

Code Section 12-6-3510, providing for an income tax credit for an investment in a qualified South Carolina motion picture project and a credit for an investment in a South Carolina motion picture production facility or post production facility, has been repealed effective July 1, 2004. Two similar nonrefundable income tax credits, however, have been added by Code Section 12-6-3570. These new credits are briefly discussed below.

1. Credit for investment in a qualified South Carolina motion picture project. Code Section 12-6-3570(A) allows a taxpayer an income tax credit equal to 20% of the taxpayer's cash investment in a company that develops or produces a qualified South Carolina motion picture project. The total credit a taxpayer may claim for any project may not exceed \$100,000. A taxpayer may claim no more than one credit in

connection with the production of a single qualified South Carolina motion picture project. This credit, when combined with all the taxpayer's other South Carolina income tax credits, cannot exceed 50% of the taxpayer's South Carolina income tax liability. Any unused credit may be carried forward 15 years.

### Qualification

The "taxpayer" eligible for the credit is the person who invests in a qualified motion picture project. With respect to a motion picture equity fund created for the sole purpose of facilitating a slate of qualified South Carolina motion picture projects, the taxpayer is the person who invests in the motion picture equity fund. Credits are allocated to the fund, based upon 20% of the cash value of its investment in a qualified South Carolina motion picture project and distributed to equity fund members based upon the percentage of their interest in the equity fund.

"Investment" means cash. To qualify as "investment," cash must have been expended for services performed in South Carolina, for tangible personal property dedicated to first use in South Carolina, or for real property in South Carolina.

The credit is earned when the cash is spent. If a South Carolina motion picture project fails to meet the statutory requirements within three years from the end of the taxpayer's tax year when the credit was first claimed, then any taxpayer which claimed the credit shall increase its income tax liability in the fourth year by an amount equal to the amount of credits claimed in prior tax years with respect to the motion picture project.

### Definitions

"Motion picture project" means a product intended for commercial exploitation that incurs at least \$250,000 of costs directly in South Carolina to produce a master negative motion picture, whether film, tape, or other medium, for theatrical or television exhibition in the United States and in which at least 20% of total filming days of principal photography, but not fewer than 10 filming days, is filmed in South Carolina. Upon the recommendation of the South Carolina Film Commission, and if appropriate, the Coordinating Council for Economic Development shall certify the motion picture project as a project eligible for this credit.

"Qualified South Carolina motion picture project" means a motion picture project which has registered by submitting its record of allocation of credits and documentation to the Department of Revenue. Before registration, all documentation of a motion picture project required to meet the credit requirements must be received by the Department of Commerce.

2. Credit for investment in a South Carolina motion picture production facility or post production facility. Code Section 12-6-3570(B) allows a taxpayer a credit equal to 20% of the taxpayer's investment in the company that constructs, converts and/or

equips a motion picture production facility or post production facility in South Carolina. The total amount of credit, which may be claimed by all taxpayers with respect to the construction, conversion, and/or equipping of a single motion picture production facility or post production facility may not exceed \$5 million. A taxpayer may claim this credit only one time in connection with a single motion picture production facility and one time for a single post production facility. This credit, when combined with all the taxpayer's other South Carolina income tax credits, cannot exceed 50% of the taxpayer's South Carolina income tax liability. Any unused credit may be carried forward for 15 years.

### Qualification

The taxpayer eligible for the credit is the person who invests in the company that constructs, converts, and/or equips a qualified South Carolina motion picture production facility.

“Investment” means cash or the fair market value of real property with any improvements thereon, or any combination of these. To qualify, cash must have been expended for services performed in South Carolina, for tangible personal property dedicated to first use in South Carolina, or for real property in South Carolina. Investments in the form of real property must be real property located in South Carolina on which facilities are located and can include the fair market value of a lease with a term in excess of 36 months of real property minus the fair market value of any consideration paid for the lease.

The credit is earned when the cash is spent or when qualifying real property is dedicated for use as part of a South Carolina motion picture production facility or South Carolina post production facility. If a South Carolina motion picture production facility or South Carolina post production facility fails to meet the statutory requirements within three years from the end of the taxpayer's tax year when the credit was first claimed, then any taxpayer which claimed the credit shall increase its income tax liability in the fourth year by an amount equal to the amount of credits claimed in prior tax years with respect to the motion picture project, motion picture production facility or post production facility.

No credit is allowed unless the total amount invested in the motion picture production facility is at least \$2 million, exclusive of land costs, or at least \$1million, exclusive of land costs, if the facility is a post production facility. The taxpayer must submit documentation to the Department of Commerce sufficient to confirm this threshold with the application for the credit.

### Definitions

“Motion picture production facility” means a site in South Carolina that contains soundstages designed for the express purpose of film and television production for both theatrical and video release. Production includes, but is not limited to, motion

pictures, made-for-television movies, and episodic television to a national or regional audience. The motion picture production facility site must include production offices, construction shops/mills, prop and costume shops, storage area, parking for production vehicles, all of which complement the production needs and orientation of the overall facility purpose. The term does not include television stations, recording studios, or facilities predominately used to produce videos, commercials, training films, or advertising films.

“Post-production facility” means a site in South Carolina designated for the express purpose of accomplishing the post-production stage of film and television production for both theatrical and video release including the creation of visual effects, editing, and sound mixing. A post-production facility site is not required to contain a soundstage or be physically located at or near soundstages.

Effective Date: July 1, 2004

Senate Bill 560, Section 1 (Act No. 187)

### **Life Sciences Facility – New Incentives**

The South Carolina Life Sciences Act has been added to provide economic development incentives to a “life sciences facility” (*i.e.*, a business engaged in pharmaceutical, medicine, and related laboratory instrument manufacturing, processing, or research and development, including a business under NAICS Code 3254 (Pharmaceutical and Medical Manufacturing) or 334516 (Analytical Laboratory Instrument Manufacturing)).

The following new life science facility incentive provisions have been added. We have been informed that the Code Commissioner has recommended codifying these provisions in Chapter 15 of Title 12:

1. Job Development Credit – Employee Relocation Expenses. The job development credit in Chapter 10 of Title 12 allows businesses approved by the Coordinating Council for Economic Development at the Department of Commerce to obtain a refund of employee withholding to use for, or to reimburse the cost of, approved business expenditures. This Act added that employee relocation expenses that qualify for reimbursement pursuant to Code Section 12-10-80(C)(3)(f) include expenses associated with a new or expanded life sciences facility investing \$100 million or more in the project, as defined in Code Section 12-10-30(8), and creating at least 200 new full time jobs at the project with an average annual cash compensation of at least 150% of annual per capita income (in South Carolina or the county the facility is located, whichever is less) based on the most recent per capita income data available as of the end of the taxable year in which the jobs are filled.
2. Job Development Credit – Increased Amount. Code Section 12-10-80(D) provides that the amount of job development credit a qualifying business may claim is limited

to 55%, 70%, 85%, or 100% of the maximum job development credit based on the designation of the county in which the business is located and the gross wages paid to employees. This Act provides that the Coordinating Council for Economic Development at the Department of Commerce may approve a waiver of 95% of the limits on the maximum job development credits that may be claimed by a life sciences facility. The creditworthiness of the business and economic viability of the project, as defined in Code Section 12-10-30(8) will be considered in determining whether to approve a waiver for such a facility.

3. Alternative Apportionment Method. The Act provides that the Department, in its discretion, may enter into an agreement for up to 15 years with a taxpayer establishing a life sciences facility to establish an alternative method to fairly allocate and apportion its income if the requirements and conditions contained in Code Section 12-6-2320 are met.

Effective Date: The amendments concerning the job development credit apply with respect to capital investment made and new jobs created after June 30, 2004, and before July 1, 2008. The amendments affecting the alternative apportionment method are effective March 17, 2004.

Senate Bill 560, Section 5 (Act No. 187)

### **Venture Capital Investment Act of South Carolina – Bank Tax or Insurance Premium Tax Credit**

“The Venture Capital Investment Act of South Carolina” (“VCI Act”) has been enacted in Title 11, Chapter 45. It is designed to increase the availability of funding to emerging, expanding, relocating, and restructuring enterprises within South Carolina. Under this Act, a new entity, the South Carolina Venture Capital Fund will receive loans from banks and insurance companies (“Lenders”), among other possible funding. The funds will be placed with qualifying investors that will invest the money in qualifying South Carolina businesses and receive common or preferred stock, debt with equity conversion rights, royalty rights, limited partnership interests, limited liability company interests, or other securities or rights evidencing ownership in the business in return. If the Fund is unable to repay the loans made to the Fund by the Lenders, the Lenders will receive tax credits that can be used against their bank tax or insurance premium tax.

Note: The Fund will be administered by a Board of Directors. Questions concerning the Fund and its operation should be addressed to the South Carolina Department of Commerce or the Board of Directors of the Fund.

As discussed above, the Fund may seek loans from Lenders. A “Lender” is a banking institution that is subject to tax under Chapter 11, Title 12, an insurance company that is subject to premium taxes under Chapter 7, Title 38 or a captive insurance company regulated under Chapter 90, Title 38. Code Section 11-45-30(11). Any fees of the Fund

earned after repayment of the Lenders will be used as a contingency fund for future obligations to Lenders and to fulfill additional capital commitments. Code Section 11-45-50(B). If a principal or interest payment is due to a Lender and the Fund does not have sufficient money to repay the Lender, the Fund will issue a tax credit certificate to meet the obligation. These tax credits may be used to offset a Lender's South Carolina bank tax or premium tax liability. The tax credits may be carried forward indefinitely, but are not refundable. The tax credits may also be transferred among bank or insurance company Lenders for consideration and used by the subsequent holder. The tax credits will take the form of a certificate issued by the Board stating the amounts, years and conditions of the tax credit. Code Section 11-45-50.

In accepting loans to the Fund, the Board must insure that no more than \$50 million in tax credits are issued and outstanding at any time and that only \$20 million of tax credits may be used in a single year. Any tax credit certificates issued in one year but carried forward and redeemed in a subsequent year do not count against the \$20 million limitation. Code Section 11-45-50(E).

Effective Date: March 17, 2004

Senate Bill 560, Section 6 (Act No. 187)

### **Palmetto Seed Capital Fund Repealed**

Chapter 44, Title 41, containing the Palmetto Seed Capital Fund Limited Partnership, is repealed once the President of the Palmetto Seed Capital Corporation certifies to the Secretary of State that the remaining investments of the private sector limited partners of the Palmetto Seed Capital Fund Limited Partnership have been liquidated. Any remaining public assets and liabilities of the Palmetto Seed Capital Corporation are transferred to the South Carolina Venture Capital Fund. See Act No. 187, Section 5, for more information on the South Carolina Venture Capital Fund.

Effective Date: March 17, 2004

House Bill 4650, Section 40 (Act No. 221)

### **Corporate License Fee – Clarification for Corporation Domesticating in State**

Code Section 12-20-40(A), providing for the filing of an initial annual report and minimum corporate license fee with the Secretary of State with the initial articles of incorporation filed by a domestic corporation or a application for certificate of authority filed by a foreign corporation, has been amended to provide for the filing with the articles



of domestication filed by a corporation domesticating in South Carolina. See Chapter 9 of Title 33 regarding domestication of a foreign corporation.

Effective Date: April 29, 2004

Senate Bill 1075, Section 3.E (Act No. 227)

### **Job Development Credit - Assignment Expanded**

Code Section 12-10-82, which allows the irrevocable assignment of future job development credits to a “designated trustee” with the approval of the Coordinating Council for Economic Development at the Department of Commerce at the time of entering into a revitalization agreement, has been expanded. This amendment allows an irrevocable assignment of payments to an “other designee.” An “other designee” is a taxpayer that receives a minimum of 70% of the goods and services produced by the qualifying business at the project. The election must be made on a form provided by the Department of Revenue and must include an appropriate waiver of confidentiality. Once assigned, the job development credits must be paid only to the designated trustee or other designee.

Effective Date: May 11, 2004

House Bill 4968, Section 2 (Act No. 299)

### **Motion Picture Production Company - Withholding Tax Rebate**

Code Section 12-62-50 has been added to provide that a motion picture production company, defined in Code Section 12-62-20(4), is entitled to a tax rebate equal to 5% of the total aggregate South Carolina payroll for persons subject to South Carolina income tax withholding who are employed in connection with the production of a motion picture. The total aggregate payroll does not include the salary of any employee whose salary is equal to or greater than \$1 million per motion picture.

To qualify for the rebate, the total production costs in South Carolina must be \$1 million or more during the taxable year. A “motion picture” is defined as a feature length film, video, television series, or commercial made in whole or in part in South Carolina and intended for national theatrical or television viewing or as a television pilot produced by a motion picture production company. Certain types of productions are specifically excluded from the definition of “motion picture” in Code Section 12-62-20(3).

The total rebate may not exceed the amount of all South Carolina income tax withholding. The rebate must be applied exclusively to film production employee payroll in South Carolina by the motion picture production company. The rebate is given to the motion picture production company after the completion of physical production and

support activities. The credit must follow the same procedures as provided in Code Section 12-10-81 (the job development credit available to tire manufacturers), subsections (B)(1), (B)(2), (B)(6), (B)(8), and (G).

Effective Date: July 1, 2004

## **REENACTED TEMPORARY PROVISOS**

**The following temporary provisions were enacted in prior legislative sessions and were reenacted by the General Assembly in 2004. Temporary provisos are effective for the State fiscal year July 1, 2004 through June 30, 2005, and will expire June 30, 2005, unless reenacted by the General Assembly in the next legislative session.**

House Bill 4925, Part IB, Section 64, Proviso 64.15 (Act No. 248)

### **Military Estimated Tax Payment Relief**

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

House Bill 4925, Part IB, Section 36, Proviso 36.17 (Act No. 248)

### **Subsistence Allowance for Law Enforcement, Firefighter, and Emergency Medical Service Personnel**

Code Section 12-6-1140(6) provides a subsistence allowance deduction to federal, state, and local law enforcement officers paid by a political subdivision or the government of South Carolina or the federal government, and to full time firefighters and emergency medical service personnel for each regular work day in the taxable year. This temporary proviso increases the subsistence deduction allowed under Code Section 12-6-1140(6) from \$5.00 to \$6.67 for each regular work day.

House Bill 4925, Part IB, Section 64, Proviso 64.7 (Act No. 248)

**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. 248)

**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.

## **REMINDER**

**The following provision was enacted in 2003, but is effective in 2005. It is summarized below for informational purposes.**

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

# PROPERTY TAXES AND FEES IN LIEU OF PROPERTY TAXES

Senate Bill 769 (Act No. 224)

## **Permanently and Totally Disabled Person Property Tax Exemption – Expanded**

Code Section 12-37-220(B)(1), allowing a property tax exemption for the legal residence of a permanently and totally disabled veteran, a surviving spouse of such veteran, or the surviving spouse of a serviceman or law enforcement officer killed in the line of duty, has been substantially rewritten and expanded. This amendment provides that the house owned by an eligible owner in fee or jointly with the eligible owner's spouse will qualify for an exemption from property taxes.

For purposes of this exemption, the following terms are defined:

1. Eligible Owner. An eligible owner means:
  - a. A veteran of the United States Armed Forces who is permanently and totally disabled as a result of a service connected disability and who files with the Department the appropriate certificate of disability;
  - b. A former law enforcement officer as further defined in Code Section 23-6-400(D)(1) who is permanently and totally disabled as a result of a law enforcement service connected disability; or,
  - c. A former firefighter, including a volunteer firefighter as further defined in Chapter 80, Title 40, who is permanently and totally disabled as a result of a firefighting service-connected disability.
2. Permanently and totally disabled. Permanently and totally disabled means the inability to perform substantial gainful employment because of a medically determined impairment, whether mental or physical, that has or is expected to last at least 12 continuous months or result in death.
3. House. House means a dwelling and the lot on which it is situated that qualifies for assessment as the legal residence of the taxpayer under Code Section 12-43-220(c).

This exemption is also extended to a house owned by a qualified surviving spouse who acquired the house from the deceased eligible spouse and a house subsequently acquired by an eligible surviving spouse. A "qualified surviving spouse" is the surviving spouse of: (1) the disabled service person, law enforcement officer, or firefighter described above or (2) the surviving spouse of a member of the United States Armed Forces who was killed in action, or the surviving spouse of a law enforcement officer or firefighter

that was killed in the line of duty, if at the time of death, the deceased owned the house in fee or jointly with the now surviving spouse. The surviving spouse must remain unmarried, reside in the house, and own or acquire ownership in the house in fee or for life.

When a trustee holds legal title to a dwelling for a beneficiary and the beneficiary qualifies for the exemption and uses the house as his domicile, then the dwelling will be exempt from property taxes under this provision.

The Department may require documentation to determine eligibility for this exemption.

Effective Date: Property tax years beginning after 2004.

Senate Bill 1075, Sections 1 and 2 (Act No. 227)

### **South Carolina Textile Communities Revitalization Act**

The South Carolina Textile Communities Revitalization Act was enacted in Title 6, Chapter 32 to create an incentive for the renovation, improvement, and redevelopment of abandoned textile mills in South Carolina. It provides that a taxpayer who improves, renovates, or redevelops an abandoned textile mill at an eligible site may elect one of the following tax credits:

1. A “property tax credit” provided in Code Section 6-32-40(A)(1) against real property taxes equal to 25% of the rehabilitation expenses made at the eligible site times the local taxing entity ratio for each local taxing entity that has consented to the credit (limited to 75% of the taxpayer’s property taxes due as discussed below); or
2. An “income tax credit” provided in Code Section 6-32-40(A)(2) equal to 25% of the rehabilitation expenses. (See the “Income Taxes, Corporate License Fees, and Withholding” section of this publication for a brief summary of the income tax credit provided in Code Section 6-32-40(C)).

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

Property Tax Credit - Code Section 6-32-40(B). If the taxpayer elects the property tax credit, the municipality or the county (if the site is located in an unincorporated area) by resolution shall determine the eligibility of the site and the eligibility of the proposed project seeking the credit. For a project beginning after July 1, 2004, a majority vote of the local governing body must approve the project. The determinations and the approval

must be by public hearing and ordinance. The ordinance shall allow the credit to be taken against up to 75% of the real property taxes due on the site each year for up to 8 years. Before determining the eligibility of the site, the municipality or county must find that the credit will not violate any covenant, representation, or warranty in any of its tax increment financing transactions.

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

Definitions. Code Section 6-32-30 provides a list of definitions of terms that are used in the statute. Some of the relevant terms are defined as follows:

1. An “eligible site” is a site that is designed for use or has been used as a textile manufacturing facility or uses ancillary to it and is located in South Carolina.
2. “Abandoned” means that at least 80% of the facilities of the eligible site have been continuously closed to business or nonoperational for at least one year immediately prior to the time the determination is to be made.
3. “Rehabilitation expenses” are the expenses incurred in the rehabilitation of the eligible site, excluding the cost of acquiring the eligible site or the cost of personal property maintained at the eligible site.
4. A “local taxing entity” is a county, municipality, school district, special purpose district, and any other entity or district with the power to levy ad valorem property taxes against the eligible site.
5. The “local taxing entity ratio” is the percentage computed by dividing the millage rate of each local taxing entity by the total millage rate for the eligible site.
6. “Placed in service” means the date upon which the eligible site is suitable for occupancy for the purposes intended.

Other Provisions. The provisions of the “South Carolina Local Government Development Agreement Act,” Chapter 31 of Title 6, which allow local governments to enter into certain agreements to develop certain properties, may also apply to the site except that the provisions of Code Section 6-31-40 (which require that the site contain at least 25 acres and setting forth certain other acreage requirements) may not apply.

Repeal of Act. The Textile Communities Revitalization Act in Chapter 32 of Title 6 is repealed on July 1, 2014.

Effective Date: July 1, 2004, and it applies for rehabilitation expenses incurred, without regard to the date such expenses were incurred, for eligible sites placed in service on or after July 1, 2004.

House Bill 4320 (Act No. Unassigned)

### **Agricultural Classification - Proposed Constitutional Amendment**

Under the South Carolina Constitution, to qualify for a 4% assessment ratio on agricultural property, a corporation may not have more than 10 shareholders. This joint resolution proposes that a constitutional amendment be submitted to the electorate at the next general election for representatives to vote on changing Section 1(4)(A)(i), Article X of the Constitution to provide that such corporation may not have more shareholders than the General Assembly shall provide by law.

Effective Date: Ratified June 2, 2004

Senate Bill 560, Section 2.A (Act No. 187)

### **Depreciation for Clean Rooms - Increase**

Code Section 12-37-930, providing a schedule of depreciation allowances for manufacturer's machinery and equipment, has been amended to increase the annual rate of depreciation in item (34) for the use of clean rooms from 10% to 15%.

A manufacturer who uses a Class 100 or better clean room, as that term is defined in Federal Standard 209E, in manufacturing its product may use the 15% depreciation rate instead of the depreciation allowance it is otherwise entitled on clean room modules and associated mechanical systems, and on process piping, wiring environmental systems, and water purification systems associated with the clean room.

Effective Date: March 17, 2004

Senate Bill 560, Section 2.A (Act No. 187)

### **Depreciation Rate for Life Sciences Facility Machinery and Equipment**

Code Section 12-37-930, providing depreciation schedules for certain manufacturing machinery and equipment, has been amended to add item (35) to provide a 20% annual



depreciation rate for machinery and equipment used directly in the manufacturing process by a life sciences facility.

A life sciences facility is a business: (1) engaged in pharmaceutical, medicine, and related laboratory instrument manufacturing, processing, or research and development, including a business under NAICS Code 3254 (Pharmaceutical and Medical Manufacturing) or 334516 (Analytical Laboratory Instrument Manufacturing), (2) who invests \$100 million or more in the project, as defined in Section 12-10-30(8), and (3) creates at least 200 new full time jobs at the project with an average annual cash compensation of at least 150% of annual per capita income (in South Carolina or the county the facility is located, whichever is less) based on the most recent per capita income data available as of the end of the taxable year the jobs are filled.

Effective Date: March 17, 2004

Senate Bill 560, Section 2.B (Act No. 187)

### **Depreciation Rates for Projects With a Fee Inducement Agreement**

In the case of machinery and equipment otherwise eligible for the depreciation allowed pursuant to Code Section 12-37-930 of the 1976 Code, as amended (see above), if the project with which the machinery and equipment is associated is the subject of an inducement agreement between the project sponsor and the county, then the initial inducement agreement must have been entered into between these parties after September 1, 2003.

Note: We have been informed that the Code Commissioner has recommended this amendment be a “Note” to Code Section 12-37-930.

Effective Date: March 17, 2004

Senate Bill 1075, Section 3.A (Act No. 227)

### **“Air Carrier Hub Terminal Facility” Definition Amended**

Code Section 55-11-500, which contains the definition of “air carrier hub terminal facility,” has been amended. The definition has been changed to allow an air carrier up to 5 years from the date of the issuance of eligible bonds to meet the required number of flights to be classified as an “air carrier hub terminal facility.” This definition is referenced in the property tax exemption contained in Code Section 12-37-220(B)(33).

Effective Date: May 11, 2004

House Bill 4220 (Act No. 206)

**Alternative Listing and Tax Payment Dates for Structural Improvements to Real Property**

This Act adds a provision to allow the governing body of a county that generates more than \$10 million in accommodations tax in a single year to, by ordinance, require that changes in the appraised value and use of real property attributable to structural improvements on the real property be listed for taxation with the county auditor within 30 days of when the improvements are completed and fit for their intended use.

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

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

This provision does not apply to real property assessed as manufacturing or utility property pursuant to Code Section 12-43-220(a).

Note: We have been informed that the Code Commissioner has recommended this amendment be codified as Code Section 12-37-680.

Effective Date: April 26, 2004

Senate Bill 973 (Act No. 226)

**\$100,000 School Tax Exemption - Millage Clarified**

Code Section 12-37-251 allows a property tax exemption against school operating millage for the first \$100,000 of a legal residence's value. Code Section 12-37-251(B) has been amended to provide that operating millage levied in a county for alternative schools, career and technology centers, and county boards of education is considered school operating millage that is subject to the exemption, whether or not the millage is levied countywide or on a school district by school district basis. County treasurers must consider this millage in determining revenue lost when making disbursements to school districts from trust funds for tax relief.

Effective Date: Property tax years beginning after 2003.

House Bill 5186 (Act No. Unassigned)

**Dillon County Millage**

This joint resolution provides that Dillon County may increase its millage for school purposes from the prior fiscal year's millage by 3 mills for the fiscal year beginning July 1, 2004 and ending June 30, 2005, with one and one-half mills used for school operating costs and one and one-half mills for debt service.

Effective Date: May 26, 2004

Senate Bill 829 (Act No. Unassigned)

**Williamsburg County Technical Education College Millage**

The authority to set millage for the Williamsburg County Technical Education College has been transferred from the Williamsburg County School Board of Trustees to the Williamsburg County Council. The Council may also issue bonds within the bonded debt limit of the county to fund necessary capital expenditures of the college.

Section 7 of Act 632 of 1980, which provided that the Board of Trustees would determine the millage for the Technical Education College, is repealed.

Effective Date: Property taxes levied for the year 2004 and thereafter.

Senate Bill 1207 (Act No. Unassigned)

**2004 Index of Taxing Ability**

This joint resolution provides that the Department may revise the 2004 Index of Taxpaying Ability, as defined in Code Section 59-20-20(3), to adjust for a property valuation error that occurred in Rock Hill School District Three located in York County.

Effective Date: June 15, 2004

House Bill 4925, Part IB, Section 72, Proviso 72.57 (Act No. 248)

**Personal Property Tax Relief Fund Not Funded**

This temporary proviso provides that the Personal Property Tax Relief Fund established under Code Section 12-37-2735 to help counties fund the reduction of ad valorem taxes on personal motor vehicles has been reduced from \$20 million to zero.

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

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2004 through June 30, 2005. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2005.

House Bill 4925, Part IB, Section 72, Proviso 72.110 (Act No. 248)

**Certain Counties May Postpone Implementation of Reassessment**

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

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2004 through June 30, 2005. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2005.

Senate Bill 277, Section 1 (Act No. 292)

**Historic Properties and Low and Moderate Income Rental Property Special Assessments - Amended**

Code Section 4-9-195, allowing the governing body of a county to grant a special property tax assessment to “rehabilitated historic property” or “low and moderate income rental property,” has been substantially amended. As amended, the statute provides for a preliminary certification and a final certification process.

Preliminary Certification

The statute allows a taxpayer to have property preliminarily certified in order to receive a freeze of the fair market value of the property. Upon preliminary certification, the property must be assessed at its fair market value at the time the preliminary certification was made. The special assessment continues for 2 years or if the project is not completed after 2 years, but the minimum expenditures for rehabilitation have been incurred, the special assessment continues until the project is completed.

Preliminary certification means that the owner of the property has applied for and received a historic designation and the proposed rehabilitation received approval of the rehabilitation work from the appropriate reviewing authority. Code Section 4-9-195(B)(5). A county governing body may require that an owner apply for preliminary certification before any work begins.

The reviewing authority is either the County Board of Architectural Review for those counties having such boards pursuant to Code Section 6-29-870, another qualified entity with historic preservation expertise designated by the county, if the county does not have a Board of Architectural Review, or the Department of Archives and History for those counties having neither a Board of Architectural Review nor a designated entity. Code Section 4-9-195(B)(7). If the Department of Archives and History is the appropriate reviewing authority, a separate application is not required for properties receiving preliminary and final approval for the federal income tax credit under Internal Revenue Code Section 47 (“Rehabilitation Credit”) or the South Carolina income tax credit under Code Section 12-6-3535 (credit for making qualified rehabilitation expenditures for a certified historic structure). Code Section 4-9-195(B)(7).

#### Final Certification

Upon completion of the project, the property must receive final certification from the county in order to be eligible for the special assessment. Once final certification has occurred, the property must be assessed for the remainder of the special assessment period on the fair market value as of the preliminary certification or the final certification, whichever occurs earlier. Code Section 4-9-195(A)(2).

To receive final certification, the property must meet the following conditions:

1. the owner of the property must apply for and be granted historical designation by the county governing body,
2. the completed rehabilitation must receive approval of rehabilitation work from the receiving authority, and
3. the “minimum expenditures for rehabilitation” must be incurred and paid.

“Minimum expenditures of rehabilitation” means the owner or his estate rehabilitates the building, with expenditures for rehabilitation exceeding the minimum percentage of the fair market value of the building established by the county in its ordinance. The county can establish different minimum percentages for owner-occupied property and income producing property and the percentage required can vary between 20% and 100%. Code Section 4-9-195(B)(3). But see Code Section 4-9-195(c)(2) for certain low and moderate income rental property.

### Special Assessment Period and Clawback Provisions

The special assessment period is set by ordinance, but may not exceed 20 years. The special assessment may not be granted retroactively. Code Sections 4-9-195(B)(3) and (4).

If an application for preliminary or final certification is filed by May 1 or approved by August 1, the special assessment is effective for that year. Otherwise, it is effective beginning with the following year. Code Section 4-9-195(F).

Once the governing body has granted the special property tax assessments, the owner of the property must apply to the auditor for the special assessment. Once a property has received final certification and has been assessed as rehabilitated historic property or low or moderate income rental property, it remains certified and continues to receive the special assessment until: (1) written notice by the owner to the county to remove the preferential assessment, (2) sale or transfer of ownership during the special assessment period except in the ordinary course of probate proceedings, (3) removal of the historic designation by the county, (4) rescission of the approval of the rehabilitation work by the reviewing authority because of alterations or changes to the property which causes it to no longer possess the qualities and features which made it eligible for final certification, or (5) in the case of low and moderate income rental property, decertification of the property by the local governing body as low or moderate income rental property for persons and families of moderate to low income as defined by Code Section 31-13-170(p). Notification of changes affecting eligibility must be given immediately to the appropriate taxing and assessing authorities. Code Sections 4-9-195(E) and (G).

If a property which has received a preliminary certification fails to obtain a final certification, the money not collected by the county due to the special assessment must be returned to the county. Code Section 4-9-195(A)(2).

To receive the “historic designation,” the property must be listed in the National Register of Historic Places, be at least 50 years old and is designated as a historic property based upon criteria established by the county, or be at least 50 years old and is located in a historic district designated by the county at any location within the geographic area of the county. Code Section 4-9-195(B)(1).

To qualify as “low and moderate income rental property” the property must:

1. provide accommodations under the Section 8 Program as defined in the United States Housing Act of 1937 and amended by the Housing and Community Act of 1974 for low and moderate income families and persons as defined by Code Section 31-13-170(p); or
2. in the case of income-producing real property, the expenditures for rehabilitation exceed the appraised value of the property; and

3. if the low and moderate income housing rehabilitation is located in an area designated by the local government as Low and Moderate Housing Rehabilitation District; and
4. the owner or estate of any property certified as “low and moderate income rental property” takes no actions which cause the property to be unsuitable for such designation. The county governing body granting the initial certification has the authority to decertify property in these cases, and the property becomes immediately ineligible for the special tax assessments provided for this type of property; and
5. if the property qualifies as “historic” as defined in subsection (B)(1), then the rehabilitation work must be approved by the appropriate reviewing authority as provided in subsection (B) and (D) (relating to qualification and fees for historic properties). Code Section 4-9-195(C).

#### Miscellaneous Provisions

The governing body may grant the special assessment or may designate an agency or a department to perform all functions and duties relating to the special assessment. Code Section 4-9-195(A).

A property certified to receive the special property tax assessment under the existing law continues to receive the special assessment in effect at the time certification was made. Code Section 4-9-195(H).

The Department of Archives and History may provide training and technical assistance to counties and may also provide procedures for application, consideration, and appeal through appropriate regulations for the “rehabilitated historic property” provisions. By ordinance or regulation, the county may establish fees for preliminary and/or final certification. Code Section 4-9-195(D).

Effective Date: August 16, 2004

## **REGULATIONS**

### Document No. 2850

The General Assembly approved Document 2850 which amends, adds and repeals various property tax regulations. The following provides a detailed listing of the new regulations and their subject matter. The final notice concerning the document, including the text of the new regulations, was published in the State Register on June 25, 2004. A copy of these regulations can be found at <http://www.scstatehouse.net/regs/2850.doc>.

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

The General Assembly approved the repeal of Article 6, Chapter 117, with the exception of Regulation 117-105, of the SC Code of Regulations ( SC regulations 117-110 through 117-128) and the creation of Article 37. The regulations were recodified and organized so that related matters could be found together. Numbering of the regulations was designed to allow additional regulations to be added if necessary in a particular area. Minimal changes were made to the regulations themselves. Under the reorganization and recodification of the regulations, 34 new regulations concerning property tax were created.

### **Property Tax Regulations Chapter 117, Article 37, Sections 117-1700 through 117-1840.2**

<b>New Regulation Section</b>	<b>Subject Matter</b>
<b>117-1700</b>	<b>General Definitions to be Used in Administering Property Taxes</b>
117-1700.1	Reserved
117-1700.2	Definition of "Power Driven" Farm Machinery and Equipment
117-1700.3	Definition of Utility
117-1700.4	Definition of Transportation Companies
117-1700.5	Definition of Facility
117-1700.6	Definition of Parsonage
117-1700.7	Definition of Plant Site
<b>117-1720</b>	<b>DOR Responsibilities in Property Tax</b>
117-1720.1	Responsibilities of the DOR in Property Taxes and Fee in Lieu of Taxes and Matters Handled by the Office of the Comptroller General
117-1720.2	General Requirements for Ratio Studies
117-1720.3	Computation of Index of Taxpaying Ability for School District When Property Under Appeal



<b>New Regulation Section</b>	<b>Subject Matter</b>
<b>117-1740</b>	<b>County Administrative Requirements and Forms Filed with the County</b>
117-1740.1	General Requirements for Building Permits
117-1740.2	Cadastral Maps and Parcel Identifiers
117-1740.3	General Requirements for Appraisal Records
117-1740.4	Forms to Provide to DOR with Information for Ratio Studies
<b>117-1760</b>	<b>Classification of Property –General Provisions as to Use of Property</b>
117-1760.1	Classification of Companies
117-1760.2	Multi-use Property
<b>117-1780</b>	<b>Classification of Property – Agricultural Use</b>
117-1780.1	Definition of Agricultural Real Property
117-1780.2	Agricultural Special Assessment Applications
117-1780.3	Rollback Provisions On Agricultural Land
<b>117-1800</b>	<b>Classification of Property – Legal Residence</b>
117-1800.1	Application for Special Assessment as Legal Residence
<b>117-1820</b>	<b>Manufacturing Plants Constructed Pursuant to the Industrial Revenue Bond Act</b>
117-1820.1	Manufacturing Plants Constructed Pursuant to the Industrial Revenue Bond Act
<b>117-1840</b>	<b>Valuation of Property Subject to Property Taxes</b>
117-1840.1	Value of Merchants’ Furniture, Fixtures, and Equipment
117-1840.2	Use of Assessment Guides Published by the DOR
117-1840.5	Discount for Subdivided Land
<b>117-1860</b>	<b>Returns</b>
117-1860.1	Licensed Automotive Vehicles and Airplanes

Effective Date: June 25, 2004

**Cross Reference Table  
Property Tax Regulations**

<b>Repealed/Former Regulation</b>	<b>New Regulations</b>	<b>Subject Matter</b>
117-8*	117-1720.1	Responsibilities of the DOR in Property Tax and Fee in Lieu of Taxes and Matters Handled by the Office of the Comptroller General
117-105	Retained	Property Defined
117-110	117-1840.1	Value of Merchants' Furniture, Fixtures, and Equipment
117-112	117-1740.3	General Requirements for Appraisal Records
117-113	117-1740.1	General Requirements for Building Permits
117-114	117-1780.1	Definition of Agricultural Real Property
117-115	117-1720.2	General Requirements for Ratio Studies
117-116	117-1740.4	Forms to Provide to DOR with Information for Ratio Studies
117-117	117-1740.2	Cadastral Maps and Parcel Identifiers
117-119	117-1840.2, Section a.	Use of Assessment Guides Published by the DOR
117-119.1	117-1840.2, Section b.	Use of Assessment Guides Published by the DOR- Information Required for Property Not Covered by Assessment Guide
117-124.1	117-1760.1	Classification of Companies
117-124.2	117-1860.1	Licensed Automotive Vehicles and Airplanes
117-124.3	117-1820.1	Manufacturing Plants Constructed Pursuant to the Industrial Revenue Bond Act
117-124.4	117-1700.7	Plant Site Defined
117-124.5	117-1700.2	Definition of "Power Driven" Farm Machinery and Equipment
117-124.6	117-1800.1	Application for Special Assessment as Legal Residence
117-124.7	117-1780.2	Agricultural Special Assessment Applications
117-124.8	117-1760.2	Multi-use Property
117-124.9	117-1700.3	Definition of Utility
117-124.10	117-1700.4	Definition of Transportation Companies
117-124.11	117-1780.3	Rollback Provisions on Agricultural Land
117-124.13	117-1700.6	Definition of Parsonage
117-124.22	117-1700.5	Definition of Facility
117-126	117-1840.2, Section c.	Use of Assessment Guides Published by the DOR- Use value manuals and procedure for cropland and timberland
117-127	117-1720.3	Computation of Index of Taxpaying Ability for School District when Property Under Appeal
117-128	117-1840.5	Discount for Subdivided land

\*Administrative Regulation 117-8 has been retained. DOR is in the process of repealing this administrative regulation.

## **REENACTED TEMPORARY PROVISO**

**The following temporary provision was enacted in a prior legislative session and was reenacted by the General Assembly in 2004. Temporary provisos are effective for the State fiscal year July 1, 2004 through June 30, 2005, and will expire June 30, 2005, unless reenacted by the General Assembly in the next legislative session.**

House Bill 4925, Part IB, Section 36A, Proviso 36A.10 (Act No. 248)

### **Vehicle License Tax Year**

This temporary proviso provides that the Department of Motor Vehicles must implement a computer system that ensures that once a newly acquired vehicle's tax year is set for a particular owner, whether by initial registration and licensing of that vehicle or by the transfer of a tag from another vehicle, the tax year cannot be changed again unless the owner proves that there was an error made in setting the original year. A particular vehicle's tax year may be transferred only once by an individual owner of that vehicle even if there has been a break in ownership.

## **REMINDERS**

**The following provisions were enacted in 2003, but are effective in 2005. They are summarized below for informational purposes.**

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

# SALES AND USE TAXES

House Bill 4925, Part IB, Section 64, Proviso 64.14 (Act No. 248)  
(See also House Bill 3065, Section 34)

## **Medicines, Medical Supplies, and Diabetic Supplies Sold to “Free Clinics”**

This temporary proviso provides that prescription and over-the-counter medicines and medical supplies, including diabetic supplies, diabetic diagnostic equipment, and diabetic testing equipment sold to a health care clinic that provides medical and dental care without charge to all patients shall be exempt from sales tax.

Effective Date: This temporary proviso is effective for State fiscal year July 1, 2004 through June 30, 2005. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2005.

**Note: See House Bill 3065, Section 34, a pending bill summarized in Appendix I, containing a permanent and codified version of a similar, but more limited, sales and use tax exemption. It does not exempt diabetic diagnostic equipment or diabetic testing equipment.**

House Bill 4968, Section 2 (Act No. 299)

## **Motion Picture Production Company – New State Sales and Use Tax Exemption**

The South Carolina Motion Picture Incentive Act was added to Chapter 62 of Title 12 to provide a financial incentive to the film industry spending money in South Carolina.

Code Section 12-62-30 has been added to exempt a motion picture production company, as defined in Code Section 12-62-20, from the payment of state sales and use taxes on funds expended in South Carolina in connection with the filming or production of motion pictures in South Carolina if the company intends to expend in the aggregate \$250,000 or more in connection with the filming or production of one or more motion pictures in South Carolina within a consecutive 12 month period.

A “motion picture production company” is defined in Code Section 12-62-20(4) as “a company engaged in the business of producing motion pictures intended for a national theatrical release or for television viewing. ‘Motion picture production company’ does not mean or include a company owned, affiliated, or controlled, in whole or in part, by a company or person that is in default on a loan made by the State or a loan guaranteed by the State.”

A “motion picture” is defined in Code Section 12-62-20(3) as “a feature-length film, video, television series, or commercial made in whole or in part in South Carolina, and intended for national theatrical or television viewing or as a television pilot produced by a motion picture production company. The term ‘motion picture’ does not include the production of television coverage of news and athletic events or a production produced by a motion picture production company if records, as required by 18 U.S.C. 2257, are to be maintained by that motion picture production company with respect to any performer portrayed in that single media or multimedia program.”

In order to qualify, the motion picture production company must make application for, meet the requirements of, and receive written certification of such designation from the Director of the South Carolina Film Commission. As part of this certification process, an estimate of total expenditures expected to be made in South Carolina in connection with the filming or production of the motion picture must be filed with the South Carolina Film Commission before the commencement of filming in South Carolina. Once approved, the Department shall issue a written certification of state sales and use tax exemption to the motion picture production company.

A motion picture production company that is approved for this exemption that fails to expend \$250,000 within a consecutive 12 month period is liable for the sales and use taxes that would have been paid had the approval not been granted; except, that the motion picture production company may still be eligible for an exemption from state and local sales and use taxes for supplies, technical equipment, machinery and electricity sold to motion picture companies for use in filming or producing motion pictures as defined in Code Section 12-36-2120(43).

If, however, it is determined that a motion picture production company is liable for the tax that would have been due had the exemption authorized under the South Carolina Motion Picture Incentive Act not been granted, the company must be given a 60 day period in which to pay the sales and use taxes without incurring penalties. The sales and use taxes are considered due as of the date that taxable expenditures are made.

The production of television coverage of news and athletic events is specifically excluded from the provisions granting this relief. In addition, this provision does not apply to a sales and use tax levied by a local governmental subdivision.

Effective Date: July 1, 2004

House Bill 4968, Section 4 (Act No. 299)

### **Motion Picture Production Company – New Rebate of State Sales Tax on Accommodations**

Code Section 12-36-920, which imposes a sales tax equal to 7% on the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings, or

sleeping accommodations furnished to transients, has been amended to grant a rebate of this tax paid by a motion picture production company (as defined in Code Section 12-62-20(4)) for employees of the motion picture production company who have stayed in accommodations in South Carolina for an aggregate of 30 days over a 12 month period. The motion picture production company must first submit to the Department a certification as to the number of days its employees have stayed in accommodations in South Carolina. The rebate of accommodations taxes does not apply to the local accommodations tax authorized by Article 5, Chapter 1, Title 6.

Effective Date: July 1, 2004

## **REGULATION**

Document Number 2826

### **Machine Exemption - Sales Tax Regulation Amended**

SC Regulation 117-302.5 has been amended to add information concerning material handling machinery and/or mechanical conveyors. This additional information incorporates the provisions of former SC Regulation 117-174.134, updated with respect to case law and legislative changes since its initial promulgation. This additional information added to SC Regulation 117-302.5 states the following:

The general rule with reference to material handling machinery and/or mechanical conveyors is that such machinery is subject to the tax up to the point where the materials go into process. The machine feeding the first processing machine(s) is exempt. The last machine to come within the exemption is that machine which discharges the finished product from the last machine used in the process. Material handling machinery used for transporting (in process) material from one process stage to another comes within the exemption. Warehouse machinery used only for warehouse purposes, loading and unloading, storing, transporting raw materials and finished products, etc., is subject to the tax, unless exempt under the provisions of Code Section 12-36-2120(51). If material handling machinery is customarily used for a dual purpose, that is partly for an exempt purpose and partly for a taxable purpose, and is not otherwise exempt under the provisions of Code Section 12-36-2120(51), the machinery may be purchased free of the tax under the machine exemption (Code Section 12-36-2120(17)) provided the exempt use represents a substantial portion of its use.

Effective Date: June 25, 2004

## **REENACTED TEMPORARY PROVISIO**

**The following temporary provision was enacted in prior legislative sessions and was reenacted by the General Assembly in 2004. Temporary provisos are effective for the State fiscal year July 1, 2004 through June 30, 2005, and will expire June 30, 2005, unless reenacted by the General Assembly in the next legislative session.**

House Bill 4925, Part IB, Section 72, Proviso 72.55 (Act No. 248)

### **Private Schools – “Use Tax” Exemption**

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

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

## **REMINDER**

**The following provision was enacted in 2003, but is effective in 2004. It is summarized below for informational purposes.**

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.



# MISCELLANEOUS

## ADMINISTRATIVE AND PROCEDURAL MATTERS

House Bill 4925, Part IB, Section 56DD, Proviso 56DD.41 (Act No. 248)

### **Reduction on Interest Rate on Tax Refunds**

This proviso decreases by 2% the interest rates for tax refunds paid during fiscal year July 1, 2004 through June 30, 2005. The revenue resulting from this reduction will be used for operations of the State's Guardian Ad Litem Program.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2004 through June 30, 2005. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2005.

## MISCELLANEOUS TAXES

Senate Bill 487 (Act No. 237)

### **Drycleaning Restoration Trust Fund - Amended**

The Drycleaning Facility Restoration Trust Fund ("Fund"), originally enacted in 1995 in Article 4, Chapter 56 of Title 44, has been amended. The provisions of the Fund are intended to generate resources to provide funds to rehabilitate sites contaminated by the release of drycleaning solvents related to the operation of drycleaning facilities or wholesale supply facilities, and to provide an insurance pool for the purpose of defraying the cost of remediation or cleanup for eligible members of the drycleaning industry and related industries. In general, these provisions require drycleaning facilities to register with the Department and pay registration fees and environmental surcharges, and require persons producing or importing certain solvents into South Carolina to register with the Department and pay environmental surcharges.

The Fund is administered by the Department of Health and Environmental Control ("DHEC") and the revenue is collected by the Department of Revenue ("DOR"). The following changes affecting the collection of fund monies by the DOR are briefly summarized below.

## Definitions

Code Section 44-56-410 provides definitions for terms used in Article 4. This amendment added or amended certain definitions, such as drycleaning facility, drycleaning solvents, insolvent, and added certain definitions, such as halogenated drycleaning fluid, nonhalogenated cleaner, and nonaqueous solvent.

Code Section 44-56-410(3) defines “drycleaning facility” to mean a professional retail commercial establishment located in this State that operates or has at some time in the past operated in whole or in part for the purpose of cleaning clothing and other fabrics from members of the public utilizing a process which involves the use of drycleaning solvents. Drycleaning facility includes laundry facilities that are using or have used drycleaning solvents as part of their cleaning process, but does not include textile mills or uniform rental and linen supply facilities.

## Environmental Surcharge

Code Section 44-56-430, imposing an environmental surcharge, has been amended. The amendment provides for the imposition of a 1% environmental surcharge on the gross proceeds of sales of every owner or operator of a drycleaning facility participating in the Fund; it does not apply to facilities with a valid statement of nonparticipation pursuant to Code Section 44-56-480(A). The basis for calculating the 1% surcharge is the total charge to the customer, excluding sales or use tax. See Code Section 12-36-90(2)(j) added by this amendment.

As a result of the notification by DHEC that the Fund is below \$1 million, the 1% surcharge is effective July 1, 2004. The initial surcharge is due and payable on the 20<sup>th</sup> day of the third month after the month it is imposed (*i.e.*, October 20, 2004 for the July, August, and September 2004 surcharges.) Subsequent charges are due and payable on or before the 20<sup>th</sup> day of each month for the previous month (*e.g.*, the October 2004 surcharge is due on November 20, 2004). DOR can authorize quarterly, semiannual, or annual payments.

The statute provides that the surcharge will be administered, collected, and enforced in the manner as sales and use taxes under Chapter 36 of Title 12, however, no timely discount or exemptions apply.

The surcharge is suspended at the end of the month when DHEC notifies DOR that the uncommitted fund balance exceeds \$5 million. The suspension is lifted on the first day of the month following DHEC’s notification to DOR that the uncommitted fund balance is less than \$1 million.

## Annual Registration and Fees for Drycleaning Facilities

Code Section 44-56-470 provides for the payment of an initial registration fee, and quarterly or annual registration fees by the owner or operator of a drycleaning facility or

person who owns the real property where the drycleaning facility has been located. The fee ranges from \$750 to \$2,250 for each drycleaning facility and is based on the number of employees employed by the owner or operator for the 12 month period preceding payment of the fee. (The term “employee” is defined in Code Section 44-56-410(6)). The amendment provides that the fee is due on the 20<sup>th</sup> day of the following month; previously the fee was due within 30 days after receipt of the bill.

#### Environmental Surcharge for Producing or Importing Drycleaning Solvents

Code Section 44-56-480 provides that an environmental surcharge is due on the privilege of producing or importing drycleaning solvents in South Carolina. The surcharge is due and payable on or before the 20<sup>th</sup> day of the month after production, importation, or removal from a storage facility.

A drycleaning facility who elects not to be under the provisions of the Fund pursuant to Code Section 44-56-485(A) or (B), however, may request a statement of nonparticipation from DOR to verify its exemption from the surcharge.

The amount of the surcharge is based upon the type of drycleaning solvent used. The surcharge amounts and definitions for the types of dry cleaning solvents are:

1. A \$10 per gallon surcharge on halogenated drycleaning fluid to be used for drycleaning purposes when first imported into or produced in South Carolina. The term “halogenated drycleaning fluid” has been added to Code Section 44-56-480(A); it is defined in Code Section 44-56-410(10) as “any nonaqueous solvent formulated, in whole or in part, with 10% or more by volume any of the halogenated compounds chlorine, bromine, fluorine, or iodine. Halogenated drycleaning fluids include perchloroethylene (also known as tetrachloroethylent), trichloroethylene, and any breakdown components of them.” Previously, the statute referred to perchloroethylene (tetrachloroethylene) solvent.
2. A \$2 per gallon surcharge on nonhalogenated cleaner to be used for drycleaning purposes when first imported into or produced in South Carolina. The term “nonhalogenated cleaner” has been added to Code Section 44-56-480(A); it is defined in Code Section 44-56-410(11) as “any nonaqueous solvent used in a drycleaning facility that contains less than 10% by volume of any halogenated compound. Nonhalogenated cleaners include petroleum based drycleaning solvents and any breakdown components of them.” The term “nonaqueous solvent” has been added to the statute and is defined in Code Section 44-56-410(12) as “any cleaning formulation designed to minimize swelling of fabric fibers and containing less than 51% of water by volume.” Previously, the statute referred to stoddard solvent.
3. A 20¢ per pound surcharge on nonhalogenated cleaners purchased, produced, or transported in a nonliquid physical state. This provision was added to Code Section 44-56-480(A).

Other various amendments to Code Section 44-56-480 are:

1. Code Section 44-56-480(B), providing for registration with DOR to become licensed to remit the surcharge, has been amended to increase the fine for failure to register before importing or producing drycleaning solvent into South Carolina from up to \$1,000 to up to \$25,000 upon conviction.
2. Code Section 44-56-480(D) was amended to provide that the solvent dealer may pass the costs of the surcharge to the owners, operators, or persons of drycleaning facilities. However, the surcharge cannot be charged to a facility having a statement of nonparticipation pursuant to Code Section 44-56-480(A).
3. Code Section 44-56-480(I) has been amended to provide that anyone exporting drycleaning solvent on which the surcharge has been paid may apply for a refund or credit. In addition, a provision was added that permits a person who sells drycleaning solvent that is exempt from the collection of the surcharge because the facility has a statement of nonparticipation to apply for a credit or refund.

#### Fund Participation

Code Section 44-56-485(A), concerning elections not to participate in the provisions of Article 4, Chapter 56 of Title 44, has been amended to provide that a dry dropoff facility whose clothing and other fabrics are cleaned only by a drycleaning facility that was in existence on July 1, 1995, that drycleans only with nonhalogenated cleaners is not subject to the Fund. This statute continues to provide that: (1) a drycleaning facility that was in existence on July 1, 1995, that drycleans only with nonhalogenated cleaners was not subject to the Fund and (2) a decision not to participate prohibits the current or future owner from receiving any funds or assistance from the Fund.

Code Section 44-56-485(B) has been amended to revise the language to reflect references to the revised meaning of drycleaning solvents. It now provides that a drycleaning facility in existence on July 1, 1995, using halogenated fluids and nonhalogenated cleaners could elect to be removed from the fund by not paying the required fees by October 1, 1995.

Code Section 44-56-485(C) has been added to allow a person, owner, or operator of a facility in existence on July 1, 1995 to reconsider the election not to participate in the Fund as provided above in Code Sections 44-56-485(A) or (B). The new election to participate is irrevocable and must be made by registering with DOR by July 1, 2005. The electing facility must pay all taxes and fees from July 1, 1995 (or the date operations began, if later) to elect into the Fund; no penalties or interest are due. The facility may remit the back taxes and fees in monthly installments; the installments must commence no later than July 1, 2004, and all back taxes and fees must be fully paid no later than July 1, 2006.

Code Section 44-56-485(D) has been added to allow any person, owner, or operator of a drycleaning facility who has not registered and complied with the Fund provisions in the

past to join the Fund. Registration must be complete by July 1, 2005, in order to avoid penalties or interest. Payment of all taxes and fees are due from July 1, 1995 (or the date operations began, if later.) Any person, owner, or operator of a drycleaning facility who does not voluntarily register is subject to interest, penalties, and all taxes and fees. No fees will be prorated or refunded for a business in operation for less than 12 months.

Code Section 44-56-485(E) has been added to allow DHEC to direct DOR to register a person, owner, or operator of a drycleaning facility who elected not to place the facility in the Fund pursuant to Code Section 44-56-485(B), if DHEC finds they did not have notice of the Fund provisions for more than 90 days prior to requesting registration. The payments of all taxes, fees, and interest must be paid from July 1, 1995 (or the date operations began, if later.) Penalties are not imposed. No fees are prorated or refunded for a business in operation for less than 12 months.

#### Additional Information

Technical questions and questions concerning Fund eligibility should be directed to DHEC at 1-866-343-2379.

Effective Date: May 24, 2004

## **OTHER ITEMS (including local taxes)**

### House Bill 3235 (Act No. 202)

#### **SC Administrative Law Court – Name Change**

Code Section 1-23-500 has been amended to change the name of the South Carolina Administrative Law Judge Division to the South Carolina Administrative Law Court.

Effective Date: April 26, 2004

### Senate Bill 277, Section 2 (Act No. 292)

(See also House Bill 4272, Section 2 (Act No. 244))

#### **Capital Projects Sales Tax – Additional Use of Proceeds**

Code Section 4-10-330(A)(1) has been amended to allow proceeds from the Capital Projects Sales Tax to be used for public parking garages and related facilities and for beach access and renourishment.

Effective Date: August 16, 2004

House Bill 4544 (Act No. Unassigned)

**Clarendon County School District Sales and Use Tax**

The Clarendon County School Districts Property Tax Relief Act has been enacted to allow, by county ordinance, the imposition of a 1% sales and use tax within Clarendon County. The governing body of the county may, but is not required to conduct a referendum on the question of the imposition of the tax. The results of the referendum are purely advisory and the results do not affect the authority of the governing body to impose the tax.

The 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 Clarendon County which are subject to the tax imposed by Chapter 36, Title 12, and the collection and enforcement provisions of Chapter 54, Title 12 apply to this tax. 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.

The tax must be imposed beginning on the first day of the third full month after the ordinance is filed with the Department. The tax terminates on the final day of the maximum time specified in the imposition (but not more than 20 years) or, if earlier, 60 days after filing with the Department a copy of the ordinance terminating the tax.

Effective Date: March 5, 2004

Senate Bill 1194 (Act No. Unassigned)

**Edgefield County School District Sales and Use Tax**

The School District of Edgefield County School Bond Property Tax Relief Act has been enacted to allow the imposition of a 1% sales and use tax within Edgefield County. The tax must be approved by a referendum open to all qualified electors residing in Edgefield County. 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.

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.

Effective Date: June 15, 2004

House Bill 5244 (Act No. Unassigned)

**Horry County School District Sales and Use Tax**

The Horry County School District School Bond Property Tax Relief Act has been enacted to allow the imposition of a sales and use tax, not to exceed 1%, within Horry County. The tax must be approved by a referendum open to all qualified electors residing in Horry County. 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.

The tax terminates on the final day of the maximum time specified in the imposition (but not more than 10 years).

Effective Date: June 15, 2004

Senate Bill 1127 (Act No. Unassigned)

**Lexington County School District Sales and Use Tax**

The Lexington County School District Property Tax Relief Act has been enacted to allow the imposition of a 1% sales and use tax within Lexington County. The tax must be approved by a referendum open to all qualified electors residing in Lexington County. The referendum must be held at the time of the 2004 general election. 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.

The tax is imposed for 7 years, unless extended as provided in the Act. However, the 1% sales and use tax, if implemented, shall no longer be authorized as of the first day of the year in which the State of South Carolina through the imposition of a statewide increase

in the sales and use tax above 5% provides or will provide directly or indirectly school millage ad valorem property tax reductions to the taxpayers of the county as determined by the Department at least equal to the total tax credit relief provided to such taxpayers by the provisions of this Act.

Effective Date: April 23, 2004

Senate Bill 1193 (Act No. Unassigned)

**McCormick County School District Sales and Use Tax**

The School District of McCormick County School Bond Property Tax Relief Act has been enacted to allow the imposition of a 1% sales and use tax within McCormick County. The tax must be approved by a referendum open to all qualified electors residing in McCormick County. 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.

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.

Effective Date: June 15, 2004

Senate Bill 208, Sections 4 and 6 (Act No. 175)

**Public Utilities Assessed for Office of Regulatory Staff Expenses**

This Act makes a number of changes to the way the Public Service Commission (“PSC”) operates. It also creates the Office of Regulatory Staff, an office to represent the public’s interest in utility regulatory matters. The provisions of the Act that effect the Department are discussed below.

1. Code Section 58-3-130 has been amended to provide that upon demand of the Office of Regulatory Staff, the Department must provide information it has concerning property values, operations, income, or other matters of any public utility in this State to the Office of Regulatory Staff. This section previously referred to the PSC rather than the Office of Regulatory Staff.



2. Code Section 58-4-60 has been added to provide that the Department must collect an assessment from public utilities to fund the expenses of the Office of Regulatory Staff. On or before May 1, the Office of Regulatory Staff must provide the Department with the amounts to be assessed. Assessments must be made on or before July 1 of each year and are payable on or before July 15. This assessment is in addition to the assessment that must be collected to fund the expenses of the PSC.

Code Section 58-4-5(6) defines “public utility” to mean a public utility as defined in Code Section 58-5-10, telephone utility as defined in Code Section 58-9-10, government-owned telecommunications service provider as defined in Code Section 58-9-2610, radio common carrier as defined in Code Section 58-11-10, carriers governed in Chapter 13 of Title 58, railroads and railways as defined in Code Section 58-17-10, motor vehicle carrier as defined in Code Section 58-23-10, or electrical utility as defined in Code Section 58-27-10.

Effective Date: The amendment to Code Section 58-3-130 is effective January 1, 2005. The amendments to Code Sections 58-4-60 and 58-4-5 are effective effect July 1, 2004.

## **REGULATORY MATTERS**

### Senate Bill 532 (Joint Resolution)

#### **Minibottles - Referendum to Amend State Constitution**

The General Assembly has enacted a Joint Resolution that proposes an amendment to the State Constitution (Section 1 of Article VIII-A) which authorizes the General Assembly to determine the size of containers in which alcoholic liquors are sold in this State and to delete the requirement that alcoholic liquors sold for on-premise consumption be only sold via minibottles. This proposal to amend the State Constitution must be submitted to the voters at the November 2004 general election for approval or rejection.

Effective Date: June 2, 2004

House Bill 5094, Section 2 (Act No. 267)  
(See also House Bill 3065, Sections 23, 24, and 25)

### **Wineries Located in South Carolina**

The provisions of Chapter 4 of Title 61, concerning licensed wineries located in South Carolina, have been amended as follows:

1. Code Section 61-4-720 has been amended to clarify that a licensed winery located in South Carolina may sell on its premises wine that is produced on its premises with a majority of the juice from fruit and berries which are grown in South Carolina, provided the wine has an alcoholic content of 16% or less. The winery may also deliver or ship this wine to consumer homes in or outside of South Carolina. This section also allows a licensed winery located in South Carolina to provide, with or without cost, wine taste samples to prospective customers.
2. Code Section 61-4-730 has been amended to clarify that licensed wineries which produce and sell wine produced on its premises with a majority of the juice from fruit and berries which are grown in this State may sell the wine at retail, wholesale, or both, and deliver or ship the wine to the purchaser in the State. This wine must be delivered between 7:00 a.m. and 7:00 p.m.

**Note: See House Bill 3065, Sections 23, 24, and 25, a pending bill summarized in Appendix I, for these and one additional amendment that will be effective July 1, 2004, if enacted.**

Effective Date: July 6, 2004

House Bill 5094, Section 1 (Act No. 267)  
(See also House Bill 3065, Sections 28 and 33)

### **Sales to Airline Companies**

Code Section 61-6-1555 has been added to allow airline companies to purchase beer, wine, and alcoholic liquor directly from licensed wholesalers. Wholesalers may sell and deliver beer, wine, and alcoholic liquor to airline companies. However, it is a misdemeanor to use beer, wine, or alcoholic liquor purchased under the provisions of this section for any purpose other than the sale or use by the airline company on its airplanes.

**Note: See House Bill 3065, Sections 28 and 33, a pending bill summarized in Appendix I, for a similar amendment.**

Effective Date: July 6, 2004

## **Electronic Bingo**

Article 24 of Chapter 21 of Title 12 concerns the regulation of bingo games. The provisions of this article have been amended to establish standards for playing electronic bingo and to add other requirements for all bingo games as follows:

1. Code Section 12-21-4007 has been added and Code Section 12-21-3920 has been amended to define and establish the standards for the site computer system, electronic dabbers, and bingo tickets used in electronic bingo.
2. Code Section 12-21-3920(21) has been added to define a “site system” in part “as a computer accounting system commonly referred to as a point of sale system used in conjunction with electronic dabbers. This computer software must be used at a site by an organization which allows a bingo ticket purchased from a licensed distributor to authorize the download or activation of faces into the electronic dabbers, accounts for gross proceeds, and provides accounting information on all activity for one year from the end of the quarter in which the activity occurred.”
3. Code Section 12-21-3920 defines an “electronic dabber” in part as “a hand-held electronic device that allows a player to store, display, and mark bingo card faces that have been downloaded or activated as authorized by the bingo ticket.”
4. Code Section 12-21-3920(3), which defines the term “card,” has been amended to include a “bingo ticket.” See SC Revenue Ruling #04-11 for information concerning bingo ticket standards.
5. Code Section 12-21-3990(A)(2) has been amended to require that anytime before the conclusion of a bingo game that the prize must be announced specifically stating the dollar amount or value merchandise awarded to the winner or winners for the game.
6. Code Section 12-21-4000(8) has been amended to require that all winning configurations must be verified using an electronic verifying system and must be displayed on the monitor for all players to see.
7. Code Section 12-21-4120, which allows an organization or a promoter to seek a determination from the Department’s regulatory bingo section as to whether or not a certain or specific action constitutes a violation, has been amended to require the Department to respond, in writing, to the party requesting the clarification, citing specific statutes which disqualify an action and, when applicable, citing actions that are authorized pursuant to the laws of this State. A response or any failure to respond is not grounds for estoppel nor does it grant any rights to the organization or promoter seeking a clarification.

8. Code Section 12-21-3940 has been amended to state that a license must not be issued for conducting a game of bingo at an establishment holding a biennial minibottle license.
9. Code Section 12-21-4011 has been added to allow federally-recognized Indian tribes authorized to conduct bingo games in South Carolina to use hardwire technology provided the hardwire technology complies with the same restrictions and meets the same requirements and testing required of electronic dabbers and site systems.
10. Code Section 12-21-3935 has been added to state that nothing in the bingo law (Article 24, Chapter 21 of Title 12) may be construed to allow video poker play and to state that the prohibitions regarding video poker in Code Sections 12-21-2710, 16-19-40 and 16-19-50 apply.
11. Code Section 12-21-4275 has been added to prohibit (1) the transfer of a bingo card or ticket by a manufacturer or bingo ticket manufacturer to a person other than a licensed distributor, (2) the transfer of a bingo card or ticket by a distributor to a person other than a licensed bingo promoter or a licensed bingo nonprofit organization, and (3) the transfer of a bingo card or ticket by a distributor to a promoter or bingo nonprofit organization that does not have a voucher covering the bingo ticket or bingo card.
12. Code Section 12-21-4200(3) has been amended to provide that a certain portion of the revenue derived from bingo must be transferred to the Commission on Minority Affairs.

Effective Date: August 2, 2003

## **REENACTED TEMPORARY PROVISOS**

**The following temporary provisions were enacted in prior legislative sessions and were reenacted by the General Assembly in 2004.**

**Temporary provisos are effective for the State fiscal year July 1, 2004 through June 30, 2005, and will expire June 30, 2005, unless reenacted by the General Assembly in the next legislative session.**

### **ADMINISTRATIVE AND PROCEDURAL MATTERS**

House Bill 4925, Part IB, Section 64, Proviso 64.7 (Act No. 248)

#### **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 4925, Part IB, Section 64, Proviso 64.9 (Act No. 248)

#### **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.

House Bill 4925, Part IB, Section 64, Proviso 64.8 (Act No. 248)

(See also House Bill 3065, Section 31)

#### **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.

**Note: See House Bill 3065, a pending bill summarized in Appendix I, that added a permanent and codified version of this provision.**

## MISCELLANEOUS TAXES

House Bill 4925, Part IB, Section 8, Proviso 8.28 (Act No. 248)

### **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 4925, Part IB, Section 8, Proviso 8.33 (Act No. 248)

### **Nursing Home Bed Franchise Fees – Suspension**

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

## REGULATORY MATTERS

House Bill 4925, Part IB, Section 56DD, Proviso 56DD.36 (Act No. 248)

### **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.

House Bill 4925, Part IB, Section 56DD, Proviso 56DD.34 (Act No. 248)

### **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.

**Local Option Permits – Municipalities**

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

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

The temporary proviso in Act No. 248 states that local option permits “may be issued in all parts of a municipality when any part of the municipality has been approved for issuance of such permits.” Essentially, if a municipality is located in more than one county, then local option permits may be issued for any part of the municipality as long as one of the counties in which the municipality is located has approved the referendum for Sunday sales.

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

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

## **REMINDERS**

**The following provisions were enacted in 2003, but are effective in 2004 or 2005. They are summarized below for informational purposes.**

### **ADMINISTRATIVE and PROCEDURAL MATTERS**

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 were summarized in SC Information Letter #03-20 and the majority of those amendments were effective June 18, 2003. The amendments to Code Sections 12-60-440 and 12-60-450 were effective January 1, 2004, and are provided below.

1. 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.
2. 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.
3. 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 Court for a determination without having to exhaust his prehearing remedies.

See SC Revenue Procedure #04-1 for more information on the Department's internal appeals process and procedure.

Effective Date: January 1, 2004 for amendments to Code Sections 12-60-440 and 12-60-450.



## **OTHER ITEMS**

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

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# INCOME TAXES AND WITHHOLDING

### House Bill 3065, Section 30

(See also House Bill 4925, Part IB, Section 73, Proviso 73.19 (Act No. 248))

#### **Internal Revenue Code Conformity and Exceptions**

Code Section 12-6-40(A)(1) has been amended, except as otherwise provided, to update South Carolina's income tax laws to conform to the Internal Revenue Code of 1986 as amended through December 31, 2003, and includes the effective date provisions contained in it.

Code Section 12-6-40(A)(1)(b) has been added to provide that for purposes of Internal Revenue Code Sections 63 ("Taxable Income Defined") and 179 ("Election to Expense Certain Depreciable Business Assets"), the amendments made by sections 103 ("Standard Deduction Marriage Penalty Relief") and 202 ("Increase Section 179 Expensing") of the Jobs and Growth Tax Relief Reconciliation Act of 2003, P.L. 108-27 (May 28, 2003) are only effective for taxable years beginning after December 31, 2003.

Code Section 12-6-50 provides a listing of Internal Revenue Code provisions specifically not adopted by South Carolina. This section was amended to clarify that for purposes of Chapter 6 and references to the Internal Revenue Code and its sections, except as otherwise specifically provided, the Internal Revenue Code provisions listed are specifically not adopted by South Carolina.

**Note: See the summary of Act No. 248, House Bill 4925, Part IB, Section 73, Proviso 73.19, for a temporary conformity proviso in effect only for calendar year 2004 income tax returns and for estate tax returns of decedents dying in 2004.**

Effective Date: Upon approval by the Governor

### Senate Bill 767, Section 2

#### **SC Military Family Relief Fund Check Off**

Code Section 12-6-5060(A), providing for various income tax check offs, has been amended to provide for a designation on South Carolina's individual income tax form enabling a taxpayer to make a contribution to the South Carolina Military Family Relief Fund established pursuant to Article 3, Chapter 11 of Title 25. The funds are used to

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provide grants to families of SC National Guard members or other Reserve component members, to include the Army Reserve, Marine Corps Reserve, Naval Reserve, Air Force Reserve, and Coast Guard Reserve, and including National Guard members of other states, who are South Carolina residents and were called to active military service as a result of the September 11, 2001, terrorist attacks.

Effective Date: For individual income tax returns due to be filed April 15, 2005 and thereafter.

### House Bill 3065, Section 2

#### **Business Dividends Apportioned**

Code Section 12-6-2220(2), providing for the allocation of certain dividends, has been amended to provide that dividends received from corporate stocks not connected with the taxpayer's business, less all related expenses, are allocated to the state of the corporation's principal place of business as defined in Section 12-6-30(9) or the domicile of an individual taxpayer. Therefore, dividends received from corporate stocks connected with the taxpayer's business are now apportioned. Prior to this amendment, all dividends received from corporate stocks owned, less all related expenses, were allocated to the taxpayer's principal place of business or domicile.

Effective Date: Taxable years beginning after 2003.

### House Bill 3065, Section 6

#### **Composite Income Tax Return by Partnership or S Corporation – Use Expanded**

Code Section 12-6-5030, allowing a partnership or S corporation to file a composite return on behalf of qualifying nonresidents, has been amended. A composite return allows partnerships or S corporations to compute and report the South Carolina income tax attributable to their nonresident partners or shareholders on a single individual income tax return filed in the name of the partnership or S corporation. The amendments include:

1. Clarifying the filing methods in which the tax may be computed on a composite return by codifying the Department's current procedure allowing a partnership or S corporation to determine each participant's tax due by one of the following methods:

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Method 1 - Compute the pro rata share of the standard deduction or itemized deductions, and personal exemption amount for each participant pursuant to Code Section 12-6-1720(2) in the same manner as if it was being separately reported or

Method 2 - Compute each participant's share of South Carolina income without regard to any deductions or exemptions.

2. Expanding who may participate in filing a composite return to include nonresident partners or shareholders having income within South Carolina from sources other than the partnership or S corporation. The following provisions are applicable to affected partners or shareholders:
  - a. A nonresident participating in the composite return that has South Carolina income from sources other than the entity filing the composite return is required to file appropriate returns and make payment of all South Carolina taxes required by law. Taxes paid for the nonresident with the composite return shall reduce taxes due at the time the nonresident files a separate return for the tax year reporting South Carolina income from all sources.
  - b. The entity shall furnish to each nonresident a written statement as required by Section 12-8-1540(A) (*i.e.*, Form 1099 –MISC for SC purposes only) as proof of the amount that has been paid by the partnership or S corporation as estimated payments for the nonresident and the amount paid for the nonresident with the composite return.
3. Clarifying that corporate taxpayers may not participate in a composite return. The statute continues to provide that nonresident partners or shareholders that are individuals, trusts, or estates having the same tax year may participate in the composite return.

Effective Date: Taxable years beginning after 2003.

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House Bill 3065, Sections 4 and 5

### **Use of Tax Credits by Consolidated Corporations – Various Amendments**

Code Section 12-6-3480, providing for the use and ordering of tax credits, has been amended. The amendments include:

1. Any credits earned under Chapters 6 (Income Tax Act) or 14 (Economic Impact Zone) of Title 12 earned by a corporation included in a consolidated income tax return under Code Section 12-6-5020 must be used and applied against the consolidated tax, unless otherwise specifically provided. This amendment deleted the portion of the statute that provided that any credits earned under Chapter 6 by one member of a controlled group of corporations may be used and applied by that member and by any other members of the controlled group. This amendment also added the reference to Chapter 14.
2. Clarifying that any limitations upon the amount of tax or license fee liability that can be reduced by use of a credit must be computed one credit at a time before another credit is used to reduce any remaining tax liability in Chapter 6 or license fee liability in Chapter 20.
3. Clarifying that a taxpayer may apply any credit under Chapters 6 or 14 of Title 12 that is allowed for use against both taxes and license fees in any order, unless otherwise specifically provided, and against either one or both taxes and license fees in any given year, subject to specific limitations in the applicable credit statute and Code Section 12-6-3480(3).
4. Clarifying that a tax credit administered by the Department must be used to the extent possible in the year it is generated and cannot be refunded, unless otherwise provided by law.
5. Deleting the definition of the term “controlled group of corporations” in Code Section 12-6-3480(5)(a).

In a related amendment, Code Section 12-6-5020(F), concerning the filing of a consolidated corporate income tax return, has been amended to clarify that a corporation which files a consolidated return who is entitled to one or more income tax credits, including the carryover of unused credits, must determine the income tax credits on a consolidated basis. Prior to this amendment, the statute provided that the credits “may” be determined on a consolidated basis.

Effective Date: Taxable years beginning after 2003.

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House Bill 3065, Section 29

### **Job Tax Credit – Special Provision for Bankrupt Manufacturing Facility Amended**

Code Section 12-6-3360(M)(3), defining “new job” for job tax credit purposes, has been amended to revise the following special provision:

Notwithstanding another 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 distressed county; (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, as of the effective date of this paragraph; (3) the taxpayer, as an unrelated entity, acquires as of March 12, 2004, substantially all of the assets of the company operated under Chapter 11.

Effective Date: Upon approval by the Governor

House Bill 3065, Section 3

(See also House Bill 3986, Section 12 (Act No. 172))

### **Tax Moratorium – Technical Corrections**

Code Section 12-6-3365 provides a 10 or 15 year moratorium to qualifying taxpayers making a substantial investment and creating a minimum number of new, full time jobs in certain economically depressed South Carolina counties at a type of facility listed in Code Section 12-6-3360(M), the job tax credit statute. The taxpayer must petition, using the procedures in Code Section 12-6-2320(B), to obtain approval to claim the moratorium on corporate income taxes or insurance premium taxes.

The technical amendments to Code Section 12-6-3365 are:

1. To correct a reference in Code Section 12-6-3365(A) to refer to insurance premium taxes imposed pursuant to Title 38. The statute erroneously referred to insurance premium taxes imposed pursuant to Code Section 12-6-530 (*i.e.*, corporate income taxes.)
2. To clarify that the petition for a moratorium on insurance premium taxes set forth in Code Section 12-6-2320(B) must be made to and approved by the director of the Department of Insurance. Note: Insurance companies are subject to premium taxes

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and license fees that are administered by the South Carolina Department of Insurance and not by the Department of Revenue.

**Note: See the summary of Act No. 172, House Bill 3986, Section 12, for other amendments to the tax moratorium.**

Effective Date: Upon approval by the Governor

### House Bill 3065, Section 9

#### **Infrastructure Credit Against License Fees – Amended**

Code Section 12-20-105 allows a company 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 amounts paid in cash to provide infrastructure for an eligible project of another taxpayer. Code Section 12-20-105 has been amended as follows:

1. Code Section 12-20-105(B)(1), addressing what is a qualifying project, has been amended to delete an incorrect reference to Chapter 37, Title 12.
2. Code Section 12-20-105(C), addressing what qualifies as eligible infrastructure, has been amended to eliminate improvements to private water and sewer systems and private electric, natural gas, and telecommunication systems as eligible infrastructure.

Effective Date: Taxable years beginning after 2003.

### House Bill 3065, Section 8

#### **Job Development Credit and Job Retraining Credit – Annual \$1,000 Fee Clarified**

Code Section 12-10-105 has been amended to clarify that an annual \$1,000 fee must be remitted to the Department by a qualifying business claiming in excess of \$10,000 in job development credits or in excess of \$10,000 in job retraining credits in one calendar year. The fee is due for each project that is subject to a revitalization agreement or retraining agreement that exceeds \$10,000 in job retraining credits or job development credits in one calendar year. The fee becomes due at the time the single project's claim for job development credits or job retraining credits exceeds \$10,000 for that calendar year.

Effective Date: Upon approval by the Governor

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House Bill 3065, Section 7.A

### **Withholding Deposits at Financial Institutions**

Code Section 12-8-1520(A)(2), providing that if a resident withholding agent is required under the Internal Revenue Code to deposit withheld funds at a financial institution, then it shall deposit the funds required to be withheld under Chapter 8 of Title 12 at a financial institution selected by the State Treasurer, has been amended to add at the end the phrase unless otherwise instructed by the Department.

Effective Date: July 1, 2004

House Bill 3065, Section 7.B

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

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

Effective Date: Payments due after January 1, 2005.

## **PROPERTY TAXES AND FEES IN LIEU OF PROPERTY TAXES**

House Bill 3065, Sections 35.A, B, and C

### **“Cap” on Real Property Values**

Code Section 12-37-223 has been added to exempt from property tax an amount of fair market value of real property located in the county sufficient to limit to 20% any valuation increase (“cap”) attributable to a countywide reassessment program conducted pursuant to Code Section 12-43-217.



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The 20% cap does not apply to:

1. Real property valued under the unit valuation method;
2. Value attributable to property or improvements that have not been previously taxed, such as new construction and renovations to existing structures; and
3. Real property transferred after the most recent reassessment implemented pursuant to Code Section 12-43-217.

Notwithstanding the general rule that the cap does not apply to transferred property, the cap does apply to:

1. Property transferred in fee simple in a transfer that is not subject to income taxes pursuant to Internal Revenue Code Sections 102 (gifts and inheritances limited to transfer to a spouse or surviving spouse), 1033 conversions (fire and insurance proceeds to rebuild), 1041 (transfers between spouses or incident to divorce), 351 (transfers to a corporation controlled by the transferor), 355 (distribution by a controlled corporation), 368 (corporate reorganizations), or 721 (nonrecognition of gain or loss on a contribution to a partnership);
2. Distributions of real property out of corporations, partnerships, or limited liability companies to persons who initially contributed the property to the corporation, partnership or limited liability company; and
3. The transfer of any interest in real property to a spouse whether inter vivos, testamentary, or by operation of law.

Unless one of the exceptions above applies, once the cap is applicable to a specific piece of property, it remains in effect until the next reassessment. In subsequent years, the property value will not increase more than 20% between reassessments. In order to receive the cap on a piece of property the owner must apply for the cap with the county assessor. The taxpayer must certify that the property meets the requirements of the cap and must provide proof if requested by the county assessor. The time period for making application or for seeking a refund as a result of subsequent eligibility is the same as provided for in Code Section 12-43-220(c) for applying for the 4% assessment ratio for legal residences. The Department will assist the applicant and the assessor to the extent practicable in providing information for determining eligibility. If a person receives the cap and is then found ineligible, then the county may charge a penalty equal to 100% of the tax paid, plus interest at one half of one percent per month. The penalty may be no less than \$30 and no more than the taxes assessed based on the current year's value of the property without regard to the cap.

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No further application is necessary from the owner who qualified for the cap while the property continues to meet the eligibility requirements. If a change in ownership occurs, the owner who had qualified for the cap shall notify the assessor within 6 months of the transfer of title. Another application is required by the new owner to qualify for the cap.

If property is transferred such that it is no longer eligible for the cap, it is subject to being taxed in the tax year following its transfer at: (1) its value as determined under Code Section 12-37-930; (2) at market value based on the sale or transfer of ownership; or (3) at the appraised value determined by the county assessor. A closing attorney involved in a real estate transfer must provide the following notice to buyers: “THE INTEREST IN REAL PROPERTY TRANSFERRED AS A RESULT OF THIS TRANSACTION MAY BE SUBJECT TO PROPERTY TAXATION DURING THE NEXT TAX YEAR AT A VALUE THAT REFLECTS ITS FAIR MARKET VALUE.”

Code Section 12-37-223A, which allowed the county to prescribe a 15% cap by ordinance, is repealed for property tax years beginning after 2003. However, amounts exempted under Code Section 12-37-223A are deemed to be exempted under Code Section 12-37-223.

A task force shall be appointed by January 14, 2014 to study the effects that Chapter 37, Title 12 has on homeowners and the real estate industry, and to recommend changes and report its finding to the General Assembly by January 13, 2015.

Effective Date: For countywide reassessment values implemented after 2003.

### House Bill 3065, Section 14

#### **Homestead Exemption – Repeal of Obsolete Provision**

Code Section 12-37-290, which provided a \$10,000 homestead exemption for taxpayers over 65, legally blind, or totally and permanently disabled, has been repealed. This statute is no longer necessary since a \$50,000 homestead exemption for these taxpayers is provided in Code Section 12-37-250.

Effective Date: Upon Approval by the Governor

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House Bill 3065, Section 35.D

### **Consumer Price Index Calculation for Millage Rate Increases - Clarification**

Code Section 6-1-320(A) has been amended to clarify that each year a local governing body may increase the millage rate imposed for general operating purposes by the increase in the average of the 12 monthly consumer price indexes for the most recent 12 month period consisting of January through December of the preceding calendar year.

Effective Date: Upon Approval by the Governor

Senate Bill 1043

### **Military Facilities Redevelopment Law Amended**

Chapter 12, Title 31 providing rules for redevelopment authorities that are revitalizing and taking over the property of closed or abandoned military facilities, has been amended. Many of the amendments deal with Tax Increment Financing in connection with the redevelopment authority and are summarized below.

1. Code Section 31-12-100(E) has been added to provide that if tax increment financing (“TIF”) obligations have been issued by a municipality at the request of a redevelopment authority, the TIF district continues in existence even if the redevelopment authority is dissolved. The TIF district will terminate once the municipality adopts an ordinance dissolving the tax allocation fund and terminating the designation of the redevelopment project area. Until the adoption of the ordinance described above, the municipality holds all the powers for redevelopment plans, the TIF district and TIF obligations that might have been held and exercised by the dissolved redevelopment authority.
2. Code Section 31-12-210(F) has been amended to provide that any obligations for redevelopment projects must be issued no later than 15 years after the adoption of an appropriate ordinance by the municipality concurring in the redevelopment authority’s redevelopment plan.
3. Code Section 31-12-270(C) has been amended to provide that upon expiration of the 15 year period for issuance of the obligations and once all redevelopment project costs have been paid, excess funds have been distributed, and the obligations have been retired, the municipality shall adopt an ordinance dissolving the tax allocation and terminating the designation of the redevelopment project area.

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4. Code Section 31-12-290 has been amended to provide that during the existence of the special allocation fund created by Chapter 12, Title 31, funds that are not used generally will not be subject to distribution, but may be carried forward and used for future year's obligations and redevelopment costs.
5. Code Section 31-12-300(A)(2) has been amended to provide that for purposes of determining the value of property in the TIF district, the auditor of the county must certify the total equalized assessed value of all taxable real property within the redevelopment project area as of the date of the creation of the redevelopment authority or the date properties were scheduled for disposal by final action of the federal government in the case of properties added after the date of creation of the authority, and certify this amount as the "total initial equalized assessed value" of the taxable property within the redevelopment area. Any other public official that is required to determine this assessed value has to cooperate and assist the county auditor in making this determination.

Effective Date: Upon approval by the Governor

### House Bill 3065, Sections 1 and 15

#### **Fee Investment Amount Increased for Net Present Value Method Calculation**

Code Section 4-29-67(D)(2)(b), in the Big Fee, and Code Section 12-44-50(A)(3), in the Simplified Fee, have been amended to increase the amount of investment that a sponsor must invest to use the "net present value" method to calculate its fee from \$45 million to \$100 million. Under the net present value method, a sponsor may calculate its annual payment based on an alternative arrangement yielding a net present value of the sum of the Fees for the life of the agreement not less than the net present value of the Fee schedule as calculated under the normal method for calculating the Fee.

Effective Date: Fee agreements entered into after September 30, 2004.

### House Bill 3065, Section 1

#### **Big Fee – Technical Correction**

Code Section 4-29-67(F)(2)(b) has been amended to make a technical amendment to change the term "investor" to "sponsor."

Effective Date: Fee agreements entered into after September 30, 2004.

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### SALES AND USE TAXES

#### House Bill 3065, Section 34

(See also House Bill 4925, Part IB, Section 64, Proviso 64.14 (Act No. 248))

#### **Medicines, Medical Supplies, and Diabetic Supplies Sold to “Free Clinics”**

Code Section 12-36-2120(63) has been added to exempt from sales and use tax prescription and over-the-counter medicines and medical supplies, including diabetic supplies sold to a health care clinic that provides medical and dental care without charge to all patients.

**Note: See the summary of Act No. 248, House Bill 4925, Part IB, Section 64, Proviso 64.14, containing a temporary proviso of a similar exemption. It also applies to diabetic diagnostic equipment and diabetic testing equipment.**

Effective Date: Upon approval by the Governor

#### House Bill 3065, Section 13

#### **Direct Pay and Exemption Certificates Guidelines Clarified**

Code Section 12-36-2510, which concerns “direct pay” and exemption certificates issued by the Department, has been amended to clarify the procedures for issuing these certificates.

A direct pay certificate allows its holder to make all purchases tax free and to report and pay directly to the Department any taxes due. The holder of a direct pay certificate is liable for any taxes due. An exemption certificate, as opposed to allowing its holder to make all purchases tax free, allows its holder to make only certain purchases tax free such as machinery, electricity, or raw materials. The holder of an exemption certificate is liable for any taxes due.

This section now permits the Department, at its discretion, to issue or authorize any type of certificate allowing a taxpayer to purchase tangible personal property tax free and be

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liable for any taxes. In addition, when a purchaser claims an exemption or exclusion from the tax, the following provisions must be followed:

1. The seller must obtain at the time of the purchase any information determined necessary by the Department, including the reason the purchaser is claiming a tax exemption or exclusion; and
2. The seller must maintain proper records of exempt or excluded transactions and provide them to the Department when requested and in the form requested by the Department.

Furthermore, the Department, at its discretion, may utilize a system where the purchaser exempt from the payment of the tax is issued an identification number which must be presented to the seller at the time of the sale.

A seller that complies with these provisions is relieved from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption or exclusion by use of a certificate, provided the seller fraudulently did not fail to collect or remit the tax, or both, or solicit a purchaser to participate in an unlawful claim of an exemption. The liability for any tax shifts to the purchaser who improperly claimed the exemption or exclusion by use of the certificate.

Effective Date: October 1, 2004

### House Bill 3065, Section 17.B

#### **Improper Use of Resale, Wholesale, and Exemption Certificates**

Code Section 12-54-43(L) has been added to impose a penalty on a purchaser who uses a resale, wholesale, or an exemption certificate issued or authorized by the Department to purchase tangible personal property tax free which the purchaser knows is not excluded or exempt from the tax. This penalty, which is in addition to any other penalties due, is 5% of the amount of the tax if the failure is for not more than one month, with an additional 5% for each additional month or fraction of the month during which the failure continues. However, this penalty cannot exceed 50% in the aggregate. This provision does not apply to direct pay certificates.

Effective Date: July 1, 2004

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House Bill 4735, Sections 2 and 3

### **Modular Homes – Partial Exemption and Inapplicability of the Maximum Tax**

Code Section 12-36-2120(34) has been amended to increase the exemption for modular homes regulated pursuant to Chapter 43 of Title 23 from 35% to 50% of the gross proceeds of sale of the modular home, whether on-frame or off-frame. The manufacturer must collect the tax and remit it to the Department. For purposes of this exemption, “gross proceeds of sale” equals the manufacturer’s net invoice price of the modular home sold, including all accessories built in to the modular home at the time of delivery to the purchaser and not including freight or deposit on returnable materials.

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

Effective Date: Upon approval by the Governor

House Bill 4537, Section 1.D

### **Aviation Gasoline Defined**

Code Section 55-5-20(12), which defines the term “aviation gasoline,” has been amended to include aviation jet fuel within the definition of aviation gasoline. Aviation gasoline now means “gasoline and aviation jet fuel manufactured exclusively for use in airplanes and sold for such purposes.”

As a result of this change, all sales and use tax revenue received from the sale of gasoline, or aviation jet fuel, manufactured exclusively for use in airplanes and sold for such purposes must be credited to the “State Aviation Fund.”

Sales of aviation gasoline, for purposes of the sales and use tax, are reported to the Department on Form ST-403.

Effective Date: Upon approval by the Governor

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# MISCELLANEOUS

## **ADMINISTRATIVE and PROCEDURAL MATTERS (Summarized by Subject Matter)**

### House Bill 3065, Section 20

#### **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. Item (11) has been amended to update references to reflect changes in certain agency names. The statute permits disclosure of information contained on a return to the South Carolina Employment Security Commission, Department of Revenue, or to the Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau.
2. Item (12)(b) was added to allow disclosure to any county auditor or county assessor of whether the 4% assessment pursuant to Code Section 12-43-220(c)(1) has been claimed by a taxpayer in any county.
3. Item (24) has been amended to delete the provision allowing disclosure of information pursuant to a subpoena issued by a federal grand jury. The statute continues to allow disclosure of information pursuant to a subpoena issued by the State Grand Jury of South Carolina.

Effective Date: Upon approval by the Governor

### House Bill 3065, Section 21

#### **Revenue Procedures Act – Various Amendments**

1. Code Section 12-60-420(A) has been amended to add that if the Department makes a division decision or determines a deficiency in any local tax administered by the Department, it must send a division decision or a proposed assessment first class mail or deliver it to the taxpayer. This provision continues to apply to state taxes.



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2. A technical correction was made to Code Section 12-60-420(A) to provide that a proposed decision or assessment must state that an assessment will be made or the decision will become final unless the taxpayer protests as provided in Code Section 12-60-450.
3. A technical correction was made to Code Section 12-60-420(B) to reinsert the phrase “if the taxpayer fails to file a protest” that was inadvertently deleted in a prior amendment. Subsection (B) provides that if the taxpayer fails to file a protest, the division decision or proposed assessment will become final and, if applicable, an assessment will be made for the amount of a proposed assessment.

Effective Date: January 1, 2004

### House Bill 3065, Section 22

#### **Refund Offset Provisions**

Code Section 12-60-490, dealing with the application of refund amounts against taxes due, has been amended as follows:

1. To correct a reference to Chapter 56, Title 12 from Article 3, Chapter 54.
2. To add debts to be collected under Code Section 12-4-580 (the government entity accounts receivable program) to the list of debts or taxes assessed that a refund may be offset against.

Effective Date: Upon Approval of the Governor

### House Bill 3065, Section 19

#### **Penalty for Failure to Keep Records or File Returns - Amended**

Code Section 12-54-210(A), a penalty provision requiring persons liable for a tax, license, fee, or surcharge administered by the Department or for the filing of a return to keep books, papers, records, render statements, make returns, and comply with regulations prescribed by the Department, has been amended as follows:

1. The penalty amount has increased to an amount not to exceed \$1,000 from an amount not to exceed \$500.

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2. The statute was expanded to apply to persons filing a return with the Department. Previously, the penalty applied to the filing of returns required by Title 12.

Effective Date: July 1, 2004

House Bill 3065, Section 17.A

### **Penalty for Frivolous Claims for Refunds, Protests or Other Documents - Amended**

Code Section 12-54-43(I), which establishes a penalty for filing a frivolous return, has been amended to expand the application of the penalty to:

1. Returns filed with the Department that are based on a position which is groundless; and,
2. Claims for refund, protests or other documents that are based on a position that is frivolous or groundless or that contains information that on its face indicates a position that is substantially incorrect.

In addition, the penalty has been changed to impose a penalty of \$500 for the first filing, \$2,500 for the second filing and \$5,000 for each subsequent filing. These penalties are in addition to all other penalties provided by law.

Effective Date: October 1, 2004

House Bill 3065, Section 16

### **Penalty for Withholding Statements - Amended**

Code Sections 12-54-42(a) and (b), concerning penalties, has been expanded to provide that a penalty is imposed on a "person" who fails to comply with the provisions of Code Section 12-8-1540, requiring the furnishing of a withholding statement to employees, or Code Section 12-8-540(A)(1). The amendment replaced the term "employer" with the term "person."

Effective Date: July 1, 2004

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### House Bill 3065, Section 31

(See also House Bill 4925, Part IB, Section 64, Proviso 64.8 (Act No. 248))

#### **20% Collection Assistance Fee Imposed on Unpaid Tax Debt**

Chapter 55 of Title 12, the “Overdue Tax Debt Collection Act,” has been enacted to codify the 20% collection assistance fee imposed on unpaid tax debts that was previously enacted as a temporary proviso in the last two State budget bills. Under this Act, tax debts that remain unpaid 120 days or more after the final notice of assessment 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. The 20% collection fee is effective for all tax debts that remain outstanding on December 1, 2002, and is effective for all debts incurred on or after December 1, 2002.

**Note: See the summary of Act No. 248, House Bill 4925 Part IB, Section 64, Proviso 64.8, for a substantially similar temporary collection fee provision that was reenacted by the General Assembly this year.**

Effective Date: Upon approval by the Governor

### House Bill 3065, Section 18

#### **Custodian of Property Not Liable for Surrendering Property to the Department**

Code Section 12-54-123 has been added to provide if a person (*e.g.*, a bank) holds property for a taxpayer and the Department levies upon that property, and the person surrenders the property to the Department, the person cannot be held personally liable for surrendering the property. If a person tries to bring an action to hold such person liable, the court will dismiss the case.

Effective Date: July 1, 2004

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### **MISCELLANEOUS TAXES**

#### House Bill 3065, Section 10

##### **Motor Fuel Tax Refunds for Sales to the Federal Government**

Code Section 12-28-740(3)(b) has been amended to no longer allow credit card issuers to apply for a credit for motor fuel user fees on certain sales to federal agencies. This section now only allows a credit card issuer to apply for a refund when the purchase is charged to a credit card issued to a federal government agency, the credit card issuer elects to be the ultimate vendor, the federal agency is not billed for the user fee, and the purchase was made at a fixed retail pump available to the general public.

Effective Date: Upon approval by the Governor

#### House Bill 3065, Section 11

##### **Tracking of Petroleum Products – Penalty Added**

Code Section 12-28-1400 has been added to require that all information required to be reported to the Department under the motor fuel user fee law must be used in the tracking of petroleum products and must be submitted in the manner prescribed by the Department by regulation. The regulation must include, but not be limited to, the data elements, the format of the data elements, and the method and medium of transmission to the Department. A person liable for reporting under motor fuel user fee law who fails to meet the requirements of this new section within three months after notification of the failure by the Department is subject to a penalty of \$5,000 for each month the failure continues. This penalty is in addition to all other penalties prescribed by the motor fuel user fee law.

Effective Date: Upon approval by the Governor

#### House Bill 3065, Section 12

##### **Illegal Use of Dyed Fuel – Penalty Amended**

Code Section 12-28-1730(F) has been added to change the penalty for the illegal use of dyed fuel in a vehicle on the highways of this State. The penalty previously set forth in Code Section 12-28-1730(C) has been repealed. The amendment allows the imposition of a civil penalty in the amount of \$1,000 or \$10 for each gallon of dyed fuel involved,

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whichever is greater, on the operator of a vehicle that is used on the highways of this State, or is authorized or otherwise allowed to be used on the highways of this State, and who uses dyed fuel for the propulsion of that vehicle or who stores dyed fuel to be used for the propulsion of a vehicle on the highways of this State. This penalty applies regardless of whether any of such dyed fuel is used for a nontaxable purpose, unless permitted to do so under federal law. For purposes of this section, the operator is the person responsible for the management and operation of the vehicle, whether as owner, lessee, or other party.

Effective Date: Upon approval by the Governor

### **OTHER ITEMS (including local taxes)**

House Bill 3530

#### **Municipal Charges to Telecommunications Providers**

Article 20, Chapter 9 of Title 58, which pertains to municipal charges to telecommunication providers for use of public rights-of-way, has been amended. An overview of the major changes includes:

1. Code Section 58-9-2200, relating to various definitions, has been amended to further define “service address” to include the origination point of the telecommunications signal for postpaid calling services and to define the term “postpaid calling service.”
2. Code Section 58-9-2220, relating to maximum rates for business license taxes for retail telecommunications services, has been amended to provide that the maximum business license tax a municipality may levy on the sale of retail communications services is 1% of the gross income derived from the sale.
3. Code Section 58-9-2230, relating to public rights of way and telecommunications services, has been amended to provide that the administrative fee charged in connection with the use of a public right of way under this section is in lieu of any permit fee, encroachment fee, degradation fee, or other fee assessed on a telecommunications provider for its occupation of or work within the public right of way.

Effective Date: Upon approval by the Governor

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### REGULATORY MATTERS

House Bill 3065, Section 26

#### **Due Date for Wine Taxes Changed on Direct Shipments to SC Residents**

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

Effective Date: July 1, 2004

House Bill 3065, Sections 23, 24 and 25

(See also House Bill 5094, Section 2 (Act No. 267))

#### **Wineries Located in South Carolina**

The provisions of Chapter 4 of Title 61, concerning licensed wineries located in South Carolina, have been amended as follows:

1. Code Section 61-4-725 has been added to state that a licensed winery located in a county or municipality that has conducted a favorable referendum under the provisions of Section 61-6-2010, during those same hours authorized by permits issued under Section 61-6-2010, may sell, possess, and permit the consumption of wine on the premises.
2. Code Section 61-4-720 has been amended to clarify that a licensed winery located in South Carolina may sell on its premises wine that is produced on its premises with a majority of the juice from fruit and berries which are grown in South Carolina, provided the wine has an alcoholic content of 16% or less. The winery may also deliver or ship this wine to consumer homes in or outside of South Carolina. This section also allows a licensed winery located in South Carolina to provide, with or without cost, wine taste samples to prospective customers.
3. Code Section 61-4-730 has been amended to clarify that licensed wineries which produce and sell wine produced on its premises with a majority of the juice from fruit and berries which are grown in this State may sell the wine at retail, wholesale, or

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both, and deliver or ship the wine to the purchaser in the State. This wine must be delivered between 7:00 a.m. and 7:00 p.m.

**Note: See the summary of Act No. 267, House Bill 5094, Section 2, for identical amendments to Code Section 61-4-720 and Code Section 61-4-730 that are effective July 6, 2004.**

Effective Date: July 1, 2004

House Bill 3065, Sections 28 and 33

(See also House Bill 5094, Section 1 (Act No. 267))

### **Sales to Airline Companies**

Code Section 61-6-1555 has been added to allow airline companies to purchase beer, wine, and alcoholic liquor directly from licensed wholesalers. Wholesalers may sell and deliver beer, wine, and alcoholic liquor to airline companies. However, it is a misdemeanor to use beer, wine, or alcoholic liquor purchased under the provisions of this section for any purpose other than the sale or use by the airline company on its airplanes.

**Note: See Act No. 267, House Bill 5094, Section 1, for a similar amendment to House Bill 3065, Sections 28 and 33 that is effective July 6, 2004.**

Effective Date: Upon approval by the Governor

House Bill 4709

### **Bingo - License Requirements for Nonprofit Organizations - Amended**

Code Section 12-21-4070 has been amended to reduce from three years to two years the length of time a nonprofit organization must have been active in South Carolina before it may receive a license to conduct bingo. The requirement that the nonprofit be domiciled in this State for three years before it may receive a license to conduct bingo did not change.

Effective Date: Upon approval by the Governor

## APPENDIX II

**CAUTION: THE GOVERNOR HAS VETOED HOUSE BILL 5085. IT HAS BEEN SUMMARIZED FOR YOUR REFERENCE ONLY. THIS VETO MAY BE OVERRIDDEN BY THE GENERAL ASSEMBLY IN THE UPCOMING 2005 LEGISLATIVE SESSION.**

### INCOME TAXES

#### House Bill 5085, Section 1

##### **Organ Donation Expenses While Living – New Individual Income Tax Deduction**

Code Section 12-6-1140(12) has been added to provide a full year resident individual an income tax deduction for up to \$10,000 of expenses incurred in connection with the donation, while living, of one or more human organs (*i.e.*, all or part of a liver, pancreas, kidney, intestine, lung, or bone marrow) to another human for transplantation.

An individual may claim this deduction for only one organ donation. Travel expenses, lodging expenses, and lost wages related to the donation, to the extent not reimbursed, are expenses eligible for this deduction. The deduction is allowed in the taxable year the transplant occurs. Unused credit may be carried forward for 3 succeeding taxable years.

#### House Bill 5085, Section 3

##### **Credit for Organ/Tissue Donation at Death – New Income or Estate Tax Credit**

Code Section 12-6-3555 has been added to allow a nonrefundable \$1,000 tax credit for a resident individual whose organs or tissues were removed at the time of death for transplant. The decedent's surviving spouse or personal representative may elect to claim the credit against any income tax liability imposed pursuant to: (1) Code Section 12-6-510 on the decedent's final South Carolina individual income tax return or the estate income tax return or (2) Chapter 16 of Title 12 against any estate tax liability.



## APPENDIX II

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### REGULATORY

House Bill 5085, Section 2

(See also House Bill 3065, Section 27)

#### **Beer and Wine Taxes in Lieu of Certain Other Taxes on Beer and Wine**

Code Section 12-21-1085 has been added to provide that the beer and wine taxes imposed in Article 7, Chapter 21 of Title 12 are, except as provided in Code Section 12-21-1035 and Code Sections 12-21-1320 to 12-21-1350, in lieu of all other taxes and licenses on beer and wine of the State, the county, or the municipality, except the sales and use tax, or Code Sections 6-1-700 through 6-1-770, and include licenses for its delivery by the wholesaler.

**Note: See House Bill 3065, Section 27, a pending bill not summarized in this publication, for an identical amendment as House Bill 5085, Section 2.**