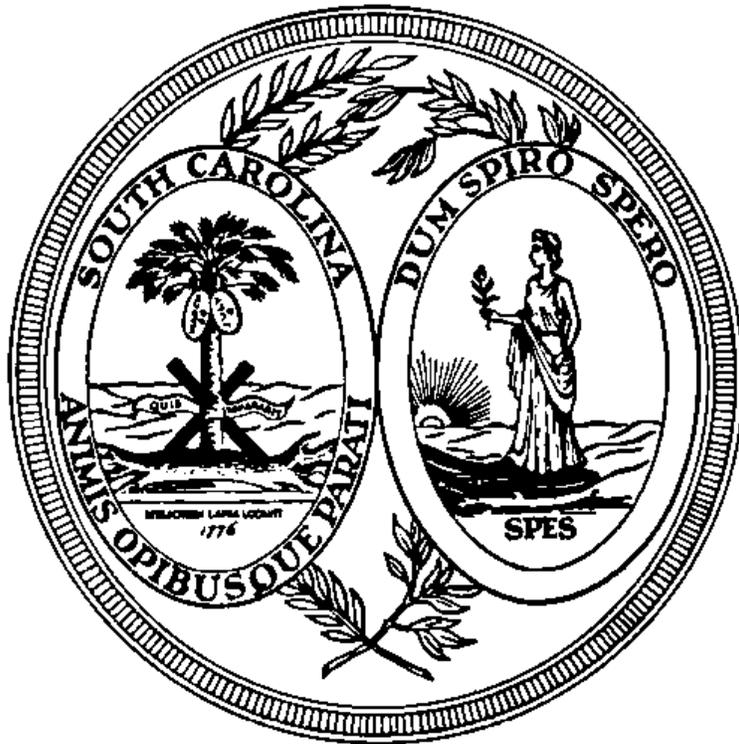


**South Carolina
Department of Revenue
Legislative Update
for 2005**



**The Honorable Mark Sanford, Governor
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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TAX LEGISLATIVE UPDATE FOR 2005

Attached is a brief summary of most of the significant changes in tax and regulatory laws and regulations enacted during the past legislative session. The summary is divided into four categories, by subject matter, as indicated below. There are several instances where more than one bill with related subject matters was ratified by the General Assembly. In such cases, these summaries are cross referenced.

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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.

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

TEXT OF LEGISLATION:

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

INCOME TAXES, CORPORATE LICENSE FEES, AND WITHHOLDING

House Bill 3768, Sections 7, 8, and 42 (Act No. 145) and House Bill 3767 Section 4 (Act No. 161)
(See also House Bill 3716, Part IB, Section 73, Proviso 73.13 (Act No. 115))

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, 2004, and includes the effective date provisions contained in it.

Code Section 12-6-40(A)(1)(b) has been codified 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. It was expanded to provide that for purposes of Title 12 ("Taxation") and all other titles which provide for taxes administered by the Department, except as otherwise specifically provided, the Internal Revenue Code sections listed in this section are specifically not adopted by South Carolina. Previously, this section pertained to Chapter 6, "Income Tax Act of Title 12," although other chapters adopted it.

Further, Code Section 12-6-50 was amended as follows:

1. Subitem (7) now provides that Internal Revenue Code Section 199, relating to the deduction attributable to domestic production activities, is not adopted by South Carolina. See a related amendment summarized below in House Bill 3768, Section 10.B (Act No. 145).
2. Subitem (13) now provides that Internal Revenue Code Sections 1352 through 1359, relating to alternative tax on qualifying shipping activities, are not adopted by South Carolina. See a related amendment summarized below in House Bill 3768, Section 9 (Act No. 145).

3. Subitem (16) was amended to (a) add that Internal Revenue Code Section 6701, Penalties for Aiding and Abetting Understatement of Tax Liability,” is adopted by South Carolina, and (b) clarify that Internal Revenue Code Sections 6654 (“Failure by Individual to Pay Estimated Income Tax”) and 6655 (“Failure of Corporation to Pay Estimated Income Tax”) are adopted as provided in Code Sections 12-6-3910 and 12-54-55. The reference to Code Section 12-54-55 (“Interest on Underpayment of Declaration of Estimated Tax”) was added.
4. The subitems were renumbered as necessary so the added Internal Revenue Codes sections would be listed in numerical order.

Note: Notwithstanding the ratification of another act during the 2004-2005 Session affecting the sections of the 1976 Code amended in Sections 7 and 8 of Act No. 145, the ratification of Act No. 145 is deemed to be the last action of the General Assembly regarding those code sections.

Effective Date: June 7, 2005, except June 9, 2005 for the addition of Code Section 12-54-55 in Act No. 161.

House Bill 3768, Section 9 (Act No. 145)

Internal Revenue Code Sections 1352 -1359 (International Shipping Activities) – Election Does Not Apply for South Carolina Purposes

Code Section 12-6-1110(B) has been added to provide that an Internal Revenue Code Section 1354 election is not effective for South Carolina. For federal purposes, the election allows the income from certain qualifying shipping activities to be taxed under Internal Revenue Code Sections 1352-1359 using a “tonnage tax” instead of a corporate income tax.

Effective Date: June 7, 2005

House Bill 3007 (Act No. 41)

Active Trade or Business Income of Pass Through Entity – New Tax Rate

Code Section 12-6-545 has been added to impose a reduced income tax rate on active trade or business income of a pass through business (*i.e.*, sole proprietor, partnership, S corporation, or limited liability company taxed as a sole proprietorship, partnership, or S corporation) in lieu of the income tax rate imposed under Code Section 12-6-510 (individual income tax.) The new rates are phased in as follows:

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

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

Active trade or business income or loss does not include:

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

Notwithstanding any other provision of Chapter 6 of Title 12, active trade or business loss must first be deducted, dollar for dollar against active trade or business income. Any remaining active trade or business loss is multiplied by a fraction, the numerator is the phased in rate of tax imposed above, and the denominator is the highest personal income tax rate imposed pursuant to Code Section 12-6-510. The resulting amount is deductible from income taxed under Code Section 12-6-510 if otherwise allowable.

Effective Date: Applies for tax years beginning in 2006.

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

Nexus for Income Tax or License Fee Purposes - Distribution Facility

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

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

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

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

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

Effective Date: Taxable years beginning January 1, 2006.

House Bill 3768, Section 18 (Act No. 145)

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 report and pay the South Carolina income tax of nonresident partners or shareholders attributable to the partnership or S corporation on a single individual income tax return. The amendments include:

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

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.

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. When the nonresident files a separate return for the tax year reporting South Carolina income from all sources, the amount paid on his behalf with the composite return is treated as a credit against and thus reduces any taxes due on the separate return. The entity must 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 2004.

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

Nonresident Individual Filing Requirement - Threshold Revised

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

Effective Date: Taxable years beginning after 2005.

House Bill 3716, Part 1B, Section 1A, Proviso 1A.34 (Act No. 115)

Teacher Supplies - Reimbursement Amount Not Taxable

This temporary proviso increases the reimbursement designed to offset expenses incurred by all certified public school teachers, certified special school classroom teachers, certified media specialists, and certified guidance counselors who are employed by a school district or a charter school as of November 30 of the current fiscal year for teaching supplies and materials from \$200 to \$250. This reimbursement is not considered taxable income by South Carolina.

Effective Date: May 17, 2005

House Bill 3767, Section 6 (Act No. 161)

Nonresident Lottery and Bingo Winnings

Code Section 12-6-1720(1), concerning the computation of South Carolina taxable income of a nonresident, has been amended to clarify that lottery or bingo winnings are included in South Carolina taxable income.

Effective Date: June 9, 2005

House Bill 3768, Section 12 (Act No. 145)

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 2004.

House Bill 3768, Sections 43.A and 43.D (Act No. 145)

Charitable Contributions – New Rules

Code Section 12-6-1130(12) and Code Section 12-6-5590 have been added to impose additional restrictions on the deduction for charitable contributions. The new charitable contribution deduction requirements are:

1. Code Section 12-6-1130(12) permits a South Carolina income tax deduction for a charitable contribution allowed by Internal Revenue Code Section 170 only if the contribution meets the requirements of both Code Section 12-6-5590 and Internal Revenue Code Section 170.
2. Code Section 12-6-5590 provides conditions on the deduction of charitable contributions for South Carolina income tax purposes. These are:

- a. A charitable deduction under Internal Revenue Code Section 170 and Code Section 12-6-1130(12) or conservation credit under Code Section 12-6-3515 will be allowed only if the donor has the donative intent required by Internal Revenue Code Section 170 and the regulations and cases interpreting it.
- b. A noncash charitable contribution of \$100,000 or more will be allowed as a charitable deduction or eligible for the conservation credit in Code Section 12-6-3515 only if the donor has the donative intent required by Internal Revenue Code Section 170 and Code Section 12-6-5590.
- c. Code Section 12-6-5590(C) provides the requisite donative intent includes the requirement that the donor be motivated by detached and disinterested generosity benefiting a charitable purpose rather than an expected economic benefit.

Code Section 12-6-5590(F) confirms the Department will examine the substance, rather than merely the form of the contribution and related or surrounding transactions, and may use the step transaction, economic reality, quid pro quo, personal benefit, and other judicially developed doctrines in determining whether the requisite donative intent is present.

- d. Code Sections 12-6-5590(D) and (E) provide a taxpayer will not be deemed to have the requisite donative intent if:
 1. A noncash contribution is given to comply with any state or federal environmental or regulatory requirements to obtain road, water, or sewer services, or it is given in conjunction with obtaining a grant, subdivision, building, zoning, environmental, mitigation or similar permit or approval from any government, absent extraordinary circumstances; or
 2. A contribution is an otherwise “qualified conservation contribution” as defined in Internal Revenue Code Section 170(h) but the underlying property is used for, or associated with, the playing of golf, or is planned to be so used or associated.

Effective Date: June 7, 2005

House Bill 3767, Section 21 (Act No. 161)

South Carolina Conservation Bank Trust Fund – New Check Off

Code Section 12-6-5060, containing various check offs on the individual income tax form to enable a taxpayer to make a contribution to specified funds or programs, was amended to add a check off for a contribution to the South Carolina Conservation Bank Trust Fund established in Code Section 48-59-60.

Effective Date: June 9, 2005

House Bill 3767, Section 21 (Act No. 161)

(See also House Bill 3716, Part IB, Section 64, Provisos 64.15, 64.16, and 64.18 (Act No. 115))

Contribution Check Offs – Provisions Reorganized

Code Sections 12-6-5060, 12-6-5065, 12-6-5070, 12-6-5080, 12-6-5085, and 12-6-5090 contain the various check offs on South Carolina's individual income tax form that allow a taxpayer to make a contribution to particular funds or programs. These code sections have been reorganized in order to put all the check off provisions in one section, Code Section 12-6-5060. As part of this reorganization, the provisions of Code Sections 12-6-5065 (Contribution to the Gift of Life Trust Fund), 12-6-5070 (Contribution to the Veterans' Trust Fund), 12-6-5085 (South Carolina Litter Control Enforcement Program), and 12-6-5090 (South Carolina Law Enforcement Assistance Program) were moved to Code Section 12-6-5060 and then repealed since they were no longer necessary. The check off contribution to Drug Awareness Resistance Education in Code Section 12-6-5080 was repealed.

The 13 contribution check offs now contained in Code Section 12-6-5060 are: (1) War Between the States Heritage Trust Fund, (2) Nongame Wildlife and Natural Areas Program Fund, (3) Children's Trust Fund of South Carolina, (4) Eldercare Trust Fund of South Carolina, (5) First Steps to School Readiness Fund, (6) South Carolina Military Family Relief Fund, (7) Gift of Life Trust Fund of South Carolina, (8) Veterans' Trust Fund of South Carolina, (9) South Carolina Litter Control Enforcement Program, (10) South Carolina Law Enforcement Assistance Program, (11) South Carolina Department of Parks, Recreation, and Tourism, (12) K-12 public education, and (13) South Carolina Conservation Bank Trust Fund.

Effective Date: June 9, 2005

House Bill 3768, Section 10.A (Act No. 145)

Internal Revenue Code Election to Deduct State and Local Sales Taxes – Not Adopted for South Carolina Purposes

Code Section 12-6-1130(2) has been amended to provide that a taxpayer electing under Internal Revenue Code Section 164 to deduct state and local sales taxes in lieu of state and local income taxes is not allowed to deduct state and local sales and use taxes for South Carolina income tax purposes. This section continues to provide that no deduction is allowed for state and local income taxes, state and local franchise taxes measured by net income, other income taxes, or taxes measured with respect to net income.

Effective Date: June 7, 2005

House Bill 3768, Section 10.B (Act No. 145)

No Deduction for Domestic Production Activities (Internal Revenue Code §199)

Code Section 12-6-1130(13) has been added to provide that adjusted gross income and taxable income are computed without the deduction allowed under Internal Revenue Code Section 199 for domestic production activities.

Effective Date: June 7, 2005

House Bill 3767, Section 5 (Act No. 161)

Retirement Income Deduction - Clarified

Code Section 12-6-1170(A)(1), providing an annual deduction from South Carolina taxable income for retirement income, has been amended to clarify that the deduction is allowed to an individual who is the “original owner” of a qualified retirement account. The deduction is up to \$3,000 of retirement income received annually until age 65, and \$10,000 per year at age 65 and thereafter. Code Section 12-6-1170(A)(3) continues to allow a surviving spouse a separate deduction for retirement income that is attributable to a deceased spouse.

Effective Date: June 9, 2005

House Bill 3768, Section 11 (Act No. 145)

Health Insurance Premiums of Self Employed Individuals

Code Section 12-6-1140(8), providing an individual income tax deduction for the portion of premiums not deductible under Internal Revenue Code Section 162(1) because the “applicable percentage” is less than 100%, has been deleted. This provision was obsolete since the federal deduction has been fully phased in at 100%.

Effective Date: June 7, 2005

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

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

Code Section 12-6-1130(12) has been added to provide that a deduction from South Carolina taxable income is not allowed for the accrual of an expense or interest if the payee is a related person and the payment is not made in the taxable year of accrual or

before the payer's income tax return is due, without regard to extensions, for the taxable year of accrual. Except as provided in Code Section 12-6-1130(12)(b) as discussed below, the disallowed deduction is allowed when the payment is made. This holder will include the payment in income in the year the debtor is entitled to take the deduction.

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

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

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

Effective Date: Applies to taxable years beginning after 2005.

House Bill 3767, Section 43 (Act No. 161)
(See also House Bill 3768, Section 59 (Act. No. 145))

Health Pool Insurance Premiums - Individual Income Tax Credit

Code Section 12-6-3575 has been added to allow an income tax credit to an individual who held a health insurance policy from an insurance company that has withdrawn from writing health insurance policies in South Carolina and the taxpayer, in replacing the insurance policy with one having substantially the same coverage, was assigned to the South Carolina Health Insurance Pool established under Chapter 74 of Title 38, with a higher premium.

The nonrefundable credit is available only to an individual taxpayer who held a policy of health insurance covering the taxpayer, the taxpayer's spouse, or a person the taxpayer was eligible to claim as a dependent on his federal income tax return, or any combination of these people. The credit is equal to 50% of the premium costs the individual paid during the taxable year for health insurance coverage as defined in Code Section 38-74-10(5) that offers coverage to the individual, his spouse, or a person he was eligible to claim as a dependent on his federal income tax return, for the tax year. The credit is limited to \$3,000 for each qualifying individual covered by a policy for which the credit is claimed. A nonresident must reduce the amount of this credit in the same manner as personal exemptions and applicable standard deduction or itemized deductions pursuant to Code Section 12-6-1720(2).

A taxpayer claiming the credit must provide information required by the Department to demonstrate the taxpayer is eligible for the credit and that the amount paid for premiums for which the credit is claimed was not excluded from the taxpayer's gross income for the taxable year. A credit is not allowed for premium payments that are deducted or excluded from the taxpayer's income for the taxable year.

Effective Date: Tax years beginning after 2004.

House Bill 3006, Sections 3 and 5 (Act No. 157)

Jobs Tax Credit Provision – New Qualifications

Code Section 12-6-3360 allows a job tax credit to qualifying taxpayers who create and maintain a required minimum number of new full-time jobs. The basic credit amount for each new job is \$1,500 to \$8,000, depending in part on which South Carolina county a taxpayer's facility is located. Amendments to the jobs tax credit statute include new rules for employers with less than 100 employees.

For taxpayers with more than 99 employees, the rules of the jobs tax credit remain basically the same, and the taxpayer must create at least 10 jobs to qualify for the jobs tax credit. However, Code Section 12-6-3360(C)(2)(a) has been added to provide that a taxpayer with 99 or fewer employees is entitled to a tax credit if: (1) a monthly average of 2 or more new full-time jobs is created in a single taxable year; and, (2) the gross wages of the full-time new jobs are a minimum of 120% of the county or state average per capita income, whichever is lower. The amount of the jobs tax credit is \$8,000 per job created in a distressed county, \$4,500 per job created in a least developed county, \$3,500 per job created in an underdeveloped county, \$2,500 per job created in a moderately developed county, and \$1,500 per job created in a developed county.

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

Code Section 12-6-3360(I) provides for the assignment of the job tax credit when there is a merger, reorganization, or consolidation or a sale of substantially all the assets of a qualifying taxpayer, however, the acquiring taxpayer is not allowed to continue the credit if the net employment increase falls below 2 net new jobs.

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

Note Repeal: The changes made by this Act are repealed for tax years beginning after June 9, 2010.

Effective Date: Taxable years beginning after January 1, 2006.

House Bill 3767, Section 32 (Act No. 161)

Job Tax Credit – Special County Ranking

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

Code Section 12-6-3360(B)(5)(f) has been added to provide that a county in which one employer has lost at least 1,500 jobs in a calendar year is ranked one tier higher than it would otherwise qualify. The higher ranking is allowed for a 3 year period beginning immediately following the year the jobs were lost. This provision does not apply to a job created in a county eligible for a higher tier pursuant to another provision of this section.

Effective Date: Tax years beginning after December 31, 2004.

House Bill 3768, Section 13 (Act No. 145)

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 special provision for taxpayers substantially acquiring all the assets of a company operating under Chapter 11 of the United States Bankruptcy Code. It provides:

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 June 7, 2005; and (3) the taxpayer, as an unrelated entity, acquires as of March 12, 2004, substantially all of the assets of the company operating under Chapter 11.

Effective Date: June 7, 2005

Port Facilities Volume Increase - Additional Job Tax Credit or Investment Tax Credit

Code Section 12-6-3375 has been added to allow additional job tax credits or investment tax credits to companies primarily engaged in manufacturing, warehousing, or distribution that use South Carolina port facilities and increase base port cargo volume at these facilities by 5% over 2005 totals. A taxpayer can take either the additional job tax credit or additional investment tax credit, but not both. The credit options and amounts are discussed below.

Job Tax Credits. The job tax credit provisions applicable to this credit are in Code Section 12-6-3360. Code Section 12-6-3375 provides the following additional job tax credits:

1. An additional \$500 job tax credit for each new full time job created and
2. An additional \$250 job tax credit for each new full time job created for each incremental 2.5% increase in port cargo volume over and above the minimum 5% increase in base volume. The maximum annual additional job tax credit is \$1,500 per job.

Investment Tax Credits. The investment tax credit provisions applicable to this credit are in Code Section 12-14-60. Code Section 12-6-3375 provides the following additional investment tax credits:

1. An additional 2% investment tax credit for investments in new facilities, plant, and equipment for increasing base port cargo volume by 5% over 2005 totals and
2. An additional 1% investment tax credit for each incremental 2.5% increase in port cargo volume over and above the minimum 5% increase in base volume. The maximum annual additional investment tax credit is 6%.

Other credit requirements include:

1. The credit may only be claimed by the manufacturer, warehouse, or distribution company that owns the cargo at the time the port facilities are used.
2. The Coordinating Council for Economic Development at the Department of Commerce (“Council”) has sole discretion in determining eligibility.
3. The credit is allocated based on the date the application is received by the Council.
4. The total amount of tax credits allowed to all qualifying taxpayers is limited to \$8 million per calendar year.

Definitions. Terms defined in the statute include the following.

Code Section 12-6-3375(D)(3) defines “port facility” as any publicly or privately owned facility located within this State through which cargo is transported by way of a waterborne ship or vehicle to or from destinations outside this State and which handles cargo owned by third parties in addition to cargo owned by the port facility’s owner.

Code Section 12-6-3375(D)(2) defines “base port cargo volume” means the total amount of net tons of noncontainerized cargo or “twenty-foot equivalent units” (TEUs) of product actually transported by way of a waterborne ship through a port facility during the period from January 1, 2005, through December 31, 2005. For companies who locate in South Carolina after June 3, 2005, their base cargo volume will be measured by their first calendar year as long as they meet the requirements of 75 net tons of noncontainerized cargo or ten loaded TEUs. Base port cargo volume must be recalculated during the period from January 1, 2015 to December 31, 2015, and every 10th year thereafter.

The terms “new job,” “full time,” “warehousing facility,” and “distribution facility” have the meaning defined in Code Sections 12-6-3360(M)(3), (4), (7), and (8), respectively, of the job tax credit statute.

Effective Date: June 3, 2005

House Bill 3767, Section 41 (Act No. 161)

Resident Milk Producer - Refundable Income Tax Credit

Code Section 12-6-3580 was added to allow a resident taxpayer in the business of producing milk for sale a refundable income tax credit against taxes due under Code Section 12-6-510 (individual income tax) or Code Section 12-6-530 (corporate income tax) based on the amount of milk produced and sold.

The credit is allowed when the USDA Class I price of fluid milk in South Carolina drops below the production price anytime during the tax year. The South Carolina Commissioner of Agriculture shall certify to the Department that producers claiming credits have met the eligibility requirements. A qualifying taxpayer is eligible for the following credit amounts:

1. A \$10,000 credit based on the production and sale of the first 500,000 pounds of milk sold below the production price over a calendar year. The credit is prorated on a quarterly basis.
2. An additional \$5,000 credit for each additional 500,000 pounds sold below the production price. The credit is prorated on a quarterly basis.

The Department of Agriculture shall promulgate regulations to implement these provisions, including the establishment of the production price. This credit will be reviewed after it has been in place for two tax years.

Effective Date: Taxable years beginning after 2004.

Senate Bill 16, Section 8 (Act No. 127)

Agricultural Use of Anhydrous Ammonia – New Refundable Credit

Code Section 12-6-3582 has been added to allow a resident taxpayer engaged in the business of farming a refundable income tax credit equal to the amount expended to obtain the additive required to comply with Code Section 44-53-375(E)(2)(a)(ii) for the agricultural use of anhydrous ammonia. The refundable credit may be claimed against individual income taxes due under Code Section 12-6-510 or corporate income taxes due under Code Section 12-6-530.

Code Section 44-53-375(E) provides criminal penalties for the unlawful possession of any product that contains 12 grams or more ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers. Code Section 44-53-375(E)(2)(a)(ii) provides that Code Section 44-53-375 does not apply to a consumer who possesses products for agricultural use containing anhydrous ammonia if the consumer has reformulated it by means of additive to effectively prevent the conversion of the active ingredient into methamphetamine, its salts, isomers, or salts of isomers, or its precursors, or the precursors' salts, isomers, or salts of isomers, or a combination of any of these substances.

Effective Date: Taxable years beginning after 2004.

House Bill 3767, Section 39.A (Act No. 161)

Quality Improvement Programs - New Tax Credits

Code Section 12-6-3580 has been added to provide two income tax credits for fees incurred for quality improvement programs. The credits are limited to the tax liability on the return and are:

1. A credit equal to the annual fee paid to the South Carolina Quality Forum to participate in quality programs.
2. A credit equal to 50% of any fees charged to participate in the organizational performance excellence assessment process.

Effective Date: June 9, 2005

House Bill 3768, Section 43.B (Act No. 145)

Conservation Credit – New Contribution Rules

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

Code Section 12-6-5590 has been added to impose additional restrictions on charitable deductions and on qualifying contributions eligible for the conservation credit in Code Section 12-6-3515. See the summary of House Bill 3768, Sections 43.A and 43.D (Act No. 145) for more information.

Effective Date: June 7, 2005

House Bill 3767, Section 17 (Act No. 161)

Textile Revitalization Income Tax Credit – Pass Through Clarified

The South Carolina Textile Communities Revitalization Act, contained in Title 6, Chapter 32, provides an income tax credit or a property tax credit for the renovation, improvement, and redevelopment of abandoned textile mills in South Carolina. Code Section 6-32-40(C)(3), allowing the pass through of the textile revitalization income tax credit earned by a general partnership, limited partnership, limited liability company, or any other entity to its partners in any manner agreed to by the partners, has been amended to clarify that the allocation must be consistent with Subchapter K of the Internal Revenue Code.

Effective Date: June 9, 2005

Senate Bill 140, Sections 1 and 2 (Act No. 138)

Credit for Rehabilitation of Certified Historic Structures - Amended

Code Section 12-6-3535, providing an income tax credit for rehabilitation of certified historic structures, has been amended. The amendments are:

1. Code Section 12-6-3535(A) has been amended to extend the use of the credit from income tax imposed by Chapter 6 of Title 12 (“Income Tax”) to income or license tax imposed under Title 12.

2. Code Section 12-6-3535(C)(2), providing the credit pass through provisions, has been amended to provide that the credits earned by a general partnership, limited partnership, limited liability company, or other entity taxed as a partnership under Subchapter K of the Internal Revenue Code must be passed through to its partners and may be allocated among any of its partners in any manner agreed by the partners, including an allocation of the entire credit to one partner. An S corporation owing corporate level income tax must use the credit first at the entity level; any remaining credit passes through to each shareholder in a percentage equal to each shareholder's percentage of stock ownership.

Effective Date: Tax periods beginning after 2004.

House Bill 3768, Section 22 (Act No. 145)

Infrastructure Credit Against License Fees – Technical Correction

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(B)(1), addressing what is a qualifying project, has been amended to delete an incorrect reference to Chapter 37, Title 12.

Effective Date: Taxable years beginning after 2004.

House Bill 3067 (Act No. 113)

Economic Impact Zone Investment Tax Credit – Indefinite Carryforward for Certain Manufacturing Taxpayers

Code Section 12-14-60 provides an economic impact zone investment tax credit against income taxes for qualified manufacturing and production property placed in service during the tax year in an economic impact zone. A 10 year carryover provision was added in 1997 and was effective for tax years beginning after 1996.

Code Section 12-14-60(D), providing for the 10 year carryforward of the economic impact zone investment tax credit, has been amended to allow a qualifying taxpayer an indefinite carryforward. A qualifying taxpayer:

1. Is engaged in an activity or activities listed under NAICS Sections 31, 32, or 33 (relating to manufacturing),

2. (a) Employs at least 1,000 full time workers in South Carolina and has a total capital investment of at least \$500 million in South Carolina or
(b) Employs at least 850 full time workers in South Carolina and has total capital at least \$750 million in South Carolina, and
3. Invested at least \$50 million in South Carolina within the past 5 years.

Any credit carryforward beyond the initial 10-year carryforward period may reduce no more than 25% of a taxpayer's tax liability in a subsequent tax year.

Effective Date: Credits earned in taxable years beginning after 1996.

House Bill 3767, Section 7 (Act No. 161)

Motion Picture Income Tax Credits Penalty Provision - Technical Correction

Code Section 12-6-3570E) provides that all documentation provided by investors and their agents to the Department in connection with claiming the credit for investment in a qualified South Carolina motion picture project or credit for investment in a South Carolina motion picture production facility or post production facility is considered a tax return and subject to the penalty provisions of Chapter 54 of Title 12. Previously, the statute incorrectly referred to Code Section 12-54-40(f).

Effective Date: June 9, 2005

House Bill 3768, Sections 15 and 17 (Act No. 145)

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 corporate income tax return under Code Section 12-6-5020 must be used and applied against the consolidated tax (*i.e.*, the pre-credit tax liability of the participating taxpayers), 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 credits under Chapters 6 or 14 of Title 12 in any order and may apply a credit 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” from Code Section 12-6-3480(5).

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 2004.

House Bill 3767, Section 33 (Act No. 161) and House Bill 3768, Section 14 (Act 145)
(See also Senate Bill 814, Section 1 (Act No. 71))

Tax Moratorium – Repeal, Technical Corrections, and Special Provision for a Manufacturing Facility

Repeal: Code Section 12-6-3365 is repealed on July 1, 2005, as provided in Section 3 of Act 277 of 2000, however, the repeal does not affect any moratorium in effect on that date.

Overview. 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.

Note: Code Section 12-6-3365 was amended in Senate Bill 814, Section 1 (Act No. 71), Code Section 12-6-3365(A) was amended in House Bill 3768, Section 14 (Act No. 145), and Code Section 12-6-3365 was amended in House Bill 3767, Section 33 (Act No. 161). The Code Commissioner has recommended that the doctrine of *pari materia* be applied and the code supplement should reflect Section 12-6-3365(A) as amended in Act 145, subsections (B) through (H) should appear as amended in Act 161, and the history line should reflect all three amendments. The following summary is based upon the Code Commissioner's recommendations.

Technical Corrections. 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 in Code Section 12-6-3365(A) 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 and license fees that are administered by the South Carolina Department of Insurance and not by the Department of Revenue.

Special Amendments for a Manufacturing Facility. Code Sections 12-6-3365(B) through (H) were amended to expand the availability of the tax moratorium to a taxpayer investing in and creating jobs at a manufacturing facility in a moratorium county and a non-moratorium county. (The Department annually publishes an Information Letter listing the moratorium counties.) A brief overview of the special provisions are below:

1. A 10 year tax moratorium is available to a taxpayer that (a) creates at least 100 new full time jobs and invests at least \$150 million at a manufacturing facility in a county that otherwise qualifies a moratorium county, (b) creates at least 100 new full time jobs and invests at least \$150 million at a manufacturing facility in a second county which is designated as distressed, least developed or underdeveloped as provided in the jobs tax credit statute in Code Section 12-6-3360, and (c) has at least 90% of its total investment in South Carolina in one or both of the counties described in item (a) or (b). If the taxpayer creates and maintains at least 200 new full time jobs (instead of 100 jobs described above) the moratorium period is 15 years.
2. Taxpayers who qualify for the moratorium under the criteria described in item (1) above are entitled to the moratorium for separate 10 (or 15) year periods for income from each facility. Special rules are provided regarding job creation and reduction at each of the eligible facilities.

3. The moratorium applies to that portion of taxpayer's corporate income tax or premium tax that represents the ratio of the taxpayer's new investment in qualifying counties to its total investment in South Carolina. The moratorium is not affected if the taxpayer changes its form of business organization within the moratorium period. For purposes of this special provision, the term "taxpayer" means a single taxpayer or, collectively, a group of one or more affiliated taxpayers.

Note Repeal: Code Section 12-6-3365 is repealed on July 1, 2005, as provided in Section 3 of Act 277 of 2000, however, the repeal does not affect any moratorium in effect on that date.

Effective Date: May 23, 2005 for amendments to Code Sections 12-6-3365(B) through (H) and June 7, 2005 for amendments to Code Section 12-6-3365(A).

House Bill 4035 (Act No.125)

Venture Capital Investment Act – Tax Credit Amended

The "Venture Capital Investment Act of South Carolina" ("Act") contained in Title 11, Chapter 45, enacted in 2004, has been substantially modified. The Act is designed to increase the availability of funding to emerging, expanding, relocating, and restructuring enterprises within South Carolina. The Venture Capital Fund has been replaced with the South Carolina Venture Capital Authority ("Authority") within the South Carolina Department of Commerce. The Authority will choose "Designated Investor Groups" that will enter into contracts with the Authority. Each Designated Investor Group will have the power and authority to borrow funds from Lenders and invest those funds as required by the Act and the Designated Investor contract. The total amount that may be borrowed by all Designated Investor Groups cannot exceed \$50 million at any one time. Through investors, the Designated Investor Groups will make investments in South Carolina businesses as provided by the statute.

Code Section 11-45-55 in the Act governs tax credits. At the time a loan is made to a Designated Investor Group, the Authority will issue a tax credit certificate to each Lender. A Lender is defined in Code Section 11-45-30(10) as "a banking institution subject to the income tax on banks under Chapter 11 of Title 12, an insurance company subject to a state premium tax liability under Chapter 7 of Title 38, a captive insurance company regulated under Chapter 90 of Title 38, a utility regulated under Title 58, or any other person approved by the authority pursuant to guidelines and regulations established by the authority pursuant to Section 11-45-100." The Authority will establish guidelines and regulations governing the procedures for the issuance, transfer and redemption of the tax credit certificates and related tax credits and the certificates shall state the amounts, year, and conditions for redemption of the tax credit certificates. Once the loan is made by the Lender, the certificate is binding on the Authority and the State and may not be modified, terminated or rescinded.

If a certificate is redeemed and a tax credit allowed, the tax credit may be used to offset the following taxes: (a) income taxes under Chapter 6, Title 12, (b) bank taxes under Chapter 11, Title 12, (c) savings and loan net income tax liability under Chapter 13, Title 12, (d) license fees and taxes under Chapters 20 or 23, Title 12; (e) insurance premium taxes under Chapter 7, Title 38, or (f) other tax liability under Title 38. In the case of a repeal or reduction by the State of the tax liability imposed by these sections, the credits may be used against any other tax imposed upon a person by this State. The amount of the tax credit issued to a Lender is limited to the Lender's principal loan amount together with required interest. The tax credits carry forward indefinitely but are not refundable. The use of tax credits by an insurance company does not affect the application of retaliatory taxes or other fees pursuant to Chapter 7, Title 38 or any payments due under that Chapter.

The tax credits may be transferred to others who are able to utilize the tax credit to offset one of the taxes listed above. Special provisions are provided for pass through entities who receive the credit. No more than \$20 million in tax credit certificates are redeemable for any one year, however, any certificates issued in one year, but carried forward and redeemed in a subsequent year, do not count against the total.

The Authority, in conjunction with the Department of Revenue, will develop a system for registration of the tax credits which assures that the tax credit claimed upon a tax return is valid and properly taken in the year of claim and that any transfer of the tax credit is made in accordance with the requirements of Chapter 45, Title 11 and the guidelines and regulations established by the Authority.

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

Effective Date: June 3, 2005

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

Wages Subject to Withholding – Minimum Amount Revised

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

Effective Date: Taxable years beginning after 2005.

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

Nonresident Personal Service Income – Withholding Requirements Revised

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

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

Effective Date: Taxable years beginning after 2005.

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

Withholding Deposits

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, 2005

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

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

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

Effective Date: Payments due after January 1, 2006.

House Bill 3767, Section 9 (Act No. 161)

Job Development Credit – Lock In of County Designation Revised

The job development credit in Chapter 10 of Title 12 allows a business approved by the Coordinating Council at the Department of Commerce (“Council”) to obtain amounts from employee withholding to use for approved business expenditures. The amount is generally based on the designation of the county (*i.e.*, distressed, least developed, under developed, moderately developed, or developed) in which the business is located and the gross wages paid.

Except as otherwise provided, Code Section 12-10-80(D)(3) has been amended to provide that the designation of the county in which the project is located on the date the incentive application is received by the Council is in effect for the entire period of the applicant’s revitalization agreement. Previously, the county designation was the designation at the time the business entered into a preliminary revitalization agreement with the Council.

Effective Date: June 9, 2005

House Bill 3716, Part IB, Section 27, Proviso 27.28 (Act No. 115)

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

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

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2005 through June 30, 2006. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2006.

House Bill 3767, Section 39.B (Act No. 161)

Job Development Credit - Use of Funds Expanded

Code Section 12-10-80(C)(3), authorizing the expenditure of the job development credit for certain purposes, has been expanded to include expenses for quality improvement programs of the South Carolina Quality Forum.

Effective Date: June 9, 2005

House Bill 3768, Section 21 (Act No. 145)

Job Retraining Credit – Annual Fee

Code Section 12-10-105 has been expanded to provide that an annual \$1,000 fee must also be remitted to the Department by a qualifying business claiming in excess of \$10,000 in job retraining credits in one calendar year. Previously, the statute applied only to a qualifying business claiming in excess of \$10,000 in job development credits in one calendar year.

The fee is imposed 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 is due when the single project's claim for job development credits or job retraining credits exceeds \$10,000 for that calendar year.

Effective Date: June 7, 2005

REENACTED TEMPORARY PROVISOS

The following temporary provisions were enacted in prior legislative sessions and were reenacted by the General Assembly in 2005. Temporary provisos are effective for the State fiscal year July 1, 2005 through June 30, 2006, and will expire June 30, 2006, unless reenacted by the General Assembly in the next legislative session.

House Bill 3716, Part IB, Section 64, Proviso 64.14 (Act No. 115)

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 3716, Part IB, Section 36, Proviso 36.14 (Act No. 115)

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 3716, Part IB, Section 64, Proviso 64.19 (Act No. 115)

First Steps Check Off – Use of Funds

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.

House Bill 3716, Part IB, Section 64, Proviso 64.7 (Act No. 115)

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 3716, Part IB, Section 27, Proviso 27.15 (Act No. 115)

Job Development Credit – Fees

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

PROPERTY TAXES AND FEES IN LIEU OF PROPERTY TAXES

House Bill 3767, Section 35 (Act No. 161)

Public Benefit Corporations - New Exemption

Code Section 12-37-220(A)(11) has been added to exempt from ad valorem property taxes all property of public benefit corporations established by a county or municipality and used exclusively for economic development which serves a governmental purpose as defined in Internal Revenue Code Section 115, "Income of States, Municipalities, Etc."

Effective Date: June 9, 2005

Senate Bill 207 (Act No. 17)

(See also Senate Bill 583 (Act No. 181))

Boy Scouts and Girl Scouts Exemption Extended

Code Section 12-37-220(B)(7), which provides a property tax exemption for certain property owned and used or occupied by The Boy Scouts of America or The Girl Scouts of America exclusively for their purposes, has been amended to extend the exemption to property not owned by these organizations but which is used exclusively by them for scouting purposes.

Effective Date: By joint resolution in Senate Bill 583 (Act No. 181), this amendment applies to property tax years beginning after 2000, notwithstanding the date provided in Senate Bill 207 (Act No. 17.) The time limitations provided in Code Section 12-54-85(F) do not apply for purposes of computing refunds pursuant to this amendment.

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

Property Leased to Volunteer Fire Departments and Rescue Squads

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

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

House Bill 3767, Section 38 (Act No. 161)

Paralegic and Hemiplegic Persons – Exemption Expanded

Code Section 12-37-220(B)(2)(a), which provides a property tax exemption for the home and lot of a paralegic or hemiplegic person, has been amended to expand the applicability of the exemption to persons with Parkinson disease, multiple sclerosis, or amyotrophic lateral sclerosis who have a doctor’s statement that their disease has resulted in the same ambulatory difficulties as a person with paraparesis or hemiparesis. The amendment also provides that the exemption does not extend to a surviving spouse of a person with Parkinson disease, multiple sclerosis, or amyotrophic lateral sclerosis receiving this exemption.

Effective Date: June 9, 2005

House Bill 3768, Section 31 (Act No. 145)

Exemptions for Obsolete Organizations Deleted

Technical correction were made to delete references to inactive organizations in certain property tax exemption provisions:

1. Code Section 12-37-220(B)(5), which allows an exemption for qualified veterans organizations, has been amended to delete reference to the Spanish American War Veterans, an inactive organization.
2. Code Section 12-37-220(B)(8), which allows an exemption for certain organizations promoting agriculture or home economics, has been amended to delete reference to the Palmetto Junior Homemakers Association, the New Homemakers of South Carolina, and the New Farmers of South Carolina, all inactive.

Effective Date: June 7, 2005

House Bill 3768, Section 43.C (Act No. 145)

Conservation Easements – New Rules

Code Section 12-43-232(3)(d), containing requirements for agricultural real property, has been amended. Unimproved real property subject to a perpetual conservation easement as provided in Chapter 8 of Title 27 is classified as agricultural real property “if the property would have otherwise qualified as agricultural real property subject to satisfactory proof to the assessor.” Previously, the statute provided that unimproved land subject to a perpetual conservation easement was classified as agricultural real property.

Effective Date: June 7, 2005

House Bill 3782 (Act No. 51)

Little Pee Dee River Scenic Designation

Code Section 49-29-230(8) has been added to designate that portion of the Little Pee Dee River located in Dillon County between the Marlboro County Line and the Marion County line as a scenic river. After a perpetual easement under the South Carolina Scenic Rivers Act is granted, the property is exempt from ad valorem property taxes under Code Section 49-29-100. The taxpayer may deduct from South Carolina income taxes the fair market value of the easement granted pursuant to Code Section 49-29-100.

Effective Date: May 3, 2005

House Bill 3768, Section 49 (Act No. 145)

4% Assessment Ratio for Residence Rented Short Term

Code Section 12-43-220(c) has been amended to add an item to provide that a taxpayer otherwise eligible to receive the 4% assessment ratio for a legal residence is not disqualified if, pursuant to Internal Revenue Code Section 280A(g), the taxpayer's residence is actually rented for less than 15 days during the tax year.

Effective Date: June 7, 2005

House Bill 3767, Section 3 (Act. No. 161)

Assessment of Certain Business Property

Code Section 12-4-540(A) has been amended to provide that the Department has the sole responsibility for the appraisal, assessment, and equalization of taxable values of the real and personal property owned by, or leased to, the following businesses and used in the conduct of their business: manufacturing; railway; private carline; airline; water, heat, light, and power; telephone; cable television; sewer; pipeline; and mining. Previously, the Department had the responsibility for property owned by, leased by, or used by the taxpayer.

Effective Date: June 9, 2005

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

Property Tax Assessment – Valuation of Golf Courses

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

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

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

House Bill 3768, Section 55 (Act No. 145)

Marinas – Access for Assessment

Code Section 12-37-712 has been added to require a marina to provide immediate access to its business records and premises to city, county, and state tax authority employees for the purpose of making a property tax assessment. A “marina” is defined as a “facility that provides mooring or dry storage for watercraft on a leased or rental basis.”

Effective Date: June 7, 2005

House Bill 3768, Section 56 (Act No. 145)

(See also House Bill 3767, Section 31 (Act No. 161) and House Bill 3716, Part IB, Section 72, Proviso 72.97 (Act No. 115))

Certain Counties May Postpone Implementation of Reassessment

This uncodified provision allows a county, by ordinance, to postpone for one additional tax year the implementation of a countywide property tax equalization and reassessment program that was conducted after 2000 but not yet implemented, even where implementation would otherwise be mandated under Code Section 12-43-217.

Effective Date: June 7, 2005

House Bill 3768, Section 6 (Act No. 145)

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: June 7, 2005

House Bill 4077 (Act No. 196)

Dillon County Millage

This joint resolution provides that the taxes imposed in Dillon County for school purposes for fiscal year 2004-2005 are reimposed for fiscal year 2005-2006. It also imposes an additional 6.25 mills for use as follows: 1.75 mills for the Dillon County Applied Technology Education Center; 1.00 mill for debt service; .50 mill for teacher bonuses; and 3.00 mills for operations.

Effective Date: June 2, 2005

House Bill 3716, Part IB, Section 72, Proviso 72.57 (Act No. 115)

Personal Property Tax Relief Fund Not Funded

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

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

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2005 through June 30, 2006. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2006.

House Bill 3305 (Act No. 136)

Real Property Taxes – Monthly Installment Payments

Code Section 12-45-75(A), allowing quarterly installment payments of ad valorem taxes on real property, has been expanded to allow a county governing body to enact an ordinance allowing taxpayers to pay property taxes on real property located in the county on a monthly basis. This section still provides that the final installment due date must be January 15th.

Effective Date: June 7, 2005

House Bill 3768, Section 53 (Act No. 145)

Interest on Overpayment of Property Taxes

Code Section 12-54-25(C)(3)(d) has been added to provide that interest is not paid on an overpayment of property taxes if the overpayment is refunded within 75 days after the county has received notice from the Department that the taxpayer is due a credit or refund.

Effective Date: June 7, 2005

Senate Bill 140, Section 3 (Act No. 138)

Valuation Used in Property Tax Appeals

Code Section 12-43-215, which governs valuation of owner-occupied residential property, has been amended to provide that if the value of the property assessment is appealed, the assessor shall consider the appeal and make any adjustments based on the market values of real property as they existed in the year that the reassessment was conducted and on which the assessment is based.

Effective Date: Applicable tax periods beginning after 2004.

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

Undervaluation of Business Property – New Penalty

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

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

House Bill 3768, Section 58 (Act No. 145)
(See also House Bill 3767, Section 42 (Act No. 161))

Waiver of Penalty for Delinquent Property Taxes

Code Section 12-45-185 has been added to allow a county treasurer to waive the penalties for delinquent property taxes imposed under Code Section 12-45-180. The taxpayer must make a written waiver request to the treasurer and provide clear and convincing evidence that the payment was timely mailed or otherwise delivered. The county treasurer has sole discretion whether to waive the penalties, and his decision is not subject to appeal.

Effective Date: Property taxes due for tax years beginning after 2004.

House Bill 3767, Section 24 (Act No. 161)

Motor Carrier Property Tax – New Penalty for Failure to File and Pay

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

1. Code Section 12-37-2890(A) sets forth the procedure for imposing this penalty after the time period for all appeals is exhausted. The Department must first notify the delinquent taxpayer by certified letter of both the pending suspension and the steps necessary to prevent the suspension. The Department must then allow 30 days for payment of taxes before requesting that the Department of Public Safety suspend the driver's license and vehicle registration.

2. Code Section 12-37-2890(B) provides that a person charged with driving under suspension is not subject to custodial arrest when the suspension is solely for failure to file and pay a motor carrier property tax. In addition, no proof of financial responsibility is required for reinstatement of the driver's license and vehicle registration.

Effective Date: June 9, 2005

House Bill 3716, Part IB, Section 36A, Proviso 36A.8 (Act No. 115)

Vehicle License Tax Year – Multiple Tag Transfers

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

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

Effective Date: This temporary proviso is effective January 1, 2006. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2006.

House Bill 3768, Section 46 (Act No. 145)

Issuance of Vehicle Tax Receipts by County Treasurer

Code Section 12-45-430 has been added to provide that a county treasurer may not issue a tax receipt to a taxpayer unless the taxes, any applicable penalties and costs, and all other charges included on the tax bill have been paid in full.

Effective Date: June 7, 2005

House Bill 3768, Section 47 (Act No. 145)

Vehicle Tax Receipts – Administrative Changes

Code Section 12-37-2650, which governs the issuance of county tax notices and paid tax receipts for property taxes on motor vehicles, has been amended to provide that a paid receipt is issued by the county treasurer to the taxpayer only when the tax and all other charges included on the tax bill have been paid. Other changes were made to modernize recordkeeping and eliminate duplicate receipts.

Effective Date: June 7, 2005

House Bill 3768, Section 48 (Act No. 145)

Municipal Personal Property Tax – Receipts and Enforcement

Code Section 12-37-2730 makes it unlawful to obtain a motor vehicle license plate unless all municipal personal property taxes are paid and imposes penalties for knowingly violating this provision. Subsection (A) has been amended to provide that, when a municipality contracts for the collection of its vehicle tax, no receipt will be issued unless both the county and municipal tax and all other charges included on the tax bill have been paid. The previous requirement that the statutory language of Section 12-37-2730(A) be printed or stamped on the treasurer's paid tax receipt has been eliminated.

Subsection (B) has been added to authorize a code-enforcement officer to issue an ordinance summons for failure either to remit property taxes or to comply fully with vehicle registration laws, but the officer may not stop a vehicle in motion to issue the summons. The amount of any fine imposed may not exceed the criminal jurisdiction of the magistrates' court. A magistrate shall dismiss a summons if the defendant shows proper registration and the payment of current and delinquent taxes before the court hearing date set in the summons.

Effective Date: June 7, 2005

House Bill 3768, Section 50 (Act No. 145)

Tax Sale of Personal Property – Forfeited Land Commission Bid Clarified

Code Section 12-49-950 has been amended to provide that if personal property is sold at a delinquent tax sale and no bid is as much as the tax and costs then due, the Forfeited Land Commission must bid in an amount equal to all unpaid property taxes, assessments, and charges billed on the tax bill, and all costs which may be incurred by a taxing entity as a result of the tax delinquency including taxes levied for the year in which the redemption period begins. For purposes of this section, an assessment includes, but is not

limited to, amounts owed a special taxing district created pursuant to Code Section 4-9-30, and a district created pursuant to Chapter 19 of Title 12 and amounts owed pursuant to Chapter 15 of Title 6. Previously, the Forfeited Land Commission bid was an amount equal to the delinquent tax and accrued costs.

Effective Date: June 7, 2005

House Bill 3768, Section 51 (Act No. 145)

Tax Sale of Real Property and Mobile/Manufactured Housing - Forfeited Land Commission Bid Clarified

Code Section 12-51-55 has been amended to provide that if real property and mobile or manufactured housing is sold at a tax sale for nonpayment of property taxes, the officer charged with the duty to sell that property shall submit a bid on behalf of the Forfeited Land Commission equal to the amount of all unpaid property taxes, penalties, “assessments, including, but not limited to, assessments owed to a special taxing district established pursuant to Code Section 4-9-30, Chapter 19 of Title 4, or an assessment district established pursuant to Chapter 15, Title 6,” and costs including taxes levied for the year in which the redemption period begins. The Forfeited Land Commission is not required to bid on property known or suspected to be contaminated. If property is not redeemed, any excess above the amount of taxes, penalties, assessments, charges, and costs for the year in which the property was sold must be applied first to taxes becoming due during the redemption period.

Effective Date: June 7, 2005

House Bill 3768, Section 52 (Act No. 145)

Costs Paid by Purchaser at Tax Sale for Title

Code Section 12-51-130, concerning execution and delivery of tax title for a delinquent tax sale, has been amended to revise the amount that a successful purchaser or assignee at a delinquent tax sale is responsible for paying to be the actual cost of preparing the tax title plus documentary stamps necessary and recording fees. Previously, the amount was \$15 for the cost of the tax title plus documentary stamps and recording fees.

Effective Date: June 7, 2005

House Bill 3768, Section 45 (Act No. 145)

Business Registration Administrative Fee

Code Section 12-37-135 has been added to allow a county governing body to impose a countywide business registration and administrative fee not to exceed \$15. If adopted, this fee is in lieu of the business license tax authorized under Code Section 4-9-30(12). The fee is not a business license tax, and is not based on business income. It must be administered and enforced in the same manner as the business license tax under Code Section 4-9-30(12). For billing purposes, the county may include the fee on any property tax bill; if it does, it is deemed to be a property tax for purposes of collection.

Effective Date: June 7, 2005

Senate Bill 814, Sections 2, 3, and 4 (Act No. 71), House Bill 3768, Section 44 (Act No. 145), and House Bill 3767, Section 40 (Act No. 161)

Certified Economic Development Project – Fee in Lieu

Code Sections 12-44-30(7)(e), 4-12-30(D)(4)(a)(v), and 4-29-67(D)(4)(a)(v) have been added to provide that a project which satisfies the requirements of Code Section 11-41-30(2)(a), and for which the Secretary of Commerce has delivered certification pursuant to Code Section 11-41-70(2)(a), is considered an eligible project for purposes of qualifying for the super fee or the enhanced fee. A project satisfying the requirements of Code Section 11-41-30(2)(a) is a project, as defined in Code Section 12-44-30(16), in which a total investment of \$400 million is invested by a single entity or combination of entities and which creates at least 400 new jobs at a project.

Effective Date: May 23, 2005

REENACTED TEMPORARY PROVISIO

The following temporary provision was enacted in prior legislative sessions and was reenacted by the General Assembly in 2005. Temporary provisos are effective for the State fiscal year July 1, 2005 through June 30, 2006, and will expire June 30, 2006, unless reenacted by the General Assembly in the next legislative session.

House Bill 3716, Part IB, Section 72, Proviso 72.97 (Act No. 115)
(See also House Bill 3768, Section 56 (Act No. 145) and House Bill 3767, Section 31 (Act No. 161))

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.

SALES AND USE TAXES

House Bill 3767, Section 19 (Act No. 161)

Warranty, Maintenance and Similar Service Contracts – New Rules

Code Sections 12-36-910(B) and 12-36-1310(B) have been amended to impose the sales and use tax on all sales or renewals of warranty, maintenance and similar service contracts for tangible personal property, whether or not such contracts are purchased in conjunction with tangible personal property. Previously, such contracts were only subject to the tax if sold in conjunction with tangible personal property or if the main purpose of the contract was to receive tangible personal property.

In addition, Code Section 12-36-90(1) has also been amended to no longer impose the tax upon the withdrawal of tangible personal property for use from inventory for use in replacing a defective part under a warranty, maintenance or similar service contract if tax was paid on the sale or the renewal of the contract and the customer is not charged for any labor or material. The statute continues to not tax a withdrawal for use if the contract is given without charge at the time of the original purchase of the defective property, the tax was paid on the sale of the defective part or on the sale of the property of which the defective part was a component, and the customer is not charged for any labor or material.

For additional information, see SC Revenue Ruling #05-12 (Warranty, Maintenance and Similar Service Contracts) and SC Revenue Ruling #05-13 (Software and Software Maintenance Contracts).

Effective Date: October 1, 2005

House Bill 3767, Section 30 (Act No. 161)

(See also House Bill 3768, Section 28 (Act No. 145))

Telecommunication Sourcing, Bundled Transactions, and Prepaid Wireless Calling Arrangements

Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3) impose the sales tax and the use tax upon various types of communication services including, but not limited to, telephone services, teleconferencing services, paging services, answering services, cable television services, satellite programming services, fax transmission services, voice mail messaging services, e-mail services, and database access transmission services. For more detailed information as to the type of services taxable and non-taxable under these sections, see SC Revenue Ruling #04-15.

These code sections have been modified as follows:

1. Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3) has been amended to require that telecommunication services, for purposes of determining where the service is taxed for state and local sales tax purposes, will be sourced in accordance with Code Section 12-36-1920.
2. Code Section 12-36-1310(B)(3)(b) has been added to clarify that the same tax treatment that applies to bundled transaction for sales tax purposes also applies for use tax purposes. 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 rendered on or after January 1, 2004 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. See a similar sales tax provision in Code Section 12-36-910(B)(3).
3. Article 19 was added to Chapter 36 to establish how various telecommunication services, for purposes of determining where the service is taxed for state and local sales and use tax purposes, will be sourced. Code Section 12-36-1910 defines numerous terms used in Article 19, Code Section 12-36-1920 establishes how each type of telecommunications service will be sourced, and Code Section 12-36-1930 requires that all local sales and use taxes administered and collected by the Department should be sourced in the same manner as the state sales and use tax.
4. Code Section 12-36-1310(B)(5) has been added to clarify that the sales tax treatment of the sales or recharge at retail of a prepaid calling arrangement also applies to the use tax. A prepaid wireless calling arrangement is a communication service that: (1) is used exclusively to purchase wireless telecommunications, (2) is purchased in advance, (3) allows the purchaser to originate telephone calls by using an access number, an authorization code or other means entered manually or electronically, and (4) is sold in units or dollars that decline with use in a known amount. The sale of prepaid wireless calling arrangements must be sourced to: (1) the location in this State where the over-the-counter sale took place, (2) the shipping address if the sale did not take place at the seller’s location and an item is shipped, or (3) either the billing address or location associated with the mobile telephone number if the sale did not take place at the seller’s location and no item is shipped. See a similar sales tax provision in Code Section 12-36-910(B)(5).

Effective Date: September 1, 2005

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

Nexus – Distribution Facility

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

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

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

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

House Bill 3768, Section 57 (Act No. 145)

Sales Tax Holiday – New Items Added

Code Section 12-36-2120(57), which concerns the sales tax holiday, has been amended to add “bath wash clothes, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs and mats, pillows, and pillow cases” to the list of items that are exempt from the sales and use tax each year for three days beginning 12:01 a.m. on the first Friday in August and ending at twelve midnight the following Sunday. See SC Revenue Ruling #05-9 for the most recent list of exempt items.

Effective Date: Applies to sales tax holidays for 2005 and thereafter.

House Bill 3297 (Act No. 89)

Prescription Medicines for Rheumatoid Arthritis - Exempt

Code Section 12-36-2120(28(a)) has been amended to exempt from the sales and use tax prescription medicines and therapeutic radiopharmaceuticals used in the treatment of rheumatoid arthritis and prescription medicines used to relieve the effects of any such treatment.

Effective Date: July 1, 2005

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

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

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

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

House Bill 3905, Section 38 (Act No. 164)

Sweetgrass Baskets – New Exemption

Code Section 12-36-2120(63) has been added to exempt from the sales and use tax sweetgrass baskets made by artists of South Carolina using locally grown sweetgrass.

Effective Date: June 10, 2005

House Bill 3152 (Act No. 56)

Motion Picture Incentive Act – Sales and Use Tax Incentive Expanded

The South Carolina Motion Picture Incentive Act, in Chapter 62 of Title 12, providing tax incentives for motion picture production companies spending monies in South Carolina, had been amended. One of these incentives is a sales and use tax exemption in Code Section 12-62-30.

Code Section 12-62-30 has been amended to exempt a motion picture production company from the payment of the state sales and use tax (including accommodations tax) and local sales and use taxes administered and collected by the Department of Revenue on behalf of local jurisdiction on funds expended in South Carolina in connection with the filming or production of motion pictures in South Carolina. Previously, the exemption only applied to the state sales and use tax. As a result of this amendment, a motion picture production company no longer needs to file for a refund for sales taxes imposed on accommodations.

The term “motion picture production company” is defined in Code Section 12-62-20(4). The statute continues to provide that a motion picture production company must still intend 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 in order to obtain the sales and use tax exemption in Code Section 12-62-30. Further, the motion picture production company must make application for, meet the requirements of, and receive written certification of such designation from the South Carolina Department of Commerce before the Department of Revenue can issue an exemption certificate for this exemption. Motion picture productions companies that want to learn more about this tax incentive, or that want to obtain an application form, should contact the South Carolina Film Commission at (803) 737-0490.

For more detailed information concerning the sales and use tax exemptions for qualified motion picture companies, see SC Revenue Ruling #05-7.

Effective Date: May 9, 2005

House Bill 3716, Part IB, Section 72, Proviso 72.106 (Act No. 115)

Respiratory Syncytial Virus Medicines Exemption - Effective Date Changed

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

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

Effective Date: This temporary proviso is effective for State fiscal year July 1, 2005 through June 30, 2006. Unless reenacted by the General Assembly in the next legislative session, the provisions of this proviso expire on June 30, 2006.

House Bill 3768, Section 29 (Act No. 145)

(See also House Bill 3716, Part IB, Section 64, Proviso 64.13 (Act No. 115))

Medicines, Medical Supplies, and Diabetic Supplies/Equipment Sold to “Free Clinics”

Code Section 12-36-2120(63) has been added to codify a temporary proviso effective from July 1, 2004 to June 30, 2005, to exempt from sales and use tax 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.

Effective Date: June 7, 2005

House Bill 3767, Section 29 (Act No. 161)

Maximum Tax – Fire Safety Education Trailers

Code Section 12-36-2110, which establishes a maximum \$300 sales and use tax with respect to the sale of certain items, has been expanded to include fire safety education trailers.

Effective Date: June 9, 2005

House Bill 3768, Section 30 (Act No. 145)

Exemption Certificate - Guidelines Clarified

Code Section 12-36-2510 concerning the issuance of exemption certificates by the Department, has been amended to provide that the Department, at its discretion, may issue any type of sales and use tax certificate allowing a taxpayer to purchase tangible personal property tax free and be liable for any taxes. The amendments include:

1. The issuance of a “direct pay certificate” or an “exemption certificate.” 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. An “exemption certificate” allows its holder to make only certain purchases tax free, such as machinery, electricity, or raw materials. The holder of either type of certificate is liable for any taxes due.
2. The Department, at its discretion, may use 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.

3. When a purchaser claims an exemption or exclusion from the tax, the following provisions apply to the seller:
 - a. 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.
 - b. 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.
 - c. A seller that complies with the provisions in Code Section 12-36-2510 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 did not fraudulently 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, 2005

House Bill 3768, Section 33.B (Act No. 145)

Knowingly Using Resale, Wholesale, or Exemption Certificates Improperly – New Penalty

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 sales and use tax. This penalty, 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, not exceeding 50% in the aggregate. This penalty does not apply to “direct pay certificates.”

Effective Date: July 1, 2005

House Bill 3768, Section 27 (Act No. 145)

Sale of a Business – Retail License and Lien

Code Section 12-36-530, which concerns the return of a retail license, payment of taxes due, and the issuance of a new retail license when a business has been closed or sold, has been amended to delete the following: (a) the provision that considered tax due at the time of sale to be a lien against the stock of goods and the fixtures and equipment in the hands of the purchaser, or any third party, until the tax is paid, and (b) the provision that the Department may not issue a retail license to the purchaser until all such taxes are paid. These provisions were no longer needed when similar provisions were enacted in Code Section 12-54-124 in 2003. See SC Revenue Procedure #03-5 for more information.

Effective Date: June 7, 2005

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

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

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

Effective Date: January 1, 2006

House Bill 3767, Section 28 (Act No. 161)

Discount for Timely Filing Sales Tax Return – Local Taxes

Code Section 12-36-2610, allowing retailers a discount for timely filing sales tax returns, has been amended to clarify that the discount applies to all local sales and use taxes administered and collected by the Department as well as the State sales and use tax. As a result, the total tax liability for both State and local taxes associated with the filing of a sales and use tax return with the Department is used in determining the discount.

Effective Date: June 9, 2005

REENACTED TEMPORARY PROVISIO

The following temporary provision was enacted in prior legislative sessions and was reenacted by the General Assembly in 2005.

Temporary provisos are effective for the State fiscal year July 1, 2005 through June 30, 2006, and will expire June 30, 2006, unless reenacted by the General Assembly in the next legislative session.

House Bill 3716, Part IB, Section 72, Proviso 72.55 (Act No. 115)

Private Schools – “Use Tax” Exemption

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

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

MISCELLANEOUS

ADMINISTRATIVE and PROCEDURAL MATTERS (Summarized by Subject Matter)

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

Tax Return Preparer - Electronic Filing or 2D Barcode Required

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

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

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

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

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

House Bill 3767, Section 1 (Act No. 161)

Tax Return Preparer – Means of Signature Amended

Code Section 12-2-75(B), concerning signatures on returns, has been amended to provide that to the extent that a tax return preparer, as defined in Internal Revenue Code Section 7701(a)(36), is required or permitted to sign a return, the Department may authorize the preparer to sign the return by other means, including electronically.

Effective Date: June 9, 2005

House Bill 3767, Section 26 (Act No. 161)

Returned and Unclaimed Refund Checks – Reissuance Procedure Expanded

Code Section 12-6-5560, providing for returned income tax refund checks due to unknown or insufficient address and its reissuance by request before the time limitation expires, has been repealed and replaced by Code Section 12-54-270. Code Section 12-54-270 provides that a tax refund check that is returned to the Department for an unknown, undeliverable, or insufficient address is unclaimed property under the “Uniform Unclaimed Property Act” in Chapter 18 of Title 27. The practical effect of the amendment is to allow taxpayers in this situation to obtain their money with no time limit.

Related amendments to the Uniform Unclaimed Property Act include:

1. Code Section 27-18-20(10)(g) has been added to include in the definition of “intangible property” tax refund checks issued by South Carolina and returned to the Department by the Post Office for an unknown, undeliverable, or insufficient address.
2. Code Section 27-18-140(B) has been added to provide that tax refund checks as defined in Chapter 54 of Title 12 are considered abandoned if unclaimed for a period of three months from the date the tax refund check was issued by the Department.
3. Code Section 27-18-140(C) was added to provide that the Unclaimed Property Act does not apply to tax refund checks mailed to an owner, and not presented for payment, but not returned to the Department by the Post Office for an unknown, undeliverable, or insufficient address.
4. Code Section 27-18-180(A) was amended to provide that reporting an unclaimed tax refund check to the administrator is not a violation of disclosure prohibitions in Code Section 12-54-240.

Effective Date: June 9, 2005

House Bill 3767, Section 15.A (Act No. 161)

Prohibition Against Delaying Refund Unrelated to Audit

Code Section 12-58-190 has been added to prohibit the Department from denying a refund or delaying the issuance of a refund determined to be due because the Department is auditing or planning an audit of the taxpayer for a different tax or different tax period. A person violating this provision is subject to disciplinary action, including dismissal. This provision does not prevent the issuance of an assessment, including a jeopardy assessment, pursuant to the Revenue Procedures Act.

Effective Date: June 9, 2005

House Bill 3768, Section 37 (Act No. 145)

Installment Payment Extension - Clarified

Code Section 12-58-185(A), providing for the Department to accept installment payments for amounts due for a period not to exceed one year from the date the payment was due, has been amended to clarify that the Department may extend the time for payment beyond one year if the payment will result in undue hardship to the taxpayer.

Effective Date: June 7, 2005

House Bill 3768, Section 3 (Act No. 145)

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, 2005

House Bill 3768, Section 4 (Act No. 145)

(See also House Bill 3716, Part IB, Section 64, Proviso 64.8 (Act No. 115))

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. Under this Act, tax debts that remain unpaid 120 days or more after the taxpayer receives a notice of assessment issued by the Department will be assessed a 20% collection fee. Code Section 12-55-30(A)(3) defines "tax debt" as the total amount of tax, fees, penalties, interest, and costs for which notice of assessment has been issued by the Department to the taxpayer. Code Section 12-55-50 provides that the Department may waive the fee to the same extent as if it were a penalty.

Effective Date: Applies to all tax debts incurred before December 1, 2002 that remain outstanding on December 1, 2002, and to all tax debts incurred on or after December 1, 2002.

Misconduct of Representative/Firm in Administrative Tax Process – New Penalties

Code Section 12-60-90 governs who may represent a taxpayer during a South Carolina administrative tax process and provides penalties for a representative or firm who fails to comply with the duties and restrictions in United States Treasury Department Circular No. 230. Circular 230 contains rules governing tax practice.

Code Section 12-60-90(D) has been amended as follows:

1. To allow the Department to censure any person authorized to represent taxpayers, if the person is shown to be incompetent, disreputable, or fails or refuses to comply with the rules in Sections 10.20 - 10.24 and 10.27 - 10.34 of Circular No. 230 or for violating the prohibitions on incompetence and disreputable conduct as defined in Section 10, or in any manner, with intent to defraud, wilfully and knowingly deceives, misleads, or threatens any person or prospective person to be represented, by word, circular, letter, or by advertisement. The statute continues to allow the Department to suspend or disbar persons authorized to represent taxpayers for these violations.
2. To provide that the Department may impose a monetary penalty on the representative, and if the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to the penalty, the Department may impose a monetary penalty on the employer, firm, or entity if it knew, or reasonably should have known, of the conduct. The penalty may not exceed the gross income derived, or to be derived, from the conduct giving rise to the penalty and may be in addition to, or instead of, suspension, disbarment, or censure of the representative.

Code Section 12-60-90(F)(4) has been amended to clarify that references to federal tax obligations in Circular 230 “include” all South Carolina taxes, including property taxes and property tax assessments, administered by the Department.

Effective Date: June 9, 2005

House Bill 3768, Section 35 (Act No. 145)

Failure to File Returns or Keep Records – Penalty Expanded

Code Section 12-54-210(A), a penalty provision requiring a person liable for a tax, license, fee, or surcharge administered by the Department or for the filing of a return with the Department including information returns, to keep books, papers, records, render statements, make returns, and comply with regulations prescribed by the Department, has been amended to provide that it applies to persons filing a return with the Department. Previously, the provision applied to the filing of returns required by Title 12.

Effective Date: July 1, 2005

House Bill 3768, Section 33.A (Act No. 145)

Penalty for Frivolous Claims, Protests, or Other Documents - Expanded

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 persons who file:

1. A return that is based on a position which is groundless; and,
2. A claim, protest, or document, other than a return, that contains information that on its face indicates a position that is substantially incorrect that is based on a persons desire to delay or impede the administration of state tax laws or a position that is frivolous or groundless.

In addition, the penalty has been increased from \$500 to \$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, 2005

House Bill 3767, Section 10 (Act No. 161)

Underpayment of Estimated Tax Penalty - Clarified

Code Section 12-54-55(1) has been amended to clarify that for an individual, estate, and trust the small amount provisions for purposes of underpayment of estimated tax referred to in Internal Revenue Code Section 6654, “Failure by Individual to Pay Estimated Income Tax,” is \$100.

Effective Date: June 9, 2005

House Bill 3767, Section 11 (Act No. 161)

Underpayment of Tax Penalty - Technical Correction

Code Section 12-54-70(b), imposing a penalty for failure to reflect at least 90% of the tax paid with the extension, has been amended to correct a code section reference from Code Section 12-54-43, a general civil penalties section, to Code Section 12-54-43(D), a specific failure to pay penalty.

Effective Date: June 9, 2005

House Bill 3768, Section 32 (Act No. 145)

Penalty for Not Furnishing Withholding Statements - Expanded

Code Sections 12-54-42(a) and (b) have been expanded to provide that a penalty for each violation 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 fails to comply with the provisions of Code Section 12-8-1550, requiring the filing of withholding statements with the Department. The amendment replaced the term “employer” with the term “person.”

Effective Date: July 1, 2005

House Bill 3767, Section 27 (Act No. 161)

False Withholding Exemption Certificates – Penalty Revised

Code Section 12-54-46, imposing a penalty for claiming more exemptions on a withholding exemption certificate than one is entitled, has been expanded. The statute now provides:

1. An individual’s actions subject to a penalty are: (1) refusing or failing to provide a withholding exemption certificate, (2) providing a withholding exemption certificate that claims he is exempt from withholding, (3) providing exemptions on a withholding exemption certificate exceeding the number of exemptions to which he is entitled, or (4) requesting a waiver from withholding to which he is not entitled.
2. The penalty is \$500 for each violation listed in item 1 above. An additional \$500 penalty is imposed each January 1st that a violation is not corrected.

3. The penalty does not apply to an individual subject to withholding and required to supply withholding information to his employer who has a change in family circumstances that makes his withholding exemption certificate inaccurate unless his employer or the Department has informed him to revise his withholding exemption certificate.

Effective Date: June 9, 2005

House Bill 3768, Section 34 (Act No. 145)

Revocation and Refusal to Issue License for Failure to Comply - Amended

Code Section 12-54-90(A), allowing the Department to revoke one or more licenses held by a taxpayer who fails, neglects, violates, or refuses to comply with a provision of law or regulation administered by the Department, has been amended so the process is in conformity with the Revenue Procedures Act provisions in Chapter 60 of Title 12. The amendments are:

1. To add that the Department may refuse to issue a license to a taxpayer who fails to comply.
2. To delete the provision allowing the revocation within 10 days of notification in writing of the taxpayer's failure to comply. This clarifies that a taxpayer has 90 days under the Revenue Procedures Act to protest the denial, suspension, or revocation of a license issued by the Department.

Effective Date: June 7, 2005

House Bill 3768, Section 38 (Act No. 145)

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 may send the taxpayer a proposed assessment. This provision previously applied only to state taxes.
2. A technical correction was made to Code Section 12-60-420(A) to provide that a division decision or proposed 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. This subsection 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, 2005

House Bill 3767, Sections 23.G and 23.H (Act No. 161)

Appeals Procedures – Administrative Law Court

Code Section 12-60-510, which concerns the appeals procedures if a taxpayer disagrees with a proposed assessment, has been amended to state that if a taxpayer fails to file a protest with the Department within 90 days of the date of the proposed assessment, the taxpayer is in default, and the Department must issue an assessment for the taxes. The assessment may be removed by the Administrative Law Court for good cause shown, and the matter may be remanded to the Department. Other provisions clarify that when a taxpayer fails to exhaust his prehearing remedies the Administrative Law Court will dismiss the action without prejudice or remand it back to the Department, depending upon the reason for the failure.

Code Section 12-60-1330, which concerns the appeals procedures with respect to the denial of a license or permit, or the suspension, cancellation or revocation of a license or permit, has been amended to state that if a taxpayer fails to file a protest with the Department within 90 days of the date of the proposed assessment, denial, suspension, cancellation or revocation, the taxpayer is in default, and the Department must deny, suspend, cancel or revoke the license or permit. The denial of the license or permit, or the suspension, cancellation or revocation of the license or permit, may be lifted by the Administrative Law Court for good cause shown, and the matter remanded to the Department.

Other provisions clarify that when a taxpayer fails to exhaust his prehearing remedies the Administrative Law Court will dismiss the action without prejudice or remand it back to the Department, depending upon the reason for the failure.

Effective Date: June 9, 2005

House Bill 3768, Section 39 (Act No. 145)

Refund Offset Provisions - Clarified

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 of Title 12, "Setoff Debt Collection Act," from Article 3, Chapter 54, "Uniform Collection and Enforcement."
2. To add debts collected under Code Section 12-4-580, the "Government Entity Accounts Receivable Program," to the list of debts or taxes due that a taxpayer's refund may be applied against.

Effective Date: June 7, 2005

House Bill 3767, Section 12 (Act No. 161)

Summons by the Department

Code Section 12-54-110(D), concerning a person who neglects or refuses to obey the Department's summons, has been amended to provide that the Department may apply to the Administrative Law Court instead of the circuit court for an action for contempt.

Effective Date: June 9, 2005

House Bill 3768, Section 36 (Act No. 145)

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: June 7, 2005

House Bill 3768, Section 54 (Act No. 145)

Disclosure of Information to State Agency or County Auditor/Assessor - Expanded

Code Section 12-54-240(B)(12), allowing the disclosure to a state agency, county auditor, or county assessor of whether a resident or nonresident tax return was filed by a particular taxpayer, has been expanded to allow the disclosure of the following information: (1) whether the return is joint or individual, (2) the name of any taxpayer filing jointly with the taxpayer, and (3) what county code of residence is on the return.

Effective Date: June 7, 2005

House Bill 3767, Section 15.B (Act No. 161)

Action Against State for Violation of Department Procedures

Code Section 12-58-170, relating to actions against the State for an employee's violation of the Department's published procedures, has been repealed.

Effective Date: June 9, 2005

MISCELLANEOUS TAXES

House Bill 3767, Section 25 (Act No. 161)

Motor Fuel User Fee Imposition Clarified

Code Sections 12-28-310 and 12-28-330, which concern the imposition of the motor fuel user fee on gasoline and diesel fuel, have been amended to clarify that the user fee applies to all gasoline used and consumed in South Carolina for any purpose and applies to all diesel fuel used or consumed in South Carolina in producing or generating power for propelling motor vehicles. Code Section 12-28-330, which concerns a rebuttable presumption that that motor fuel removed from a terminal, or imported or stored, in South Carolina is considered used and consumed in South Carolina, was amended to clarify that such gasoline is considered used and consumed in South Carolina and that such other fuel is considered used and consumed on the highways in South Carolina in propelling motor vehicles.

Effective Date: June 9, 2005

House Bill 3768, Section 25 (Act No. 145)

Motor Fuel Tax Refunds for Sales to the Federal Government

Code Section 12-28-740(3)(b) has been amended to delete the provision allowing credit card issuers to apply for a credit for motor fuel user fees on certain sales to federal agencies. This section continues to allow 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: June 7, 2005

House Bill 3768, Section 2 (Act No. 145)

Reporting of Petroleum Products – New Penalty

Code Section 12-28-1400 has been added to require that all information required to be reported to the Department under Title 12, Chapter 28, “Tax on Motor Fuels,” must be used in the tracking of petroleum products and must be submitted in the manner prescribed by the Department. The requirements may include 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 Chapter 28 who fails to meet the requirements of Section 12-28-1400 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, in addition to all other penalties prescribed by Chapter 28.

Effective Date: June 7, 2005

House Bill 3768, Section 26 (Act No. 145)

Illegal Use of Dyed Fuel – Penalty Amended

Code Sections 12-28-1730(C) and 12-28-1730(F) provide civil penalties on the operator of a vehicle for the illegal use of dyed fuel on South Carolina highways. The amendments to these sections include:

1. Code Section 12-28-1730(C) has been repealed and replaced by Code Section 12-28-1730(F), as amended below.

2. Code Section 12-28-1730(F) has been amended to impose a civil penalty in the amount of \$1,000 or \$10 for each gallon of dyed fuel involved, whichever is greater, on the operator of a vehicle that is used on South Carolina, or is authorized or otherwise allowed to be used on South Carolina highways, 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 South Carolina highways, regardless of whether any of such dyed fuel is used for a nontaxable purpose, unless permitted to do so under federal law. For purposes Code Section 12-28-1730, “operator” is defined as the person responsible for the management and operation of the vehicle, whether as owner, lessee, or other party.

Effective Date: June 7, 2005

House Bill 3767, Section 34 (Act No. 161)

State Rural Infrastructure Funds - Municipalities Eligible

Code Section 12-10-85 provides that the State Rural Infrastructure Fund must be administered by the Coordinating Council at the Department of Commerce for the purpose of providing financial assistance to local governments for infrastructure and other economic development activities. Code Section 12-10-85(C) has been amended to add “municipality” to the definition of “local government.” For purposes of this section, local government means a county, municipality, or group of counties, organized pursuant to Code Section 4-9-20(a), (b), (c), or (d).

Effective Date: June 9, 2005

House Bill 3768, Section 24 (Act No. 145)

Tourism Infrastructure Admissions Tax Act – Application Process Clarified

The Tourism Infrastructure Admissions Tax Act in Article 27, Chapter 21 of Title 12 allows a portion of the admissions tax collected at a qualifying tourism and recreation facility to be remitted to counties or municipalities for making infrastructure improvements. Code Section 12-21-6550 has been amended to provide that a county or municipality seeking to obtain funds pursuant to the Act must file a certification application with the Department of Parks, Recreation, and Tourism. The completed application is forwarded by the Department of Parks, Recreation, and Tourism to the Department of Revenue for processing. Previously, the application was submitted directly to the Department of Revenue.

Effective Date: July 1, 2005

OTHER ITEMS (including local taxes)

House Bill 3152 (Act No. 56)

Motion Picture Incentive Act – Rebate Improved and Expanded

The South Carolina Motion Picture Incentive Act, in Chapter 62 of Title 12, providing tax incentives for motion picture production companies spending monies in South Carolina, has been amended.

Code Section 12-62-50, previously allowing a qualified motion picture production company a withholding tax rebate issued by the Department of Revenue, has been amended to allow a labor rebate issued by the South Carolina Film Commission at the South Carolina Department of Commerce that may not exceed 15%.

Under this amendment, the Film Commission may rebate to a motion picture production company a portion of the South Carolina payroll of the employment of persons subject to South Carolina income tax withholdings in connection with production of a motion picture. The rebate may not exceed 15% of the total aggregate South Carolina payroll for persons subject to South Carolina income tax withholdings employed in connection with the production when total production costs in South Carolina equal or exceed \$1 million during the taxable year. The rebates in total may not annually exceed \$10 million. Total aggregate payroll does not include the salary of an employee whose salary is equal to or greater than \$1 million for each motion picture.

For the rebate to apply, an employee must be an individual directly involved in the filming or post-production of a motion picture in South Carolina who is an employee of a:

1. motion picture production company that is directly involved in the filming or post-production of a motion picture in South Carolina; or
2. personal service corporation retained by a motion picture production company to provide persons used directly in the filming or post-production of a motion picture in South Carolina; or
3. payroll services or loan out company that is retained by a motion picture production company to provide employees who work directly in the filming or post-production of a motion picture in South Carolina.

In addition, the employee must be certified by the Department of Commerce as a qualifying employee and the employee must have had South Carolina income tax withholding withheld and remitted to the Department of Revenue. The rebate only applies with respect to an employee of a personal service company or a payroll services or loan out company if, before commencement of filming in South Carolina, such company is approved and certified by the Department of Commerce, and makes an

irrevocable assignment of its rebate to the motion picture production company that produced the motion picture. The assignment must be made on a form provided by the Department of Revenue, which must include a waiver of confidentiality pursuant to Section 12-54-240. Upon assignment, the rebate may be paid only to the motion picture production company.

The rebate is available to the motion picture production company at the end of all filming in South Carolina in connection with the motion picture. The motion picture production company must follow the procedures established by, and apply to, the South Carolina Film Commission at the Department of Commerce in order to obtain the rebate.

To claim the rebate, the motion picture production company and all personal service company or a payroll services or loan out company must be current with respect to all taxes due and owing the State at the time of filing the request for rebate. If the motion picture production company or a personal service company or a payroll services or loan out company is not current with respect to all taxes due and owing the State, the motion picture production company is permanently barred from claiming the rebate.

At the time the motion picture production company is certified by the Department of Commerce, it may make, with the approval of the Coordinating Council at the Department Of Commerce, an irrevocable assignment of future payments attributable to this rebate to a designated trustee as defined in the Code Section 12-62-55.

Note: This provision is under the jurisdiction of the South Carolina Film Commission, which is a part of the Department of Commerce. Questions concerning this rebate should be directed to South Carolina Film Commission at 803-737-0490.

Effective Date: July 1, 2005

House Bill 3304 (Act No. 61)

Tobacco Qualified Escrow Fund Enforcement – Provisions Applicable to the Department

On November 23, 1998, leading United States tobacco product manufacturers entered into the “Master Settlement Agreement” with South Carolina. This agreement obligates these manufacturers, in return for a release of past, present, and certain future claims against them, to pay substantial sums to the State based in part on the volume of sales of their products in South Carolina. In 1999, the General Assembly enacted the “Tobacco Escrow Fund” and found that it is the policy of this State that financial burdens imposed on the State by cigarette smoking be borne by tobacco product manufacturers rather than by the State.

Code Section 11-47-30 of the “Tobacco Escrow Fund” provides that any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) shall either become a participating manufacturer, as defined in section II(jj) of the Master Settlement Agreement, and generally perform its financial obligations under the Master Settlement Agreement or place certain amounts into a qualified escrow fund based on the number of cigarettes sold. Under this law, the Department determines the number of cigarettes sold in the State by the applicable tobacco product manufacturer during the year in question, as measured by excise taxes collected by the State on packs or “roll-your-own” tobacco containers. This is the Department’s only duty with respect to this law.

House Bill 3304 (Act No. 61) adds Chapter 48 to Title 11 for purposes of enacting procedural enhancements that may deter potential violations and promote the enforcement of the Tobacco Escrow Fund Act, safeguard the Master Settlement Agreement, the financial interests of the State, and the public health. Administration and enforcement of the provisions of Chapter 48 rest with the South Carolina Attorney General; however, the Department of Revenue is involved with two aspects of this law:

1. Code Section 11-48-50 requires a cigarette distributor to submit information to the Attorney General to facilitate compliance with Chapter 48 including, but not limited to, a list by brand family of the total number of cigarettes or in the case of roll-your-own, the equivalent stick count for which the cigarette distributor affixed stamps during the previous calendar quarter, or otherwise paid the tax due for the cigarettes. The cigarette distributor shall maintain, and make available to the Attorney General, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and other information relied upon in reporting to the Attorney General for a period of five years.

The distributors also shall provide this information and documentation to the Department of Revenue and any other documentation requested by the Department of Revenue. The Department of Revenue shall process this information as needed by it and as needed by the Attorney General for the purposes of this chapter and the Tobacco Escrow Fund Act.

2. Code Section 11-48-90 makes it unlawful for a cigarette manufacturer, cigarette importer, cigarette distributor, or cigarette retailer to sell or possess counterfeit cigarettes. A person who violates this subsection is guilty of a felony and, upon conviction, is subject to a fine, imprisonment or both. In addition, certain violations require the revocation by the Department of Revenue of any cigarette and tobacco products license required pursuant to Article 5, Chapter 21, of Title 12 and held by the cigarette manufacturer, cigarette importer, cigarette distributor, or cigarette retailer.

Effective Date: May 17, 2005. (Section 1(B), unrelated to the above responsibilities of the Department of Revenue, is effective January 1, 2006.)

House Bill 4189 (Act No. 204)

Marlboro County School District Sales and Use Tax

The Marlboro County School District School Bond - Property Tax Relief Act has been enacted to allow the imposition of a sales and use tax not exceeding 1% within Marlboro County. The tax must be approved by a referendum open to all qualified electors residing in Marlboro 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, if approved in the referendum, must be imposed beginning on the first day of the third full month following the filing of a declaration of the results of the referendum with the Department. The tax terminates on the final day of the maximum time specified in the imposition (but not more than 25 years).

Effective Date: June 8, 2005

House Bill 4086 (Act No. 197)

Dillon County School Districts Sales and Use Tax

The Dillon County School Facilities Financing Act has been enacted to allow the imposition of a sales and use tax not exceeding 2% within Dillon County. The tax must be approved by a referendum open to all qualified electors residing in Dillon 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, if approved in the referendum, must be imposed beginning on the first day of the third full month following the filing of a declaration of the results of the referendum with the Department. However, the timing of the imposition may not result in a rate of sales and use tax paid by the citizens of the county that will exceed 8%. In order to ensure this limit is not exceeded, the tax may be phased in one cent at a time. The tax terminates on the final day of the maximum time specified in the imposition or earlier, but not if later, upon payment of the final maturing payment of any financing undertaken by a district for

the purposes set forth in its proposed program of facilities improvement, or upon payment of the final maturing installment of any financing undertaken by the district or on behalf of the district to refund obligations issued for purposes of constructing, acquiring, or renovating school facilities.

Effective Date: June 8, 2005

Senate Bill 426 (Act No. 195)

Clarendon County School District Tax – Exemption for Food Eliminated

Clarendon County imposes two local sales and use taxes - the 1% Local Option Tax and the 1% Clarendon Schools Tax. Sales of foods which are eligible to be purchased with United States Department of Agriculture food stamps were exempt from the 1% Clarendon School Tax for the period of June 1, 2004 through June 30, 2005.

However, under the provisions of this bill, sales of foods which are eligible to be purchased with United States Department of Agriculture food stamps are subject to the 1% Clarendon School Tax effective July 1, 2005.

Effective Date: July 1, 2005

Senate Bill 97 (Act No. 109)

Tax Increment Financing For Counties and Municipalities

Chapter 7, Title 31 and Chapter 33, Title 6 allow counties to engage in tax increment financing to encourage revitalization of blighted areas within a county. Chapter 6, Title 31 allows municipalities to engage in tax increment financing to encourage the revitalization of urban blighted areas. The amendments expanded the type of areas that can qualify for tax increment financing, the criteria that are used to determine if tax increment financing is appropriate, and the uses of funds received from tax increment financing. Below is a brief summary of amendments made to these provisions.

Financing For Counties. Chapter 7, Title 31 has been amended to further expand the areas that are eligible for tax increment financing and include the following changes.

1. Code Section 31-7-25 has been added to provide a finding that certain agricultural properties within counties are now in need of redevelopment and such areas may be eligible to use the tax increment financing provisions of Chapter 7, Title 31.
2. The definition of “blighted area” in Code Section 31-7-30(1) has been amended to include presence of or potential environmental hazard, lack of storm drainage facilities, and inadequate transportation infrastructure as factors that may be considered in determining whether an area may qualify as a “blighted area.”

3. The definition of “conservation area” in Code Section 31-7-30(2) has been amended to provide that the following items may be considered as factors in determining whether an area may qualify as a conservation area: (a) presence of or potential environmental hazard, (b) lack of storm drainage, (c) inadequate transportation infrastructure, (d) agricultural foreclosures, (e) static or declining agricultural land rental rates, (f) depopulation, (g) area-wide economic decline, or (h) static per capita income.
4. The definition of “sprawl area” contained in Code Section 31-7-30(3) has been amended by expanding a rural redevelopment zone (RRZ) to include an area of the county without regard to minimum acreage requirements, suitable for “planned communities, other residential clusters, light industry, tourism and recreation facilities, retail centers, and locations suitable for manufacturing facilities.”
5. The definition of “redevelopment plan” contained in Code Section 31-7-30(6) has been amended to require that the costs of long term project maintenance, if applicable, be included in the redevelopment plan.
6. The definition of “redevelopment project” in Code Section 31-7-30(7) has been expanded to include: (a) street, road, and highway improvements, (b) tourism and recreation-related facilities, (c) energy production or transmission infrastructure, (d) communications technology, and (e) public transportation infrastructure, including rail and airport facilities.
7. The definition of “redevelopment project area” in Code Section 31-7-30(8) has been amended to provide that the 5% acreage limitation provision (redevelopment project areas may not exceed 5% of the counties total acreage) does not apply to a redevelopment area comprised of a conservation area or an RRZ sprawl area.
8. The definition of “redevelopment project costs” in Code Section 31-7-30(9) has been amended to include costs related to: (a) long term maintenance of the redevelopment project and (b) relocation or removal of federal, state, or local facilities or activities to the extent that the county determines that relocation costs must be paid or are required by federal or state law.
9. Code Section 31-7-120 which allows a county and municipality to jointly create a tax increment financing district, has been clarified to specify that such a redevelopment plan must be done through an intergovernmental agreement. Code Section 31-7-120 has also been expanded to provide that counties, by intergovernmental agreement incorporated into county ordinances, may establish a multi-county or regional authority for establishing a redevelopment plan and redevelopment projects if the economic impact of a project extends beyond the boundaries of a single county. The manner of developing the plans and projects is also provided for in this code section.

10. In an uncodified provision, the Act indicates that it is the intent of the General Assembly that should legislation enacted in the 116th General Assembly repeal either Chapter 7, Title 31 or Chapter 33, Title 6 (both of which provide for tax increment financing for counties), the amendments made during the 116th General Assembly to the repealed chapter are deemed to have been made to the remaining chapter and the Code Commissioner is directed to incorporate those amendments into the surviving chapter.

Financing For Municipalities. Chapter 6, Title 31 has been amended to further expand the areas that are eligible for tax increment financing and includes the following changes.

1. An item has been added to the findings contained in Code Section 31-6-20(A) recognizing that certain agricultural property within, or contiguous to, municipalities may be in need of redevelopment using the redevelopment tools provided in Chapter 6, Title 31.
2. The definition of “blighted area” in Code Section 31-6-30(1) has been amended to provide that the following items may be considered as factors in determining if an area is blighted: (a) lack of storm drainage facilities, (b) lack of necessary transportation infrastructure, (c) present or potential environmental hazards, (d) lack of water or wastewater services, (e) inadequate electric, natural gas, or other energy services, or (f) lack of modern communications infrastructure. Additionally, if the land is vacant, overcrowding of structures and community facilities in neighboring areas adjacent to the vacant land is an eligible factor as well. If the land is improved, static or declining land values in the area may also be considered as an eligible factor.
3. A new definition of “agricultural area” has been added as Code Section 31-6-30(1.5) and is defined as an area of agricultural property where growth is inhibited because of a combination of 3 or more factors. There are a number of factors that may be considered such as: (a) obsolete platting of land, (b) diversity of the ownership of the land, (c) deterioration of structures or site improvements in neighboring areas adjacent to the land, and (d) environmental hazards.
4. The definition of “conservation area” in Code Section 31-6-30(2) has been amended to provide different sets of factors to be considered, depending on whether the property has been improved or is vacant, and to add a number of new factors that may be considered in determining whether an area qualifies as a conservation area.
5. The definition of “redevelopment plan” contained in Code Section 31-6-30(5) has been amended to include agricultural areas as eligible for a plan and to require that the costs of the long term project maintenance, if applicable, be included in the redevelopment plan.

6. The definition of “redevelopment project” in Code Section 31-6-30(6) has been expanded to include: (a) road and highway improvements, (b) tourism facilities, (c) energy production or transmission infrastructure, (d) communications technology, and (e) public transportation facilities, including rail and airport facilities, as eligible projects.
7. The definition of “redevelopment project area” in Code Section 31-6-30(8) has been amended to eliminate the requirement that the total aggregate amount of all redevelopment projects areas within the municipality cannot exceed 5% of the total acreage.
8. The definition of “redevelopment project costs” in Code Section 31-6-30(9) has been amended to include (a) costs related to long term maintenance of the redevelopment project and (b) relocation or removal costs of federal, state, or local facilities or activities to the extent that the county determines that relocation costs must be paid or are required by federal or state law.

Municipal Improvement Districts. In addition to the changes made to the tax increment financing provisions, Code Sections 5-37-40(A)(5), 5-37-40(B), and 5-7-50, dealing with municipal improvement districts, have been amended to provide that an owner of owner-occupied real property taxed under Code Section 12-43-220(c) must provide written consent to the inclusion of such property in the improvement district at the time the improvement district is created.

Effective Date: June 2, 2005

REGULATORY LEGISLATION

House Bill 3694 (Act No. 104)

Gambling Cruise Act

The "Gambling Cruise Act" in Chapter 11 of Title 3 has been enacted to delegate to counties and municipalities the authority to prohibit or regulate the operation of gambling vessels that are engaged in voyages that depart from the territorial waters of the State, sail into United States or international waters, and return to the territorial waters of the State without an intervening stop.

If a county or municipality does not adopt an ordinance prohibiting a gambling vessel from operating, or if a gambling vessel other than a passenger cruise liner is permitted to operate because that gambling vessel, on each cruise, makes an intervening stop in another State, possession of the United States, or foreign country, the county or municipality may assess a surcharge of up to 10% of each ticket sold per gambling cruise,

and a surcharge of up to 5% of the gross proceeds of each gambling vessel. If a county or municipality assesses these surcharges, then the proceeds of the surcharges are to be paid to the county or municipality from which the gambling vessel originates its cruise. The county or municipality is responsible for setting forth the procedures by which the proceeds are paid to the county or the municipality.

Administration and enforcement of the provisions of the “Gambling Cruise Act” rests with the municipality or county; however, the Department is involved with two aspects of this law:

1. Each gambling vessel must report to the Department, on a monthly basis, the average daily percentage of winnings to losses for each gambling device used on a gambling vessel. The report must be delivered to the Department of Revenue on the 20th of the month for the preceding month, in a form and format determined by the Department. If no gambling devices are used, the gambling vessel must report to the Department that no gambling devices were used. The Department must perform an annual audit to verify the accuracy of the reports. A gambling vessel that fails to deliver the report of winnings and losses to the Department may be assessed a civil penalty up to the amount of \$100 per day per gambling device for each day that the report is late.
2. The Department must make the above information available, on a quarterly basis, to the governing body of the county or municipality from which the gambling vessel originates and to the general public. In addition, quarterly reports must be submitted to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.

Effective Date: June 1, 2005

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

Due Date for Wine Taxes on Direct Shipments to Residents

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

Effective Date: Applies for reports due after 2005.

House Bill 3768, Section 5 (Act No. 145)

Licensed South Carolina Wineries – Sunday Wine Sales

Code Section 61-4-725 has been added to provide that a licensed winery located in a county or municipality that has conducted a favorable referendum under the provisions of Section 61-6-2010 (*i.e.*, Sunday sales of alcoholic liquor), 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.

Effective Date: July 1, 2005

House Bill 3325 (Act No. 173)

Beer Importer – Agent of the Foreign Brewer

Code Section 61-4-1115 has been amended to state that when a registered producer is an importer of beer produced by a brewer located outside of the United States, the importer is considered to be the agent of the foreign brewer and an agreement subject to the provisions of this article between a wholesaler and the importer is binding on a successor importer of beer produced by that foreign brewer, its successor, or its assignee. Previously, the agreement was only binding on a successor importer of beer produced by that foreign brewer, and not beer produced by the successor or assignee of the foreign producer.

Effective Date: June 7, 2005

House Bill 3767, Section 23.A (Act No. 161)

Relocation of a Wholesale Beer, Wine or Liquor Facility

Code Section 61-2-136 has been added to require that a currently licensed beer and wine wholesaler, or currently licensed alcoholic liquor wholesaler, who wishes to relocate the licensed business to a new location within the State, must notify the Department in writing 30 days prior to the move. The notice must precisely describe the premises to be licensed and the date of the move. Upon receipt of this notice, the Department must transfer the permit to the new premises effective the date of the move.

Effective Date: September 1, 2005

House Bill 3767, Sections 23.B and 23.D (Act No. 161)

Persons Entitled to be Wholesale Licensee or Permittee

Code Section 61-2-100, which restricts who may obtain an alcoholic beverage license or permit, has been amended to add subsection (I) to only allow the issuance of a wholesale beer and wine permit by the Department to an applicant who is a legal resident of the United States and who has been a legal resident of South Carolina and has maintained his principal place of abode in South Carolina for at least 30 days before the date of the application. In a related amendment, Code Section 61-4-520 was amended to delete these restrictions that were moved to Code Section 61-2-100.

Code Section 61-2-100 (J) was further added to state that a misstatement or concealment of fact on an application for an alcoholic beverage license or permit pursuant to Title 61 is sufficient grounds for the Department to deny an application and to revoke a license or permit issued based on an application containing a misstatement or concealment of fact.

Effective Date: June 9, 2005

House Bill 3767, Section 23.C (Act No. 161)

Delinquent Taxes – Applicant for Alcoholic Beverage License or Permit

Code Section 61-2-160, which prohibits the issuance, renewal or transfer of an alcoholic beverage license or permit if the applicant owes delinquent taxes, has been amended to only apply this prohibition if the applicant owes delinquent state taxes, penalties, or interest. This provision no longer applies to delinquent federal taxes, penalties, or interest.

Effective Date: June 9, 2005

House Bill 3767, Section 23.F (Act No. 161)

Sales of Wine in Retail Liquor Stores

Code Section 61-6-1540(B), which allows only a retail liquor store to sell wine containing more than 14% of alcohol by volume, has been amended to increase the alcoholic content of such wine to 16%.

Effective Date: June 9, 2005

Senate Bill 339 (Act No. 26)

Beer and Wine Taxes in Lieu of Other Taxes

Code Section 12-21-1085 has been added to state that, except as provided in Section 12-21-1035 (tax on beer brewed at a brewpub) and Article 9 of Chapter 21 (additional wine excise tax) of Title 12, the beer and wine taxes provided for in Article 7 of Chapter 21 of Title 12 are 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 the local hospitality tax, and include licenses for its delivery by the wholesaler.

Effective Date: March 23, 2005

House Bill 3767, Section 23.I (Act No. 161)

Repeal of Restrictions on Retail Price Displays

Code Section 61-6-1520, which requires retail prices in a retail liquor store to be displayed on the shelf under each brand and bottle size and prohibits a retail liquor store from displaying alcoholic liquor bottles, packages or pricing signs in or near its window so as to be visible from the outside, has been repealed.

Effective Date: June 9, 2005

Senate Bill 19 (Act No. 19)

Minibottles – Amendment to State Constitution

In 2004, the General Assembly enacted a Joint Resolution that proposed an amendment to the State Constitution (Section 1 of Article VIII-A) authorizing 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 amendment to the State Constitution was approved by the voters in the November 2004 general election. During this legislative session, the General Assembly formally ratified this constitutional amendment.

Note: See the summary of Senate Bill 165 (Act 139 of 2005) for detailed information as to the new regulatory provisions for selling alcoholic liquor for on-premises consumption.

Effective Date: Ratified March 17, 2005.

Sale of Alcoholic Liquor by the Drink – New Rules

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

1. Code Section 61-6-1636(A) has been added to require that a person licensed for the sale of alcoholic liquors for on-premises consumption (now known as “alcoholic liquor for sale by the drink”) must purchase the alcoholic liquor from a licensed retail dealer with a wholesaler's basic permit issued pursuant to the Federal Alcohol Administration Act in any size bottle, except 1.75 liter size bottles.
2. Code Section 61-6-1636(B) has been added to allow a licensed retail dealer with a wholesaler's basic permit issued pursuant to the Federal Alcohol Administration Act to deliver, in sealed containers, alcoholic liquor in any size bottle, except 1.75 liter size bottles, to a person licensed to sell alcoholic liquors for on-premises consumption.
3. Code Section 61-6-1637 has been added to state that a person licensed for the sale of alcoholic liquors for on-premises consumption, including his agent, may not substitute another brand of alcoholic liquor in place of the brand specified by a customer unless the licensee or his agent has advised the customer that the desired brand is not available, and received the customer's approval for the substitution.
4. Code Section 12-33-245 has been amended to replace the 25 cent tax on each minibottle that was paid at the wholesale level with a 5% excise tax on the gross proceeds of sales of alcoholic liquors by the drink that will be paid at locations licensed for on-premises consumption. This new excise tax is in addition to the excise taxes, case taxes and the surtax paid at the wholesale level and is also in addition to sales taxes imposed on the sale of alcoholic liquors by the drink.

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

5. Code Section 12-36-90(2), which defines the term “gross proceeds of sales” for sales tax purposes, has been amended to exclude from this term the new 5% excise tax imposed on alcoholic liquors by the drink.
6. Code Section 61-6-2430 has been added to allow a wholesale distributor of alcoholic liquor to discount product price based on quantity purchases if all discounts are on price only for each location, appear on the sales records, and are available to all licensed retail dealers with a wholesaler's basic permit issued pursuant to the Federal Alcohol Administration Act or any other alcoholic liquor retail license.
7. Code Section 61-6-20(1)(b) has been added to define “alcoholic liquor by the drink” as a drink poured from a container of alcoholic liquor, without regard to the size of the container for consumption on the premises of a business licensed pursuant to Article 5 of Chapter 6 of Title 61.
8. Code Section 61-6-20(5) has amended the definition for the term “minibottle” to use metric measurements and define a “minibottle” as a sealed container of fifty milliliters or less of alcoholic liquors.
9. Code Section 61-6-1500, which establishes restrictions on retail liquor dealers, has been amended to eliminate various restrictions related to minibottles.
10. Code Sections 61-6-1600 and 61-6-1610, which authorize the sale and on-premises consumption of alcoholic liquors at locations of certain nonprofit organizations, restaurants, and lodging establishments, have been amended to change references to minibottles to “alcoholic liquor by the drink.”
11. Various other code sections in Chapter 4 of Title 61 (Beer and Wine) and Chapter 6 of Title 61 (Alcoholic Liquors) were amended to change references to minibottles, or alcoholic liquors in container of two ounces or less, to “alcoholic liquor by the drink.”
12. Various other code sections in Chapter 6 of Title 61 (Alcoholic Liquors) were amended to provide penalties for licensees who act to avoid payment of the new excise tax on alcoholic liquors sold by the drink.
13. Section 24 of the act creates a study committee to examine the delivery and distribution of alcoholic liquors by licensed retail dealers with a wholesaler's basic permit issued pursuant to the Federal Alcohol Administration Act. The study committee must issue a report on its findings to the President Pro Tempore of the Senate and the Speaker of the House of Representatives no later than the second Tuesday of January 2007. The committee terminates when the report is made. The purpose of the report is to enable the General Assembly to consider the findings of the study committee and to determine if the findings should be adopted and if state laws should be amended.

14. Section 25 of the Act states that all statutes and regulations applicable to minibottle licenses or permits or applications for licenses or permits apply to licenses or permits for alcoholic liquors by the drink. All minibottle licenses or permits in effect before the effective date of this Act are considered to be licenses or permits to sell alcoholic liquors by the drink after the effective date of this act through the expiration of the license or permit.
15. Section 27 of this Act states that each person licensed to sell or purchase minibottles must take an inventory of minibottles in the licensee's possession as of January 1, 2006 and send within 60 days a certified copy of the inventory to the Department. By no later than January 1, 2006, the Department must devise a method whereby the twenty-five cents excise tax on minibottles previously paid by the licensees is credited to each licensee so that on or after January 1, 2006, the tax rate paid on each minibottle is prorated in accordance with the terms of this Act.

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

REGULATORY REGULATIONS

Regulation Document No. 2906

Repeal of Video Game Machine Regulations

The following regulations concerning locations that operated video poker were repealed. Video poker machines are now illegal in South Carolina and these regulations are obsolete.

<u>Regulation No.</u>	<u>Subject</u>
117-190	Definition – “Single Place” or “Premises”
117-190.1	Definition – “Inducements”
117-190.2	Definition – “Advertising”
117-190.3	Definition – “Measurement of Distance”

Effective Date: April 22, 2005

Drive-In/Drive-Thru Establishments Prohibited

Regulation 7-702.5 has been added to prohibit the sale or delivery of beer or wine to anyone who remains in a motor vehicle during the transaction. This regulation incorporates the provisions of former Regulation 7-98, which was inadvertently deleted during the drafting process in 2003, in which all alcoholic beverage regulations were reorganized by subject matter. Regulation 7-702.5 states:

A permit holder, employee of a permit holder, or agent of a holder must not sell or deliver beer or wine to anyone who remains in a motor vehicle during the transaction. This regulation is specifically intended to prohibit the sale of beer and wine at drive-in/drive-thru establishments and on a curb service basis.

Effective Date: April 22, 2005

REENACTED TEMPORARY PROVISOS

The following temporary provisions were enacted in prior legislative sessions and were reenacted by the General Assembly in 2005.

Temporary provisos are effective for the State fiscal year July 1, 2005 through June 30, 2006, and will expire June 30, 2006, unless reenacted by the General Assembly in the next legislative session.

ADMINISTRATIVE AND PROCEDURAL MATTERS

House Bill 3716, Part IB, Section 56DD, Proviso 56DD.40 (Act No. 115)

Reduction on Interest Rate on Tax Refunds

This temporary proviso decreases by 2% the interest rates for tax refunds paid during fiscal year July 1, 2005 through June 30, 2006. The revenue resulting from this reduction must be used for operations of the State's Guardian ad Litem Program.

House Bill 3716, Part IB, Section 64, Proviso 64.7 (Act No. 115)

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 3716, Part IB, Section 64, Proviso 64.9 (Act No. 115)

Fee Charged for Installment Agreement

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

MISCELLANEOUS TAXES

House Bill 3716, Part IB, Section 1, Proviso 1.17 (Act No. 115)

Local Government School Buses - Motor Fuel Tax Exemption

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

House Bill 3716, Part IB, Section 8, Proviso 8.23 (Act No. 115)

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 3716, Part IB, Section 8, Proviso 8.27 (Act No. 115)

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 3716, Part IB, Section 56DD, Proviso 56DD.36 (Act No. 115)

Class Two Coin-Operated Devices Licenses - Fees Increased

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

House Bill 3716, Part IB, Section 56DD, Proviso 56DD.34 (Act No. 115)

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

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

House Bill 3716, Part IB, Section 64, Proviso 64.11 (Act No. 115)

Local Option Permits – Municipalities

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

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

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

The temporary proviso in Act No. 115 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.