

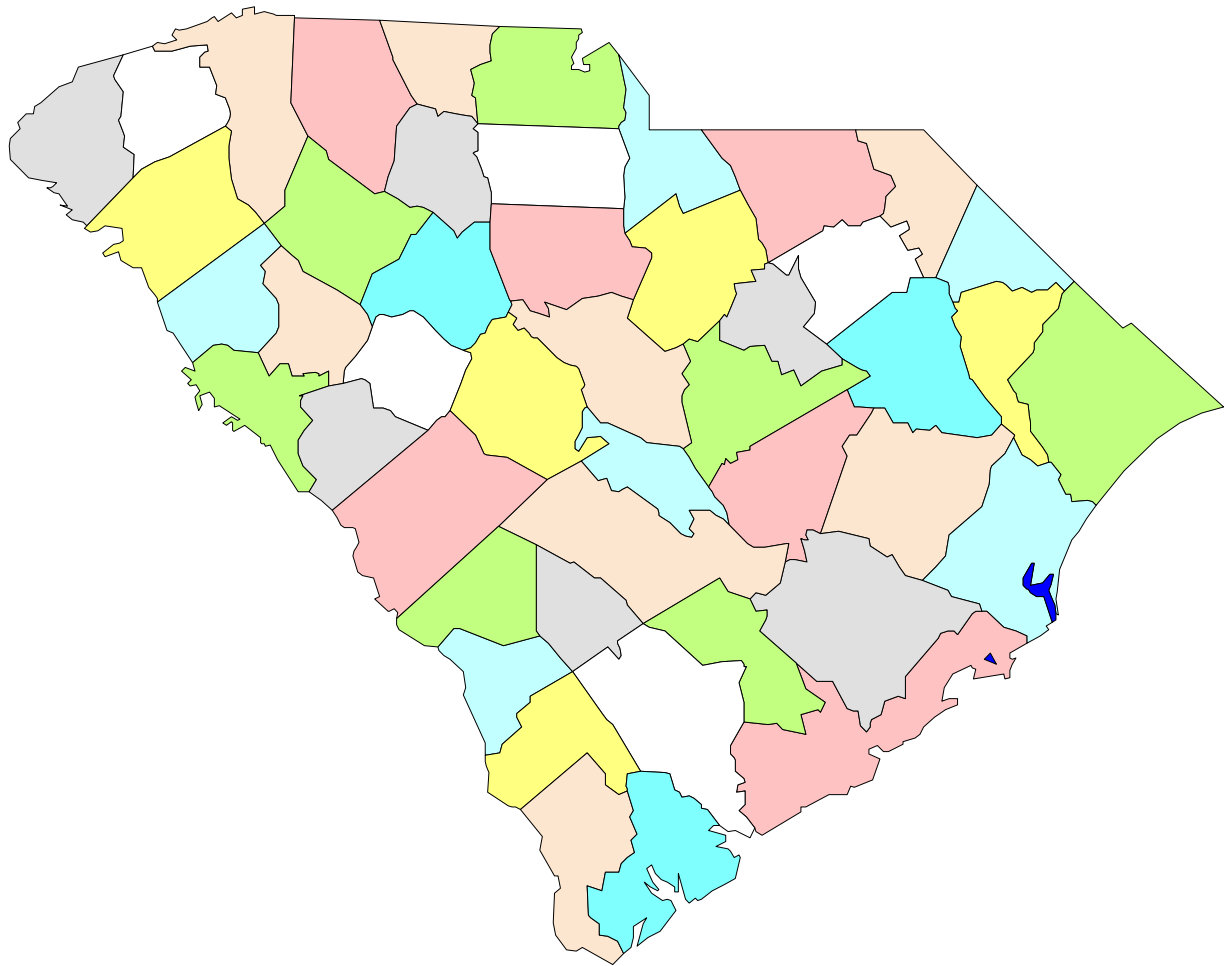
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South Carolina property tax 2006 edition

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South Carolina Property Tax

2006 Edition



Governor Mark C. Sanford
Ray N. Stevens, Director

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SOUTH CAROLINA PROPERTY TAX

May 2006

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PART I: § 001. INTRODUCTION.

- A. **Property Subject to Tax:** Real property is subject to property taxes. Personal property used in business and certain personal property used for personal purposes such as motor vehicles, boats and airplanes are subject to property taxes. Property taxes are generally assessed and collected by local governments, but the South Carolina Department of Revenue assesses and collects some property taxes and oversees all property tax assessments to ensure equitable and uniform assessment throughout the state. There is no state or local tax on intangible personal property or inventories.
- B. **Liability for Taxes on Real Property:** In general, the person who owns real property on December 31st of the year preceding the tax year in fee, for life, or as trustee, as recorded in the public records for deeds, or has the care of the property as guardian, executor, trustee, or committee is liable for the payment of the taxes on the real property. SC Code 12-37-610.
- C. **Calculation of Tax:** The calculation of property taxes involves the following three elements:
1. **Valuation:** Real property (other than agricultural use real property and property subject to a negotiated fee in lieu of taxes) is appraised. Real property is reassessed (revalued) every 5 years, although by ordinance, the county may postpone the implementation of the reassessed values for one year. SC Code 12-43-217. By ordinance, the county may postpone implementation of a reassessment by one additional year even where implementation would otherwise be mandated by SC Code 12-43-217, allowing for a total delay in implementation of the reassessed values of up to 7 years. Personal property of manufacturers is valued at cost from which a fixed depreciation percentage is deducted each year until a residual value is reached. Personal property of merchants is valued at cost from which income tax depreciation is deducted each year until a residual value is reached. Motor vehicles are valued in accordance with nationally recognized publications of value (except that the value may not exceed 95% of the prior year's value) from which discounts are allowed for high mileage. Utilities are valued using the unit valuation method considering the utilities operations as a whole.
 2. **Assessment Ratio:** The assessment ratios are established in the State Constitution to ensure stability. All manufacturing and utility property and commercial personal property are assessed at 10.5%. A constitutional amendment voted on November 7,

2000, reduces the assessment ratio of motor vehicles commencing in 2002 over a 6 year period from 10.5% until it reaches 6%. For tax years beginning January 1, 2006, the assessment ratio on personal motor vehicles is 6.75%. A person's primary residence is assessed at 4%; other personal use real property and commercial real property is assessed at 6%. The valuation is multiplied by this ratio to produce the "assessed value" of a particular piece of property. Taxes are levied based upon this assessed value. New and expanding businesses which invest \$5 million or more (\$1 million or more in certain counties and certain environmental clean up sites) can enter into a fee in lieu of property taxes which can reduce a 10.5% assessment ratio to 6% for 20 years and eliminate inflationary increases in the value of real property for that period. Very large investments can qualify for a fee in lieu of property taxes with a 4% assessment ratio for 30 years with no increase in the value of real property for that period.

3. **Millage:** On an annual basis, each taxing jurisdiction determines the number of mills required so that when that number is applied to the total assessed value of property subject to taxation within its jurisdiction it will raise the money necessary to operate for the next year. (Other sources of revenue are also taken into account in making this determination.) The 2005 average millage rate was 289 mills.

For example, if a manufacturer owned a piece of property with a value of \$100 and an assessment ratio of 10.5% (the ratio for manufacturing property in the absence of a fee in lieu of property taxes agreement), the assessed value of that property equals \$10.50 ($\$100 \times 10.5\%$). If the taxing jurisdiction decided in a particular year to levy a tax of 275 mills, then the property tax liability of the owner would be \$2.89 ($\$10.50 \times .275$).

Generally, a governing body may increase the millage imposed for general operating purposes over the rate charged in the prior taxable year only to the extent of the average increase in the Consumer Price Index ("CPI") for the prior taxable year. However, under SC Code 6-1-320, a local governing body may increase millage to: (A) respond to a natural, environmental or other disaster; (B) offset a prior year's deficit, as required by Section 7, Article X of the South Carolina Constitution; (C) raise the revenue necessary to comply with judicial mandates requiring the use of county or municipal funds, personnel, facilities, or equipment; or, (D) meet certain educational funding needs. The millage rate may also be increased by a positive majority vote of the appropriate governing body. The vote must be taken at a specially called meeting held solely for the purpose of increasing the millage rate. A "positive majority vote" is a vote for adoption by the majority of the members of the entire governing body, whether present or not, but if there is a vacancy in the membership of the governing body, a positive vote of the entire governing body as it is constituted on the date of the final vote on the imposition of the additional millage is required.

In a year in which a reassessment program is implemented, a special millage rate, referred to as the "rollback millage" is used instead of the previous year's millage rate. The rollback millage is usually lower than the previous year's millage rate. The rollback millage rate is to compensate for the increase in the value of the property in the county after the reassessment has occurred. It is designed to prevent the county from getting a windfall from an

increase in the value of the property. The rollback millage is calculated by dividing the prior year's property tax revenues by the adjusted total assessed values applicable in the year the values derived from a countywide equalization and reassessment are implemented. The amount of assessed value is adjusted by deducting assessments added for property or improvements not previously taxed, for new construction, and for renovations of existing structures, so that it reflects only the increase in value attributable to the reassessed property. See, SC Code §12-37-251(E).

In the South Carolina Supreme Court case of *Angus v. City of Myrtle Beach*, 363 S.C. 1, 609 S.E. 2d 808 (2005) the court addressed whether an additional adjustment could be made to rollback millage for anticipated appeals and uncollectible tax debts. In that instance, the city was required to use the rollback millage for the year in question; however, in calculating its rollback millage, it applied an additional variable which further reduced property values for an appeal allowance of 7.5%. This variable took into account the fact that some property owners would successfully appeal the new values placed on their properties and that approximately 7.5% of them would be successful. In addition, in calculating the rollback millage, the city reduced the prior year's revenues by 14% based on an estimate that approximately 14% of the revenues would be uncollected. The Supreme Court found that the adjustments made by the City were improper since these adjustments were not statutorily prescribed adjustments and that if the county did not believe the calculated millage would be sufficient it could increase the millage by a positive majority vote of the city council pursuant to SC Code 6-1-320.

D. **Access to Cited Material.** The SC Code, Regs., SC Department advisory opinions, and Administrative Law Judge Decisions may be accessed at, or through, the Department of Revenue web cite at: <http://www.sctax.org>

This Chapter is current through December 31, 2005.

PART II: § 110. DEFINITIONS AND CITATIONS.

§ 110. Definitions of Terms used in Chapter.

§ 110.01. Real Property. Real property means not only land, but also all structures and other things therein contained or annexed or attached to the land which pass to the vendee by the conveyance of the land. SC Code 12-37-10(1). It includes fixed wharves and docks on rivers, lakes or tidewaters. For the purpose of determining the property's assessment ratio; all mobile homes, some motor homes, and all improvements to leased real property made by the lessee are considered real property. SC Code 12-43-230(b).

§ 110.02. Personal Property. All things, other than real estate, which have any pecuniary value, including money, credits, investments in bonds, stock, and joint-stock companies. SC Code 12-37-10(2). See Regs. 117-105 for examples of real and personal property.

§ 110.03. The Department. South Carolina Department of Revenue. SC Code 12-2-10.

§ 120. Citations to Statutes, Regulations, And Case Law.

- Code of Laws of South Carolina, 1976, as amended (SC Code)
- South Carolina Reports (S.C.)
- Southeastern Reporter (S.E.)
- Southeastern Reporter, 2d Series (S.E.2d)
- South Carolina Property Tax Regulations (Regs.)
- Property tax decisions of the former South Carolina Tax Commission (P.D. or C.D.)

PART III: § 200. CLASSIFICATION AND VALUATION OF PROPERTY.

§ 210. Classification Of Property.

§ 210.01. Purpose of Classification. Classification is used to determine a property's assessment ratio. Property exempt from taxation is also exempt from assessment. SC Code 12-43-330. Property and companies are classified to determine whether the property will be valued by a county assessor (real property) or auditor (personal property) or by the SC Department of Revenue (specified real and personal property—*see* SC Code 12-4-540). See §§110.01 and 110.02 above for definitions of real and personal property.

§ 210.02. Classification of Companies. In classifying businesses for purposes of property tax assessments, if the company is involved in more than one operation, the major operation of the company determines its classification. Regs. 117-1760.1.

§ 211. Manufacturers and Utilities. Except as provided below, real and personal property owned by, or leased to, manufacturers and utilities, and used by the manufacturer or utility in the conduct of its business, is taxed on an assessment equal to 10.5% of the fair market value of the property. SC Code 12-43-220(a). Regs. 117-1700.3 defines utilities to include water companies, power companies, electric cooperatives, and telephone companies. The Property Section of the Department also considers sewer companies and cable television companies to be utilities.

Real property owned by, or leased to, a manufacturer and used primarily for *research and development* is not considered used by a manufacturer in the conduct of its manufacturing business for purposes of classification of property and therefore enjoys a 6% assessment ratio rather than 10.5%. The phrase *research and development* means basic and applied research in the sciences and engineering and the design and development of prototypes and processes. SC Code 12-43-220(a). SC Technical Advice Memorandum #89-2 holds that research and development real property of a manufacturer is taxed based on an assessment ratio of 6% and personal property on an assessment ratio of 10.5%.

Real property owned by, or leased to, a manufacturer and used primarily as an *office building* is not considered used by a manufacturer in the conduct of the business of the manufacturer for purposes of classification of property, if the office building is not located on the premises of, or contiguous to, the plant site of the manufacturer. SC Code 12-43-220(a). If they meet these qualifications, office buildings of a manufacturer are taxed on an assessment ratio of 6%.

Real property owned by, or leased to, a manufacturer and used primarily for *warehousing and wholesale distribution of clothing and wearing apparel* is not considered used by a manufacturer in the conduct of its manufacturing business for purposes of classification of property, if the property is not located on the premises of, or contiguous to, the manufacturing site. SC Code 12-43-220(a). It is taxed on an assessment ratio of 6%.

§ 212. Manufacturers, etc. vs. Merchants. For the purpose of assessing property of *manufacturers*, the Department follows the classifications set out in Sectors 21, 31, and 33 of the North American Industry Classification System Manual. SC Code 12-43-335(B). However, establishments that publish newspapers, books and periodicals that do not have facilities for printing or which do not actually print their publications are not classified as manufacturers.

For the purpose of assessing property of railroads, private carlines, airlines, water, power, telephone, cable television, sewer and pipeline companies, the Department follows the classifications set out in Sectors 22, 57, 424, 481–483, 485, and 486 of the North American Industry Classification System Manual, with certain exceptions within each sector. SC Code 12-43-335(C).

For the purpose of assessing property of *merchants* and related businesses, the Department follows the following classifications of the most recent Standard Industrial Classification Manual, Bureau of the Budget: Sectors 22, 23, 42, 44, 45, 48, 51, 56, 71, 81, 453, 481, 483, and 484 with certain exceptions within the sectors. SC Code 12-43-335(A).

For the purpose of appraising and assessing personal property of businesses and other entities under the jurisdiction of the county auditor, the county auditor follows the following classifications of the North American Industry Classification System Manual: Sector 11, subsectors 111–115 unless exempt; Sector 51, subsector 12; Sector 52, subsectors 522–525; Sector 53, subsectors 531 and 533; Sector 541, subsector 54; Sector 55, subsector 551, unless exempt; Sector 61, subsector 6111; Sector 62, subsectors 621–624; Sector 71, subsector 712, Sector 72, subsector 721; and Sector 81, subsectors 813–814, unless exempt. See, SC Code § 12-39-70.

§ 213. Agricultural Property.

§ 213.01. Tax on Agricultural Real Property. Real property that is actually used for agricultural purposes (and meets the other requirements for agricultural real property discussed below) is taxed on an assessment equal to:

- A. 4% of its fair market value for such agricultural purposes for owners or lessees who are individuals or partnerships, and for corporations that do *not* have one or more of the following: (1) more than ten shareholders; (2) a shareholder (other than an estate) who is not an individual; (3) a nonresident alien as a shareholder; and (4) more than one class of stock.
- B. 6% of its fair market value for such agricultural purposes for corporate owners or lessees, except for certain closely held corporations specified in (a) above which are allowed the 4% ratio. SC Code 12-43-220(d)(1). Regs. 117-1780.2.

SC Code 12-43-220(d) grants a special agricultural use value for real property which is “*actually used* for agricultural purposes.” See also SC C.D. #92-77. Hence, an agricultural use value classification is dependent upon how the property is currently being used. Intended use or future use is not determinative.

The fair market value of agricultural use real property determined for the 1991 tax year is effective for all subsequent years. SC Code 12-43-220(d)(2)(B)(i).

§ 213.02. Definition of Agricultural Real Property. SC Code 12-43-230(a) defines agricultural real property as “. . . any tract of real property which is used to raise, harvest or store crops, feed, breed or manage livestock, or to produce plants, trees, fowl or animals useful to man, including the preparation of the products raised thereon for man’s use and disposed of by marketing or other means. . . .” SC Code 12-43-220(d)(5) provides that notwithstanding any other provision of law, agricultural real property also includes a dockside facility whose primary use is the landing and processing of seafood.

Regs. 117-1780.1 further defines agricultural real property, and provides in part:

. . . In no event shall real property be classified as agricultural real property when such property is not used for bona fide agricultural purposes. Real property is not used for agricultural purposes unless the owner or lessee thereof has, in good faith, committed the property to that use. Real property which is ostensibly used for agricultural purposes, but which is in reality used for other purposes, is not agricultural real property. The agricultural use of the property must be genuine in nature as opposed to sham or deception. The following factors shall be considered by county assessors in determining whether the tract in question is bona fide agricultural real property: (These factors are not, however, meant to be exclusive and all relevant facts must be considered.) (1) The nature of the terrain; (2) The density of the marketable product (timber, etc.) on the land; (3) The past usage of the land; (4) The economic merchantability of the agricultural product; (5) The use or not of recognized care, cultivation, harvesting and like practices applicable to the product involved, and any implemented plans thereof; and (6) The business or occupation of the landowner or lessee, however, the fact that the tract may have been purchased for investment purposes does not disqualify it if actually used for agricultural purposes.

In cases in which the real property is committed to more than one use, one use being agricultural use and the other use or uses being unrelated to agriculture, the agricultural activity use must comprise the most significant use of the property in order for it to be classified as agricultural real property.

The following uses of real property do not qualify as agricultural:

- (1) Recreation
- (2) Hunting Clubs
- (3) Fishing Clubs
- (4) Vacant Land (land lying dormant)
- (5) Any other similar use.

It is often difficult to ascertain whether a particular parcel of land is being used for a bona fide agricultural purpose. In such instances, no single factor is determinative of the issue. Rather, all the factors listed in Regs. 117-1780.1 must be viewed together to determine the classification.

Additionally, the factors considered in this process are not necessarily limited to those listed in the regulation. For example, except as provided in §213.03 below, while the size of a parcel alone is not a sufficient basis for arbitrarily denying a use value classification, it can be considered in conjunction with other factors in reaching an overall determination. The location of property in a residential subdivision or an area zoned for residential use is also a factor. SC C.D. #93-37.

The term “agricultural real property” includes real property used to provide free housing for farm laborers provided such housing is located on a tract of land that qualifies as agricultural real property. SC Code 12-43-230(a).

§ 213.03. Additional Requirements for Classification as Agricultural Real Property. SC Code 12-43-232 has been added to provide additional requirements which must be met in order for real property to qualify as agricultural real property. The requirements are as follows:

- A. *Timberland:* If the tract is used to grow timber, the tract must be 5 acres or more. Tracts of timberland of less than 5 acres qualify if they are contiguous to, or are under the same management system as, a tract of timberland which meets the minimum acreage requirement. Tracts of timberland of less than 5 acres are eligible to be agricultural real property if they are owned in combination with other tracts of agricultural real property which are not timberland but qualify as agricultural real property. Tracts of timberland must be actively devoted to growing trees for commercial use.
- B. *Christmas Trees:* A tract devoted to growing Christmas trees must be 5 acres or more. If the tract is less than 5 acres, it will qualify as agricultural real property if at least \$1,000 of gross farm income was reported for at least three of the last five years.

C. *Acreage*: All other tracts must be at least 10 acres or more. Tracts of less than 10 acres that are contiguous to other tracts which, when combined total at least 10 acres, qualify as agricultural real property. Tracts which do not meet this requirement will qualify if at least \$1,000 of gross farm income was reported for at least three of the last five taxable years.

1. *Income*: A new owner will satisfy this requirement if he earns at least \$1,000 of gross farm income in at least three of the first five years. If the new owner fails this requirement, the tract is not considered agricultural real property and is subject to the rollback tax.
2. If neither the acreage nor the income requirements are met, the property will qualify if the current owner or an immediate family member has owned the property for at least the 10 years ending January 1, 1994, and the property was classified as agricultural real property for property tax year 1994.

D. Real property idle under a federal or state land retirement program or property idle pursuant to accepted agricultural practices is agricultural real property if the property otherwise would have qualified as such property subject to satisfactory proof to the assessor.

In the case of rented or *leased* agricultural real property, the property will qualify if either the lessor or the lessee meets the above requirements.

Unimproved real property subject to a perpetual *conservation easement* as provided in SC Code Title 27, Chapter 8, will be classified as agricultural real property if the property would have otherwise qualified as agricultural property subject to satisfactory proof to the assessor.

Property must continue to be classified as agricultural real property until the property is applied to some other use or until the property is transferred to someone other than an immediate family member, whichever occurs first.

§ 213.04. Application for Classification of Property as Agricultural Real Property. Each new owner must make application for agricultural use valuation to the county assessor on or before the first date taxes are due without penalty. SC Code 12-43-220(d)(3). Additionally, the owner must notify the assessor of a change in use within 6 months.

§ 213.05. Penalty for Falsifying Application. SC Code 12-43-340 provides that it is unlawful for a person to knowingly and willfully make a false statement on the application for agricultural real property. A person making such a false statement is guilty of a misdemeanor and, upon conviction, must be fined not more than \$200.

§ 213.06. Change in Use - Rollback of Agricultural Use Valuation. When real property which is agricultural use and is being valued, assessed, and taxed as agricultural property, is applied to a use other than agricultural, it is subject to additional taxes, referred to as rollback

taxes. The amount of the rollback taxes is equal to the sum of the differences, if any, between the taxes paid or payable on the basis of the agricultural valuation and the taxes that would have been paid or payable had the real property been valued, assessed, and taxed as other real property in the taxing district (except the value of standing timber is excluded), for the current tax year (the year of change in use) and each of the immediately preceding five tax years. SC Code 12-43-220(d) and Regs. 117-1780.3.

Any property which becomes exempt from property taxes under SC Code 12-37-220(A)(1) (property owned by the state or a local government and used exclusively for public purposes), or any economic development property which becomes exempt under SC Code 12-37-220(B)(41) is not subject to rollback taxes. See SC Code 12-43-220(d)(6) and the discussion below at §712 on fees in lieu of property taxes.

§ 214. Transportation for Hire. All real and personal property owned by, or leased to, companies primarily engaged in the transportation for hire of persons or property and used by such companies in the conduct of such business is taxed on an assessment equal to 9.5% of the fair market value of the property. The Department applies an equalization factor to real and personal property owned by, or leased to, transportation companies for hire as mandated by federal legislation. SC Code 12-43-220(g). See SC Code 12-37-2810 et seq. regarding the assessment and taxation of motor carriers used in transportation for hire, other than intercity bus services and certain farm vehicles.

§ 215. Personal Motor Vehicles. On November 7, 2000, the voters of South Carolina passed a constitutional amendment establishing a separate class of property for property tax purposes consisting of personal motor vehicles (passenger motor vehicles and pick-up trucks) which must be titled by a state or federal agency. Under the amendment, the property which was previously assessed at 10.5% would be assessed at a rate of 9.75% of fair market value for the first year commencing in 2002 and would decline in equal reductions of .75% to a permanent assessment ratio of 6% in the sixth year and thereafter. See Section 1(8), Article X of the SC Constitution. S.C. Act No. 10 (2001) and SC Revenue Advisory Bulletin #01-9.

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

§ 216. Commercial Fishing Boats. Commercial fishing boats, commercial tugboats, and pilot boats are taxed on an assessment of 5% of fair market value. SC Code 12-43-220(f).

§ 217. Legal Residence. The legal residence and not more than five contiguous acres, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, is taxed on an assessment equal to 4% of the fair market value of the property. The residence must be the domicile of the owner at some time during the tax year. Additional dwellings located on the same (not more than 5 acres) property and occupied by immediate family members of the owner will also qualify for the 4% ratio. An individual is

considered the owner of the property if he has an interest in it pursuant to an installment contract for sale with the U.S. Department of Veterans Affairs. If residential real property is held in trust and the income beneficiary of the trust occupies the property as his legal residence, then the 4% ratio applies if the trustee certifies to the assessor that the income beneficiary occupies the property as a residence. When the legal residence, including a mobile home, is located on leased or rented property, and the residence is owned and occupied by the owner, the assessment for the residence is at the 4% ratio (the assessment ratio for the land is 6%). If the lessee of property upon which he has located his legal residence is liable, by law, for taxes on the leased property, then the property upon which he is liable for taxes, not to exceed five acres contiguous to his legal residence, will be assessed at the 4% ratio. See SC Code 12-37-620 and S.C. Rev. Rul. #93-11. If there is any mobile home or residence which is rented, or any business for profit located on the property, this 4% ratio does not apply to the business or rental property. See SC Code 12-43-220(c) and 12-43-221.

A motor home may qualify as a primary or secondary residence for property tax purposes and treated as real property if the interest portion of indebtedness on the motor home is deductible under the Internal Revenue Code as an interest expense on a qualified primary or secondary residence. A motor home that is a primary residence qualifies for the 4% assessment ratio, and a motor home that is a secondary residence qualifies for the 6% assessment ratio. SC Code 12-37-224.

A purchaser who purchases residential property with the intent that it will become his primary residence, but the property is subject to vacation rentals as provided in Title 27, Chapter 50, Article 2, for no more than 90 days, may apply for the 4% assessment ratio once the purchaser occupies the property. If the owner actually occupies the property within 90 days of acquiring ownership and otherwise qualifies, the 4% ratio will apply retroactively to the date of ownership. A taxpayer may rent out his legal residence for 14 days or less during the tax year and still maintain the 4% legal residence assessment ratio.

Generally, the residential classification is not available unless the owner of the property applies to the county assessor before the first penalty date for taxes due (January 16). As part of the application, the taxpayer must certify that neither he nor any other member of his family (his spouse, unless legally separated, and his dependent children) is residing in or occupying any other residence in South Carolina which he or a member of his family has qualified for the 4% assessment ratio. He must also certify that he does not claim to be a legal resident of a jurisdiction other than South Carolina for any other purpose. The application may be extended by the local taxing authority for reasonable cause. A new application does not have to be filed unless there is a change in ownership. A residence which is qualified as a legal residence for any part of a year is entitled to the 4% assessment ratio for the entire year, the exemption from property taxes levied for school operations pursuant to Section 12-37-251 for the entire year, and the homestead exemption under Section 12-37-250, if otherwise eligible, for the entire year.

A member of the armed forces on active duty is deemed a legal resident and domiciled in South Carolina for purposes of the 4% assessment ratio if he owns and occupies a home in South Carolina and his permanent duty station is in South Carolina. SC Code 12-43-220(c)(2)(v).

Property that qualifies for the homestead exemption pursuant to SC Code 12-37-250 is classified and taxed as residential on an assessment equal to 4% of the property's fair market value. Any agriculturally classified lands that are a part of the homestead must be taxed on an assessment equal to 4% of the land's value for agricultural purposes. When a person qualifies for a refund because she should have received a 4% assessment ratio, if she is qualified, she may also receive a refund for the homestead exemption, but the refund for the homestead exemption is limited to the immediate preceding year. The refund is made to the owner of record at the time the exemption is granted or the classification is made. SC Code 12-37-252 and 12-45-78.

The personal representative of a deceased taxpayer's estate may apply for the homestead exemption under SC Code 12-37-250 and the 4% assessment ratio provided by SC Code 12-43-220(c).

§ 218. “Rehabilitated Historic Property” and “Low and Moderate Income Rental Property.” The governing body of any municipality¹ or county, or its designee, may, by ordinance, grant special property tax assessments to real property qualifying as “rehabilitated historic property” or as “low and moderate income rental property” as described below. SC Code 4-9-195 and 5-21-140.

§ 218.01. Rehabilitated Historic Property. Upon preliminary certification by the governing body of the county or municipality, owner occupied rehabilitated historic property is assessed for two years at the fair market value of the property at the time of preliminary certification. If the project is not completed after 2 years, but the minimum expenditures for rehabilitation as described below have been incurred, the special valuation continues until the project is completed.

Rehabilitated historic property is eligible for preliminary certification if:

- A. The owner of the property applies for and is granted historic designation; and,
- B. The *proposed* rehabilitation receives approval of the proposed rehabilitation work from the reviewing authority as described below.

In order to be granted a historic designation, the property must either be:

1. listed in the National Register of Historic Places;
2. at least fifty years old and designated as a historic property based on criteria established by the county; or

¹ Under SC Code 5-21-140, the powers and authorities conferred upon a county governing body by SC Code 4-9-195 are also conferred upon municipal governing bodies, *mutatis mutandi*.

3. at least fifty years old and located in a historic district designated by the county within the geographic area of the county.

The appropriate "Reviewing Authority" is either: (a) the County Board of Architectural Review for those counties having such boards pursuant to Code Section 6-29-870; (b) another qualified entity with historic preservation expertise designated by the county, if the county does not have a Board of Architectural Review; or, (c) the Department of Archives and History for those counties having neither a Board of Architectural Review or a designated entity.

"Approval of rehabilitation work" means that "the proposed and completed rehabilitation work is approved by the reviewing authority as appropriate for the historic building and the historic district in which it is located."

A county may require that an owner apply for preliminary certification before any work begins. The county may adopt a preliminary certification procedure, or may choose only to have a final certification procedure for approving "rehabilitated historic property."

If a property that received preliminary certification fails to receive final certification as discussed below, any money not collected because of the special valuation must be paid to the county.

- C. Upon completion of the project, the property must receive final certification from the county, or its designee, to continue to obtain its special valuation. To receive final certification the property must meet the following conditions:
 1. the owner of the property must apply for and be granted historical designation by the county or municipal governing body based on the criteria established for a "historic designation" as discussed above for preliminary certification.
 2. the *completed* rehabilitation must receive approval of the rehabilitation work from the appropriate reviewing authority; and,
 3. the "minimum expenditures for rehabilitation" must have been incurred and paid. The "minimum expenditures for rehabilitation" means the owner or his estate rehabilitates the building and incurs expenditures for the rehabilitation that exceed the minimum percentage of the fair market value of the building established by the county by ordinance. This percentage can vary between 20 to 100 percent and the county can establish different minimum percentages for income producing properties as opposed to residential properties.

Once the final certification has occurred, the property must be assessed based on its fair market value at the time of preliminary certification or final certification, whichever occurs first. The property is assessed at fair market value for 20 years or whatever lesser period the county establishes in its ordinance.

§ 218.02. Low and Moderate Income Rental Property. Upon certification by the governing body of the county, low and moderate income rental property is assessed at the fair market value of the property at the time of certification.

Low and moderate income rental property is eligible for certification if:

A. either:

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

B. if the low and moderate income housing rehabilitation is located in an area designated by the local government as a Low and Moderate Housing Rehabilitation District; and

C. the owner or estate takes no actions which cause the property to be unsuitable for designation as “low and moderate income rental property;” and

D. if the property qualifies as “historic” as defined above, then the rehabilitation work must be approved by the appropriate reviewing authority as provided above.

Once the certification has occurred, the property must be assessed at its fair market value at the time of certification for 20 years or whatever lesser period the county establishes in its ordinance.

§ 218.03. Application and Effective Date of Special Assessment for “Rehabilitated Historic Property” and “Low and Moderate Income Rental Property.” If an application for preliminary or final certification is filed by May 1st or approved by August 1st, the special assessment is effective for that year. Otherwise, it is effective beginning the following year. SC Code 4-9-195(F).

Once the governing body has granted the special property tax assessments authorized by this section, the owner of the property must apply to the auditor for the special assessment. SC Code 4-9-195(G).

Once a property has received final certification, it continues to receive the special assessment until one of the following occurs:

A. the owner notifies the county in writing to remove the special assessment;

B. a sale or transfer of the property except in the orderly course of probate proceedings (where someone is inheriting the property);

C. removal of the historic designation by the county;

- D. rescission of the approval of the rehabilitation because of ineligible or inappropriate alterations to the property; or,
- E. in the case of low or moderate income rental property, decertification of the property by the local governing body as low or moderate income rental property for persons and families of moderate to low income as defined by SC Code 31-13-170(p).

Notification of changes affecting eligibility must be given immediately to the appropriate taxing and assessing authorities.

By ordinance or regulation, the county or municipality may establish fees for preliminary or final certification. A property that has been certified to receive the special property tax assessment under the prior law continues to receive the special assessment in effect at the time of certification until the special assessment period has expired.

§ 219. Ratio for All Other Property.

§ 219.01. All Other Real Property. All other real property not provided for is taxed on an assessment equal to 6% of the fair market value of such property. SC Code 12-43-220(e).

§ 219.02. All Other Tangible Personal Property. All other tangible personal property is taxed on an assessment of 10.5% of fair market value of such property. SC Code 12-43-220(f).

§ 220. Valuation of Property. Article X, Section 1, of the South Carolina Constitution provides for taxation by classification, but also states that within each classification “fair market value” is to be used. Article III, Section 29 of the South Carolina Constitution provides that “All taxes upon property, real and personal, shall be laid upon the actual value of the property taxed, as the same shall be ascertained by an assessment made for the purpose of laying such tax.” SC Code 12-37-930 provides that all property is to be valued “at its true value in money which is the price which the property would bring following reasonable exposure to the market where both seller and buyer are willing.” See also *Lindsey v. South Carolina Tax Commission*, 302 S.C. 504, 397 S.E.2d 95 (1990); *Smith v. Newberry County Assessor*, 350 S.C. 572, 567 S.E.2d 501 (Ct. App. 2002).

§ 221. Valuation Methods. The South Carolina Legislature has given specific instructions concerning the valuation of certain properties. Certain other valuation methods have been adopted by the Department.

§ 221.01. Manufacturers Machinery and Equipment. The value of machinery and equipment of manufacturers is based on a depreciation cost method. See SC Code 12-37-930. Property may not be depreciated below 10% of its original cost. SC Code 12-37-935. The depreciated cost method has been challenged on the ground that it does not conform to the “true value” or “fair market value” standard. This challenge was unsuccessful. See *South Carolina Tax Commission v. S.C. Board of Tax Review*, 305 S.C. 183, 407 S.E.2d 627 (1991), *cert. den.*, 112 S.Ct. 878.

§ 221.02. Business Personal Property. The value of business personal property is equal to its depreciated basis for income tax purposes (but not less than 10% of its original cost). See Regs. 117-1840.1. The *Collins Music Company* case, cited as *SCTC v. S.C. Tax Board of Rev.*, 305 S.C. 183, 407 S.E.2d 627 (1991), upheld this method of valuation against an argument that it did not reach “fair market value.”

§ 221.03. Motor Vehicles, Aircraft, and Watercraft. SC Code 12-37-930 requires motor vehicles, aircraft, and watercraft to be valued based on nationally recognized publications, except that the value may not exceed 95% of the prior year’s value. The property tax on motor carriers’ motor vehicles are annually assessed on an apportioned basis by the Department. See SC Code 12-37-2810 through 2880. For a discussion of the property taxation of watercraft, see SC Rev. Rul. #98-12.

§ 221.04. Value of Agricultural Property. Fair market value for agricultural purposes is statutorily determined in SC Code 12-43-220(d)(2), which defines the value of “agricultural lands and timber” and provides a method based on capitalization of “typical cash rents.” Department regulations provide values (derived prior to 1992) based upon the soil capacity of the region in question. See Regs. 117-1780.1 and 117-1840.2, section C. The agricultural use value of real property determined for the 1991 tax year is effective for all subsequent years. When agricultural use changes, the property is subject to “roll back taxes” which cause a recapture of the difference in tax on the property as agricultural property and the tax which would have been assessed had the property not qualified as agricultural use. The value of standing timber is not included in calculating the roll back recapture. SC Code 12-43-220(d)(4). See §213.06 above.

§ 221.05. Subdivided Acreage. A discounted value is available for lots which are in the process of being sold from subdivided acreage. SC Code 12-43-224 and 12-43-225. There must be ten (10) or more lots within the subdivision. An application must be made in order to obtain the discount. Note: this provision does not allow an assessor to reappraise the value of subdivided lots in a non-reassessment year. See *Lindsey v. SCTC*, 302 S.C. 274, 395 S.E.2d 184 (1990).

§ 221.06. Property Subject to Lease. There is no statutory provision concerning the valuation of property subject to lease. However, the importance of the valuation question merits special attention. In *Carmont Realty*, 75-CP-40-757 (Richland County October 21, 1975), the trial court agreed with the Department that property should be valued without reference to an existing lease which the taxpayer argued was at less than market rents and therefore depressed the value of the property. See SC P.D. 332 and 338. The decision rested on the theory that market rents should always be used regardless of the actual lease terms. However, the South Carolina Court of Appeals in *S.C.T.C. v. S. C. Tax Board of Review*, 287 S.C. 415, 339 S.E.2d 131 (Ct. App. 1985), reached a different conclusion and found that an unfavorable lease should be considered as an element of value. Following that decision, legislation was proposed to split the fee simple ownership into valuations for the lessor and lessee. However, the legislation was not enacted.

Leases for a term of 99 years or more, or for a term certain renewable at the option of the lessee for an additional term of 99 years or more, are valued at the full value of the property and are taxed to the lessee, provided that the lease is recorded with the clerk of the court or register of mesne conveyances of the county where the property is located. SC Code 12-37-620.

§ 221.07. Utility Properties. Utility values may be based on the unit or unitary method of valuation. SC Code 12-4-540. This method is referred to as the unit valuation method. The unit valuation method is not set forth statutorily or in a regulation. In practice, it is based on the: (1) cost, (2) income, and (3) stock and debt approaches.

§ 221.08. Homeowners' Association. The South Carolina Supreme Court has held that commonly owned property in condominium regimes has value and is subject to a separate property tax assessment. See, *Long Cove Home Owners Assoc. v. Beaufort County Tax Equalization Board*, 327 S.C. 31, 488 S.E. 2d 857 (S.C. 1997). However, reassessment of the commonly owned property by the county assessor in a non-reassessment year is prohibited.

Homeowners' associations which make timely application may have their property valued at the greater of \$500 an acre, or an amount determined by dividing the association's gross receipts (not including dues, fees, or assessments from the members) by 20%. SC Code 12-43-227.

§ 221.09. Golf Courses. The valuation of golf course real property for property 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" is as defined in Article X, Section 3(j) of the South Carolina Constitution. Further, if a capitalized income approach is used to determine the value of the golf course, the taxpayer is required to provide income and expense data for the entire golf operation, golf cart rentals, food and beverage service and pro shop. SC Code 12-43-365.

§ 221.10 Timeshares. For purposes of property taxation, a time share unit operating under a vacation time sharing ownership plan as defined in item (7) of SC Code 27-32-10, must be valued as if the unit were owned by a single owner.

PART IV: § 300. ASSESSMENT PROCEDURE.

§ 300.01. Split Procedure. Valuation responsibility is divided between the state (Department of Revenue) and county assessing officials (county assessor and county auditor), depending upon the ownership of the property. In general, the property of all manufacturers, utilities and certain transportation companies (railroads, airlines, and motor carriers), which is used in the business of the taxpayer and the personal property of merchants is valued by the Department. SC Code 12-4-540. County assessors and county auditors value the remaining property, including commercial, residential and agricultural properties. SC Code 12-37-90 (Assessor—Real Property) and SC Code 12-39-340 (Auditor—Personal Property).

§ 310. Assessment of Property. There is only one assessment for property tax purposes. SC Code 12-37-30. For most properties which are assessed by the State (Department of Revenue), the Department “certifies” the assessment to the County Auditor who computes the tax and forwards the tax amount to the County Treasurer for billing.

Although the Department assesses certain property and certifies this assessment to the County Auditor, it does not collect the tax. Generally, property taxes are local taxes. Except for property taxes on airlines, private car lines (railroad cars), and motor carriers which are billed by and paid to the Department, there is no statewide property tax.

§ 310.01. Lien Date. Except as otherwise provided, real and personal property is assessed in South Carolina depending upon ownership of the property on December 31st of the year preceding the tax year. SC Code 12-37-900. For example, liability for 2004 property taxes depends upon ownership of the property on December 31, 2003. Numerous attorney general’s opinions have held that there is no proration when more than one person owns the property during the year. The entire tax is due by the owner of the property on December 31st of the year preceding the tax year. See, e.g., 1965-66 Ops. Atty Gen. 2180 at 313. In *Atkinson Dredging Company v. Thomas*, 266 S.C. 361, 223 S.E.2d 592 (1976), the Court applied this rule when it upheld a tax on an out of state dredging company, whose dredge was located in Charleston on December 31st, based on the entire annual tax liability despite the fact that the dredge was present in Charleston County for only a few months.

In spite of the fact that the liability is fixed on December 31st of the year proceeding the tax year, a county auditor must make appropriate adjustments in the valuation of real property which is damaged during the tax year as a result of fire, provided that the application for correction of the assessment is made prior to the payment of the tax. SC Code 12-39-250(B). Note, only damage due to fire is covered.

The lien date for: (1) merchants’ inventories, equipment, furniture and fixtures; (2) manufacturers’ real and personal property; and, (3) machinery, equipment, furniture and fixtures of any other taxpayer required to file a return with the Department, is the last day of the taxpayer’s accounting year. SC Code 12-37-970.

Property taxes for merchants’ inventories, equipment, furniture, and fixtures; manufacturers’ real and personal property; and the machinery, equipment, furniture and fixtures of all other taxpayers required to file returns with the Department are to be determined by the Department from property tax returns submitted by the taxpayer on or before the end of the fourth month of the close of the accounting period regularly employed by the taxpayer for income tax purposes. Special rules are provided if the taxpayer changes accounting periods during the calendar year and when property is sold during the accounting period. For information about the filing of manufacturer’s property tax returns, including filings for the first year of business in the State and upon sale of the manufacturer’s property, consult SC Rev. Rul. #05-20.

§ 310.02. Where Personal Property Is Taxed. SC Code 12-37-890 provides that business personal property is taxed where it is situated, and nonbusiness personal property located in South Carolina, or kept or used temporarily out of the state, is taxed at the domicile of the owner if the owner is a resident of South Carolina, otherwise at the residence of the person having it in charge.

In *Atkinson Dredging Company v. Thomas*, 266 S.C. 361, 223 S.E.2d 592 (1976), the Court held that tangible personal property owned by a nonresident which was in South Carolina on the lien date was subject to tax. However, it did not state what the result would be if tangible personal property of a nonresident was present in the state for an extended period of time which did not include the lien date. See also SC Code 12-37-210 and SC Code 12-37-710. See SC Rev. Rul. #98-12 for a more complete discussion of the place of taxation of both business and nonbusiness property.

§ 310.03. When Improvements Subject to Tax. SC Code 12-37-670 provides that new structures (buildings) are not subject to tax until the structure is “completed and fit for the use for which it is intended.” Unless the building is completed and fit for the use intended on or before December 31st preceding the tax year, it cannot be taxed during that year. See *Charleston County Board of Assessment Control v. S.C.T.C., Deytens et. al.*, (78-CP-10-1543). This statute does not prevent the assessment and taxation of portions of a structure which are complete. Note, however, that a county auditor must make appropriate adjustments in the valuation and assessment of real property which is damaged as a result of fire provided that the application for correction of the assessment is made prior to the payment of the tax. SC Code 12-39-250(B).

New SC Code 12-37-680 allows the governing body of a county to require that changes in appraised value and use of real property attributable to structural improvements on real property be listed for taxation with the county within 30 days of when the improvements are completed and fit for their intended use. Only counties that generate more than \$10 million in accommodations tax in a single year are allowed this option. To make this provision operative, the county must adopt it by ordinance. If the county does adopt it, then the property taxes attributable to the structural improvements are due as follows:

- A. If the structural improvements are listed on or before June 30th, the taxes for the succeeding period from July 1st through December 31st are due when the property taxes for that year are otherwise due:
- B. If the structural improvements are listed after June 30th, the taxes are due when taxes are otherwise due for the succeeding year.

§ 311. Notice to Taxpayer. When the value of property is increased by the county assessor, by \$1,000 or more, he is required to give notice to the taxpayer of the increase. Upon receipt of notice, if the taxpayer disagrees, he must file an objection within 90 days after the assessor mails the notice. SC Code 12-60-2510; SC Code 12-60-2520. See §510.01 below for a further discussion.

Note, in non-reassessment years and when there has been no increase in value as a result of additions, no notice of assessment is sent to taxpayers by the County Assessors. It is incumbent upon taxpayers who wish to appeal to notify the County by March 1st of the tax year. For a legal residence, the assessor shall consider the appeal and make adjustments based on the market value of real property as it existed in the year that the reassessment was conducted and on which the assessment is based. SC Code 12-43-215.

§ 312. Request for Hearing/Conference. See §510 below.

§ 320. Hearing Procedure at Local Level. See §510 below.

§ 330. Practice and Procedure at Local Level. See §510 below.

PART V: § 400. ASSESSMENT PRACTICE BY TAXPAYERS.

The assessment practice by taxpayers depends upon whether the property is assessed by the Department or by county officials. See §300 above. The procedure for appeals is also determined by this question. The procedure for appeals is set forth at §500 through §545 below.

§ 410. The Property Tax Case Summarized. The nature of the property tax case depends upon the subject matter under appeal and the origin of the assessment. More specifically, it depends upon whether the subject matter is one of valuation, classification (the proper assessment ratio), or exemption, and whether the assessment originates with the Department or the county officials (county assessor or auditor). Both valuation and classification issues are contested by appeal to the agency charged with the responsibility of assessing the property in question. For example, the value of property owned or leased by manufacturers is contested at the Department. Similarly, the question of whether or not the property should be classified as manufacturing property and therefore subject to a 10 1/2% assessment ratio is also made at the Department. On the other hand, the value of agricultural property and the question of whether or not the property is entitled to the agricultural classification is determined by the county assessor, so that the procedure to contest the denial of the agricultural use classification is made to the county assessor.

§ 420. The Appraiser. The taxpayer's appraiser is a witness and it is her testimony which gives evidence of the taxpayer's assertion of the value of the property in question. It is incumbent upon the taxpayer to produce evidence to support his assertion of value. It is insufficient to merely challenge the appraisal as void or illegal. See *Newberry Mills, Inc. v. Dawkins*, 259 S.C. 7, 190 S.E.2d 503 (1972).

Chapter 60 of Title 40 of the SC Code sets forth requirements for appraisers. Appraisers must be registered, licensed, or certified by the South Carolina Real Estate Appraisers Board.

§ 430. The Attorney. The attorney is an advocate of the taxpayer's position. Her arguments are not testimony and are therefore not given evidentiary value. Appearances before county boards or the Department are not considered the practice of law in South Carolina, and representation of taxpayers before these boards or agencies is not limited to licensed attorneys. However, certain restrictions apply; see the sections which follow.

§ 431. Appearance by Nonresident Attorneys. Administrative practice is to allow attorneys licensed in any state to represent taxpayers before county boards and the Department. Appearances before county boards and the Department are defined by SC Code 12-60-90. See also, SC Information Letter #92-20 (June 5, 1992). Under this legislation as originally enacted, only attorneys, CPA's and "enrolled agents" could represent clients before the Department and local taxing authorities. However, the act was amended to permit South Carolina "registered, licensed or certified" real estate appraisers to represent taxpayers on real property valuation issues. See generally SC Code 12-60-90(C) and §545 below.

§ 432. Appearances by In-House Attorneys and Officers. SC Code 12-60-90(C) specifically provides that corporations, unincorporated associations or partnerships may be represented by an officer or full-time employee. Therefore, in-house attorneys or officers are specifically authorized to represent their employers. See a more thorough explanation of SC Code 12-60-90 at §545 below.

§ 440. The Consultant. The ability of "property tax consultants" to represent taxpayers before the Department and county boards has been limited by SC Code 12-60-90(C). Unless the consultant meets the requirements of that section, they may not represent taxpayers in South Carolina. The consultant must: (1) be a South Carolina registered, licensed or certified appraiser; (2) be a licensed or certified appraiser in another state whose business in South Carolina is temporary and who obtains a temporary license from the South Carolina Board of Real Estate Appraisers; or (3) meet the other criteria expressed above, *e.g.*, be an attorney, certified public accountant, or enrolled agent.

§ 450. Other Persons. Only those persons permitted to practice before the Department and county boards by SC Code 12-60-90(C) may practice, *i.e.*, attorneys, CPA's, enrolled agents, licensed appraisers, and employees of the taxpayer (in-house counsel).

PART VI: § 500. APPEAL OF TAX ASSESSMENT.

The South Carolina Revenue Procedures Act, SC Code 12-60-10 et. seq., provides the appeal procedures for all tax matters, including property tax. It provides for an appeal from the Department to the independent administrative judges in the Administrative Law Judge Court ("ALJC"), created by SC Code 1-23-500. The appropriate appeal procedure in a property tax matter is dependent upon the identity of the taxing authority making the determination that gives rise to the issue. This taxing authority will be the County Assessor, the County Auditor, or the Department. For this reason, the appeals procedure discussion will be segregated based on the taxing authority that has the responsibility of making the determination.

It should be noted that for all of these procedures where a taxpayer is required to file a document by a certain date, timely mailing is timely filing. SC Code 12-60-50(B).

§ 510. Conference at Local Level. A taxpayer may obtain a conference with the county assessor or auditor as part of the appeal of his property tax assessment. See below.

§ 510.01. County Assessor.

A. SC Code 12-60-2510 and 12-60-2520 establish the initial steps necessary to appeal an assessment made by a County Assessor:

1. Whenever a property's value is increased by \$1,000 or more, the Assessor must give written notice to the taxpayer by July 1st or as soon thereafter as practical.
2. If the taxpayer objects to the assessment, he must give written notice of objection to the Assessor within 90 days of the mailing of the assessment notice. In tax years in which a property's fair market value has not been increased by \$1,000 or more, no notice by the Assessor is required. In these years (generally, years for which there is no county wide reassessment) the taxpayer must object to the appraisal by filing written notice by March 1st of the tax year.
3. After receiving the property taxpayer's objection, if the Assessor agrees with the taxpayer, the Assessor must correct the error. If the Assessor does not agree with the taxpayer, the Assessor must schedule a conference with the taxpayer within 30 days of the date of a request for a meeting or as soon thereafter as practical.
4. If the matter is not resolved at the conference, the taxpayer must file a written protest with the Assessor within 30 days of the conference.
5. The Assessor must respond to the protest in writing within 30 days of the date of receipt of the written protest or as soon thereafter as practical.

B. SC Code 12-60-2530 establishes the procedures for administrative appeal of the Assessor's decision to the County Board of Assessment Appeals:

1. The taxpayer may appeal the Assessor's decision by giving a written notice of intent to appeal to the Assessor within 30 days of the date of the Assessor's response. See SC Code 12-60-2530(A).
2. The conference on appeal must be conducted by the County Board of Assessment Appeals.
3. Third parties may intervene under certain circumstances.
4. At least fifteen (15) days before the conference, the taxpayer and Assessor must exchange lists of documents, witnesses and other evidence that they anticipate presenting to the County Board, and they must provide copies to the County Board.

5. Seven (7) days before the conference, the taxpayer or Assessor may file responses with the County Board to the exchanged information. This response must also be mailed to the other party.
6. SC Code 12-60-2530 specifies the procedures of the conference. Each party may present evidence and arguments, and each side has the right of rebuttal. Any member of the County Board may ask questions.
7. The County Board must mail a written decision to the taxpayer and the Assessor.

Conferences of the County Board are subject to any rules that may be prescribed by the Administrative Law Judge Court.

C. SC Code 12-60-2540 establishes the procedures to appeal an adverse decision from the County Board to the Administrative Law Judge Court (ALJC). No record is established by the County Board. The ALJC hearing is an entirely new hearing with all evidence presented. Further, the ALJC is the finder of fact and its record becomes the record for appeals.

1. Either the taxpayer or the Assessor may appeal the County Board's decision by requesting a contested case hearing.
2. A request for a contested case hearing before the ALJC must be made within 30 days after the date of the County Board's written decision in accordance with the Rules of the ALJC (See §525 below and SC Code 12-60-2540(A)).
3. If the taxpayer requests a contested case hearing without exhausting his pre-hearing remedy because he failed to file a protest or attend a conference with the County Board, the ALJC will dismiss the action without prejudice.
4. If the taxpayer failed to provide facts or law to support his position to the County Board and seeks to provide those facts or argue that legal position to the ALJC, the ALJC will remand the case to the County Board to reconsider the case in light of the new facts or law.

If an appeal extends, or is expected to extend, beyond December 31st, the taxpayer must pay a portion of the tax equal to 80% of the protested property tax assessment and may agree, in writing, to pay a higher amount. SC Code 12-60-2550. Interest at the federal rate for underpayments provided for in Internal Revenue Code Sections 6621(a)(2) and 6622 must be paid on any additional tax due or refunds due after a final review is made. No interest will be paid on refunds due that are paid within 75 days of (i) the last day prescribed for filing a tax return if the return was filed timely, (ii) the date a late return is filed, (iii) the last day prescribed for payment if no return is required, or (iv) the date a claim for refund is filed. SC Code 12-54-25.

§ 510.02. County Auditor.

- A. SC Code 12-39-340 requires the Auditor to insure that all taxable personal property not assessed by the Department is listed and assessed. This includes such items as motor vehicles, boats, airplanes and the personal property of merchants and certain other businesses.
- B. SC Code 12-39-340 further states that the value of this property shall be determined by use of manuals, guidelines, and rules and regulations promulgated by the Department. Regs. 117-1840.2, Section a., provides for the valuation of motor vehicles, boats and airplanes in accordance with published guidelines. Regs. 117-1840.2, Section b., also refers to Regs. 117-1840.1 for the valuation of merchants' furniture, fixtures, and equipment which are generally valued at the depreciated cost for South Carolina income tax purposes, but not less than 10% of the original cost.
- C. SC Code 12-60-2910 states the appeal procedures for contesting personal property tax assessments or a denial of a homestead exemption to the County Auditor:
 - 1. The appeal is to be made by giving written notice to the Auditor at any time on or before the later of (a) 30 days after the tax notice (bill) is mailed, or (b) the last day the tax can be paid without penalty.
 - 2. The Auditor will schedule a conference with the taxpayer within 30 days of the request for a meeting, or as soon thereafter as practical.
 - 3. If the matter is not resolved at the conference, the taxpayer must file a written protest with the Auditor within 30 days after the date of the conference.
 - 4. The Auditor must mail a written response within 30 days of receipt of the taxpayer's protest, or as soon thereafter as practical.
- D. There is no appeal to the County Board as there is with County assessed real property. Appeal from the Auditor's decision is direct to the Administrative Law Judge Court.
- E. SC Code 12-60-2920 states the procedures to appeal an Auditor's decision to the Administrative Law Judge Court (ALJC):
 - 1. A taxpayer may appeal the decision by requesting within 30 days after the date of the Auditor's response a contested case hearing before the ALJC in accordance with its rules. (See §525 below).
 - 2. If the taxpayer requests a contested case hearing without exhausting his pre-hearing remedies because he failed to file a protest or attend a conference with the Auditor, the ALJC will dismiss the action without prejudice.

3. If the taxpayer failed to provide facts or law to support his position to the Auditor, the ALJC will remand the case to the Auditor to reconsider the case in light of the new facts or law.

Interest at the federal rate for underpayments provided for in Internal Revenue Code Sections 6621(a)(2) and 6622 must be paid on any additional tax due or refunds due after a final review is made. SC Code 12-60-2930. No interest will be paid on refunds due that are paid within 75 days of (i) the last day prescribed for filing a tax return if the return was filed timely, (ii) the date a late return is filed, (iii) the last day prescribed for payment if no return is required, or (iv) the date a claim for refund is filed. SC Code 12-54-25.

§ 520. Appeal To The Department Of Revenue.

- A. SC Code 12-60-2110 and 12-60-2120 establish the initial steps necessary to appeal an assessment or denial of an exemption made by the Department:
 1. The taxpayer must file a written protest with the Department within 90 days after the date of the property tax assessment notice, or within 90 days after the tax notice (bill) is mailed to the taxpayer if the Department did not send the taxpayer a property tax assessment notice.
 2. The protest must contain certain information, including the taxpayer's assertion of the fair market value of the property and, if contested, the classification of the property the taxpayer believes is correct. If the protest claims the property is exempt, the taxpayer must state the basis on which the exemption is claimed.
 3. The appeal must be conducted in accordance with SC Code 12-60-450. A Department determination adverse to the taxpayer must be in writing sent or delivered to the taxpayer, explain the basis for the determination, and inform the taxpayer of his right to a contested case hearing.
- B. SC Code 12-60-2130 establishes the procedure to appeal a Department determination to the Administrative Law Judge Court (ALJC):
 1. Either the taxpayer or the local governing body may appeal by requesting, in accordance with ALJC Rules (see §525), a contested case hearing before the ALJC within 30 days of the date of the Department's determination. Note, although not an appeal from a County assessment, the County is granted a right to appeal a Department's determination to the ALJC.
 2. If the taxpayer requests a contested case hearing without exhausting his pre-hearing remedy because he failed to file a protest or attend a conference with the Department, the ALJC will dismiss the action without prejudice.
 3. If the taxpayer failed to provide facts or law to support his position to the Department, the ALJC will remand the case to the Department to reconsider the case in light of the new facts or law.

If an appeal extends beyond December 31st, the taxpayer must pay a portion of the tax based on 80% of the protested property tax assessment and may pay a higher amount if agreed to in writing by the taxpayer. SC Code 12-60-2140. Interest at the federal rate for underpayments provided for in Internal Revenue Code Sections 6621(a) and 6622 must be paid on any additional tax due or refunds due after a final review is made. SC Code 12-60-2140. No interest will be paid on refunds due that are paid within 75 days of (i) the last day prescribed for filing a tax return if the return was filed timely, (ii) the date a late return is filed, (iii) the last day prescribed for payment if no return is required, (iv) the date a claim for refund is filed, or (v) the county receiving notification from the Department that the taxpayer is due a credit or refund. SC Code 12-54-25.

§ 525. Contested Case Hearing before the ALJC. Contested case hearings must be without a jury and held in accordance with the ALJC rules and SC Code 1-23-310, et seq. SC Code 12-60-3340.

The taxpayer can designate the hearing as a small claims case if no more than \$10,000 in taxes, including penalties, but not interest, is in controversy. A small claims case cannot be appealed and has no precedential value. SC Code 12-60-1770 and 12-60-520.

The Rules of Procedure for the ALJC (“Rules”) provide the procedures for requesting and conducting a contested case hearing:

- A. The request must be filed with the agency with subject matter jurisdiction (e.g., the Department) within 30 days of the agency determination and must contain certain information. Rule 11. (This request is in the form of a letter to the Department.)
- B. The Department or the County must notify the ALJC within 5 working days of the receipt of the request for a contested case hearing with a transmittal form and must forward a copy of the transmittal form to all parties. Rule 12.
- C. The ALJC may request each party to prepare a Pre-hearing Statement and to exchange evidence. Rules 8, 10, & 14.
- D. The Department may intervene in the contested case hearing if it is not already a party. SC Code 12-60-3330.
- E. The ALJC will issue a Notice of Contested Case Hearing 30 days before the hearing date. ALJC Rule 15.
- F. The ALJC will issue its decision in a written order. A party can make a motion for reconsideration if it is filed within 10 days of notice of the order concluding the matter before the ALJC. ALJC Rule 29.

§ 530. Judicial Review.

- A. SC Code 12-60-3370 to 12-60-3390 provide the procedures to appeal an adverse decision by the ALJC to the circuit court:

1. A petition by the aggrieved party must be filed in the circuit court and served on the opposing party or parties not more than 30 days after the party receives the final decision and order of the ALJC. SC Code 1-23-610(B).
2. The taxpayer must pay, or post a bond, for all taxes, including interest, determined to be due by the ALJC, before the appeal to the circuit court. For appeals from the local governing body and the Department that extend beyond December 31st of the tax year, the taxpayer need only pay 80% of the assessment or other amount agreed to in writing greater than the 80% amount before appealing to the circuit court. SC Code 12-60-3370.
3. The appeal must be made to the circuit court in Richland County unless the taxpayer is a resident of South Carolina, in which case it may also be brought in the circuit court of the county of the taxpayer's residence. SC Code 12-60-3380.

The circuit court decision may be appealed in the manner provided by the South Carolina Appellate Court Rules as in other civil cases. SC Code 1-23-390.

§ 535. Miscellaneous Relief - Waiver, Dismissal, or Reduction of Penalty. A committee composed of the county auditor, county treasurer, and county assessor may waive, dismiss, or reduce a penalty levied against real or personal property in the case of an error by the county. SC Code 12-45-420.

§ 536. Miscellaneous Relief - Claims for Refund. If it is determined that any tax in excess of the amount due was paid to, or collected by, a county, municipality, or other political subdivision, the county treasurer shall refund the taxes and penalties, if any, together with interest at the federal underpayment rate, within 30 days of the final determination. SC Code 12-60-1740.

A refund will not be granted if the claim is based on an exemption requiring an application unless the application was timely filed. It also will not be granted for errors in valuation, unless the assessment was appealed as outlined above. SC Code 12-60-1750.

All claims for refund must be filed within the later of three years from the date a return was filed, or two years from the date of payment of the tax. SC Code 12-54-85(F).

As in the case of an appeal of a tax assessment, the procedure for claiming a refund of property taxes paid depends on the identity of the taxing authority that made the assessment, i.e., the County Assessor, the County Auditor, or the Department of Revenue.

The following discussion will therefore be segregated based on the taxing authority.

§ 536.01. County Assessor. SC Code 12-60-2560 provides the procedure for claiming a refund for taxes paid based on an assessment by the County Assessor.

A. The claim is first reviewed by the Assessor.

1. The taxpayer must file the claim with the Assessor who made the assessment.
 2. The Assessor will meet with the County Treasurer and County Auditor, and a majority of these officials will determine the taxpayer's refund, if any.
 3. The taxpayer will be notified in writing of the decision of these officials.
- B. The taxpayer can have the decision reviewed by the County Board of Assessment Appeals.
1. The taxpayer must appeal to the County Board within 30 days after the decision is mailed to the taxpayer.
 2. The appeal is conducted in the same manner as an appeal of assessments to the County Board. SC Code 12-60-2530. (See §510.01(B)).

The County Board will mail a written decision to the taxpayer and the Assessor.

- C. An adverse decision can be appealed to the Administrative Law Judge Court (ALJC).
1. Either the taxpayer or the County Assessor may appeal by requesting, in accordance with ALJC Rules (See §525), a contested case hearing before the ALJC within 30 days of the date of the mailing of the County Board's written decision.
 2. If the taxpayer requests a contested case hearing without exhausting his pre-hearing remedy because he failed to file a claim for refund or attend a conference with the County Board, the ALJC will dismiss the action without prejudice.
 3. If the taxpayer failed to provide facts or law to support his position to the County Board, the ALJC will remand the case to the County Board to reconsider the case in light of the new facts or law.

The procedure for conducting a contested case hearing and appealing a contested case hearing are described in §525 and §530.

§ 536.02. County Auditor. SC Code 12-60-2940 provides the procedure for filing a claim for a refund of taxes paid based on an assessment made by the County Auditor:

- A. The claim is first reviewed by the Auditor.
1. The taxpayer must file the claim with the Auditor who made the assessment.
 2. The Auditor will meet with the County Treasurer and County Assessor, and a majority of these officials will determine the taxpayer's refund.
 3. The taxpayer will be notified in writing of the decision of these officials.

- B. An adverse decision can be appealed to the Administrative Law Judge Court (ALJC).
1. Denials of claims for refund made to the County Auditor are not appealed to the County Board. Appeal is directly to the ALJC.
 2. The taxpayer may appeal by requesting, in accordance with ALJC Rules (See §525), a contested case hearing before the ALJC within 30 days of the date of the written denial of the taxpayer's claim for refund.
 3. If the taxpayer requests a contested case hearing without exhausting his prehearing remedy because he failed to file a claim for refund, the ALJC will dismiss the action without prejudice.
 4. If the taxpayer failed to provide facts or law to support his position to the Auditor, the ALJC will remand the case to the three county officials to reconsider the case in light of the new facts or law.

The procedure for conducting a contested case hearing and appealing a contested case hearing are described in §525 and §530.

§ 536.03. Department of Revenue. SC Code 12-60-2150 provides the procedure for claiming a refund for taxes paid based on an assessment made by the Department:

- A. The claim is first reviewed by the Department.
1. The taxpayer must file its claim with the Department.
 2. The claim must contain certain information as provided by SC Code 12-60-2150(C) and SC Code 12-60-450(B).
 3. The Department will notify the counties affected by the claim, and the County Auditor will notify any municipality affected by the claim.
 4. The appropriate division of the Department will consider the claim, determine what refund is due, if any, and issue a written decision to the taxpayer.
- B. A taxpayer may appeal the decision of the division to the Department following the procedures provided in SC Code 12-60-2120 (See §520):
1. The taxpayer must file a written protest with the Department within 90 days of the date of the denial by the division of any part of the claim for refund. SC Code 12-60-2110.
 2. The Department will conduct the appeal from the division in accordance with SC Code 12-60-450, and will mail a Department determination to the taxpayer if the decision is adverse to the taxpayer.

C. An adverse determination can be appealed to the Administrative Law Judge Court (ALJC).

1. The taxpayer or the local governing body may appeal from the Department's determination by requesting, in accordance with ALJC Rules, a contested case hearing before the ALJC within 30 days of the date of the Department's determination.
2. If the taxpayer requests a contested case hearing without exhausting his prehearing remedy because he failed to file a claim or a protest, the ALJC will dismiss the action without prejudice.
3. If the taxpayer failed to provide facts or law to support his position to the Department, the ALJC will remand the case to the Department to reconsider the case in light of the new facts or law.

The procedure for conducting a contested case hearing and appealing a contested case hearing are described in §525 and §530 above.

§ 540. Practice And Procedure.

§ 541. Use Of Appraisals And Expert Witnesses. A taxpayer is not required to use appraisals or expert witnesses in the appeals process. However, it is incumbent upon a taxpayer to prove his or her assertions. In questions of valuation, a taxpayer can not prevail without establishing the valuation which he asserts. See *Newberry Mills vs. Dawkins*, 259 S.C. 7, 190 S.E.2d 503 (1972) and *Belk Dept Store vs. Taylor*, 259 S.C. 174, 191 S.E.2d 144 (1972).

§ 542. Forms And Pleadings. No specific types of forms or pleadings are required to appeal a property valuation whether made at the local level or at the state level. However, most County Assessors require the taxpayer to file a prescribed form after the initial conference pursuant to SC Code 12-43-300 and 12-60-2520(B).

§ 544. Method Of Filing/Delivery. No specific method of filing an appeal to the County or to the Department is required by South Carolina law. However, if the appeal is filed near the deadline, it may be prudent to hand deliver and obtain a clocked-in copy, or to mail the appeal by certified mail, return receipt requested.

§ 545. Appearances For Taxpayer. In general, the taxpayer may represent himself or certain specified others may represent the taxpayer in the administrative appeals process. SC Code 12-60-90. The "administrative tax process" includes all matters connected with the presentation to any state or local tax authority, or any of its employees, relating to a client's rights, privileges, or liabilities under laws or regulations administered by such tax authorities. SC Code 12-60-90(A). See §420 – 450.

This section contains numerous references to United States Treasury Department Circular No. 230 (“Circular No. 230”) with the effect that only attorneys, certified public accountants and enrolled agents may represent clients before the Department and local taxing authorities. Also, a registered, licensed, or certified real estate appraiser can represent a taxpayer in matters limited to the valuation of real property. Certain exceptions are provided, however, so that an individual may represent himself; corporations and unincorporated associations and employers may be represented by an officer or full time employee; partnerships may be represented by a partner or full time employee; and trusts, receiverships, guardianships, and estates may be represented by their trustees, receivers, guardians, administrators or executors, or their regular full time employees. The Department has the authority to allow any other individual to represent a taxpayer when it seems appropriate.

In addition to restricting who may represent taxpayers in the administrative process, this statute also provides that taxpayer representatives must comply with the duties and restrictions contained in Sections 10.20 through 10.24 and 10.27 through 10.34 of Circular No. 230, which covers a wide array of procedural, substantive, and ethical issues. See SC Code 12-60-90(E). The Department may suspend or disbar from practice in the administrative tax process an authorized representative that is incompetent or who fails to comply with subsection (E) or engages in “disreputable conduct” as defined in §10.51 of Circular No. 230 or one whom with intent to defraud, willfully and knowingly, deceives, misleads, or threatens a person to be represented. SC Code 12-60-90(D).

Please note that the Department of Revenue has ruled that a taxpayer may only use a contingent fee arrangement in a tax matter in only a limited number of situations. These situations are set forth in SC Rev. Rul. #04-03.

§ 550. Payment Of Property Tax And Protest Procedure. The South Carolina Revenue Procedures Act, SC Code Chapter 60, Title 12, provides the exclusive remedies for the illegal or wrongful collection of taxes. SC Code 12-60-80. It states that the circuit court shall dismiss a case without prejudice that is brought by a taxpayer on a matter covered by the Act, other than an appeal of an ALJC decision. SC Code 12-60-3390.

§ 560. Jurisdictional Requirements.

§ 561. Exhaustion Of Administrative Remedies. For both a proposed assessment and a claim for refund, before a taxpayer may request a contested case hearing before the Administrative Law Judge Court, she must exhaust her prehearing remedies. Exhaustion of the taxpayer’s prehearing remedies requires that the taxpayer file a written protest as required and provide the facts, the law, and any other authority supporting the taxpayer’s position to the appropriate administrative party handling the appeal. SC Code 12-60-30(15).

If a taxpayer requests a contested case hearing prior to exhausting the prehearing remedy by failing to file a protest, the Administrative Law Judge will dismiss the matter without prejudice. If a taxpayer has failed to provide the appropriate administrative party with all the facts or law necessary for that party to reach its conclusion, the Administrative Law

Judge will remand the case for reconsideration. Procedures are provided in the event of a remand. The statute of limitations for assessment remains suspended by SC Code 12-54-85(G) during the remand process. SC Code 12-60-510.

If the taxpayer brings an action in circuit court without exhausting administrative remedies, the Court will dismiss the case without prejudice. SC Code 12-60-3390. The taxpayer's administrative remedies are the aforementioned pre-hearing remedies and the hearing before the Administrative Law Judge Court. However, if the sole issue posed in a particular case is the constitutionality of a statute, a court may decide the case without waiting for an administrative ruling. Although the Administrative Law Judge Court may not rule on the validity of a statute, it (and the Department) can rule on whether a party's constitutional rights have been violated. Thus, merely asserting an alleged constitutional violation will not allow a party to avoid an administrative ruling. See *Video Gaming Consultants, Inc. v. SC Dep't of Revenue*, 342 S.C. 34, 535 S.E.2d 642 (2000), and *Ward v. State of South Carolina*, 343 S.C. 14, 538 S.E.2d 245 (2000). However, SC Code 12-60-80(B) provides that if the only issue is whether a statute is unconstitutional then a declaratory judgment action can be brought in circuit court without the taxpayer having to exhaust his pre-hearing remedies under the Revenue Procedures Act. This exception does not apply to a claim that the statute is unconstitutional as applied to a person or a limited class of persons.

§ 562. Class Action Lawsuits. SC Code 12-60-80(C) provides that a class action lawsuit for a refund of taxes may not be brought in the Administrative Law Judge Court or any court in this State, and the Department, political subdivisions, or their instrumentalities may not be named as a defendant in a class action lawsuit brought in South Carolina.

PART VII: § 600. EXEMPTION FROM TAXATION.

§ 601. Fees for Fire Protection for Property Exempt from Taxation. Except as otherwise stated below, counties and municipalities may charge the owners of all real property exempt from property taxation reasonable fees for fire protection. SC Code 12-37-235. However, property of the State, counties, municipalities, school districts and other political subdivisions used exclusively for public purposes, and property of public libraries are exempt from these fees. See 1982 Op. Atty. Gen., No. 82-68, p. 68.

The fees must be based on the protection and services which are generally maintained by funds from ad valorem taxes. The fees cannot exceed the amount of taxes that would be levied on the property for any one service if the property were subject to taxation. No fees may be charged by a county for protection or service provided by a municipality.

§ 602. U.S. Department of Veterans Affairs' Installment Contracts. An individual is considered to be the owner of the property if he has an interest in it pursuant to an installment contract for sale with the U.S. Department of Veterans Affairs. SC Code 12-43-221.

§ 610. Exempt Property and Taxpayers. Section 3 of Article X of the SC Constitution and SC Code 12-37-220 deal with property tax exemptions. Subsection A of SC Code 12-37-220 generally repeats the constitutional exemptions. Subsection B enumerates a list of additional exemptions. Missing from the enumerations are “501(c)(3) organizations.” These organizations are exempt only if they meet the other requirements of the exemption provisions.

In *TNS Mills, Inc. v. SC Dept. of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998), the court held that if an application for an exemption is required, (1) it must be made timely, (2) the Department of Revenue does not have the power to grant a retroactive exemption, and (3) if a timely application is not made, no refund of previously paid taxes is authorized.

§ 611. Intangible Personal Property. Intangible personal property is exempt from property taxes. No application for this exemption is necessary. SC Code 12-4-720(A)(3), 12-37-220(A)(10) and Section 3, Article X, SC Constitution.

§ 612. Certain Personal Use Property and other Miscellaneous Property.

§ 612.01. Household Goods. All household goods and furniture used in the home of the owner, including built-in equipment such as ranges, dishwashers and disposals, are exempt from property taxes. This exemption does not apply to household goods used in hotels, rooming houses, apartments or other places of business. SC Code 12-37-220(A)(5) and Section 3, Article X, SC Constitution. No application for this exemption is necessary. SC Code 12-4-720(A)(3). SC Code 12-37-220(B)(35) exempts this type of property when it is located in a timeshare unit.

§ 612.02. Wearing Apparel. All wearing apparel is exempt from property taxes. SC Code 12-37-220(B)(9). No application for this exemption is necessary. SC Code 12-4-720(A)(3).

§ 612.03. Private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors. On November 7, 2000, the voters of South Carolina passed a constitutional amendment allowing, but not requiring, the governing body of a county through ordinance to impose a local sales and use tax to exempt the value of private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors from property taxes levied in the county. The exemption (or the recession of the exemption) is allowed pursuant to a county referendum which must be submitted to the voters at the next general election of representatives.

Watercraft and motors which have an assessment of not more than \$50 are exempt from property taxes. SC Code 12-37-220(B)(38). Watercraft trailers are exempt from property taxes. SC Code 12-37-220(B)(40).

§ 612.04. Private Passenger Vehicle of Certain Military Personnel. A private passenger motor vehicle leased by a member of the United States armed forces stationed in South Carolina is exempt if the service member’s home of record is in another state and the leased vehicle is registered and licensed in that state.

§ 613. Economic Development Related Exemptions.

§ 613.01. Inventories. All inventories are exempt from property taxes. No application for this exemption is necessary. SC Code 12-4-720(A)(3) and 12-37-220(B)(30). See also 12-37-220(A)(6) and Section 3, Article X, SC Constitution. SC Rev. Rul. #91-7 defines inventory as merchandise purchased for resale. Equipment which is rented and materials and supplies used in a business are not inventory. Generally, items will be classified as inventory if they are inventory for South Carolina income tax purposes, which is based upon federal income taxes.

§ 613.02. Manufacturing. All new manufacturing establishments are exempt from county property taxes for five years from the time of establishment. Further, all additions to existing manufacturing establishments are exempt from county property taxes for five years from the time such additions are made, if the cost of such addition is fifty thousand dollars or more. Such additions include additional machinery and equipment installed in the plant. Upon approval of the county, an unrelated purchaser who acquires the facilities in an arms length transaction and preserves the existing facilities and the number of jobs may use the unexpired portion of this exemption. This exemption applies for five years if the purchaser otherwise meets the exemption requirements. SC Code 12-37-220(A)(7) and (C). See also, SC Rev. Rul. #04-14 which discusses these requirements in detail.

This exemption is only for county taxes. It does not exempt the property from school or municipal taxes. However, a municipality may agree to exempt this property from municipal property taxes for up to five years. Section 3, Article X, SC Constitution.

Application for this exemption must be filed with the Department within the period provided in SC Code 12-54-85(F) for claims for refund. SC Code 12-4-720(A)(1), 12-37-220(A)(7) and Section 3, Article X, SC Constitution.

SC Rev. Rul. #89-3 provides that the exemption for additions to real property improvements of existing manufacturing establishments is allowed to the extent that the addition increases the total appraisal of real property improvements.

SC Private Letter Ruling #87-11 reviewed whether a new business purchasing an existing building from a facility that had ceased operations met the requirements to be a new manufacturing establishment or was a continuation of the previous business. The following elements were considered relevant: (1) change in ownership, (2) change in product, (3) substantial investment of new capital, (4) cessation of former business, and (5) change in product market. Based on the facts in the letter ruling, the plant met these elements to a degree sufficient to allow the exemption as a new manufacturing establishment and was entitled to a new five year exemption period under SC Code 12-37-220(A)(7).

§ 613.03. Pollution Control. All facilities or equipment of industrial plants which are designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution (both internal and external) required by the state or federal government and used in the conduct of the business are exempt from property taxes. SC

Code 12-37-220(A)(8) and Section 3, Article X, SC Constitution. For equipment that serves a dual purpose of production and pollution control, the value eligible for the property tax exemption is the difference in cost between this equipment and equipment of similar production capacity or capability without the ability to control pollution. For purposes of this exemption, 20% of the cost of any piece of equipment placed in service in a greige mill qualifies as internal air and noise pollution control property and is exempt from property taxes. *Greige mill* means all textile processes from opening through fabric formation before dyeing and finishing. Application for this exemption must be filed with the Department before the first penalty date for payment of property taxes. SC Code 12-4-720(A)(2).

§ 613.04 Environmental Cleanup Site. SC Code 12-37-220(B)(44) provides a 5 year exemption from county property taxes (the exemption does not apply to school and municipal property taxes) for property and improvements subject to a nonresponsible party voluntary cleanup contract for which a certificate of completion has been issued by the South Carolina Department of Health and Environmental Control pursuant to Article 7, Chapter 56, Title 44 (The Brownsfield Voluntary Cleanup Program.) The exemption applies beginning with the taxable year in which a certificate of completion is issued.

§ 613.05. Corporate Headquarters, and Corporate Office and Distribution Facilities. All new corporate headquarters, corporate office facilities, distribution facilities, and all additions to existing corporate headquarters, corporate office facilities, or distribution facilities, are exempt from nonschool county ad valorem taxes for a period of five years from the time of establishment, construction, or being placed in service if the cost of the new construction or additions is fifty thousand dollars or more and seventy-five or more new full time jobs are created in South Carolina. Upon approval of the county, an unrelated purchaser who acquires the facilities in an arms length transaction and preserves the existing facilities and the number of jobs may use the unexpired portion of this exemption. This exemption applies for five years if the purchaser otherwise meets the exemption requirements. SC Code 12-37-220(B)(32) and (C). See also, SC Rev. Rul. #04-14 which discusses these requirements in detail.

This exemption is only for county taxes. It does not exempt the property from school or municipal taxes. However, a municipality may agree to exempt this property from municipal property taxes for up to five years. SC Code 12-37-220(B)(39).

Application for exemption must be filed with the Department within the period provided in SC Code 12-54-85(F) for claims for refund. SC Code 12-4-720(A)(1). SC Private Letter Ruling #89-19 provides that the positions created to satisfy the statute for an addition to a corporate headquarters need not be placed in the new buildings; however, they must be employed in the South Carolina headquarters complex. SC Rev, Rul. #98-10 provides guidance on the criteria which must be met in order for a taxpayer to qualify as a “corporate office facility.”

§ 613.06. Research and Development. The facilities of all new enterprises engaged in research and development activities and all additions valued at fifty thousand dollars or more to existing facilities of enterprises engaged in research and development are exempt from

property taxation for five years. Additions include machinery and equipment installed in an existing manufacturing or research and development facility. This exemption is only for county taxes. It does not exempt the property from school or municipal taxes. However, a municipality by ordinance may exempt this property from municipal property taxes for no more than five years. SC Code 12-37-220(B)(39).

Facilities engaged in research and development activities are facilities devoted directly and primarily to research and development in the experimental or laboratory sense for new products, new uses for existing products, or for improving existing products. To be eligible for this exemption, the facility must be a separate facility devoted primarily to research and development. The exemption does not include facilities used in connection with efficiency surveys, management studies, consumer surveys, economic surveys, advertising, promotion, or research in connection with literary, historical, or similar projects. Application for exemption must be filed with the Department within the period provided in SC Code 12-54-85(F) for claims for refund. SC Code 12-4-720(A)(1), 12-37-220(B)(34) and (B)(39).

Upon approval by the county, an unrelated purchaser who acquires a research and development facility in an arm's length transaction and preserves the existing facility and number of jobs may use the unexpired portion of this exemption. This exemption applies for five years if the purchaser otherwise meets the exemption requirements. SC Code 12-37-220(B)(34) and (C). See also, SC Rev. Rul. #04-14 which discusses these requirements in detail.

§ 613.07. Air Carrier Hubs. All *personal property*, including aircraft, of an air carrier which operates an air carrier hub terminal facility is exempt from property taxes for a period of ten consecutive years from the date of qualification. Application for exemption must be filed with the Department within the period provided in SC Code 12-54-85(F) for claims for refund. SC Code 12-4-720(A)(1) and 12-37-220(B)(33). See SC Code 55-11-500 for the definition of air carrier hub.

§ 613.08. Trailers and Semitrailers used by Motor Carriers. Trailers and semitrailers used by motor carriers are subject to a one time \$87 fee in lieu of all property taxes and registration requirements after the initial registration. Trailers and semitrailers do not include pole trailers. SC Code 12-37-2860 and 2880.

§ 613.09. Personal Property in Transit. Personal property in transit with "no situs" status is exempt from property taxes. Personal property in transit is personal property, goods, wares and merchandise which: (a) is moving in interstate commerce; or (b) was consigned to a warehouse (public or private) within this State from without this State for storage in transit to a final destination outside of this State, whether specified when transportation began or afterward. This property is subject to certain record keeping requirements. No application for exemption is necessary. SC Code 12-37-220(B)(17), 12-4-720(A)(3) and Article 7, Chapter 37, Title 12.

§ 614. Agricultural Property. The following agricultural property is exempt:

- A. All *agricultural products* owned by the producer are exempt from property taxes. SC Code 12-37-220(B)(13).
- B. All *farm machinery and equipment* including self propelled farm machinery and equipment, but excluding motor vehicles licensed for use on the highways, are exempt from property taxes. For purposes of this item, farm equipment includes greenhouses. SC Code 12-37-220(B)(14).
- C. All *livestock and live poultry* are exempt from property taxes. SC Code 12-7-220(B)(15).

No application is necessary for these three agricultural exemptions. See SC Code 12-4-720(A)(3).

§ 615. Other Particular Businesses. Some or all of the property of the following businesses is exempt:

- A. The personal property of *banks and savings and loan associations* is exempt from property taxes. No application for this exemption is necessary. SC Code 12-37-220(B)(23) and 12-4-720(A)(3).
- B. *Beer and wine* is exempt from property taxes. No application for this exemption is necessary. SC Code 12-37-220(B)(23) and 12-4-720(A)(3).
- C. The property of *telephone companies and rural telephone cooperatives* used in providing rural telephone service that was exempt from property taxation as of December 31, 1973, is exempt from property taxes; provided that the amount of property subject to property taxes in any tax district is not less than the net amount to which the tax millage was applied for the year ending December 31, 1973. Property in any tax district added after December 31, 1973, is also exempt in the same proportion that the exempt property of the company or cooperative as of December 31, 1973, in that tax district, bears to the total property of the company or cooperative as of December 31, 1973, in that tax district. Application for exemption must be filed with the Department within the period provided in SC Code 12-54-85(F) for claims for refund. SC Code 12-37-220(B)(10) and 12-4-720(A)(1).
- D. All *carnival equipment* owned, leased, or used by a foreign corporation or other nonresident of this State, and not physically present in South Carolina for an aggregate of more than six months of the tax year, and on which property taxes have been paid in at least one other state. SC Code 12-37-220(B)(28).

§ 616. Public Property and Certain Public Use Property. All property of the *State, counties, municipalities, school districts, water and sewer authorities and other political subdivisions* is exempt from property taxes if the property is used exclusively for public purposes. It is the duty of the Department and the county assessor to determine whether such property is used exclusively for public purposes. No application for exemption is necessary. SC Code 12-37-220(A)(1), Section 3, Article X, SC Constitution and SC Code 12-4-720(A)(3).

The statute granting exemption of State property from taxation is subject to liberal construction. The rule of strict construction applies to private, not public property. *Charleston County Aviation Authority v. Wasson, et al.*, 277 S.C. 480, 289 S.E.2d 416 (1982). See §632 below for a county's ability to "lend" its exemption to private parties.

Section 13(D), Article VIII of the SC Constitution provides that all property in multi-county industrial parks is exempt from property taxes, but property owners must pay an amount equivalent to the property taxes or other fee in lieu of property tax payments (see the discussion of fee in lieu of property taxes below), which would otherwise be due if it were not for this exemption. See also SC Code 4-1-170.

For purposes of collection and enforcement, a multicounty park "fee in lieu of tax" will be treated just like a property tax and the owners must file returns and pay a fee in lieu of taxes just as if it were a property tax. All provisions relating to collection and enforcement of property taxes, including penalty provisions, but excluding SC Code 12-54-155 (substantial understatement of tax) apply to a multicounty park fee in lieu of taxes. SC Code 12-2-90(B).

There are also exemptions for the public use of the following property:

- A. Property owned by the *South Carolina Research Authority* is specifically exempted from property taxes. No payment for fire protection is necessary. No application for this exemption is necessary. SC Code 13-17-90.
- B. Property owned by any of the *Regional Transportation Authorities* is specifically exempted from property taxes. No payment for fire protection is necessary. No application for this exemption is necessary. SC Code 58-25-80.
- C. *Property Leased for Public Purposes*. Except as otherwise indicated below, application for these exemptions must be filed with the Department within the period provided in SC Code 12-54-85(F) for claims for refund. SC Code 12-4-720(A)(3). The following property leased for public purposes is exempt:
 1. Real property *leased on a nonprofit basis to a state agency, county, municipality or other political subdivision* if used for a general public purpose is exempt from property taxes, except that this exemption does not apply to property used for office space or ware-housing. SC Code 12-37-220(B)(18).
 2. All personal property *loaned or leased on a non-profit basis to a state agency, county, municipality, or other political subdivision*, or to an organization exempt from federal income tax under Internal Revenue Code §501 through 514, for at least thirty days during the tax year, is exempt from property taxes as long as the property is used solely for the purpose of public display. No application for exemption is necessary. SC Code 12-37-220(B)(25).

3. All property leased to and operated by the *South Carolina Public Service Authority* for the generation or transmission of electric power is exempt from property taxes. SC Code 12-37-220(B)(21).
 4. A private passenger motor vehicle leased to a governmental entity that would be exempt under SC Code 12-37-220(A)(1) if the governmental entity owned the vehicle, is exempt from taxes.
- D. *Land subject to a perpetual easement* donated to this State under the South Carolina Scenic Rivers Act of Chapter 29 of Title 49 of the SC Code. SC Code 12-37-220(B)(36). Application for this exemption must be filed with the Department within the period provided in SC Code 12-54-85(F) for claims for refund. SC Code 12-4-720(A)(1).
- E. *All property of a public benefit corporation* established by a county or municipality and used exclusively for economic development purposes which serve a governmental purpose as defined in §115 of the Internal Revenue Code. SC Code 12-37-220(A)(11).

§ 617. Certain Nonprofit, Charitable, Religious, Educational, and Fraternal

Organizations. The following is a listing of the nonprofit, charitable, religious, educational, and fraternal organizations which are entitled to property tax exemptions. Application for the following exemptions must be filed with the Department within the period provided in SC Code 12-54-85(F) for claims for refund. SC Code 12-4-720(A)(3).

- A. Property of all *schools, colleges* and other institutions of learning and all charitable institutions in the nature of *hospitals and institutions caring for the infirmed, the handicapped, the aged, children and indigent persons* is exempt from property taxes, except where the profits of such institutions are applied to private use. Equipment leased by and used in connection with the operation of charitable, not for profit, or governmental hospital is deemed to be owned by the hospital. SC Code 12-37-220(A)(2) and 12-37-222, and Section 3, Article X, SC Constitution. For a discussion of what type of property of a hospital may qualify for an exemption under this section, see SC Rev. Rul. #05-18.
- B. The property of all *public libraries, churches, parsonages and burying grounds* is exempt from property taxes. This exemption for real property does not extend beyond the buildings and premises actually occupied by the owner. SC Code 12-37-220(A)(3) and Section 3, Article X, SC Constitution. But see (c) below for property owned, but not occupied, by churches.
- C. All real property of *churches* which extends beyond the buildings and premises actually occupied by the churches, if no profit or benefit from any operation on the churches' real property inures to the benefit of any private stockholder or individual and no income producing ventures are located on the property, is exempt from property taxes. SC Code 12-37-220(B)(31).

- D. The property tax liability of a person selling real property to a church ends once the church acquires the real property if it will be exempt from property taxes when owned by the church. The property taxes that have accrued up to the date of the acquisition by the church must be paid to the county within 30 days of the date of transfer. SC Code 12-37-220(D). The church must file an application for the exemption with the Department.
- E. The property of all *charitable trusts and foundations* used exclusively for charitable and public purposes is exempt from property taxes. This exemption for real property does not extend beyond the buildings and premises actually occupied by the owner. SC Code 12-37-220(A)(4) and Section 3, Article X, SC Constitution.
- F. The property of any *religious, charitable, eleemosynary, educational, or literary society, corporation, or other association*, when the property is used by it primarily for the holding of its meetings and the conduct of the business of the society, corporation, or association and no profit or benefit inures to the benefit of any private stockholder or individual, is exempt from property taxes. SC Code 12-37-220(B)(16)(a).
- G. The property of any *religious, charitable, or eleemosynary society, corporation, or other association* when the property is acquired for the purpose of building or renovating *residential structures on it for not for profit sale to economically disadvantaged persons* is exempt from property taxes. The total properties for which this exemption may be claimed may not exceed fifty acres per county. SC Code 12-37-220(B)(16)(b).
- H. All property of a *nonprofit corporation* (1) created for the purpose of providing *water supply or sewage disposal*, or a combination of such services, and (2) organized pursuant to SC Code Chapter 36 of Title 33, is exempt from property taxes. SC Code 12-37-220(B)(4).
- I. All property of *nonprofit housing corporations* which are devoted exclusively to providing (1) *below cost housing for the aged or for handicapped persons* or for both aged and handicapped persons as authorized by Section 202 of the Housing Act of 1959 and regulated by regulations that appear in the Federal Register, 24 CFR Part 885, (2) *below cost supportive housing for elderly persons or households* as authorized by Section 202 of the Housing Act of 1959, (3) *below cost supportive housing for persons with disabilities* as authorized by Section 811 of the National Affordable Housing Act of 1990, or (4) *housing for elderly or handicapped persons* or families of *low or moderate income* as authorized by Section 515 of Title V of the Housing Act of 1949, is exempt from property taxes. SC Code 12-37-220(B)(11). Also, all property of nonprofit housing corporations or solely owned instrumentalities of these corporations which are devoted to providing housing to low or very low income residents, is exempt from property taxes. A nonprofit housing corporation must satisfy the safe harbor provisions of IRS Rev. Proc. #96-32 to qualify for this exemption. SC Code 12-37-220(B)(11)(C).

- J. All property owned by *Volunteer Fire Departments and Rescue Squads* used exclusively for the purposes of such departments and squads is exempt from property taxes. 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 if the property were owned by the department or squad. SC Code 12-37-220(B)(19).
- K. All community owned *recreation facilities* open to the general public and operated on a nonprofit basis are exempt from property taxes. SC Code 12-37-220(B)(22).
- L. All property of *nonprofit museums* which is used exclusively for such purpose is exempt from property taxes. SC Code 12-37-220(B)(20).
- M. All property of *nonprofit or eleemosynary community theater companies, symphony orchestras, county and community arts councils* and commissions and other such companies, which is used exclusively for the promotion of the arts, is exempt from property taxes. SC Code 12-37-220(B)(24).
- N. Miscellaneous organizations.
1. All property of the *American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, and Fleet Reserve Association or any similar Veterans Organization chartered by Congress*, whether belonging to the department or to any of the Posts in this State when used exclusively for the purpose of such organization and not used for any purpose other than club rooms, offices, meeting places or other activities directly in keeping with the policy stated in the National Constitution of such organization, and when devoted entirely to its own uses and not held for "pecuniary profit," such property is exempt from property taxes. For the purposes of this item, "pecuniary profit" refers to income received from the sale of alcoholic beverages to persons other than bona fide members and their bona fide guests, or any income, any part of which inures to the benefit of any private individual. SC Code 12-37-220(B)(5).
 2. All property owned and used or occupied by any *Young Women's Christian Association, Young Men's Christian Association* or the *Salvation Army* used for the purpose of, or in support of, such organization is exempt from property taxes. However, this exemption does not apply to any portion of the property rented for purposes not related to the functions of the organization. SC Code 12-37-220(B)(6).
 3. All property owned and used or occupied by *The Boy's or Girl's Scouts of America* and used exclusively for the purposes of those organizations is exempt from property taxes. The exemption extends to property not owned by these organizations but which is used by them exclusively for scouting purposes. SC Code 12-37-220(B)(7).
 4. All property used or occupied by the *South Carolina Association of Future Farmers of America*, is exempt from property taxes, as long as the property is used exclusively to promote vocational education or agriculture, better business methods and more

effective organization for farming, or to encourage thrift or provide recreation for persons studying agriculture or home economics in the public schools. SC Code 12-37-220(B)(8).

5. The property of any *fraternal society*, corporation or association, when the property is used primarily for the holding of its meetings and the conduct of its business and no profit or benefit inures to the benefit of any private stockholders or individuals, is exempt from property taxes. SC Code 12-37-220(B)(12).
6. Property held in trust under the provisions of the *War Between the States Heritage Trust Program* in Chapter 18 of Title 51 of the SC Code, and all real property of charitable trusts and foundations held for historic preservation of forts and battlegrounds which extends beyond the building and premises actually occupied by the charitable trusts or foundations which own the real property will be exempt from property taxes if:
 - a. No profit or benefit from any operations on the property inures to any private stockholder or individual; and
 - b. No income producing ventures are located on the property. SC Code 12-37-220(B)(42).

§ 618. Disabled Persons and Certain Veterans. Except as otherwise provided below, application for the following exemptions for disabled persons and certain veterans must be filed with the Department within the period provided in SC Code 12-54-85(F) for claims for refund. SC Code 12-4-720(A)(1).

- A. The house owned in fee or for life, or jointly with a spouse, by one of the following persons:
 1. *a veteran of the United States armed forces* who is permanently and totally disabled as a result of a service related disability and who files with the Department a certificate signed by the county service officer certifying this disability;
 2. *a former law enforcement officer* as further defined in SC Code 23-6-400(D)(1)² who is permanently and totally disabled as a result of a law enforcement service connected disability; or

²A “law enforcement officer” is an appointed officer or employee hired by and regularly employed on the payroll of the State or any of its political subdivisions, who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State and who possesses, with respect to those laws, the power to effect arrest for offenses committed or alleged to have been committed.

3. *a former firefighter, including a volunteer firefighter* as further defined in Chapter 80, Title 40³, who is permanently and totally disabled as a result of a firefighting service disability; or
4. *a “qualified surviving spouse.”* A qualified surviving spouse is (a) a surviving spouse of the disabled service person, law enforcement officer, or firefighter; or (b) the surviving spouse of a member of the United States Armed Forces who was killed in action, or the surviving spouse of a law enforcement officer or firefighter who was killed in the line of duty if at the time of death, the deceased eligible person owned the house in fee, or jointly with the surviving spouse.

To receive the exemption, the qualified surviving spouse must not remarry, must reside in the house, and must acquire ownership of the house in fee or for life.

In addition, a house may be held in trust for a qualifying beneficiary if the house is his domicile.

For purposes of this exemption, “house” means a dwelling and a lot on which it is situated which qualifies as the legal residence of the taxpayer under SC Code 12-43-220(c). A house subsequently acquired by a surviving spouse may also qualify for the exemption; however, the qualifying surviving spouse must notify the Department of the address of the new house.

“Permanently and totally disabled” means “the inability to perform substantial gainful employment by reason of a medically determinable impairment, either physical or mental, that has lasted or is expected to last for a continuous period of twelve months or more or to result in death.”

- B. The dwelling house in which he resides and a lot (not to exceed one acre of land) owned in fee or for life, or jointly with his spouse, by a *paraplegic* or *hemiplegic* person is exempt from property taxes. The person must provide proof of his disability to the Department. The exemption is allowed to the surviving spouse of the person so long as the spouse does not remarry, resides in the dwelling, and obtains the fee or a life estate in the dwelling. The house may be held in trust for a qualifying beneficiary. The house must be the domicile of the qualifying person. This exemption is extended to persons with Parkinson’s disease, multiple sclerosis, or amyotrophic lateral sclerosis if the person has a doctor’s statement stating that their disease has resulted in the same ambulatory difficulties as a person with paraparesis or hemiparesis. The exemption does not extend to the surviving spouse of such a person. SC Code 12-37-220(B)(2).

³A “firefighter” is any person, male or female, paid or unpaid, who engages in rescue, fire suppression, or related activities under the supervision of a fire chief or fire department.

- C. Two private passenger vehicles owned or leased by any *totally and permanently disabled veteran* for which special license tags have been issued are exempt. In lieu of the license tag, a veteran may have a certificate of such disability signed by the county service officer or the Veterans Administration filed with the Department of Public Safety. SC Code 12-37-220(B)(3).
- D. Two personal motor vehicles owned or leased by *persons required to use wheelchairs*, and who qualify for special license tags, are exempt. SC Code 12-37-220(B)(27).
- E. One personal motor vehicle owned or leased by *a legal guardian of a minor who is blind* or is required to use a *wheelchair* is exempt provided the vehicle is used to transport the minor. SC Code 12-37-220(B)(37).
- F. Two private passenger vehicles owned or leased by recipients of the *Medal of Honor* are exempt. SC Code 12-37-220(B)(26).
- G. Two personal motor vehicles (or trucks, not exceeding three quarter ton), owned or leased by and licensed and registered in the name of any member or former member of the armed forces who was a prisoner of war (*POW*) in certain wars or conflicts are exempt. This exemption also extends to the surviving spouse of a qualified former POW until the remarriage of the surviving spouse. SC Code 12-37-220(B)(29).
- H. The dwelling home and a lot totaling one acre or less, owned by a resident of this State who is a recipient of the Medal of Honor or who was a prisoner of war in World War I, World War II, the Korean Conflict, or the Vietnam Conflict, is exempt from property taxes if certain requirements are met. This exemption is allowed to a surviving spouse of a qualifying person under the same terms and conditions governing the exemption of a surviving spouse under SC Code 12-37-220(B)(1). SC Code 12-37-220(B)(43).

§ 619. Homestead Exemptions. There are arguably two homestead exemptions, described below. Application procedures are described below in §642. SC Code 12-37-220(A)(9), 12-37-250, and 12-37-251, and Section 3, Article X, SC Constitution.

§ 619.01. Exemption for the Elderly, Disabled or Blind. The first homestead exemption, is an exemption of \$50,000 of the fair market value of the dwelling place of a person who has been a resident of this State for at least one year and has reached the age of 65, or has been classified as *totally and permanently disabled*, or is *legally blind*. The taxpayer must hold title in fee simple, part in fee, by life estate, or part for life. The exemption is from county, municipal, school, and special assessment real estate property taxes. It exempts the dwelling place when jointly owned by husband and wife, if either spouse meets the criteria for the exemption. An individual is considered the owner of the property if he or she has an interest pursuant to an installment contract for sale with the U.S. Department of Veterans Affairs. SC Code 12-37-220(A)(9), 12-37-250 and 12-43-221. The term *dwelling place* means the permanent home and legal residence of the applicant. If a person would be entitled to a homestead tax exemption owns only the mobile home and not the real property on which it is located, the mobile home will be exempt from personal property taxes to the extent and in accordance with the same procedures as is provided for in SC Code 12-37-250 for real property.

When a dwelling house is located on leased property, the owner lessee qualifies for a homestead exemption for the house in the same manner as though he owned a fee simple or life estate interest in the leased property on which his dwelling house is located. This occurs even if, at the end of the lease period, the lessor becomes the owner of the residence.

The dwelling place of a surviving spouse of one who qualified for the homestead exemption and acquires complete fee simple title, a part fee, a life estate, or part for life to or in the dwelling place within nine months after the death of the spouse, will qualify for the homestead exemption so long as the spouse is at least 50 years of age and remains unmarried.

The homestead exemption is also available for *dwelling held in trust*. When a trustee holds legal title to a dwelling that is the legal residence of a qualifying beneficiary, the dwelling qualifies for the homestead exemption. The trustee must make application to the county auditor for the exemption in person or by mail. No further application is necessary, but the trustee is subject to penalty if he does not notify the county auditor of any change in classification of the property within six months. SC Code 12-37-266.

Incorporated municipalities may provide for homestead exemptions from municipal ad valorem taxes on real property. SC Code 12-37-285.

The personal representative of a deceased taxpayer's estate may apply for the homestead exemption under SC Code 12-37-250. Additionally, a person who applies for this exemption and was qualified for the exemption in the prior tax year, in addition to the current year, may be certified for the exemption not to extend beyond the immediate preceding tax year.

§ 619.02 Exemption for All Residents. The second "homestead exemption" is for everyone with a legal residence in the state (regardless of age or disability). Every legal residence is exempt from tax levied for school operating purposes on up to \$100,000 of value based upon a millage rate of the lesser of the current millage rate or the millage rate for 1995. It does not apply to taxes levied for bonded indebtedness, payments pursuant to lease-purchase agreements for capital construction, or other county or municipal taxes. SC Code 12-37-251.

§ 630. Constitutional Issues.

§ 631. The Power of Local Government to Grant Exemptions. Municipal governments can, by ordinance, exempt from municipal property taxes, for not more than five years, all new manufacturing establishments and all additions to existing manufacturing establishments, including additional machinery and equipment costing \$50,000 or more. Item (g) of Section 3 of Article X of the Constitution.

Item (g) of Section 3 of Article X of the Constitution also authorizes the governing body of a municipality to exempt from municipal property taxes for not more than 5 years:

- A. All new corporate headquarters, corporate office facilities, distribution facilities, and additions to such facilities.
- B. All facilities of new enterprises engaged in research and development activities and additions to such facilities.

Counties can also enter into agreements for economic development projects which make the projects exempt as “economic development property” during the period fee in lieu of property taxes are paid pursuant to Chapter 44 of Title 12. See §712.01, .04 and .05, below.

§ 632. The Power of Local Government to “Lend” its Property Tax Exemption to a Private Industry. Article X, Section 3 of the South Carolina Constitution and SC Code 12-37-220(A)(1) provide that all property of a political subdivision is exempt if the property is used exclusively for public purposes. In *Charleston County Aviation Authority v. Wasson*, 277 S.C. 480, 289 S.E.2d 416 (1982), a challenge was raised to the exemption of property owned by the Aviation Authority (a political subdivision) which was leased to a private business. The Court held:

- A. The fact that property is used by a private business entity does not preclude its use from being public;
- B. The lease of the airport authority’s property to airlines, car rental companies, a parking lot operator, a limousine and taxi service, an air cargo company and to the operator of a restaurant, snack bar, lounge and gift shop providing various services to meet the needs of passengers were incidental to the public use and such property was exempt under Article X, Section 3 of the South Carolina Constitution and SC Code 12-37-220(A)(1). Note that the court did not address the possible taxation of the leasehold interest of the lessees in that case.

In *Quirk v. Campbell*, 302 S.C. 148, 394 S.E.2d 320 (1990), a taxpayer challenged the constitutionality of one of South Carolina’s “Fee in lieu” statutes. SC Code 4-29-67 allows a negotiated “fee in lieu of [property] taxes,” with the possibility of no millage increases or increases in the property’s value for 20 years.

To qualify for the “fee in lieu,” the property was required to be transferred to the county, which then leased it back to the private party making the investment. The lease was a 20 year financing lease that gave the investor the right of repurchasing the property at the end of the lease for \$1. The Court in *Quirk*, citing *Charleston County Aviation Authority v. Wasson*, held that: (a) The “fee in lieu” statute was constitutional because the property qualified for the exemption provided for by Article X, Section 3 of the South Carolina Constitution and SC Code 12-37-220(A)(1) which provides that all property of a political subdivision is exempt if the property is used exclusively for public purposes; (b) The public purpose was “promoting industrial development.” (It is no longer always necessary to transfer title to property to the county to qualify for a “fee in lieu title to property taxes.” See §712 below.)

SC Code 4-12-20 was amended in 1998 to require that if any political subdivision leases property, the lease must contain a provision requiring the lessee to make fee payments equivalent to the property tax that would have been due if the property was not exempt from property tax as a result of ownership by the political subdivision. (Previously, the statute only applied to counties.) The statute excludes fee in lieu property from its application. See §712 below.

§ 633. No Taxation without Representation. In *Weaver v. Recreation District*, 328 S.C. 83, 492 S.E.2d 79 (1997) a taxpayer brought an action challenging the constitutionality of a statute that created a county recreation commission made up of appointed members. The commission was granted authority to determine its annual budget and levy a property tax of up to 5 mills per year to meet the cost of maintaining and operating recreational facilities. The South Carolina Supreme Court held the tax unconstitutional stating that the “General Assembly may not, consistent with Article X, Section 5, delegate the unrestricted power of taxation to an appointive body.” (Section 5 of Article X of the SC Constitution states, in pertinent part: “No tax . . . shall be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled. . . .”)

Because of the disruptive effect the holding could have on numerous special purpose districts and local commissions and boards, the Court further held that its decision would be applied prospectively beginning December 31, 1999.

§ 634. Financing Public Schools. In *Abbeville County School District, et al. v. The State*, 355 S.C. 58, 515 S.E.2d 535 (1999), the plaintiffs, 40 school districts, public school students, and taxpayers instituted this action to challenge South Carolina’s statutory scheme for funding public schools.

The plaintiff’s alleged that the State’s statutory scheme of public school funding:

- A. is underfunded, inadequate, lacks uniformity and imposes unlawful tax burdens on the plaintiffs;
- B. is not serving the purpose for which it was enacted;
- C. has resulted in substantial disparity in the educational opportunities for students throughout the State, to the extent the students do not receive an education sufficient to meet constitutional and statutory mandates; and
- D. is not being funded at the level mandated by state statutes.

The complaint alleged violations of the Fourteenth Amendment to the United States Constitution, the education and equal protection clauses of the SC Constitution and the SC Education Finance Act of 1977 (EFA). The defendants moved to dismiss for failure to state a claim on which relief may be granted. The Circuit Court granted the defendant’s motion. The ruling was appealed to the South Carolina Supreme Court.

The South Carolina Supreme Court affirmed the circuit court in part, reversed in part, and remanded the case. It held that the South Carolina Constitution's education clause requires the General Assembly to provide the opportunity for each child to receive a minimally adequate education. On the other hand, the Court dismissed the plaintiff's equal protection claims and held that the SC Education Finance Act does not create a private cause of action.

The *Abbeville County School District* case was remanded to the Court of Common Pleas for the Third Judicial Circuit and a decision was rendered in December 2005. The plaintiff's argued that their school districts were underfunded in relation to the economic conditions of their districts and socioeconomic status of their students.

Using the test established by the South Carolina Supreme Court in the original Abbeville case, the trial judge examined the facts in each district to determine if the students in the plaintiff districts had the opportunity to acquire a minimally adequate education. The judge concluded that the facilities, teachers, course of instruction and other factors were sufficient to provide a minimally adequate education to most of the students in the plaintiff school districts and that additional funding alone would not insure better performance by the students in the relevant districts. However, the judge found that the failure to fund certain early childhood programs, specifically those directed at the specific needs of children in poverty, did deny the children in those districts the opportunity to acquire a minimally adequate education and that additional funds for early childhood education (pre-kindergarten through third grade) could be effective in minimizing the impact of poverty on the abilities and achievement of the students in later years. *Abbeville School District, et. al v. the State*, case number 93-CP-31-0169 (December 29, 2005) which can be found at www.nsba.org.

§ 640. Practice And Procedure In Exemption Cases.

§ 641. Exemption Cases (Other than the Homestead Exemption).

§ 641.01. Application for Exemption. With the exception of the homestead exemptions, the Department determines whether property or a taxpayer qualifies for an exemption. SC Code 12-4-710. See §642 below. Applications for exemption (other than the homestead exemption) are filed with the Department. Certain exemptions do not require application. See the list of the exemptions above to determine if an application is required. When an application is required, it must be filed within the time period allowed or no exemption will be permitted. Upon receipt of an application and an investigation, the Department may declare that the property qualifies for exemption and will certify the exemption to the auditor's office in the county in which the property is located. SC Code 12-4-730. If the exemption is granted, the owner is not required to file an additional annual application unless there is a change in the status of the property. However, a taxpayer who is required to file a property tax return must claim the property as exempt on the return. SC Code 12-4-720. Applications for certain exemptions, such as the economic development related exemptions discussed in §613, are made by properly filing the property tax return.

§ 641.02. Appeal when Exemption Denied or Revoked. If the Department denies an application for exemption or revokes the tax-exempt status of property because it does not qualify or continue to qualify for exemption, the taxpayer may appeal. SC Code 12-4-755; SC Code 12-60-10 et seq.; SC Rev. Proc. #04-01. To appeal, the taxpayer must file a written protest with the Department within ninety (90) days from the date of the mailing of the proposed denial. This protest must state the basis on which the exemption is claimed. SC Code 12-60-2110.

The Department may meet with the taxpayer or gather additional facts prior to issuing its Department Determination. If the taxpayer disagrees with the Department Determination, he has 30 days to appeal the Department Determination to the Administrative Law Judge Court by requesting a contested case hearing. If a taxpayer appeals to the Administrative Law Judge Court but failed to exhaust his pre-hearing remedies because he failed to file a protest, the Administrative Law Judge will dismiss the action without prejudice. If the taxpayer failed to provide facts, law and other authority to the Department, the Administrative Law Judge will remand the case to the Department, which will have 30 days to consider the taxpayer's new information. The Department will then issue its amended determination and the taxpayer will have 30 days to again request a contested case hearing before the Administrative Law Judge Court. If the Department fails to issue its amended determination within 30 days, the taxpayer may again request a contested case hearing.

The Taxpayer or the local governing body can appeal a decision of the Administrative Law Judge to the Circuit Court on the record made at the Administrative Law Judge level.

If the appeal is not reasonably expected to be resolved by December 31st, the Department will notify the county auditor who will adjust the tax assessment of the property under protest to 80% of the protested assessment, or some higher amount if agreed to in writing by the taxpayer. The tax must then be paid. When the final assessment is made, any underpayment, plus interest, must be collected. Likewise any overpayment, plus interest, must be refunded.

§ 641.03. Refunds. Refunds are not permitted for property tax exemptions requiring an application unless the application was timely filed. SC Code 12-60-1750. See *TNS Mills Inc., vs. SC Department of Revenue* supra at §610. If an application was not required or was filed timely, SC Code 12-60-2150 states that a property taxpayer may seek a refund by mailing or delivering a claim for refund to the Department within the time provided in SC Code 12-54-85(F) which is generally the later of 3 years from the date of a timely filed return or 2 years from the date of payment. Even if the taxpayer does not file a claim, if a timely claim for refund could be filed, there is no question of fact or law, and money has been erroneously or illegally collected, the Department may order a refund.

The Department will determine what refund is due and give the taxpayer written notice of its determination. The taxpayer may appeal this determination by filing a written protest with the Department following the procedures described above. The Department will issue a determination.

If the taxpayer or the county wishes to appeal the Department's determination, the taxpayer or county must file a request with the Department for a contested case hearing before the Administrative Law Judge Court within 30 days of the Department's determination.

If the taxpayer fails to exhaust his prehearing remedies because he failed to file a protest, the Administrative Law Judge Court will dismiss the action with-out prejudice. If the taxpayer fails to exhaust his prehearing remedy because he failed to provide facts, law and other authority to the Department, the Administrative Law Judge Court will remand the case to the Department, which will have 30 days to consider the taxpayer's new information. The Department will then issue its amended determination and the taxpayer will have 30 days to again request a contested case hearing. If the Department fails to issue its amended determination within 30 days, the taxpayer may request a contested case hearing.

The taxpayer or county can appeal a decision of the Administrative Law Judge to the Circuit Court on the record made at the Administrative Law Judge level.

§ 642. Homestead Exemptions. There are two homestead exemptions: one for taxpayers 65 and over, those totally and permanently disabled, or legally blind; another for exemption from a certain amount of taxes for school operations. See §619.01 and §619.02 above.

§ 642.01. Application for Exemption. The application for the homestead exemption for taxpayers 65 and over, those totally and permanently disabled or legally blind must be made to the county auditor and to the governing body of the municipality in which the home is located on forms provided by the county and municipality. Failure to apply constitutes a waiver of the exemption for that year subject to the exception discussed in §619. No application is required for the school operations exemption. SC Code 12-37-250 and 12-37-251.

This exemption will not be granted for the tax year in which application is made unless the person applies for the exemption before July 16th. If the person makes written application for the exemption after July 15th, the exemption will generally not be granted except for the succeeding tax year. However, if a person applies after July 15th, but before the first penalty date on property taxes for that year, and the person qualifies under this section when the application is made, the taxes due for that tax year will be reduced to reflect the exemption. SC Code 12-37-250.

When the homestead exemption is granted, it continues to be effective for successive years in which the ownership of the homestead or the other qualifications for the exemption remains unchanged. Notification of any change affecting eligibility must be given immediately to the county auditor. SC Code 12-37-255.

§ 642.02. Appeal when Exemption Denied or Revoked. If the homestead exemption is denied, the taxpayer may object by written request for a conference with the county auditor. The request may be made at any time before the later of (a) 30 days after the tax notice is mailed, or (b) the last day the tax can be paid without penalty (January 5th). SC Code 12-60-2910; 12-45-180 and 12-60-50.

If the matter is not resolved at the conference, the taxpayer must file a written protest with the auditor within 30 days of the conference. The protest must contain: (1) the name, address, and phone number of the taxpayer; (2) a copy of the tax notice or a description of the property including the receipt number of the tax notice; (3) a statement of facts supporting the taxpayer's position; and (4) a statement outlining the reasons for the appeal, including any law or other authority upon which the taxpayer relies.

The taxpayer may appeal a denial of a homestead exemption within 30 days of the date of the auditor's response by requesting a contested case hearing before the Administrative Law Judge Court. SC Code 12-60-2920.

If a taxpayer fails to exhaust his prehearing remedies because he failed to file a protest or failed to meet with the county auditor, the ALJC will dismiss the action without prejudice. If a taxpayer fails to exhaust his prehearing remedy because he failed to provide facts, law and other authority to the county auditor, the ALJC will remand the case to the auditor who will have 30 days to consider the information. The auditor will then issue his amended determination and the taxpayer will have 30 days to request a contested case hearing. If the auditor fails to issue his amended determination within 30 days, the taxpayer may again request a contested case hearing.

The taxpayer or county can appeal a decision of the Administrative Law Judge to the Circuit Court on the record made at the Administrative Law Judge level. SC Code 12-60-3380.

If the assessment as finally determined is less than the adjusted amount, a corrected assessment must be made and any overpayment plus interest must be refunded.

§ 642.03. Refunds. Refunds are not permitted for property tax exemptions requiring an application unless the application was timely filed. SC Code 12-60-1750. If an application was not required or was filed timely, SC Code 12-60-2940 states that a taxpayer may request a refund of property taxes resulting from the denial of a homestead exemption by filing a claim for refund with the county auditor. The auditor, county assessor, and county treasurer shall determine the amount of the refund, if any, and notify the taxpayer. Within 30 days of the decision, the taxpayer may request a contested case hearing before the Administrative Law Judge Court.

If a taxpayer fails to exhaust his prehearing remedies because he failed to file a claim for refund, the action will be dismissed without prejudice. If the taxpayer fails to exhaust his prehearing remedy because he failed to provide facts, law and other authority to the county auditor, the case will be remanded to the county auditor, assessor and treasurer who will have 30 days to consider the information. These three county officials will then issue their amended determination, and the taxpayer will have 30 days to again request a contested case hearing. If the county officials fail to issue their amended determination within 30 days, the taxpayer may again request a contested case hearing.

The taxpayer or county can appeal a decision of the Administrative Law Judge to the Circuit Court on the record made at the Administrative Law Judge level. SC Code 12-60-3380.

§ 642.04. Refund -- Exception to the necessity of making application. When a taxpayer qualifies for a refund due to the reduction of her assessment ratio from 6% to 4% for a legal residence, the taxpayer may also be certified for a homestead exemption for taxpayers 65 and over, totally and permanently disabled, or legally blind, and given a refund for the immediate preceding tax year in spite of the fact that the taxpayer failed to file an application for the homestead exemption. SC Code 12-37-250 and 12-37-252(B).

PART VIII: § 700. MISCELLANEOUS ITEMS.

§ 710. Current Issues.

§ 711. Homeowners Associations. A homeowners association may apply to have its property valued pursuant to a statutory capitalized earnings formula. This formula calculates fair market value based on the nonmember revenue generated from the property. Generally, this valuation method will produce favorable property tax valuations for a homeowners association since only nonmember revenue is capitalized. However, the formula cannot result in value of less than \$500 per acre. SC Code 12-43-227 and 12-43-230.

§ 712. Fee in Lieu of Property Taxes.

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

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

Property subject to the Fee usually consists of land, improvements to land, and/or machinery and equipment (excluding some mobile property) located at a project. See SC Rev. Ruls. #93-7 and #97-21. The Fee statutes permit a company to negotiate to pay a fee instead of paying property taxes. The 10.5% assessment ratio can be, and often is, negotiated to 6% (4% for very large investments under the Super Fee or Enhanced Investment Fee). In addition, the company and the county can agree to freeze the millage rate applicable to the property at a set millage rate, or adjust the millage rate every five years, for the period the Fee is in effect. During the period of the Fee, the value of personal property is deemed to decrease each year by the depreciation allowable for

property tax purposes subject to a floor on the value. The value of real property remains constant, and therefore, is not subject to inflation. The period of the Fee generally is 20 years for each item of property (30 years for the Super and Enhanced Investment Fee) with an overall limit for the project of 30 years (40 years for the Super and Enhanced Investment Fee, respectively).

Calculations of the Fee must be made incorporating any property tax exemptions for which the property may be eligible, except for the 5 year exemptions from county property taxes allowed for manufacturing property, corporate headquarters, corporate office or distribution facilities property, and research and development facilities provided for by Section 3(g) of Article X of the South Carolina Constitution, and SC Code 12-37-220(A)(7), and (B)(32) and (34), respectively. SC Code 4-12-30(E), 4-29-67(E), and 12-44-50(A)(2).

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

	Normal Calculation	Fee in lieu Calculation
Total Investment in Equipment	\$100,000,000	\$100,000,000
Total Investment Less Depreciation	\$89,000,000	\$89,000,000
Assessment Ratio	<u>x 10.5%</u>	<u>x 6%</u>
Assessed Value	\$9,345,000	\$5,340,000
Millage	<u>x .250</u>	<u>x .250</u>
Tax Due	\$2,336,250	\$1,335,000
Savings		<u>\$1,001,250</u>

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

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

§ 712.02. Little Fee.

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

- A. Project identification—The county must identify the project or proposed project. This may be accomplished by the adoption of an inducement resolution or similar resolution by county council.
- B. Inducement agreement—The company and the county must enter into an inducement agreement. This agreement establishes that a company will receive the Fee as an inducement for locating in the county. The company entering into the Little Fee is known as the “sponsor.”
- C. Millage rate agreement—The sponsor and the county may enter into a millage rate agreement which fixes the millage rate for the entire Fee period or fixes it for the first 5 years and provides that it will be revised every 5 years. If the sponsor and the county do not execute a millage rate agreement, the millage rate is usually fixed in the inducement agreement or the lease agreement.
- D. Transfer of the property to the county—Title to the property must be transferred to the county.
- E. Lease or lease purchase agreement—The sponsor and the county may enter into one or more lease agreements. This agreement leases the property from the county back to the sponsor and usually provides for the sale of the property to the sponsor at the end of the Fee period for a nominal sum. If there is a series of these agreements, the first one is called the initial lease agreement. A definition of “lease agreement” is provided in SC Code 4-12-10(5).
- F. Financing agreement—There may be one or more financing agreements, which may include special source revenue bonds issued pursuant to SC Code 4-29-68. (See the discussion of special source revenue bonds at §712.06.)

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

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

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

- A. The project is anticipated to benefit the general public welfare of the locality by providing services, employment, recreation, or other public benefits not otherwise provided locally.
- B. The project gives rise to no pecuniary liability of the county or any municipality or a charge against its general credit or taxing power. The estimated cost of maintaining the project in good repair and keeping it properly insured must be in the lease payment, unless the terms of an agreement with the sponsor provide that the sponsor will maintain the project and carry all proper insurance.
- C. The purposes to be accomplished by the project are proper governmental and public purposes, and the benefits of the project are greater than the cost. The county may seek the assistance and advice from the Board of Economic Advisors or the Department in making its findings. SC Code 4-12-30(B)(5).

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

Required Investment and Timing of Investment. Generally, the required investment must be made by a sponsor. In many instances, a sponsor affiliate may also qualify for the Fee. A “sponsor” is defined as “one or more entities which sign the fee agreement with the county and also includes a sponsor affiliate unless the context clearly indicates otherwise.” “Sponsor affiliate” is defined as “an entity that joins with or is an affiliate of a sponsor and that participates in the investment in, or financing of, a project.” To qualify for the Little Fee, the minimum investment in the project is \$5 million. However, this investment amount is reduced to \$1 million for a sponsor investing in a county with an average annual unemployment rate of at least twice the state average during the last 24 months based on data available on November 1. (See §712.08 “Fee in Lieu Reduced Investment Counties” for a list of qualifying counties.) Additionally, the \$1 million investment is deemed met if a sponsor is a non-responsible party in a voluntary cleanup on the property pursuant to Article 7, Chapter 56, of Title 44, the Brownfields Voluntary Cleanup Program, where the cleanup costs are at least \$1 million, and the South Carolina Department of Health and Environmental Control has issued a certificate of completion of the cleanup. SC Code 4-12-30(B)(3).

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

A sponsor must complete its required investment in the project within 5 years of the end of the property tax year in which the sponsor and the county execute the initial lease agreement. If the sponsor does not expect to complete the project within this 5 year period, it may apply to the county before the end of the 5 year period for an extension of up to 5 years to complete the project. Even if an extension to complete the project is granted, the

required investment must be made before the end of the initial 5 year period. If the company does not make the required investment within the required time period, all property covered by the Fee will be retroactively subject to a Fee equal to the general property tax. Any applicable statute of limitations is suspended during the 5 year period a sponsor has to make the minimum investment. The company must provide to the county the total amount invested in the project for each year during the 5 year investment period. SC Code 4-12-30(C).

A sponsor affiliate that does not originally join in the Fee may later qualify for the Fee if (1) the county approves the addition of the sponsor affiliate for the Fee, and (2) the sponsor affiliate invests the minimum investment and agrees to be bound by those portions of the agreement that affect the county. SC Code 4-12-30(B)(4). An agreement may provide for a process of approval of sponsor affiliates. However, all qualifying investments must be made at the same project.

If the property is otherwise eligible for the Little Fee, investment expenditures incurred during the investment period by an entity whose investments are not being counted towards the minimum investment can qualify for the Fee if the expenditures are part of the original cost of the property and if the property is transferred to one or more entities which are sponsors or sponsor affiliates whose investments are being considered for minimum investment purposes as long as the property would have qualified for the Fee if it had been acquired by the sponsor or sponsor affiliate receiving the property. The income tax basis of the property immediately after the transfer must equal the income tax basis immediately before the transfer, except that if after the transfer, the income tax basis of the property unintentionally exceeds the income tax basis before the transfer, the excess will be subject to a Fee equal to the property tax which would be due without the Fee. SC Code 4-12-30(J).

Period in Which Property May Be Subject to the Fee. Generally, each piece of Fee property may be subject to the Fee for 20 years. For projects that are completed and placed in service during more than 1 year, each year's investment may be subject to the Fee for 20 years, and the maximum time that all property at the project can be subject to the Fee is 30 years for a project which has been granted an extension. SC Code 4-12-30(C)(3).

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

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

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

Disposal of Property and Replacement Property. The inducement agreement may provide that when property is scrapped, sold, or removed from the project, the Fee will be reduced by the amount of the Fee applicable to the property. If there is no provision in the inducement agreement dealing with the disposal of property, the Fee remains fixed. If property is removed from the project, but remains within South Carolina, the property becomes subject to property tax.

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

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

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

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

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

Inducement Agreement—Timing. Once the project has been identified, the county and sponsor should enter into an inducement agreement. The sponsor and the county have 2 years after the date on which the county adopts an inducement or similar resolution identifying the project to enter into an inducement agreement. If an agreement is not reached within this 2 year period, any of the property purchased before the inducement agreement is entered into will not be subject to the Fee. SC Code 4-12-30(I).

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

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

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

Valuation for Fee Purposes. Generally, for real property, value is the original income tax basis for South Carolina income tax purposes without regard to depreciation, however, in certain instances, the fair market value is determined by appraisal. For personal property, the original tax basis for South Carolina income tax purposes less depreciation allowable for property tax purposes is used for valuation without regard to any extraordinary obsolescence of that property. SC Code 4-12-30(D)(2)(a). Utility property that is subject to a fee is valued similarly to the method that the Public Service Commission uses to value utility property. See, SC Rev. Proc. #04-5.

Financing Agreements. A sponsor, sponsor affiliate, or a county may enter into any lending, leasing, or financing arrangement with any financing entity concerning all or part of the

project (including any lease) regardless of the identity of the income tax owner of the property which is subject to the Fee. SC Code 4-12-30(M).

Amendment of Agreements. The inducement agreement, the millage rate agreement, or both may be amended or terminated and replaced with regard to all matters, including but not limited to, the addition or removal of sponsors or sponsor affiliates. However, the millage rate, assessment ratio, and length of the agreement cannot be changed once a millage rate agreement, an inducement agreement that sets the millage rate, or a lease agreement has been executed. SC Code 4-12-30(H).

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

Record Keeping Requirements. Any sponsor that engages in a Fee transaction must file all returns, contracts, or other information the Department may require. Also, a copy of the inducement agreement and the lease agreement must be filed with the Department and appropriate county auditors and assessors within 30 days of execution. Fee payments and returns are due at the same time as property tax payments and returns would be due if the property was subject to property tax. The Department may, for good cause, allow up to a 60 day extension for filing Fee returns. The written request must be filed on or before the due date of the return. Penalties and interest may apply if a sponsor is late in making a Fee payment or in filing a required return. To the extent that any Fee form or return is filed with the Department, a copy must also be filed with the county auditor, assessor, and treasurer for the county where the project is located. The county and the sponsor may agree to include a recapitulation of the terms of the transaction as part of the agreement. SC Code 4-12-30(O) and 4-12-45.

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

Expiration of Fee Period and Maintaining the Minimum Investment. After the Fee period has expired, the real property that was originally subject to the Fee will be subject to property tax based on the fair market value of the property as of the latest reassessment date for similar taxable property. Personal property will be subject to property taxes based on the then depreciated value applicable to the property under the Fee, and thereafter continuing with the appropriate property tax depreciation schedule. If the sponsor's

investment in the property ever falls below the minimum investment (based on income tax basis without regard to depreciation) the Fee is no longer available and the sponsor must pay a Fee equivalent to property tax on the property. SC Code 4-12-30(D)(3) and (B)(4)(f).

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

§ 712.03. Big Fee.

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

- A. Project identification—The County must identify the project or proposed project. This may be accomplished by the adoption of an inducement resolution or similar resolution by county council.
- B. Inducement agreement—The company and the county must enter into an inducement agreement. In the Big Fee, the company or companies that enters into the inducement agreement is the “sponsor.” This agreement establishes that a company will receive the Fee as an inducement for locating in the county.
- C. Millage rate agreement—The sponsor and the county may enter into a millage rate agreement which fixes the millage rate for the entire Fee period or fixes it for the first 5 years and provides that it will be revised every 5 years. If the sponsor and the county do not execute a millage rate agreement, the millage rate is usually provided for in the inducement agreement or the initial lease agreement.
- D. Transfer of the property to the county—Title to the property must be transferred to the county.
- E. Lease or lease purchase agreement—The sponsor and the county may enter into one or more lease agreements. This agreement leases the property from the county back to the sponsor and usually provides for the sale of the property to the sponsor at the end of the Fee period for a nominal sum. If there is a series of these agreements, the first one is called the initial lease agreement. A definition of a “lease agreement” is found in SC Code 4-29-67(A)(1)(b).
- F. Financing agreement—There may be one or more financing agreements executed in connection with the Big Fee which may include the issuance of industrial revenue bonds (which are often purchased by the sponsor leasing the project) and the issuance of special source revenue bonds pursuant to SC Code 4-29-68. (See the discussion of special source revenue bonds in §712.06.)

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

Definition and Location of Project. A project is any land, building, and other improvements on the land including water, sewage, and pollution control improvements and all other machinery, apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, and useful for a sponsor. SC Code 4-29-67(A)(1)(c). A project does not include facilities for most enterprises that distribute electricity, gas, or telephone services to the public, but may include enterprises engaged in water and wastewater treatment.

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

Required Investment and Timing of Investment. Generally, the required investment must be made by a “sponsor.” A “sponsor affiliate” may also qualify for the Fee. A “sponsor” is defined as “one or more entities that sign the inducement agreement with the county and also includes a sponsor affiliate unless the context clearly indicates otherwise.” SC Code 4-29-10(9). A “sponsor affiliate” means “an entity that joins with, or is an affiliate of, a sponsor and that participates in the investment, or financing of, a project.” SC Code 4-29-10(10).

To qualify for the Big Fee, the minimum level of investment at the project is \$45 million. SC Code 4-29-67(B)(3). However, this investment amount is reduced to \$1 million for a sponsor investing in a county with an average unemployment rate of at least twice the state average during the last 24 months based on data available on November 1st. (See §712.08 “Fee in Lieu Reduced Investment Counties for a list of qualifying counties.) Additionally, the \$1 million investment is deemed met if a sponsor is a non-responsible party in a voluntary cleanup on the property pursuant to Article 7, Chapter 56, of Title 44, the Brownfields Voluntary Cleanup Program, where the cleanup costs are at least \$1 million, and the South Carolina Department of Health and Environmental Control has issued a certificate of completion of the cleanup. SC Code 4-29-67(B)(3). Each sponsor and sponsor affiliate must invest the minimum investment. SC Code 4-12-30(B)(4)(a). However, in the case of a manufacturing, research and development, corporate office, or distribution facility, as defined in SC Code 12-6-3360(M), each sponsor or sponsor affiliate does not have to invest the \$5 million if the total investment at the project exceeds \$10 million. SC Code 4-12-30(B)(4)(b).

From the end of the property tax year in which the initial lease agreement is executed, sponsor has 5 years to complete its investment and the project. If the sponsor does not expect to complete the project within this 5 year period, it may apply to the county before the end of the 5 year period for an extension of up to 5 years to complete the project. Any applicable statute of limitations is suspended during the 5 year period a sponsor has to make the minimum investment. The county’s agreement to grant an extension must be in writing and a copy must be delivered to the Department within 30 days of the date the extension is granted. If the minimum investment is not made within the required 5 years, all property covered by the Fee will be retroactively subject to a Fee equal to the property tax. SC Code 4-29-67(C).

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

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

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

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

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

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

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

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

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

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

If the sponsor disposes of property and the sponsor is using the net present value method described on pg. 63 for determining its Fee, the Fee on the property which is disposed of must be recomputed using the standard Fee method contained in SC Code 4-29-67(D)(2)(a) and to the extent that the amount that would have been paid by the sponsor with respect to the disposed property exceeds the amount it paid under the net present value method, the sponsor must pay the county the difference with the next Fee payment. If the sponsor used the 5 year adjustable millage provision as part of its Fee, that millage rate must be used in determining the amount that the sponsor would have paid under the standard Fee method. SC Code 4-29-67(F)(1).

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

Timing Investment Expenditures and Purchases. Investment expenditures incurred by a sponsor qualify as expenditures subject to the Fee if the inducement agreement is executed within two years of the date the county adopts an inducement resolution; otherwise, only

expenditures made after the inducement agreement is executed qualify. Unless the sponsor's agreement covers replacement property, all expenditures must be incurred either: (a) prior to the end of the applicable investment period; or, (b) if an extension is granted, before the expiration of the additional time allowed to complete the project (usually 5 additional years after the investment period has ended). SC Code 4-29-67(I). Note, the minimum investment must be completed within 5 years.

Also, if the property is otherwise eligible for the Big Fee, investment expenditures incurred during the investment period by an entity whose investments are not being counted towards the minimum investment can qualify for the Fee if the expenditures are part of the original cost of the property and if the property is transferred to one or more sponsors or sponsor affiliates whose investments are being counted towards the minimum investment, as long as the property would have qualified for the Fee if it had been acquired by the transferee entity (a sponsor or sponsor affiliate) receiving the property. The income tax basis of the property immediately after the transfer must equal the income tax basis immediately before the transfer, except that if after the transfer, the income tax basis of the property unintentionally exceeds the income tax basis before the transfer, the excess will be subject to a Fee equal to the property tax which would be due without the Fee. To have property that is transferred in this manner qualify for the Fee, the county must agree to its inclusion. SC Code 4-29-67(J).

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

Millage Rate Agreement. The millage rate agreement may either fix the millage rate for the entire term of the Fee or increase or decrease the millage rate every 5 years in step with the average actual millage rate applicable in the district where the project is located based on the preceding 5 year period. The initial millage rate used must be no lower than the cumulative property tax millage legally levied by, or on behalf of, all taxing entities within which the subject property is to be located that is applicable either on: (a) June 30th of the year preceding the year in which the millage rate agreement is executed or if a millage rate is not executed, when the lease agreement is executed; or, (b) June 30th of the year in which the millage rate agreement is executed, or if a millage rate agreement is not executed when the lease agreement is executed. The millage rate agreement may be executed at any time up to the date the initial lease agreement is executed. SC Code 4-29-67(G) and (D)(2).

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

Valuation for Fee Purposes. Generally, for real property, value is the original income tax basis for South Carolina income tax purposes without regard to depreciation, however, in certain instances, the value is determined by appraisal. For personal property, the original tax basis for South Carolina income tax purposes less depreciation allowable for property tax purposes is used for valuation without regard to any extraordinary obsolescence of that property. SC Code 4-29-67(D)(2). Utility property that is subject to a fee is valued similarly to the method that the Public Service Commission uses to value utility property. See, SC Rev. Proc. #04-5.

The Big Fee contains a special rule for valuing Fee property of a pharmaceutical company that invests more than \$400 million in one South Carolina county. SC Code 4-29-67(W).

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

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

Amendment of Agreements. The inducement agreement, the millage rate agreement, or both may be amended or terminated and replaced with regard to all matters, including but not limited to, the addition or removal of sponsors or sponsor affiliates. However, the millage rate, assessment ratio, discount rate, and length of the agreement cannot be changed once a millage rate agreement, an inducement agreement that sets the millage rate, or a lease agreement has been executed. SC Code 4-29-67(H).

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

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

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

If a sponsor's investment at the project ever falls below \$45 million (based on income tax basis without regard to depreciation) or such greater amount as specified in the inducement agreement or lease agreement, the sponsor or sponsor affiliate will no longer qualify for the Fee. SC Code 4-29-67(B)(4)(b)(iii).

The sponsor and the county may agree in the agreement that if the sponsor fails to make the required \$45 million investment required for the Big Fee, the sponsor may elect to use the provisions of the Little Fee, including the reduced investment requirement. SC Code 4-29-67(Q).

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

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

Special Rules for Qualified Recycling Facilities. "Qualified recycling facilities," as defined in SC Code 12-6-3460(A)(3) (previously SC Code 12-7-1275(A)), may qualify for a Fee equivalent to a 3% assessment ratio. The Fee is available for each item of property for 30 years (for projects placed in service in more than one year, the Fee is available for a

maximum of 40 years). If the qualified recycling facility elects to use the net present value calculation, it must use the discount rate equivalent to the yield in effect for new or existing Treasury bonds of similar maturity as published on any day selected by the qualified recycling facility during the year in which the assets are placed in service or in which the inducement agreement is executed. SC Code 4-29-67(V).

§ 712.04. Simplified Fee.

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

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

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

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

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

Additionally, prior to agreeing to the Simplified Fee, the county must evaluate the project based on additional criteria that include, but are not limited to:

A. The anticipated dollar amount and nature of the investment to be made. SC Code 12-44-40(H).

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

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

To qualify for the Simplified Fee, each sponsor must invest \$5 million. This investment, however, is reduced to \$1 million for a sponsor investing in a county with an average annual unemployment rate of at least twice the state average during the last 24 months based on the data available on November 1st. (See §712.08 “Fee in Lieu Reduced Investment Counties” for a list of qualifying counties.) Additionally, the \$1 million investment is deemed met if a sponsor is a non-responsible party in a voluntary cleanup on the property pursuant to Article 7, Chapter 56, of Title 44, the Brownfields Voluntary Cleanup Program, where the cleanup costs are at least \$1 million, and the South Carolina Department of Health and Environmental Control has issued a certificate of completion of the cleanup. SC Code 12-44-30(14) and (18).

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

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

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

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

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

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

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

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

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

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

Disposal of Property and Replacement Property. The Fee must be reduced by the amount of the Fee applicable to property scrapped, sold, or removed from the project. Property which has been removed from the project but which remains in South Carolina is subject to property tax. SC Code 12-44-50.

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

- A. The replacement property does not have to serve the same function as the property it is replacing.
- B. The replacement property qualifies for the Fee only up to the original income tax basis of the Fee property which is being disposed of in the same property tax year. To the extent that the income tax basis of the replacement property exceeds the original income tax basis of the property which it is replacing, the excess is subject to payments as if the Fee were not allowed.
- C. More than one piece of replacement property can replace a single piece of original Fee property.
- D. Replacement property is deemed to replace the oldest property subject to the Fee, whether real or personal, which is disposed of in the same tax year that the replacement property is placed in service.
- E. Replacement property is entitled to the Fee payment for the period of time remaining on the Fee period for the property which it is replacing.

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

If the sponsor disposes of property and the sponsor is using the net present value method as described on pg. 69 for determining its Fee, the Fee on the property which is disposed of must be recomputed using the standard Fee method contained in SC Code 12-44-50(A)(1) and to the extent that the amount that would have been paid by the sponsor with respect to the disposed property exceeds the amount it paid under the net present value method, the sponsor must pay the county the difference with its next Fee payment. SC Code 12-44-50 and 12-44-60.

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

Timing Investment Expenditures and Purchases. If the county adopts an inducement resolution within 2 years of the date the county takes action reflecting or identifying the project, then all expenses for property for the Fee may be subject to the Fee. If the

inducement resolution is adopted after the 2 year period, then only those expenses incurred after the date of adoption of the inducement resolution qualify for the Fee. SC Code 12-44-40.

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

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

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

The Fee agreement may either fix the millage rate for the entire term of the Fee or increase or decrease the millage rate every 5 years in step with the average actual millage rate applicable in the district where the project is located based on the previous five year period. The initial millage rate used must be no lower than the cumulative property tax millage legally levied by, or behalf of, all taxing entities within which the subject property is to be located that is applicable either on: (a) June 30th of the year preceding the year in which the Fee agreement is executed; or, (b) June 30th of the year in which the Fee agreement is executed.

Valuation for Fee Purposes. Generally, for real property, value is the original income tax basis for South Carolina income tax purposes without regard to depreciation, however, in certain instances, the value must be determined by appraisal. For personal property, the original tax basis for South Carolina income tax purposes less depreciation allowable for property tax purposes is used for valuation without regard to any extraordinary obsolescence of that property. SC Code 12-44-50(A)(1)(c). Utility property that is subject to a fee is valued similarly to the method used by the Public Service Commission uses to value utility property. See, SC Rev. Proc. #04-5.

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

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

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

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

Record Keeping Requirements. Any sponsor that engages in a Fee transaction must file all returns, contracts, or other information the Department may require. Also, a copy of the Fee agreement must be filed with the Department and all appropriate county auditors and assessors within 30 days of execution. Fee payments and returns are due at the same time as property tax payments and returns would be due if the property was subject to property tax. The Department may, for good cause, allow up to a 60 day extension for filing Fee returns. The written request must be filed on or before the due date of the return. To the extent that any Fee form or return is filed with the Department, a copy must be filed with the auditor, assessor, and treasurer for the county where the project is located. The parties may agree to include a recapitulation of the transaction as part of the agreement. Penalties and interest may apply if a sponsor is late in making a Fee payment or in filing a required return. The provisions of Chapters 49, 51, and 53 of Title 12 are applicable to the Fee agreement and for purposes of those chapters the Fee is considered a property tax. SC Code 12-44-55 and 12-44-90.

Termination of the Fee and Fee Agreement. The county and the sponsor may agree to terminate the Fee agreement at any time. If a sponsor fails to make the minimum investment or any other investment or job requirements set forth in the Fee agreement, within the applicable time period, the Fee agreement will terminate. Once terminated, all property that was subject to the Fee will be retroactively subject to property tax, subject to the provision described in the "Required Investment and Timing of Investment" section above which may allow a sponsor that has committed to an investment exceeding the minimum investment to retain the benefits of the Fee, even if it does not meet its original agreed investment. SC Code 12-44-140.

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

Infrastructure Fee Credit. A county can agree to allow the sponsor an “Infrastructure Improvement Credit” against the Fee in an amount not to exceed the lesser of the infrastructure improvement costs of the project or the amount of Fee that the county would otherwise receive. If the project is located in a multi-county industrial park, the credit cannot exceed the lesser of the improvement costs of the project or the county’s share of the Fee. A municipality or special purpose district may also consent to allow a credit against their portion of the Fee. A direct payment of cash may not be made to the sponsor for the credit. SC Code 12-44-30(12) and 12-44-70.

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

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

§ 712.05. Super and Enhanced Investment Fees.

Both the Little and Big Fee contain a provision that allows certain entities to apply for a Super Fee. The Simplified Fee contains an equivalent provision, but calls it an Enhanced Investment Fee. The Super or Enhanced Investment Fee may be equal to what the property tax would have been if the property was assessed at 4%. In addition to a possible assessment ratio of 4%, if a company qualifies for the Super Fee, the company has 8 years from the end of the property tax year in which the lease agreement is executed to make the investment required by the statute and may obtain 10 years to complete the project.

If the company is under the Enhanced Investment Fee, the company has from the date it purchases economic development property for the project until 8 years from the last day of the property tax year in which the first piece of Fee property is placed in service to make the required level of investment and may obtain up to 10 years to complete the project. Under the Enhanced Investment Fee, the first piece of property must be placed in service no later than 3 years from the end of the property tax year in which the company and the county enter into a Simplified Fee agreement.

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

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

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

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

- A. A single sponsor which invests at least \$200 million, which when added to the previous investments, results in a total investment of at least \$400 million, and which is creating at least 200 new full-time jobs at the project. SC Code 4-12-30(D)(4)(a)(i), 4-29-67(D)(4)(a)(i) and 12-44-30(7)(a).
- B. A single sponsor which invests at least \$400 million and creates at least 200 new full-time jobs at the site qualifying for the Fee. SC Code 4-12-30(D)(4)(a)(ii), 4-29-67(D)(4)(a)(ii) and 12-44-30(7)(b).
- C. A business, including a corporation, its subsidiaries, and its limited liability company members, that build a gas-fired combined-cycle power facility, and invests at least \$400 million at the project and creates at least 25 full-time jobs as defined in SC Code 12-6-3360(M) at the facility, if they invest an additional \$500 million in this State. SC Code 4-12-30(D)(4)(a)(v), 4-29-67(D)(4)(a)(iv) and 12-44-30(7)(d).
- D. A single sponsor which is investing at least \$600 million in South Carolina. SC Code 4-12-30(D)(4)(b), 4-29-67(D)(4)(a)(iii), and 12-44-30(7).
- E. A project which satisfies the requirements of SC Code 11-41-30(2)(a) and for which the Secretary of Commerce has delivered a certification pursuant to SC Code 11-41-70(2)(a). SC Code 4-12-30(D)(4)(a)(v), 4-29-67(D)(4)(a)(v), and 12-44-30(7)(c).

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

§ 712.06. Special Source Revenue Bonds.

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

To issue special source revenue bonds, the governing body of the issuer must adopt an ordinance calling for the issuance of the special source revenue bonds, hold a public hearing, and then pass a resolution authorizing the issuance of the bonds. The bonds must be issued solely for the purpose of providing infrastructure that benefits the issuer's economic development. Bonds may be issued for improved and unimproved real property on which the project will be located.

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

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

§ 712.07 Reserved.

§ 712.08 Fee in Lieu Reduced Investment Counties

For 2006, there are no counties that qualified for the \$1 million minimum investment.

§ 712.09. Incentive for Rehabilitating an Abandoned Textile Site

Chapter 32, Title 6, The South Carolina Textile Communities Revitalization Act, was enacted to encourage the renovation, improvement, and redevelopment of abandoned textile mills in South Carolina. It provides either a property tax credit or an income tax credit to a taxpayer who improves, renovates, or redevelops an abandoned textile mill site in this State.

The taxpayer may elect to claim either the property tax credit or the income tax credit. The taxpayer does this by notifying the South Carolina Department of Commerce of its election prior to the date the eligible site is placed in service. If the taxpayer does not make the election in a timely manner, the taxpayer is deemed to have chosen the income tax credit.

If the taxpayer chooses the property tax credit, the municipality, or county (if the site is in an incorporated area), must determine the eligibility of the site and the proposed project by passing a resolution. The majority of the local governing body must approve the project. Further, there must be a public hearing and an ordinance to actually grant the credit. The county must make certain findings regarding the project and 45 days before the public hearing, the governing body of the county or municipality in which the project is located must give notice to all taxing entities in whose jurisdiction the site is located of its intention to grant the credit and the amount of credit to be granted. If a local taxing entity does not file an objection on or before the date of the public hearing, it is deemed to have consented to the granting of the credit and the revenues that it would otherwise receive will be subject to offset by the credit, provided that the credit granted is the same amount as that set forth in the notice of public hearing.

If granted, the credit is equal to 25% of the rehabilitation expenses at the eligible site times the local taxing entity ratio for each local taxing entity that has consented to the credit. The local governing body, by ordinance, must decide how much the taxpayer's property tax may be offset by the credit; however, the credit cannot offset more than 75% of the real property taxes due for the site in any single tax year. The credit is vested in the taxpayer in the year in which the eligible site is placed in service and may be carried forward for up to 8 years following that date.

If the taxpayer chooses the income tax credit, the credit is equal to 25% of the taxpayer's rehabilitation expenses and is taken ratably over a five year period. If the credit is not used during that five year period, the credit may be carried forward for an additional five years.

Under the Act, an "eligible site" is defined as "a site that is designed for use or has in fact been used as a textile manufacturing facility or uses ancillary to it and is located in South Carolina." "Rehabilitation expenses" are "the expenses incurred in the rehabilitation of the eligible site, excluding the cost of acquiring the eligible site or the cost of personal property maintained at the eligible site." "Local taxing entities" means "a county, municipality, school district, special purposes district, and any other entity or district with the power to levy ad valorem property taxes against the eligible site." The "local taxing entity ratio" means "that percentage computed by dividing the millage rate of each local taxing entity by the total millage rate for the eligible site."

§712.10. Ad Valorem Taxation of Leasehold Interests in Certain Property. One of the current issues being discussed among South Carolina practitioners is the taxation of certain leasehold interests in real property. The specific issue is whether the lease of real property owned by a tax exempt entity to a taxable entity, results in the lessee's leasehold interest in the property being taxable and the leasehold being valued as though the lessee owned the underlying real property.

Two South Carolina Code Sections are applicable to this issue. The first code section, SC Code 4-12-20, reads as follows:

Every agreement between a county, municipality, school district, water and sewer authority, or other political subdivision and another party in the form of a lease must contain a provision requiring the other party to make payments to the county, municipality, school district, water and sewer authority, and other political subdivision in which the project is located in lieu of taxes, in the amounts that would result from taxes levied on the project by a county, municipality, school district, water and sewer authority, and other political subdivisions, if the project were owned by the other party, but with appropriate reductions similar to the tax exemptions, if any which would be afforded to the other party if it were owner of the project.

The other code section is SC Code 12-37-950, which reads as follows:

When any leasehold estate is conveyed for a definite term by any grantor whose property is exempt from taxation to a grantee whose property is not exempt, the leasehold estate shall be valued for property tax purposes as real estate.

Under SC Code 4-12-20, if a county, municipality, school district, water and sewer authority, or other political subdivision leases property to a third party, then the county, municipality, school district, water and sewer authority, or political subdivision must charge that third party a fee equal to the property taxes that would be due on the property as though the third party owned the property. However, what about property owned by the State or other tax exempt entities that are leased to taxable third parties? Practitioners in the area of ad valorem taxes are split on whether SC Code 12-37-950 should be construed as a tax imposition statute as well as a tax valuation statute.

Some practitioners believe that SC Code 12-37-950 is just a valuation statute that is obsolete because it values intangible personal property and, in their opinion, leasehold interests are intangible personal property. Since intangible personal property is no longer subject to property taxes in South Carolina, they argue SC Code 12-37-950 no longer is relevant. They also argue that the general statutory scheme in South Carolina does not tax lessees of property, but owners of property. They further argue that if SC Code 12-37-950 were a tax imposition statute, it would have been addressed in such cases as *Quirk v. Campbell*, 394 S.E. 2d 320 (S.C. 1990) and *Charleston Aviation Authority v. Wasson*, 289 S.E. 2d 416 (S.C. 1985) both of which involved a tax exempt entity leasing property to an entity that did not qualify for a property tax exemption. However, as noted in §632 above, the court did not address the possible taxation of the lessees in those cases as the lessees were not before the court.

On the other side of the issue, a well known South Carolina tax commentator, William J. Quirk, a professor at the South Carolina School of Law, as well as some of the department staff, have taken the position that SC Code 12-37-950 does in fact impose a tax on a taxable entity's leasehold interest when the property being leased is owned by a tax exempt entity.

They argue that the background of SC Code 12-37-950 makes it clear that it was intended to impose a tax on the lessee as well as provide for the valuation at the value of the fee simple interest. The title of the Act enacting SC Code 12-37-950 states that it is an "Act Relating to

the Taxation and Valuation For Property Tax Purposes of Certain Leasehold Estates Conveyed by Grantors Whose Property is Exempt from Taxation.” The title appears to impose a property tax liability. The appellate courts in South Carolina have held that “it is proper to consider the title or caption of an act in aid of construction to show the intent of the legislature.” *Joytime Distrib. & Amusement v. State*, 338 S.C. 634, 649, 528 S.E. 2d 647,655 (1999) (citing *Lindsay v. Southern Farm Bureau Cas. Ins. Co.*, 258 S.C. 272, 188 S.E. 2d 374 (1972)); *Father v. South Carolina Department of Social Services*, 345 S.C. 57, 67, 545 S.E. 2d 523, 528 (Ct. App. 2001).

SC Code 12-37-950 is similar to statutes enacted in other states that were designed to impose a tax on the leasehold interest of property of a tax exempt entity leased to a taxable party. These statutes were enacted in response to federal legislation that permitted the states to tax the use of federal property by a private party, even if the property remained titled to the federal government. Several states impose a tax on the leasehold interest of the taxable entity. Since SC Code 12-37-950 reads similarly to the statutes adopted by other states, they argue that it is reasonable to conclude that SC Code 12-37-950 was meant to be a tax imposition statute as well. It has been suggested that when public property is put to private use, the property, or the use of such property, should be subject to tax just like other taxable property and that is the intent of SC Code 12-37-950. The fact that the state tax is measured by the value of the underlying property used does not make the imposition of the tax on the leasehold interest in reality a tax on the tax exempt entity.

At present, we are not aware of any active property tax appeals involving this type of issue. Therefore, the controversy remains an unresolved issue.

§ 41-712.11. Property Tax Reform. As this book goes to press, the South Carolina legislature is considering revisions to the current ad valorem property tax scheme in South Carolina. It is unclear what types of reform, if any, will be adopted or the types of property that will be affected by the reform. However, several of the reforms being considered will require amendments to the South Carolina Constitution and may dramatically change the way that property taxes are imposed in South Carolina.

Some of the proposals that are being considered include:

- a. Locking in the value of all types of property as of a set date with no reassessment of the property until the property is sold or another triggering event occurs;
- b. Allowing the value of property to increase by only 15% between each reassessment unless the property is sold or another triggering event occurs;
- c. Allowing a county the option to elect out of any type of lock in of the value of property in the county and instead elect whether to reassess the property every five years or increase the value of property each year by the personal income growth for the prior year within the county or by some other factor;

- d. Eliminating the millage attributable to all operating millage on owner-occupied residential property and replacing it with a 2% sales tax;
- e. Distributing the additional 2% sales tax funds among different counties and school districts in the State based on different proposed formulas; and
- f. A possible income tax credit for renters.

It is too early to determine which, if any, of these proposals will be adopted by the South Carolina Legislature. However, to learn more about the new proposals and the status of all bills relating to property tax reform, a taxpayer may visit the South Carolina Legislature's web site at www.scstatehouse.net.

§ 720. Jurisdiction of State & Local Agencies.

§ 721. Reserved.

§ 722. Jurisdiction To Assess Property Taxes. Except as provided in the next paragraph, county assessors assess (determine the value and assessment ratio of) real property and county auditors assess personal property.

The South Carolina Department of Revenue has the sole responsibility for the appraisal, assessment, and equalization of the taxable values of corporate headquarters, corporate office facilities, and distribution facilities and of all of the property owned by, or leased to, the following businesses and used in the conduct of their business:

- A. Manufacturing;
- B. Railway;
- C. Private carline;
- D. Airline;
- E. Water, heat, light and power;
- F. Telephone;
- G. Cable television;
- H. Sewer;
- I. Pipeline;
- J. Mining.

In addition, the Department has the sole responsibility for the appraisal, assessment, and equalization of the taxable values of the personal property of merchants and motor vehicles of motor carriers. SC Code 12-4-540.

§ 723. How To Contact The South Carolina Department of Revenue.

Address: SC Department of Revenue
P. O. Box 125
Columbia, SC 29214
Fax: (803) 898-5484

Telephone Numbers for questions:

- A. Utilities
 - 1. Taylor Ingram (803) 898-5701
- B. Business personal property
 - 1. Gary Grooms (803) 898-5758
- C. Property Tax Exemption
 - 1. Stokes, Lisa (803) 898-5491
 - 2. Shealy, Adriane (803) 898-5480
- D. Manufacturing
 - 1. Coleman, Ralph (803) 898-5472
- E. Motor vehicles
 - 1. Stokes, Lisa (803) 898-5491
- F. Fee in Lieu of Tax
 - 1. Ralph Coleman (803) 898-5472
- G. Anything else:
 - 1. Houck, Sandy (803) 898-5478

§ 724. The County Property Tax Officials.

<u>COUNTY</u>	<u>ASSESSOR</u>	<u>AUDITOR</u>
Abbeville	Mark Sumner P. O. Box 1050 Abbeville, SC 29620 864-459-4921	B J Johnson P.O. Box 184 Abbeville, SC 29620 864-459-2719
Aiken	Mike Reed 828 Richland Ave. Aiken, SC 29802 803-642-1583	Cyrus Spradley 828 Richland Ave. Aiken, SC 29802 803-642-1508
Allendale	Harvey Rouse P. O .Box 686 Allendale, SC 29810 803-584-2572	Henri Mae Grant P. O. Box 583 Allendale, SC 29810 803-584-2011
Anderson	Mike Freeman P O Box 8002 Anderson, SC 29622 864-260-4028	Jacky Hunter 100 S. Main St. Anderson, SC 29622 864-260-4027

Bamberg	Doretta Elliott P. O. Box 511 Bamberg, SC 29003 803-245-3010	Margaret Meyer P. O. Box 179 Bamberg, SC 29003 803-245-2021
Barnwell	Mikell Anderson Room 209, County Office Building Barnwell, SC 29812 803-541-1011	James Fickling P. O. Box 711 Barnwell, SC 29812 803-541-1041
Beaufort	Ed Hughes P. O. Box 458 Beaufort, SC 29902 843-470-2513	Sharon Burriss P. O. Box 458 Beaufort, SC 29902 843-470-2555
Berkeley	Ronnie Williams P. O. Box 6122 Moncks Corner, SC 29461 843-719-4061	Janet Jurosko P. O. Box 6122 Moncks Corner, SC 29461 843-723-3800
Calhoun	Steve Hamilton 115 Liberty Street Suite107 St. Matthews, SC 29135 803-874-3613	Pamela Taber Courthouse Annex Suite 104 St. Matthews, SC 29135 803-874-3623
Charleston	Mike Huggins P.O. Box 427 Charleston, SC 29402 843-958-4100	Peggy Moseley 2 Courthouse Square Charleston, SC 29402 843-958-4203
Cherokee	Bob Everett P. O. Box 1405 Gaffney, SC 29342 864-487-2552	Nancy Elliott P. O. Box 32 Gaffney, SC 29342 864-487-2543
Chester	Scott Thomas P. O. Drawer 580 Chester, SC 29706 803-377-4177	Edward M. Thomas P.O. Drawer 580 Chester, SC 29706 803-385-2607
Chesterfield	Kyle Johnson County Courthouse Chesterfield, SC 29709 843-623-7362	Johnny Jenkins 200 W. Main St. Chesterfield, SC 29709 843-623-2338

Clarendon	Dennis Schad P. O. Box 697 Manning, SC 29102 803-435-4423	Patricia Pringle P. O. Box 367 Manning, SC 29102 803-435-2013
Colleton	Bucky McCormack P. O. Box 1166 Walterboro, SC 29488 843-549-1213	James O. Hiott, Jr. P. O. Box 128 Walterboro, SC 29488 843-549-2131
Darlington	Jack Newsome 3rd Floor, Courthouse Darlington, SC 29532 843-398-4180	Rosa D. Hudson 1 Public Square Rm 205 Darlington, SC 29532 843-398-4110
Dillon	Steve Rogers P. O. Box 1041 Dillon, SC 29536 843-774-1412	Kay McKenzie P. O. Box 32 Dillon, SC 29536 843-774-1418
Dorchester	Greg Thacker 201 Johnston Street St. George, SC 29477 843-563-5156	Johnette Connelley 201 Johnston Street St. George, SC 29477 843-563-5124
Edgefield	Lakeisha Bryant 129 Courthouse Square Suite 204 Edgefield, SC 29824 803-637-4066	William Gilchrist 129 Courthouse Square Suite 201 Edgefield, SC 29824 803-637-4045
Fairfield	Wendell Irby P. O. Drawer 60 Winnsboro, SC 29180 803-635-1411	Peggy H. Hensley P. O. Box 88 Winnsboro, SC 29180 803-712-6524
Florence	Leval Williams Box A, City-County Complex Florence, SC 29501 843-665-3056	H. Wayne Joye Box B City-County Complex Florence, SC 29501 843-665-3088
Georgetown	Susan Edwards P.O. Drawer 1270 Georgetown, SC 29440 843-546-1241	Linda Mock P. O. Drawer 1270 Georgetown, SC 29440 843-546-5941

Greenville	Debbie Adkins Suite 206, 301 University Ridge Greenville, SC 29601 864-240-7314	Charles (Ed) Haskins Suite 800 301 University Ridge Greenville, SC 29601 864-240-7045
Greenwood	Tommy Whitmire 528 Monument St. 109 Greenwood, SC 29646 864-942-8537	R. Brann Lowther 528 Monument St. 107 Greenwood, SC 29646 864-942-8543
Hampton	Woodrow Harter 201 Lee Ave. Hampton, SC 29924 803-943-7507	Teresa Williams P. O. Box 575 Hampton, SC 29924 803-943-7504
Horry	Rendel Mincey 1301 2 nd Ave. Suite C108 Conway, SC 29526 843-915-5040	Lois Eargle 1301 2 nd Ave. Conway, SC 29526 843-915-5050
Jasper	Rosemay O'Quinn P.O. Box 837 Ridgeland, SC 29936 843-726-7725	Hazel Holmes P. O. Box 807 Ridgeland, SC 29936 843-726-7732
Kershaw	Clarence Cordill III Room 206, Courthouse Camden, SC 29020 803-425-1500 ext. 338	Robin Watkins Room 204, Courthouse Camden, SC 29020 803-425-1500 ext. 324
Lancaster	Norman Anderson P. O. Box 1809 Lancaster, SC 29720 803-285-6964	Cheryl Morgan P. O. Box 2016 Lancaster, SC 29720 803-285-7424
Laurens	Jerry Robertson P. O. Box 727 Laurens, SC 29360 864-984-6546	Sally Lancaster P. O. Box 907 Laurens, SC 29360 864-984-2535
Lee	Diane Boykin County Courthouse Bishopville, SC 29010 803-484-5341	Cecil Stevens P. O. Box 241 Bishopville, SC 29010 803-484-5341

Lexington	Rick Dolan 212 S. Lake Drive Lexington, SC 29072 803-359-8190	Chris Harmon 212 S. Lake Drive Lexington, SC 29072 803-359-8181
Marion	Ruben Butler P. O. Box 429 Marion, SC 29571 843-423-8225	John A. Padgett P. O. Box 672 Marion, SC 29571 843-423-8205
Marlboro	Billy Weatherly P. O. Box 62 Bennettsville, SC 29512 843-479-5602	Gene Moore P. O. Box 468 Bennettsville, SC 29512 843-479-5608
McCormick	Curt Arnold P. O. Box 836 McCormick, SC 29835 864-465-2931	Virginia Edmonds 133 S. Mine St. McCormick, SC 29835 864-465-2107
Newberry	Susie Berry P. O. Box 362 Newberry, SC 29108 803-321-2125	Nancy P. Owen P. O. Box 362 Newberry, SC 29108 803-321-2105
Oconee	Leslie Smith 415 S. Pine St. Walhalla, SC 29691 864-638-4150	Linda Nix 415 S. Pine St. Walhalla, SC 29691 864-638-4158
Orangeburg	Jim McClain P. O. Drawer 6000 Orangeburg, SC 29115 803-533-6220	Roger Cleckley P. O. Drawer 9000 Orangeburg, SC 29115 803-533-6200
Pickens	David Day 222 McDaniel Ave B8 Pickens, SC 29671 864-898-5871	George Bryant 222 McDaniel Ave B7 Pickens, SC 29671 864-898-5895
Richland	John A. Cloyd P. O. Box 192 Columbia, SC 29202 803-576-2640	Harry Huntley P. O. Box 192 Columbia, SC 29202 803-576-2600

Saluda	Bryan Bedenbaugh 101 E. Church St. Saluda, SC 29138 864-445-8121	Jane B. Guy 101 E. Church St. Saluda, SC 29138 864-445-2521
Spartanburg	Gil Bulman P. O. Box 5762 Spartanburg, SC 29304 864-596-2544	Sharon West 366 N. Church St. Spartanburg, SC 29304 864-596-2600
Sumter	Lath Harris 13 E. Canal St. Sumter, SC 29150 803-773-1581	Lauretha A. McCants 13 E. Canal St. Sumter, SC 29150 803-773-1581
Union	Bill Randall 203 N. Herndon Street Union, SC 29379 864-429-1650	Bradley O. Valentine 210 W. Main St. Union, SC 29379 864-429-1618
Williamsburg	Jeoff Liffrange 147 W. Main St. Kingstree, SC 29556 843-354-7059	Sally Mouzon 125 E. Main St. Kingstree, SC 29556 843-354-7085
York	Vacant P. O. Box 57 York, SC 29745 803-684-8526	Vacant P. O. Box 25 York, SC 29745 803-684-8501

§ 731. How To Obtain Forms. Forms may be obtained from the Department's web site: www.sctax.org. You can also call (803) 898-5599 to order forms. Orders are taken 24 hours a day via an answering machine. Forms may also be obtained by writing:

Forms
S.C. Department of Revenue
P.O. Box 125
Columbia, SC 29214

§ 732. The Basic Property Tax Forms Are.

PT-100 Business Personal Property [Tax] Return

PT-139 Water and Sewer Companies Property Tax Return

PT-300 Manufacturing Property Tax Return PT-401 Application for [Property Tax] Exemption

PT-401-I Instruction for Application for [Property Tax] Exemption

§ 733. Other Forms of Possible Interest.

SC2848 Power of Attorney (federal form may be used with modifications)

C-188 Request for Publications

I-231 Request for Forms