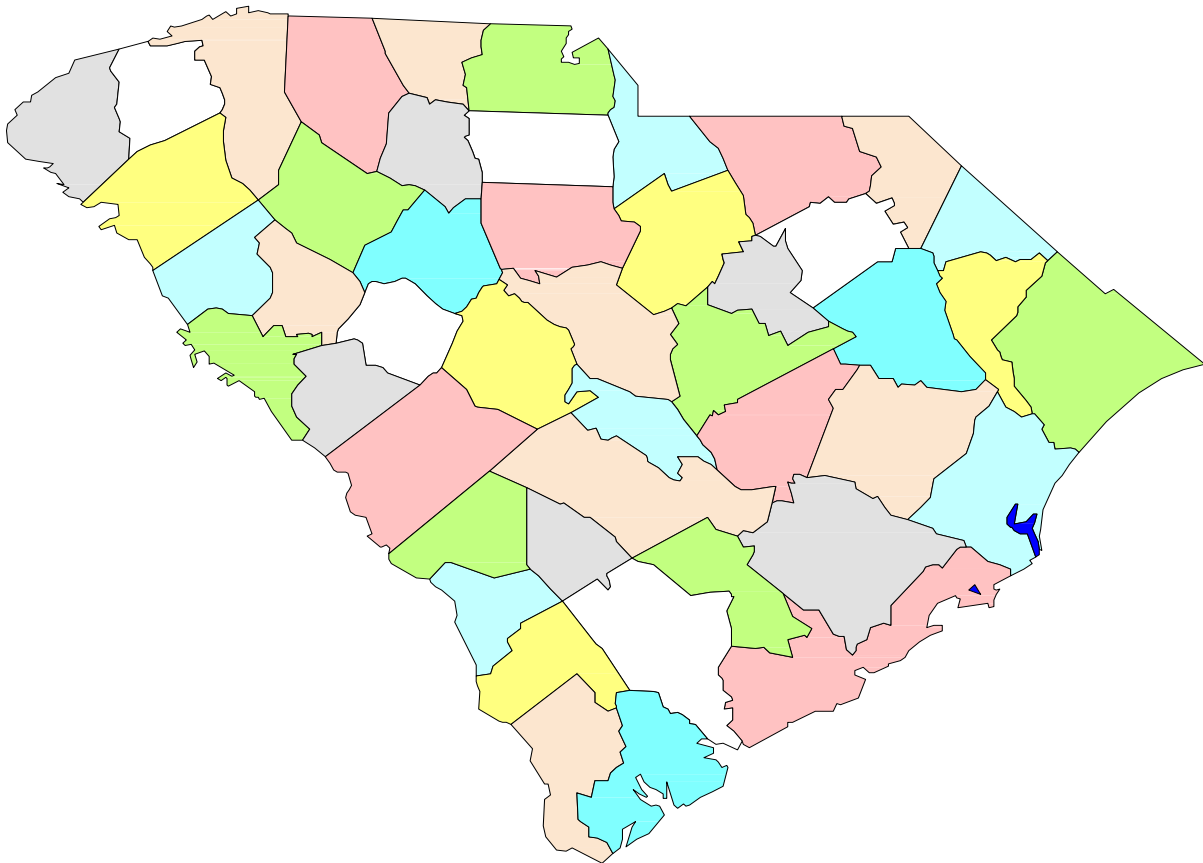


South Carolina Property Tax

2011 Edition



The Honorable Nikki R. Haley, Governor
James F. Etter, Director

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SOUTH CAROLINA PROPERTY TAX

April 2011

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PART I: § 001. INTRODUCTION.

- A. **Property Subject to Tax:** Property subject to ad valorem tax includes real property, personal property used in business, and certain other personal property such as motor vehicles, boats and airplanes. Property taxes are generally assessed and collected by local governments, but the South Carolina Department of Revenue (the Department) 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 simple, for life, or as trustee, as recorded in the public records for deeds, or who 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. In general, property taxes are due and payable between September 30th and January 15th after their yearly assessment. SC Code §12-45-70; see SC Code §12-38-150. There are special rules fixing liability and due dates for taxpayers that make returns to the Department on a fiscal year basis. See SC Code §12-37-970 and SC Revenue Ruling 05-20.
- C. **Calculation of Tax:** The calculation of property taxes involves the following 3 elements:
1. **Valuation:** Real property (other than agricultural real property and property subject to a negotiated fee in lieu of taxes) is appraised to determine fair market value. 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. For property tax years after 2006, any increase in the fair market value of any parcel of real property as a result of a countywide reassessment program will be limited to 15% within a 5 year period. The fair market value of improvements and additions will be added to the fair market value of a parcel after completion. Fair market value will also be adjusted by appraisal after an assessable transfer of interest (ATI), resulting in a transfer value. The 15% cap does not apply to the transfer value in the year the transfer value is first subject to property tax, or to the fair market value of improvements and additions in the year they are first subject to property tax. See South Carolina Code §§12-43-217 and 12-37-3120 through 12-37-3170 and the discussion at §220 below.

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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 and other businesses 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. See §221 below.

2. **Assessment Ratio by Classification:** The assessment ratios are established for each class of property in the State Constitution to ensure stability. All manufacturing and utility property is assessed at 10.5%. Commercial personal property is also assessed at 10.5%. A person's primary residence is assessed at 4%; other real property is assessed at 6%. Personal motor vehicles are assessed at 6%.

The fair market value is multiplied by the assessment ratio to produce the "assessed value" of a particular piece of property. Taxes are levied based on this assessed value. New and expanding businesses that invest \$2.5 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. See §712 below.

3. **Millage:** Each taxing jurisdiction determines its tax rate annually by dividing the cost of its annual budget by the total assessed value within the taxing jurisdiction. This results in a fraction in thousandths (mills), known as the millage rate or millage. The average millage rate in South Carolina, as computed by the Department in 2009, is 297 mills.

The following is an example of the application of the property tax. 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, the property tax liability of the owner would be \$2.89 ($\$10.50 \times .275$).

Any increases in a taxing jurisdiction's annual budget are subject to the restrictions set forth in SC Code §§6-1-320 and 12-37-251(E). See *Angus v. City of Myrtle Beach*, 363 S.C. 1, 609 S.E.2d 808 (2005). Generally, a governing body may increase the millage imposed for general operating purposes over the rate charged in the preceding tax year only to the extent of the average increase in the Consumer Price Index (CPI) for the preceding calendar year, plus the percentage increase in population within the taxing jurisdiction. The governing body, by a two-thirds vote, may levy additional millage for certain purposes specified in SC Code §6-1-320(B).

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 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) and *Angus v. City of Myrtle Beach*, 363 S.C. 1, 609 S.E. 2d 808 (2005) (additional adjustments to rollback millage, such as adjustments for anticipated appeals and uncollectible tax debts, are not authorized by SC Code §12-37-251(E)).

This publication is current through December 31, 2010.

PART II: § 100. DEFINITIONS AND CITATIONS.

§ 110. Definitions of Terms Used in this Publication.

§ 110.1. Real Property. Real property means not only land, but also all structures and other things therein contained or annexed or attached to the land that 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 boats, and all improvements to leased real property made by the lessee are considered real property. SC Code §§12-37-224 and 12-43-230(b).

§ 110.2. Personal Property. Personal property means all things, other than real estate, that have any pecuniary value, including money, credits, investments in bonds, stock, and joint-stock companies. SC Code §12-37-10(2). See 27 SC Code Regs. 117-1700.1 (formerly Regulation 117-105) for examples of real and personal property.

§ 110.3. The Department. As used herein and throughout Title 12 of the SC Code, the Department means the 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 (27 SC Code Regs.)
- Property tax decisions of the former South Carolina Tax Commission (P.D. or C.D.)

The SC Code, Regulations, Department advisory opinions, and Administrative Law Court decisions may be accessed at, or through, the Department’s web site at: [http:// www.sctax.org](http://www.sctax.org).

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

§ 210. Classification of Property.

§ 210.1. Purpose of Classification. Classification is used to determine a property's assessment ratio. Classification is also used to determine whether the property will be valued by a county assessor (real property), by a county auditor (personal property), or by the Department (specified real and personal property under SC Code §12-4-540). See §§110.1 and 110.2 above for definitions of real and personal property.

§ 210.2. Classification of Companies. For the purpose of assessing property of *manufacturers*, the Department follows the classifications set out in Sectors 21 and 31-33 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 that 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, 51, 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 North American Industry Classification System Manual: 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 512; Sector 52, subsectors 522-525; Sector 53, subsectors 531 and 533; Sector 54, subsector 541; Sector 55, subsector 551, unless exempt; Sector 61, subsector 611; 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.

If a business is involved in more than one operation, the major operation determines its classification for purposes of assessing property taxes. 27 SC Code 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). 27 SC Code Regs. 117-1700.3 defines utilities to include water companies, power companies, electric cooperatives, and telephone companies. The Property Division of the Department also considers sewer companies and cable television companies to be utilities.

The following types of real property may qualify for a 6% assessment ratio:

- A. 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. 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).
- B. 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). A right-of-way for a public road or an easement for a railroad running between a manufacturer's plant site and its office building does not destroy contiguity. *Sunoco v. S.C. Dep't of Revenue*, 378 S.C. 385, 662 S.E.2d 599 (2008).
- C. Real property owned by, or leased to, a manufacturer and used exclusively for *warehousing and wholesale distribution* is not considered used by a manufacturer in its manufacturing business for purposes of classification of property. SC Code §12-43-220(a). This provision is being phased in on a county-by-county basis in the year after implementation of the next countywide reassessment after 2008. Affected owners of existing warehouses that were paying a 10.5% assessment ratio in 2008 must notify the county in writing to receive the 6% assessment ratio.
- D. 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 physically attached to the manufacturing plant unless the warehousing and distribution area is separated by a permanent wall. SC Code §12-43-220(a). This provision is effective January 1, 2011. Contact the Department of Revenue for qualifications in effect on an earlier date. See §721 below.

§ 212. Agricultural Real Property. Real property that is actually used for agricultural purposes (and meets the other requirements for agricultural real property discussed in §222 below) is classified as agricultural real property and taxed on an assessment equal to:

- A. 4% of the fair market value for 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 10 shareholders; (2) a shareholder (other than an estate) that is not an individual; (3) a nonresident alien as a shareholder; and (4) more than 1 class of stock.
- B. 6% of the fair market value for agricultural purposes for corporate owners or lessees, except for certain closely held corporations specified in (a) above. SC Code §12-43-220(d)(1). 27 SC Code Regs. 117-1780.2.

In addition, SC Code §12-43-220(d) grants a special valuation, known as fair market value for agricultural purposes, for real property that is “actually used for agricultural purposes.” See §222 below.

§ 212.1. Application for Classification of Property as Agricultural Real Property. Each new owner must apply to the county assessor for classification as agricultural real property on or before the first date taxes are due without penalty. An owner who has obtained such classification must notify the assessor of a change in use within 6 months. SC Code §12-43-220(d)(3).

§ 212.2. 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.

§ 212.3. Change in Use - Rollback Taxes. When agricultural real 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 fair market value for agricultural purposes and the taxes that would have been paid or payable if the real property had 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 5 tax years. SC Code §12-43-220(d) and 27 SC Code Regs. 117-1780.3.

Any property that becomes exempt from property taxes under SC Code §12-37-220(A)(1) (property owned by the state or a local taxing authority and used exclusively for public purposes) or SC Code §12-37-220(B)(41) (economic development property during the exemption period as provided in Chapter 44, Title 12 of the SC Code) is not subject to rollback taxes. See SC Code §12-43-220(d)(6) and the discussion at §712 below regarding fees in lieu of property taxes.

§ 213. 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 based on an assessment ratio of 9.5%. 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 through 12-37-2880 regarding the assessment and taxation of motor carriers used in transportation for hire, other than intercity bus services and certain farm vehicles.

§ 214. Personal Motor Vehicles. Personal motor vehicles (passenger motor vehicles, pick-up trucks and motorcycles) that must be titled by a state or federal agency are subject to an assessment ratio of 6% in 2007 and thereafter. SC Code §12-37-2645; see S.C. CONST. art. X, §1(8) and SC Revenue Advisory Bulletin 01-9.

§ 215. Aircraft. SC Code §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 from 10.5% to not less than 4%. The ordinance must be applied uniformly to all general aviation aircraft subject to property tax in the county. Assessment ratios by county are published at www.scaeronautics.com.

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

§ 217. Legal Residence. The legal residence and not more than 5 contiguous acres, when owned totally or in part in fee simple or by life estate and occupied by the owner of the interest, is taxed based on an assessment ratio of 4%. The residence must be the domicile of the owner at some time during the tax year. Additional dwellings located on the same property (not more than 5 acres) 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, 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 4% assessment ratio applies for the residence (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 5 acres contiguous to his legal residence, will be assessed at the 4% ratio. See SC Code §12-37-620 and SC Revenue Ruling 93-11. The 4% assessment ratio does not apply to any mobile home or residence that is rented, or to any business for profit located on the residential property. See SC Code §§12-43-220(c) and 12-43-221.

A motor home, boat or watercraft, or trailer used for camping and recreational travel that is pulled by a motor vehicle may qualify as a legal residence if it meets the requirements set forth in SC Code §12-37-224. See §218 below for further discussion.

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 SC Code 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 is not disqualified from receiving the 4% legal residence assessment ratio just because he rents out his legal residence for not more than 14 days during the tax year.

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 (which includes his spouse, unless legally separated, and his dependent children under age 18) is residing in or occupying any other residence in South Carolina that has been qualified for the 4% assessment ratio by the taxpayer or a member of his family. He must

also certify that he does not claim to be a legal resident of a jurisdiction other than South Carolina for any 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 that is qualified as a legal residence for any part of a year is entitled to the 4% assessment ratio 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).

A taxpayer may apply for a refund of property taxes overpaid because the property was eligible for the 4% assessment ratio. The procedure for claiming a refund is discussed in §536.1 below. The taxpayer must establish that the property in question was in fact his legal residence and where he was domiciled. SC Code §12-43-220(c)(3). 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.

If a deceased taxpayer failed to claim the 4% assessment ratio before the date of the taxpayer's death, the personal representative of a deceased taxpayer's estate may apply for the 4% assessment ratio provided by SC Code §12-43-220(c). SC Code §12-37-252(C).

§ 218. Non-Traditional Residences. A motor home or trailer used for camping and recreational travel that is pulled by a motor vehicle may qualify as a primary or secondary residence for property tax purposes if it qualifies for deduction of the interest portion of indebtedness on a qualified primary or secondary residence under the Internal Revenue Code. SC Code §12-37-224(A).

A boat or watercraft may qualify for classification as a primary or secondary residence if it contains (a) a cooking area with an onboard power source, (b) a sleeping quarter, and (c) a toilet with exterior evacuation. Classification as a primary residence is restricted to one qualifying boat, provided the boat is owned by an individual. Qualifying boats owned by individuals and certain entities are eligible for classification as a secondary residence. SC Code §12-37-224(B).

A primary residence is taxed based on a 4% assessment ratio, and a secondary residence is taxed based on a 6% assessment ratio. Property that qualifies under SC Code §12-37-224 is valued in the same manner as motor vehicles. See §217 above and §§219 and 221.3 below.

§ 219. Ratio for All Other Property. Except as otherwise provided, a 6% assessment ratio applies to real property and a 10.5% assessment ratio applies to tangible personal property. SC Code §12-43-220(e) and (f).

§ 220. Valuation of Property. Article X, Section 1, of the South Carolina Constitution provides for taxation by classification based on "fair market value." Similarly, SC Code §12-37-930 provides that all property is to be valued "at its true value in money that is the price that the property would bring following reasonable exposure to the market where both seller and buyer are willing." See also *Lindsey v. S.C. Tax Comm'n*, 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).

With respect to personal property, Article III, Section 29 of the South Carolina Constitution provides that taxes “must 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.”

With respect to real property, Article X, Section 6 of the South Carolina Constitution authorizes the General Assembly to provide a method for valuing real property whereby the value of each parcel, adjusted for improvements and losses, does not increase more than 15% every 5 years, unless an assessable transfer of interest (ATI) occurs. See §221.4 below.

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

§ 221.1. Valuation of Manufacturers’ Machinery and Equipment. The value of machinery and equipment of manufacturers is based on a depreciation cost method according to a schedule set forth in 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 *S.C. Tax Comm’n v. S.C. Tax Bd. of Review*, 305 S.C. 183, 407 S.E.2d 627 (1991).

There is a *special reporting rule for idle property* not under an agreement for a fee in lieu of property tax. Personal property of a manufacturer located at the manufacturer’s facility does not have to be returned for property tax purposes if the facility has not been operational for one fiscal year and the personal property has not been used in the operations for one fiscal year. A return is not required for the property until it becomes operational in a manufacturing process or until it has not been returned for 4 years, whichever occurs first. The manufacturer must continue to list the personal property annually with a designation that the personal property is not subject to tax. SC Code §12-37-900.

§ 221.2. Valuation of Business Personal Property. The value of merchants’ and other business personal property is equal to its depreciated basis for income tax purposes, but not less than 10% of its original cost. 27 SC Code Regs. 117-1840.1 and 117-1840.2(b). See *S.C. Tax Comm’n v. S.C. Tax Bd. of Review*, 305 S.C. 183, 407 S.E.2d 627 (1991) (upholding this valuation method against an argument that it was unconstitutional).

§ 221.3. Valuation of Motor Vehicles, Aircraft, and Watercraft. The value of motor vehicles, aircraft, and watercraft is based on nationally recognized publications, except that the value may not exceed 95% of the prior year’s value. SC Code §12-37-930. Also valued in this manner are motor homes, boats and watercraft, and trailers used for camping and recreational travel that pulled by a motor vehicle if they qualify as a primary or secondary residence under SC Code §12-37-224. See §218 above.

The property tax on motor carriers’ motor vehicles is annually assessed on an apportioned basis by the Department. See SC Code §§12-37-2810 through 12-37-2880. Property tax is also apportioned for boats that are used in interstate commerce and that have a tax situs in South Carolina (by being physically present an aggregate of 30 days or more in a property tax year) and in at least one other state. SC Code §12-37-714(1).

§ 221.4. Valuation of Real Property. Real property, other than agricultural real property (see §222 below) and property that is subject to a fee in lieu of property taxes (see §712 below), is appraised to determine fair market value. Usually, reassessment (reappraisal) of real property takes place every 5 years. For property tax years after 2006, any increase in the fair market value of any parcel of real property as a result of a countywide reassessment program will be limited to 15% within a 5 year period.

Apart from countywide reassessment programs, appraisals are triggered by 2 other types of occurrences. The first type of occurrence is completion of most types of “improvements” or “additions,” including new construction and remodeling. See SC Code §12-37-3130(1) for a comprehensive definition. The fair market value of improvements and additions will be added to the fair market value of a parcel after completion. SC Code §12-37-670. The 15% cap does not apply to the fair market value of improvements and additions in the year they are first subject to property tax. SC Code §12-37-3140. For further discussion, see §310.3 below.

The second type of triggering occurrence is an “assessable transfer of interest” or “ATI,” which encompasses a broad range of changes as to ownership, or use, or the passage of time. An assessable transfer of interest will trigger an unrestricted appraisal of fair market value, and the adjusted value is known as the “transfer value.” The 15% cap does not apply to the transfer value in the year the transfer value is first subject to property tax. See SC Code §§12-43-217 and 12-37-3120 through 12-37-3170. SC Code §12-37-3150(A) provides a non-exclusive list of specific transaction that constitute an assessable transfer (ATI transactions), with certain exceptions (ATI exceptions). SC Code §12-37-3150(B) provides a list of transactions that affirmatively do not constitute an assessable transfer (non-ATI transactions), some of which mirror transactions not subject to income tax under the provisions of the Internal Revenue Code.

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

§ 221.6. Valuation of Real Property Subject to Lease. In *S.C. Tax Comm’n v. S.C. Tax Bd. of Review*, 287 S.C. 415, 339 S.E.2d 131 (Ct. App. 1985), the court held that below-market contract rents from unfavorable long-term leases could be considered in calculating value using the capitalization of income approach because the leases in question were negotiated at arm's length, and because actual income produced by long-term leases is a determinative factor to potential investors.

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.

§ 221.7. Valuation of Utility Properties. The Department is authorized to use the unit valuation method to determine utility values. 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. See SC Revenue Procedure 04-5 regarding use of a composite depreciation rate for valuing electric companies for purposes of property tax, as well as for a fee in lieu of property tax.

§ 221.8. Valuation of Property of Homeowners' Associations. Property that is commonly owned by homeowners' associations has intrinsic value and is subject to a separate property tax assessment. See *Long Cove Home Owners' Association v. Beaufort County Tax Equalization Board*, 327 S.C. 135, 488 S.E. 2d 857 (1997).

Homeowners' associations that make timely application may have their property valued at the greater of \$500 an acre, or an amount determined by dividing an association's gross receipts (not including dues, fees, or assessments from the members) by a capitalization rate of 20%. SC Code §§12-43-227 and 12-43-230(d).

§ 221.9. Valuation of 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. Valuation of Time Share Units. For purposes of property taxation, a time share unit operating under a vacation time sharing ownership plan, as defined in SC Code §27-32-10(7) (purchaser receives an ownership interest as well as right of use), must be valued as if the unit were owned by a single owner. However, a time share unit operating under a vacation time sharing lease plan, as defined in SC Code §27-32-10(8) (purchaser receives right of use but not ownership interest), may be valued as other income producing investment property is valued.

§ 221.11. Valuation of Low Income Housing Property. SC Code §12-37-225 provides that federal or state income tax credits for low income housing may not be taken into consideration with respect to the valuation of real property or in determining the fair market value of real property for property tax purposes. Further, the income approach must be the method of valuation used for properties that have deed restrictions in effect that promote or provide for low income housing. "Low income housing" means housing intended for occupancy by households with incomes not exceeding 80% of area median income, adjusted for household size, as determined by the United States Department of Housing and Urban Development.

§ 222. Valuation of Agricultural Real Property. "Fair market value for agricultural purposes" is a special valuation that applies to real property that qualifies as "agricultural real property." The special valuation is governed by statute and by Department regulations.

§ 222.1. Method of Valuation. SC Code §12-43-220(d)(2)(A) defines “fair market value for agricultural purposes” as the productive earning power based on soil capability to be determined by capitalization of typical cash rents or typical net income from timber and non-timber crops.

The fair market value for agricultural purposes determined for the 1991 tax year is effective for all subsequent years. SC Code §12-43-220(d)(2)(B)(i). Values derived before 1992 and based on the soil capacity of the various regions of the state are provided in Department regulations for current use. See 27 SC Code Regs. 117-1780.1 and 117-1840.2(c).

When the use of agricultural real property changes, the property is subject to “roll back taxes” that cause a recapture of the difference in tax on the property as agricultural real property and the tax that would have been assessed if the property had not qualified as agricultural real property. The value of standing timber is not included in calculating the roll back recapture. SC Code §12-43-220(d)(4). See §212.3 above.

§ 222.2. Definition of Agricultural Real Property. To qualify as agricultural real property, real property must be “*actually used* for agricultural purposes.” SC Code §12-43-220(d). See also SC Commission Decision 92-77. This means that the property must be currently used for bona fide agricultural purposes. Intended or future use is not determinative. 27 SC Code Regs. 117-1780.1; SC Commission Decision 92-77.

Agricultural real property is defined 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 §12-43-230(a). Agricultural real property also includes a dockside facility whose primary use is the landing and processing of seafood. SC Code §12-43-220(d)(5).

27 SC Code Regs. 117-1780.1 further defines agricultural real property. It provides 6 non-exclusive factors to be considered by county assessors in determining whether the tract in question is bona fide agricultural real property: (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, provided that purchase for investment purposes does not disqualify a tract if it is actually used for agricultural purposes.

The following uses of real property do not qualify as agricultural: (1) recreation; (2) hunting clubs; (3) fishing clubs; (4) vacant land lying dormant; or (5) any other similar use. *Id.*

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 Regulation 117-1780.1 and all relevant facts must be viewed together to determine the classification. *Id.*

Except as provided in SC Code §12-43-232 (discussed in §222.3 below), the size of a parcel 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 Tax Commission Decision 93-37.

In cases in which the real property is committed to more than one use, one use being agricultural and the other use or uses being unrelated to agriculture, the agricultural activity must comprise the most significant use of the property for the property to be classified as agricultural real property. 27 SC Code Regs. 117-1780.1.

Agricultural real property may be used for agritourism, provided agritourism is supplemental and incidental to a primary use for agricultural purposes. SC Code §12-43-233. A lengthy, non-exclusive list of agritourism uses set forth in the statute includes such diverse uses as wineries, educational tours, on-farm food sales, farm vacations, birdwatching, and crop art.

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).

§ 222.3. Additional Requirements for Agricultural Real Property. SC Code §12-43-232 provides additional requirements that 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 fewer than 5 acres qualify if they are contiguous to, or are under the same management system as, a tract of timberland that meets the minimum acreage requirement. Tracts of timberland of fewer than 5 acres are eligible to be agricultural real property if they are owned in combination with other tracts of agricultural real property that are not timberlands but qualify as agricultural real property. Tracts of timberland must be devoted actively 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 fewer than 5 acres, it will qualify as agricultural real property if at least \$1,000 of gross farm income was reported for at least 3 of the last 5 tax years.
- C. *Other Acreage*: All other tracts must be at least 10 acres or more. Tracts of fewer than 10 acres qualify as agricultural real property if they are contiguous to other tracts that total at least 10 acres when combined. Tracts that do not meet this requirement will qualify if at least \$1,000 of gross farm income was reported for at least 3 of the last 5 tax years.
- D. *New Ownership*: A new owner may qualify a nontimberland tract of fewer than 10 acres if he earns at least \$1,000 of gross farm income in at least 3 of the first 5 years of ownership. If the new owner fails this requirement, the tract is not considered agricultural real property and is subject to the rollback tax.

- E. *Grandfather Clause*. If neither the acreage nor the income requirements are met, the property will qualify as agricultural real property if the current owner or an immediate family member 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. Such 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. “Immediate family” is defined in SC Code §12-43-232(3)(e).
- F. *Idle Land*. Real property idle under a federal or state land retirement program or property idle pursuant to accepted agricultural practices will be classified as agricultural real property if the property otherwise would have qualified, subject to satisfactory proof to the assessor.
- G. *Leased Agricultural Real Property*. 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.
- H. *Conservation Easement*. 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 otherwise would have qualified, subject to satisfactory proof to the assessor.

§ 223. Valuation of “Rehabilitated Historic Property” and “Low and Moderate Income Rental Property.” The governing body of any municipality or county may, by ordinance, grant special property tax assessments based on preferential valuations 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.

§ 223.1. Rehabilitated Historic Property. Upon preliminary certification by the taxing entity, owner occupied rehabilitated historic property is assessed for 2 years based on a special valuation equal to 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 50 years old and designated as a historic property based on criteria established by the taxing entity; or
3. at least 50 years old and located in a historic district designated by the taxing entity within the geographic area of the taxing entity.

The appropriate “Reviewing Authority” is either: (a) the County Board of Architectural Review for those counties having such boards pursuant to SC Code §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 nor 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 taxing entity may require that an owner apply for preliminary certification before any work begins. The taxing entity 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 taxing entity.

- C. Upon completion of the project, the property must receive final certification from the taxing entity, 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. “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 taxing entity by ordinance. This percentage can range between 20 to 100%, and the taxing entity 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 a special valuation equal to its fair market value at the time of preliminary certification or final certification, whichever occurs first. This special valuation continues for 20 years or whatever lesser period the taxing entity establishes in its ordinance.

§ 223.2. Low and Moderate Income Rental Property. Upon certification by the governing body of the county, low and moderate income rental property is assessed based on a special valuation equal to 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
 - 2. 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 that 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 based on a special valuation equal to its fair market value at the time of certification for 20 years or whatever lesser period the taxing entity establishes in its ordinance.

§ 223.3. Application and Effective Date of Special Valuation 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 valuation 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 property tax assessments based on the special valuation 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. removal of the historic designation by the county;

- C. rescission of the approval of the rehabilitation because of ineligible or inappropriate alterations to the property; or,
- D. 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.

PART IV: § 300. ASSESSMENT PROCEDURE.

Valuation responsibility is divided between the state (Department of Revenue) and county assessing officials (county assessor and county auditor), depending on ownership and use of the property. In general, the Department values the property of all manufacturers, utilities, mining companies and certain transportation companies (railroads, private carlines and airlines) used in the business of the taxpayer. The Department also values the personal property of merchants and the motor vehicles of motor carriers. SC Code §§12-4-540 and 12-37-2820. County assessors and county auditors value the remaining property, including commercial, residential and agricultural property. SC Code §12-37-90 (assessor—real property) and SC Code §12-39-340 (auditor—personal property).

§ 310. Assessment of Property. Generally, property taxes are levied by local government entities. There is a uniform assessment for such taxes. See SC Code §12-37-30. In most cases, property taxes on real property are due and payable to the county treasurer between September 30th and January 15th after their yearly assessment. SC Code §12-45-70(A); see SC Code §12-39-150. A county, by ordinance, may allow taxpayers to elect to prepay taxes on real property in 6 installments. SC Code §12-45-75.

In the case of real and personal property assessed by the Department, the Department generally certifies the assessment to the county auditor, who computes the tax and forwards the tax amount to the county treasurer for billing. However, for airlines, private carlines (railroad cars), and motor carriers, property taxes are both assessed by and paid to the Department.

§ 310.1. Lien Date. For property tax purposes, the lien date is the date as of which tax liability is fixed. Except as otherwise provided, liability for ad valorem taxes on real and personal property in South Carolina is based on ownership of the property on December 31st of the year preceding the tax year. SC Code §12-37-900. For example, liability for 2011 property taxes is based on ownership of the property on December 31, 2010.

Numerous opinions of the South Carolina Attorney General have stated that there is no proration when more than one person owns the property during the year. See, *e.g.*, 1965-66 Op. Atty. Gen. No. 2180 at 313. Unless otherwise provided by statute, the entire tax is owed by the owner of the property on December 31st of the year preceding the tax year. See

Atkinson Dredging Company v. Thomas, 266 S.C. 361, 223 S.E.2d 592 (1976) (an out of state dredging company was liable for ad valorem tax for the full property tax year on a dredge located in Charleston County on December 31st, despite the fact that the dredge was present in Charleston County for only a few months).

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

A special lien date is provided 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. For these categories of property, the lien date is the last day of the taxpayer's accounting year. SC Code §12-37-970. Property tax returns for such property must be filed with the Department on or before the end of the fourth month after 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 a manufacturer's property tax return, including filings for the first year of business in the state and upon sale of the manufacturer's property, consult SC Revenue Ruling 05-20.

§ 310.2. Where Personal Property Is Taxed. SC Code §12-37-890 provides that (1) business personal property is taxed where it is situated, and (2) 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, such nonbusiness personal property is taxed at the residence of the person having it in charge. See also SC Code §§12-37-210 and 12-37-710.

Boats that are not currently taxed in South Carolina and that are not used exclusively in interstate commerce become taxable if they are present in South Carolina for 60 consecutive days or for 90 days in the aggregate in a property tax year. An alternative aggregate period of either 90 or 1980 days may be provided by county ordinance, in which case the number of consecutive days is disregarded. Boats that are used in interstate commerce and that have a tax situs in at least one other state become taxable on a proportionate basis in South Carolina by being physically present in South Carolina an aggregate of 30 days or more in a property tax year. However, time spent in a marine repair facility pursuant to a written contract for repairs does not count toward establishing in-state tax situs. SC Code §12-37-714.

§ 310.3. When Improvements Are Subject to Tax. In general, value attributable to additions and improvements is first subject to property tax in the tax year following completion. SC Code §§12-37-670 and 12-37-3140(E). Additions and improvements include new construction, reconstruction, major additions to the boundaries of the property or a structure on the property, remodeling, renovation and rehabilitation, including installation; excluded are minor

construction, ongoing maintenance and repair of existing structures, qualifying repair or reconstruction of a structure damaged or destroyed by disaster, qualifying construction to make a home handicap accessible, and qualifying installation of a fire sprinkler system in a commercial or residential structure when the installation is not required by law, regulation, or code. SC Code §12-37-3130(1).

Before a new structure can be taxed, it must be “completed and fit for the use for which it is intended.” SC Code §12-37-670. Unless the structure is completed and fit for the use intended on or before December 31st of the preceding property tax year, it cannot be taxed in the current property tax year. However, the statute does not prevent the assessment and taxation of portions of a structure that are completed on or before December 31st. See, *e.g.*, *International Center II, LLC v. Berkeley County Assessor*, Docket No. 05-ALJ-17-0235-CC (SC Admin. L. Ct., filed Feb. 2, 2006).

SC Code §12-37-670(B) allows the governing body of a county to adopt an ordinance requiring that previously untaxed improvements to real property be listed for taxation with the county by the first day of the next calendar quarter after a certificate of occupancy is issued or after the structure actually is occupied if no certificate is issued. If the county adopts such an ordinance, the additional property taxes attributable to the improvements may be accelerated. They accrue on the listing date and are due when taxes are due for the property tax year in which the improvements were listed for taxation, regardless of whether the value of the improvements is reflected on a tax receipt issued for the tax year in question.

If the county adopts such an ordinance, the election is binding on all municipalities within the county that impose a property tax.

It should be noted that the constitutionality of the county ordinance provisions has been called into question. See 2010 Op. Atty. Gen. No. ___ (Feb. 26, 2010) (2010 WL 928446).

§ 311. Notice to Taxpayer. When the county assessor records an increase in the value of a parcel by \$1,000 or more, the assessor is required to give notice of the increase to the taxpayer. If the increase is subject to the 15% cap imposed by Article 25, Chapter 37, Title 12 of the SC Code, the assessment notice must include both the fair market value and the value as limited by the 15% cap. SC Code §12-60-2510. In non-reassessment years and when there has been no increase in value as a result of additions, a taxpayer will receive only a tax notice (bill) and not a separate notice of assessment. SC Code §§12-60-2510 and 12-60-2520. See §510.1 below for a discussion of appeal procedures.

PART V: § 400. ASSESSMENT PRACTICE BY TAXPAYERS.

The assessment practice by taxpayers varies, depending on whether the property is assessed by the Department or by county officials. See §300 above. The procedure for appeals, also determined by this question, is discussed in detail 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. The subject matter may involve an element of the assessment, such as valuation or classification (the proper assessment ratio), or an exemption determination. The assessment may originate with the Department or with a county official (county assessor or auditor).

In challenging one or more elements of an assessment or an exemption determination, the taxpayer may appear for himself or be represented by certain others, as discussed below. If valuation is at issue, it is incumbent upon the taxpayer to produce evidence to support his assertion of value. It is insufficient merely to challenge the appraisal as void or illegal. See *Newberry Mills, Inc. v. Dawkins*, 259 S.C. 7, 190 S.E.2d 503 (1972).

§ 420. The Appraiser. Appraisers who are registered, licensed, or certified by the South Carolina Real Estate Appraisers Board may represent a taxpayer in matters limited to the valuation of real property. Alternatively, the taxpayer's appraiser may be a witness as to the value of the property in question. See Chapter 60 of Title 40 of the SC Code for appraiser licensing requirements.

§ 430. The Attorney. The attorney is an advocate of the taxpayer's position. The attorney's 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 that follow. Additional considerations are discussed in §545 below.

§ 431. Appearance by Nonresident Attorneys. Administrative practice allows attorneys licensed in any state to represent taxpayers before county boards and the Department. See generally SC Code §12-60-90. Additional considerations are discussed in §545 below.

§ 432. Appearances by In-House Attorneys and Officers. Corporations, unincorporated associations and partnerships may be represented by an officer or full-time employee. SC Code §12-60-90(C). Therefore, in-house attorneys or officers are specifically authorized to represent their employers. Additional considerations are discussed in §545 below.

§ 450. Other Persons. An individual may represent himself; 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, as applicable, or their regular full time employees.

In summary, only those persons authorized by SC Code §12-60-90 may represent taxpayers before the Department or county boards. As discussed above, attorneys, appraisers licensed or certified in South Carolina, and employees, including in-house counsel, and corporate officers of the taxpayer, may appear on behalf of a taxpayer. Certified public accountants and enrolled agents may also appear in tax matters, and the Department has the authority to allow any other individual to represent a taxpayer when it seems appropriate. Additional considerations are discussed in §545 below.

PART VI: § 500. APPEAL OF TAX ASSESSMENT.

The South Carolina Revenue Procedures Act, Chapter 60, Title 12 of the SC Code, provides the appeal procedures for all tax matters, including property tax. It provides for an appeal from the Department or the county to the independent administrative law judges in the South Carolina Administrative Law Court (ALC), created by SC Code §1-23-500 (formerly the Administrative Law Judge Division (ALJD)). The procedure for challenging a property tax assessment depends on which taxing authority made the assessment, *i.e.*, the county assessor, the county auditor, or the Department. The following discussion will therefore be divided into 3 parts.

§ 510. Determinations by the County Assessor.

The county assessor is responsible for appraising and assessing all real property in the county not appraised and assessed by the Department. See SC Code §12-37-90. The assessor also determines eligibility for the 4% assessment ratio applicable to owner-occupied real property set forth in SC Code §12-43-220(c).

- A. The initial steps necessary to appeal an assessment made by a county assessor are set forth in SC Code §§12-60-2510 and 12-60-2520:
 1. When the county assessor records an increase in a property's fair market value by \$1,000 or more, the assessor must give written notice to the taxpayer by July 1st or as soon thereafter as practical. If the increase is subject to the 15% cap imposed by Article 25, Chapter 37, Title 12 of the SC Code, the assessment notice must include both the fair market value and the value as limited by the 15% cap.
 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.
 3. In tax years in which a property's recorded fair market value has not been increased by \$1,000 or more, no assessment notice is required. In these years (generally, years for which there is no county wide reassessment and no assessable transfer of interest has occurred), the taxpayer may object in writing to the fair market value, special use value, assessment ratio and property tax assessment at any time. An appeal will apply to the previous tax year only if it is submitted before the first penalty date, *i.e.*, January 15th following the end of the previous property tax year on December 31st. An appeal submitted on or after the first penalty date applies for the succeeding property tax year.
 4. After receiving the taxpayer's objection, the assessor must correct the error if the assessor agrees with the taxpayer. 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. Note that for a legal residence, the assessor shall consider the appeal and make adjustments, if warranted, based on the market values of real property as they existed in the year that the most recent reassessment was conducted and on which the assessment is based. SC Code §12-43-215.

5. 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.
 6. 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. The assessor's decision may be appealed to the County Board of Assessment Appeals, as follows:
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 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. Responses to the exchanged information must be filed with the County Board at least 7 days before the conference. These responses must also be mailed to the other party.
 6. The procedures of the conference are specified in SC Code §12-60-2530. 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 Court (ALC).

- C. Either the taxpayer or the assessor may appeal the County Board's decision by requesting a contested case hearing before the ALC within 30 days after the date of the County Board's written decision, in accordance with ALC Rules. SC Code §12-60-2540.

The contested case hearing is discussed in §525 below. Payment of disputed property taxes pending appeal is discussed in §550 below.

§ 515. Determinations by the County Auditor.

The county auditor must insure that all taxable personal property not assessed by the Department is listed and assessed. SC Code §12-39-340. This includes such items as motor vehicles, boats and airplanes, as well as the personal property of the businesses specified in SC Code §12-39-70. The auditor also determines eligibility for the homestead exemption for the elderly, disabled or blind set forth in SC Code §§12-37-220(A)(9) and 12-37-250. See §642 below.

- A. The procedure for contesting personal property tax assessments or a denial of a homestead exemption to the county auditor is set forth in SC Code §12-60-2910:
 - 1. If the taxpayer objects to an assessment or to the denial of a homestead exemption, he must give 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. See SC Code §12-45-180 (setting forth penalty dates).
 - 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.
- B. There is no appeal to a county board as there is with county assessed real property. A taxpayer may appeal the auditor's decision by requesting a contested case hearing before the Administrative Law Court (ALC) within 30 days after the date of the auditor's response, in accordance with ALC Rules. SC Code §12-60-2920.

The contested case hearing is discussed in §525 below. Payment of disputed property taxes pending appeal is discussed in §550 below.

§ 520. Determinations by the Department of Revenue.

The Department values and assesses the property of certain taxpayers specified by statute. See SC Code §§12-4-540 and 12-43-335. The Department is authorized to levy ad valorem tax on airlines, private carlines and motor carriers. See SC Code §§12-4-510 and 12-37-2850. The Department determines eligibility for exemptions in accordance with SC Code §§12-4-710 and 12-4-720. See §641.1 below regarding applications for exemption.

- A. The initial steps necessary to appeal an assessment or denial of an exemption made by the Department are set forth in SC Code §§12-60-2110 and 12-60-2120:

1. The taxpayer must file a written protest with the Department (a) within 90 days after the date of the property tax assessment notice, or (b) 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, or (c) within 90 days after the date the notice of denial of an exemption is mailed to the taxpayer, as applicable.
 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. If the Department determination is adverse to the taxpayer, it must be in writing and sent or delivered to the taxpayer. It must explain the basis for the determination and inform the taxpayer of his right to a contested case hearing.
- B. Either the taxpayer or the local governing body affected by the Department determination may appeal by requesting a contested case hearing before the Administrative Law Court (ALC) within 30 days after the date of the Department determination, in accordance with ALC Rules. SC Code §12-60-2130.

The contested case hearing is discussed in §525 below. Payment of disputed property taxes pending appeal is discussed in §550 below.

§ 525. Contested Case Hearing before the Administrative Law Court (ALC).

Contested case hearings must be held without a jury and in accordance with the ALC Rules and Chapter 23 of Title 1 of the SC Code. SC Code §12-60-3340. The Department may intervene in the contested case hearing if it is not already a party. SC Code §12-60-3330. Payment of disputed property taxes pending appeal is discussed in §550 below.

The contested case hearing is an entirely new hearing at which all evidence must be presented to the Administrative Law Judge (ALJ). The ALJ is the finder of fact, and the ALC record becomes the record for judicial appeals. The ALJ will decide the case in a written order. A party can make a motion for reconsideration if the motion is filed within 10 days of notice of the ALJ's written order. See *Home Medical Systems, Inc. v. S.C. Dep't of Revenue*, 382 S.C. 556, 677 S.E.2d 582 (2009).

If the taxpayer requests a contested case hearing without exhausting his prehearing remedies because he failed to file a protest or attend a conference with county or Department officials, as discussed in §510 through §520 above, the ALC will dismiss the action without prejudice. If the taxpayer failed to provide facts or law to support his position at the county or Department level, as appropriate, the ALC will remand the case for reconsideration in light of the new facts or law. The statutory time limitation period for assessment remains suspended during the remand process. SC Code §12-54-85(G).

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.

§ 530. Judicial Review. An adverse decision by the ALC may be appealed to the South Carolina Court of Appeals, as provided in SC Code §§12-60-3370 through 12-60-3390.

The standard of review applied in such cases is as follows: The court will presume that the findings of an administrative agency are correct and will set them aside only if unsupported by substantial evidence in the record. *Hull v. Spartanburg County Assessor*, 372 S.C. 420, 641 S.E.2d 909 (Ct. App. 2007) (holding that, because the valuation of commercial real property as determined by the ALJ was supported by substantial evidence in the record, it would not be overturned on appeal).

To initiate an appeal, notice of appeal must be filed in the South Carolina Court of Appeals as provided in the South Carolina Appellate Court Rules and served on the opposing party or parties not more than 30 days after the party receives the final decision and order of the ALJ. SC Code §1-23-610(B). Additional considerations are discussed in §560 through §562 below. Payment of disputed property taxes pending appeal is discussed in §550 below.

§ 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, under the procedures discussed below, 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. See SC Code §12-54-25.

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 3 years from the date a return was filed, or 2 years from the date of payment of the tax. SC Code §12-54-85(F).

An administrative claim for refund is the appropriate means to challenge an excessive millage rate. *B&A Dev., Inc. v. Georgetown County*, 372 S.C. 261, 641 S.E.2d 888 (2007).

As in the case of a challenge to a tax assessment, the procedure for claiming a refund of property taxes paid depends on which taxing authority made the assessment, *i.e.*, the county assessor, the county auditor, or the Department. All claims for refunds based on exemptions other than the homestead exemptions are determined by the Department. All claims for refunds based on homestead exemptions are determined by the county auditor.

The following discussion will therefore be divided into 3 parts, based on the taxing authority.

§ 536.1. Determinations by the County Assessor. To claim a refund for taxes paid based on an assessment by the county assessor, the taxpayer must file the claim with the assessor. The assessor will meet with the county treasurer and the county auditor, and a majority of these officials will determine the taxpayer's refund, if any, and notify the taxpayer in writing. SC Code §12-60-2560.

The taxpayer may appeal to the County Board of Assessment Appeals within 30 days after the decision is mailed. The appeal is conducted in the same manner as an appeal of an assessment. See §510.B above.

An adverse decision by the County Board may be appealed to the Administrative Law Court (ALC) by requesting a contested case hearing within 30 days of the date of the mailing of the County Board's decision, in accordance with ALC Rules. See §510 above.

The contested case hearing is discussed in §525 above. The procedure for appeal from an ALC decision is discussed in §530 above.

§ 536.2. Determinations by the County Auditor. To claim a refund for taxes paid (a) based on an assessment by the county auditor or (b) if the taxpayer believes the property is subject to the homestead exemption for the elderly, disabled or blind, the taxpayer must file the claim with the auditor who made the assessment. The auditor will meet with the county treasurer and the county assessor, and a majority of these officials will determine the taxpayer's refund, if any, and notify the taxpayer in writing. SC Code §12-60-2940.

An adverse decision may be appealed to the Administrative Law Court (ALC) by requesting a contested case hearing within 30 days of the date of the mailing of the decision, in accordance with ALC Rules. See §510 above.

The contested case hearing is discussed in §525 above. The procedure for appeal from an ALC decision is discussed in §530 above.

§ 536.3. Determinations by the Department of Revenue. To claim a refund for taxes paid (a) based on an assessment by the Department or (b) if the taxpayer believes the property is exempt (under an exemption other than a homestead exemption), the taxpayer must file the claim with the Department. SC Code §12-60-2150. The claim must contain certain information as provided by SC Code §§12-60-2150(C) and 12-60-450(B). The Department will notify the counties affected by the claim, and the county auditor will notify any municipality affected by the claim. The Department will consider the claim, determine what refund is due, if any, and issue a written decision to the taxpayer. This process is discussed in SC Revenue Procedure 06-2.

If the decision is adverse, the taxpayer may file a written protest with the Department within 90 days of the date of the denial of any part of the claim for refund. SC Code §12-60-2110. The Department will conduct an appeal 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.

The Department determination may be appealed by either the taxpayer or the local governing body affected by the Department determination in the same manner as an assessment would be appealed to the Administrative Law Court (ALC), by requesting a contested case hearing within 30 days of the date of the mailing of the Department determination, in accordance with ALC Rules. See §520.B above.

The contested case hearing is discussed in §525 above. The procedure for appeal from an ALC decision is discussed in §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 cannot prevail without establishing the valuation that he asserts. See *Newberry Mills v. Dawkins*, 259 S.C. 7, 190 S.E.2d 503 (1972), and *Belk Department Store v. Taylor*, 259 S.C. 174, 191 S.E.2d 144 (1972).

§ 543. 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. For all appeal purposes, whenever a taxpayer is required to file a document by a certain date, timely mailing is timely filing. SC Code §12-60-50(B). Although no specific method of filing an appeal to the county or to the Department is required by South Carolina law, it may be prudent to hand deliver and obtain a clocked-in copy if the appeal is filed near the deadline, or to mail the appeal by certified mail, return receipt requested.

§ 545. Appearances for the Taxpayer. In general, the taxpayer may represent himself or certain specified others may represent the taxpayer in the administrative tax process. SC Code §12-60-90. See §420 through §450 above. 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).

Taxpayer representatives must comply with the duties and restrictions contained in United States Treasury Department Circular No. 230 (“Circular No. 230”), Sections 10.20 through 10.24 and Sections 10.27 through 10.34, which cover 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 who is incompetent or who fails to comply with SC Code §12-60-90(E) or engages in “disreputable conduct” as defined in Section 10.51 of Circular No. 230, or one who with intent to defraud, willfully and knowingly deceives, misleads, or threatens a person to be represented. SC Code §12-60-90(D).

Use of contingent fee arrangements in tax matters is limited. The acceptable uses are set forth in SC Revenue Ruling 04-03.

§ 550. Payment of Property Tax and Protest Procedure. If a written protest or appeal extends 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 §§12-60-2140, 12-60-2550, 12-60-2930. 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.

Before appealing to the South Carolina Court of Appeals, the taxpayer must pay, or post a bond for, all taxes, including interest, determined to be due by the Administrative Law Court (ALC), unless the taxpayer has paid at least 80% of the protested assessment as described above.

Interest must be paid on any additional tax due or on any refunds due after review, at the rate for underpayments provided in Internal Revenue Code Sections 6621(a) and 6622. 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.

§ 561. Exhaustion of Administrative Remedies. The South Carolina Revenue Procedures Act, SC Code Chapter 60, Title 12, provides the exclusive remedies for the illegal or wrongful collection of taxes. *B&A Dev., Inc. v. Georgetown County*, 372 S.C. 261, 641 S.E.2d 888 (2007); SC Code §12-60-80. Under the Revenue Procedures Act, the decision of any state or local tax authority relating to property taxes is first appealed to the Administrative Law Court (ALC). See §§500 through 525 above. Appeals from the ALC are then filed in the South Carolina Court of Appeals. See §530 above. In general, unless the taxpayer has exhausted those exclusive remedies, the case is not ripe for judicial remedy, and the courts will decline to intervene. See, e.g., *Brackenbrook North Charleston, LP v. County of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004) (an administrative claim for refund is the appropriate means to challenge an excessive millage rate and must be exhausted before bringing suit in circuit court).

Only those cases in which the sole issue is a challenge to the constitutionality of a tax statute on its face may be initiated in the South Carolina circuit courts. *B&A Dev., Inc. v. Georgetown County*, 372 S.C. 261, 641 S.E.2d 888 (2007); SC Code §12-60-80(B). If the taxpayer merely asserts that the statute is unconstitutional in its application, he must exhaust his administrative remedies *Id.* See *Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue*, 342 S.C. 34, 535 S.E.2d 642 (2000), and *Ward v. State*, 343 S.C. 14, 538 S.E.2d 245 (2000).

§ 562. Class Action Lawsuits. A class action lawsuit for a refund of taxes may not be brought in the Administrative Law 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. SC Code §12-60-80(C).

PART VII: § 600. EXEMPTION FROM TAXATION.

§ 601. Generally; Fees for Fire Protection. Most property tax exemptions are codified in SC Code §12-37-220. Subsection (A) of SC Code §12-37-220 contains the property tax exemptions authorized by Section 3 of Article X of the SC Constitution, among others. Note that there is no exemption for property owned by “501(c)(3) organizations.” These organizations qualify for property tax exemption only if they meet the other requirements of the exemption provisions.

The Department determines eligibility for most property tax exemptions. SC Code §12-4-710. The procedure for obtaining exemptions is set forth in SC Code §12-4-720.

Property that is exempt from taxation is also exempt from assessment. SC Code §12-43-330.

Except as otherwise stated below, counties and municipalities may require the owners of all real property exempt from property taxation to pay reasonable fees for fire protection. SC Code §12-37-235. Exceptions: These fees may not be required for property of the State, counties, municipalities, school districts and other political subdivisions used exclusively for public purposes, and property of public libraries. See 1982 Op. Atty. Gen. No. 82-68 at 68.

The fees must be based on the fire protection and services that 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.

§ 609. Exemption for All Residential Real Property Subject to a 4% Assessment Ratio.

An exemption from all property taxes imposed for school operating purposes applies to 100% of the fair market value of residential real property subject to a 4% assessment ratio, to the extent it is not already exempt pursuant to the homestead exemption for the elderly, disabled or blind, discussed in §619 below. The exemption does not apply to millage imposed for the repayment of general obligation debt. SC Code §12-37-220(B)(47).

The exemption requires that the property be owner-occupied residential property eligible for and receiving a 4% assessment ratio, discussed in §217 above. Once the property is approved by the county assessor for the 4% assessment ratio, a separate exemption application is not required.

§ 610. Intangible Personal Property. Intangible personal property is exempt from property taxes. SC Code §12-37-220(A)(10); S.C. CONST. art. X, §3. No application for this exemption is necessary. SC Code §12-4-720(A)(3).

§ 611. Fire Sprinkler System Equipment. All fire sprinkler system equipment that is installed on a commercial or residential structure is eligible for a limited exemption when the installation is not required by law, regulation, or code. SC Code §12-37-220(B)(50). The value of such equipment is exempt until there is an assessable transfer of interest as determined by SC Code §12-37-3150. For more on assessable transfers of interest, see §221.4 above.

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

§ 612.1. 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 applies to such personal property when located in a time share unit, but does not apply when used in hotels, rooming houses, apartments or other places of business. SC Code §§12-37-220(A)(5) and (B)(35); S.C. CONST. art. X, §3. No application is necessary for the exemption under SC Code §12-37-220(A)(5). SC Code §12-4-720(A)(3).

§ 612.2. 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).

§ 612.3. Private Passenger Vehicles, Motorcycles, General Aviation Aircraft and Watercraft. The South Carolina Constitution allows, but does not require, 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. S.C. CONST. art. X, §3. The exemption (or the rescission of the exemption) is allowed only pursuant to a county referendum that must be submitted to the voters at the next general election of representatives.

Watercraft and motors that have an assessment of not more than \$50 are exempt from property taxes. SC Code §12-37-220(B)(38)(a). In addition, the governing body of a county by ordinance may exempt from property tax 42.75% of the fair market value of a watercraft (other than watercraft classified as a primary or secondary residence under SC Code §12-37-224). SC Code §12-37-220(B)(38)(b). Watercraft trailers are exempt from property taxes. SC Code §12-37-220(B)(40).

An antique motor vehicle is exempt from property taxes if it is licensed and registered as an antique motor vehicle pursuant to Article 23, Chapter 3, Title 56 of the SC Code. SC Code §12-37-220(B)(48).

§ 612.4. 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 in South Carolina. SC Code §12-37-220(B)(45). Application 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).

§ 613. Economic Development Related Exemptions.

§ 613.1. Inventories. All inventories are exempt from property taxes. SC Code §§12-37-220(A)(6), and 12-37-220(B); S.C. CONST. art. X, §3. No application for this exemption is necessary. SC Code §12-4-720(A)(3). SC Revenue Ruling 91-7 defines inventory as merchandise purchased for resale. Equipment that 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 purposes of South Carolina income tax, which conforms to federal income tax provisions in this regard.

§ 613.2. Manufacturing. All new manufacturing establishments are exempt from county property taxes for 5 years from the time of establishment. Further, all additions to existing manufacturing establishments are exempt from county property taxes for 5 years from the time such additions are made, if the cost of such addition is \$50,000 or more. Such additions include additional machinery and equipment installed in the plant. SC Code §12-37-220(A)(7); S.C. CONST. art. X, §3. With the county's approval, an unrelated purchaser that 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. The exemption applies for the full 5 year period if the purchaser invests an additional \$50,000. SC Code §12-37-220(C). See SC Revenue Ruling 04-14, which discusses these requirements in detail, and SC Revenue Ruling 89-3, which discusses the calculation of the exemption. SC Private Letter Ruling 87-11 addresses factors relevant to determining whether a new business purchasing an existing building from a facility that had ceased operations satisfied the requirements to be a new manufacturing establishment under SC Code §12-37-220(A)(7).

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 5 years. S.C. CONST. art. X, §3.

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).

With respect to a manufacturer's idle personal property, see the special reporting rule discussed in §221.1 above.

§ 613.3. Pollution Control. All facilities or equipment of industrial plants that 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); S.C. CONST. art. X, §3. 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). The Department does not have the power to grant this exemption retroactively or refund previously paid taxes unless an application for the exemption was timely filed. *TNS Mills, Inc. v. South Carolina Department of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998).

§ 613.4. 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 Brownfields Voluntary Cleanup Program.) The exemption applies beginning with the taxable year in which a certificate of completion is issued.

§ 613.5. 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 5 years from the time of establishment, construction, or being placed in service if the cost of the new construction or additions is \$50,000 or more and 75 or more new full time jobs are created in South Carolina. SC Code §12-37-220(B)(32). Upon approval of the county, an unrelated purchaser that 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. The exemption applies for the full 5 year period if the purchaser invests an additional \$50,000 and creates at least 75 new full time jobs. SC Code §12-37-220(C). See SC Revenue Ruling 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 5 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, the new employees must be employed in the South Carolina headquarters complex. SC Revenue Ruling 98-10 provides guidance on the criteria that must be met in order for a taxpayer to qualify as a “corporate office facility.”

§ 613.6. Research and Development. The facilities of all new enterprises engaged in research and development activities, and all additions valued at \$50,000 or more to existing facilities of enterprises engaged in research and development, are exempt from property taxation for 5 years. Additions include machinery and equipment installed in an existing manufacturing or research and development facility. SC Code §12-37-220(B)(34). Upon approval by the county, an unrelated purchaser that 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. The exemption applies for the full 5 year period if the purchaser invests an additional \$50,000. SC Code §12-37-220(C). See SC Revenue Ruling 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 by ordinance may exempt this property from municipal property taxes for no more than 5 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. SC Code §12-37-220(B)(34).

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).

§ 613.7. Air Carrier Hubs. All *personal property*, including aircraft, of an air carrier that operates an air carrier hub terminal facility for a period of 10 consecutive years from the date of qualification is exempt from taxation. SC Code §12-37-220(B)(33)(a). See SC Code §55-11-500 for the definition of air carrier hub.

Alternatively, all *aircraft and associated personal property* owned by a company owning aircraft meeting the requirements of SC Code §55-11-500(a)(3)(i) (*i.e.*, two or more specially equipped planes that are used for the transportation of specialized cargo, irrespective of the number of flights) is exempt for property taxes. SC Code §12-37-220(B)(33)(b).

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). An aircraft qualifying for the exemption allowed under SC Code §12-37-220(B)(33)(b) cannot be used as the basis for an exemption under SC Code §12-37-220(B)(33)(a).

§ 613.8. New Single Family Housing for Sale by a Builder. A newly constructed detached single family home offered for sale by a residential builder or developer is exempt from property taxes through the earlier of (a) the property tax year in which the home is sold or otherwise occupied or (b) the property tax year ending the sixth December 31 after the home is completed and any required certificate of occupancy is issued, provided required notice is given for each year of eligibility and the county approves. To obtain this exemption, the owner of the property must notify the county assessor and county auditor by written affidavit that the property is eligible for the exemption and is unoccupied.

§ 613.9. 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 12-37-2880.

§ 613.10. 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 that: (a) is moving in interstate commerce; or (b) was consigned to a warehouse (public or private) within South Carolina from without for storage in transit to a final destination outside of South Carolina, whether specified when transportation began or afterward. This property is subject to certain record keeping requirements. SC Code §12-37-220(B)(17) and Article 7, Chapter 37, Title 12. No application for this exemption is necessary. SC Code §12-4-720(A)(3).

§ 613.11. Multicounty Industrial Parks. All property in *multicounty 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 that would otherwise be due if it were not for this exemption. S.C. CONST. Art. VIII, §13(D). See §712 below regarding fee in lieu of property taxes. 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 tax just as if it were a property tax. All provisions relating to collection and enforcement of property taxes apply to a multicounty park fee in lieu of tax, including penalty provisions, but excluding SC Code §12-54-155 (substantial understatement of tax). SC Code §12-2-90(B).

§ 614. Agricultural Personal Property. The following agricultural personal 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. SC Code §12-37-220(B)(23). No application for this exemption is necessary. SC Code §12-4-720(A)(3).
- B. *Beer and wine* are exempt from property taxes. SC Code §§12-37-220(B)(23) and 12-21-1085. No application for this exemption is necessary. SC Code §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 on a proportionate basis such 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. SC Code §12-37-220(B)(10). 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).

- D. All *carnival equipment* owned, leased, or used by a foreign corporation or other nonresident of South Carolina, and not physically present in South Carolina for an aggregate of more than 6 months of the tax year, and on which property taxes have been paid in at least one other state, is exempt from property taxes. SC Code §12-37-220(B)(28).

§ 616. Public Ownership and Public Use or Benefit.

§ 616.1. Publicly Owned 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. SC Code §12-37-220(A)(1), S.C. CONST. art. X, §3. No application for exemption is necessary. SC Code §12-4-720(A)(3).

Property acquired by the State or a political subdivision from a private owner will be exempt in the year of acquisition if the acquisition precedes the date property taxes become due and payable. *Town of Myrtle Beach v. Holliday*, 203 S.C. 25, 26 S.E.2d 12 (1943). By statute, property taxes are assessed annually before September 30th and are due and payable between September 30th and January 15th. SC Code §12-45-70; see SC Code §12-39-150.

The statute granting exemption of the property of the State and political subdivisions from taxation is subject to liberal construction. The rule of strict construction governs exemptions applicable to private, not public property. *Charleston County Aviation Authority v. Wasson*, 277 S.C. 480, 289 S.E.2d 416 (1982). See §714.2 below for further discussion of the meaning of “exclusively for public purposes” in the context of public property leased to private entities.

Real property not subject to property tax remains exempt if it is leased by a state agency, county, municipality, other political subdivision, or other state entity to an entity that would not be subject to property tax if the entity owned the property. SC Code §12-37-220(B)(49). See §715 below regarding ad valorem taxation of leasehold interests in exempt property.

§ 616.2. Public Use or Benefit. Exemptions related to property used by or benefitting the public includes the following:

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.

- A. 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.

B. *Property Leased for Public Purposes.* 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 warehousing. 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. SC Code §12-37-220(B)(25). No application for exemption is necessary. SC Code §12-4-720(A)(3).
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 is exempt if the vehicle would be exempt under SC Code §12-37-220(A)(1) if it were owned by the governmental entity. SC Code §12-37-220(B)(46).

Except as otherwise indicated above, 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)(1); see SC Code §12-4-720(A)(3).

D. *Land subject to a perpetual easement* donated to the State under the South Carolina Scenic Rivers Act, Chapter 29, Title 49 of the SC Code is exempt from property tax. 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 is exempt from property tax if used exclusively for economic development purposes that serve a governmental purpose as defined in §115 of the Internal Revenue Code. SC Code §12-37-220(A)(11). 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).

§ 617. Certain Nonprofit, Charitable, Religious, Educational, and Fraternal Organizations. The following is a listing of the nonprofit, charitable, religious, educational, and fraternal organizations that 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)(1).

- 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; S.C. CONST. art. X, §3. For a discussion of what type of property of a hospital may qualify for an exemption under this section, see SC Revenue Ruling 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); S.C. CONST. art. X, §3. But see (C) below for property owned, but not occupied, by churches.
- C. All real property of *churches* that extends beyond the buildings and premises actually occupied by the churches is exempt from property taxes 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. 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 as provided in SC Code §12-4-720(A)(1).
- 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); S.C. CONST. art. X, §3. If an entity owns property a portion of which qualifies for this exemption, and a portion of which is leased to one or more separate entities and that property would be exempt under SC Code §12-37-220(A)(4) or (B)(16) if the entity leasing the property owned the property, then any portion of the property that is leased to such entity is exempt from property taxes. SC Code §12-37-220(E).
- F. The property of any *religious, charitable, eleemosynary, educational, or literary society, corporation, or other association* is exempt from property taxes when the property is used by the qualifying owner primarily for holding its meetings and conducting its business, or for certain future or investment uses when qualified, provided no profit or benefit inures to the benefit of any private stockholder or individual. SC Code §12-37-220(B)(16)(a) and (c).

If a religious, charitable, eleemosynary, educational, or literary society, corporation, or other association owns property, a portion of which is eligible for exemption by virtue of use primarily for the holding of the owner's meetings and the conduct of its business, and a portion of which is leased to one or more separate entities and that property would be exempt under SC Code §12-37-220(A)(4) or (B)(16) if the entity leasing the property owned the property, then any portion of the property that is leased to such entity is exempt from property taxes. SC Code §12-37-220(E).

- 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 Chapter 36, Title 33 of the SC Code, is exempt from property taxes. SC Code §12-37-220(B)(4).
- I. All property of *nonprofit housing corporations* 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 that 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 Revenue Procedure 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 fire department or rescue 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 fire department or rescue 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* that 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, that 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, Fleet Reserve Association, Marine Corps League, or any similar Veterans Organization chartered by Congress*, whether belonging to the department or to any of the posts in South Carolina, 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. “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 Scouts of America* or *The Girl 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 that 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, Title 51 of the SC Code, and all real property of charitable trusts and foundations held for historic preservation of for

and battlegrounds that extends beyond the building and premises actually occupied by the charitable trusts or foundations that 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. SC Code §12-37-220(B)(1) provides an exemption for 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* who is permanently and totally disabled as a result of a law enforcement service connected disability. A “law enforcement officer,” as defined in SC Code §23-6-400(D)(1), 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, who is permanently and totally disabled as a result of a firefighting service disability. A “firefighter,” as defined in Chapter 80, Title 40 of the SC Code, 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.
 4. *a “qualified surviving spouse.”* A qualified surviving spouse is (a) a surviving spouse of the disabled service person, law enforcement officer or firefighter described above; 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 died in the line of duty if, at the time of death, the deceased eligible person owned the house in fee simple, 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 simple or for life. A house subsequently acquired by a qualified surviving spouse may also qualify for the exemption; however, the Department must be notified of the address of the new house.

For purposes of this exemption, “house” means a dwelling and a lot on which it is situated that qualifies as the legal residence of the taxpayer under SC Code §12-43-220(c). A house may be held in trust for a qualifying beneficiary if the house is his domicile.

“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.” SC Code §12-37-220(B)(1)(e)(ii).

- B. The dwelling house and a lot (not to exceed one acre of land) owned in fee simple or for life, or jointly with a spouse, by a *paraplegic* or *hemiplegic* person is exempt from property taxes. The qualifying person must provide proof of his disability to the Department. The exemption is allowed to the surviving spouse of a qualifying person so long as the spouse does not remarry, resides in the dwelling, and obtains a fee simple interest 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. A qualifying person includes certain persons with Parkinson’s disease, multiple sclerosis, or amyotrophic lateral sclerosis (ALS). SC Code §12-37-220(B)(2).
- 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 South Carolina Department of Motor Vehicles. 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 (POW)* 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).

The homestead exemption for the elderly, disabled or blind is discussed in §619 below.

§ 619. Homestead Exemption for the Elderly, Disabled or Blind. An exemption from all property taxes applies to the first \$50,000 of the fair market value of the dwelling place of a person who (a) has been a resident of South Carolina for at least 1 year and has reached the *age of 65*, or (b) has been classified as *totally and permanently disabled* as defined by the statute, or (c) is *legally blind* as defined by the statute. SC Code §§12-37-220(A)(9) and 12-37-250; S.C. CONST. art. X, §3. Application procedures are described in §642.1 below.

The term *dwelling place* means the permanent home and legal residence of the applicant. The exemption is applicable to county, municipal, school, and special assessment real estate property taxes.

With respect to qualifying interests, title in fee simple or by life estate held exclusively by the applicant qualifies to the full extent allowed (up to \$50,000). The dwelling place is also exempt to the full extent allowed (up to \$50,000) when jointly owned by husband and wife, if either spouse meets the criteria for the exemption. Otherwise, if the taxpayer's interest, whether a life estate or fee simple interest, is held in common with others, the exemption is calculated on a pro rata basis. 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 §12-43-221.

If a qualifying person owns a mobile home only 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 owned and occupied by a qualifying person is located on leased property, the homestead exemption is allowed for the house in the same manner as though the qualifying person 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 landowner becomes the owner of the residence.

The dwelling place of the surviving spouse of one who qualified for the homestead exemption at the time of death will qualify for the exemption to the same extent as before the death, provided (a) the surviving spouse acquires complete fee simple title to, or a life estate in, the dwelling place within 9 months after the death, and (b) the surviving spouse remains unmarried, and (c) the property is used as the permanent home and legal residence of the surviving spouse. The exemption for the surviving spouse is obtained in accordance with the procedures provided in SC Code §12-37-250. A surviving spouse who disposes of the dwelling place and acquires another residence in South Carolina for use as a dwelling place may apply for and receive the exemption on the newly acquired dwelling place.

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 6 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.

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. The personal representative of a deceased taxpayer's estate may apply on behalf of the deceased taxpayer for the homestead exemption and any refund due for those property tax years open to the deceased taxpayer immediately before the taxpayer's death. SC Code §12-37-252.

§ 640. Practice and Procedure in Exemption Cases.

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

§ 641.1. Application for Exemption. Applications for exemptions other than the homestead exemption are filed with the Department, which determines eligibility. SC Code §12-4-710. (Procedures for the homestead exemption are discussed in §642 below.)

Certain exemptions do not require application. See SC Code §12-4-720 to determine if an application is required. When an application is required, it must be filed within the time period allowed under SC Code §12-4-720 or no exemption will be permitted for the tax year in question.

Upon receipt of an application and an investigation, the Department may declare that the property qualifies for exemption and 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**. An example of a change in the status of the property is a new lease. 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.

§ 641.2. 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. See the South Carolina Revenue Procedures Act, Chapter 60, Title 12 of the SC Code; SC Revenue Procedure 06-2. The procedure for contesting the denial of an exemption is discussed in §520 above.

§ 641.3. 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 filed timely or was not required, a 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. SC Code §12-60-2150. See SC Revenue Procedure 06-2.

The procedure for claiming a refund of taxes paid if the taxpayer believes the property is subject to an exemption other than a homestead exemption is discussed in §536.3 above.

§ 642. The Homestead Exemption. The homestead exemption for taxpayers who are 65 and over, totally and permanently disabled, or legally blind is discussed in §619 above. This exemption is administered at the local level, as follows.

§ 642.1. Application for Exemption. The application for the homestead exemption for taxpayers who are 65 and over, 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 set forth in SC Code §12-37-252.

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 be granted 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 remain unchanged. Notification of any change affecting eligibility must be given immediately to the county auditor. SC Code §12-37-255. See §619 above.

§ 642.2. Appeal when Exemption Denied or Revoked. If an application for the homestead exemption is denied, the taxpayer may challenge the decision 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 15th). SC Code §§12-60-2910, 12-45-180 and 12-60-50.

The procedure for contesting the denial of a homestead exemption is discussed in §515 above.

§ 642.3. 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 filed timely or was not required, 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. SC Code §12-60-2940. The procedure for claiming such a refund is discussed in §536.2 above.

§ 642.4. Refund—Exception to the necessity of making application. When a taxpayer qualifies for a refund due to the reduction of the assessment ratio from 6% to 4% for a legal residence, the taxpayer may also be certified for the homestead exemption for the elderly, disabled or 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 that exemption. SC Code §§12-37-250 and 12-37-252(B).

PART VIII: § 700. MISCELLANEOUS ITEMS.

§ 710. Economic Development Incentives. Incentives for economic development include special assessment ratios (see §211 above), special valuations (see §220 above), and certain exemptions (see §613 above). In addition, to encourage economic growth and revitalization, South Carolina offers certain tax credits, as discussed in §711 below, and a fee in lieu of property tax, as discussed in §712 below.

§ 711. Tax Credits

§ 711.1. Incentive for Rehabilitating an Abandoned Textile Mill Site. To encourage the renovation, improvement, and redevelopment of abandoned textile mills in South Carolina, the South Carolina Textile Communities Revitalization Act provides either a property tax credit or an income tax credit to a taxpayer that improves, renovates, or redevelops a qualifying textile mill site. The Act, recodified in 2008 in Chapter 65, Title 12 of the SC Code, applies to all textile mill sites, or portions thereof, placed in service on or after January 1, 2008. See SC Code §12-65-50 for transition rules applicable to sites placed in service on or before December 31, 2007.

If the taxpayer elects to claim the property tax credit, the taxpayer must provide a Notice of Intent to Rehabilitate to the municipality in which the textile mill site is located, or to the county if the textile mill site is located in an unincorporated area, before incurring its first rehabilitation expenses at the textile mill site. Rehabilitation expenses incurred before this Notice is provided will not qualify for the credit. SC Code §12-65-30(B).

The Notice of Intent to Rehabilitate is a letter stating: (a) the intention of the taxpayer to rehabilitate the site; (b) the location of the site; (c) the amount of acreage involved with the site; (d) the estimated expenses to be incurred in rehabilitating the site; (e) which buildings on the site are to be renovated or demolished; and (f) whether new construction is to be involved at the site. SC Code §12-65-20(9).

The Act specifies the procedures for approval that the municipality or county must follow before the property tax credit goes into effect. These include giving notice to all affected taxing entities in whose jurisdiction the textile mill site is located. If a local taxing entity does not file a timely objection, it is deemed to have consented to the granting of the credit. SC Code §12-65-30(B).

The credit amount is based on actual or estimated rehabilitation expenses as follows:

1. If the actual expenses are between 80% and 125% of the estimated expenses listed in the Notice, the credit is *25% of the actual rehabilitation expenses* multiplied by the local taxing entity ratio for each local taxing entity that has consented to the credit.
2. If the actual expenses exceed 125% of the estimated expenses listed in the Notice, the credit is *25% of 125% of the estimated rehabilitation expenses* multiplied by the local taxing entity ratio for each local taxing entity that has consented to the credit.
3. If the actual rehabilitation expenses are below 80% of the estimated expenses, no credit is allowed.

The local governing body, by ordinance, must decide how much of 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 eligible 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. The credit may be claimed for each applicable phase or portion of the site beginning with the property tax year the applicable phase or portion is first placed in service. SC Code §12-65-30(B).

In addition, the Act specifies a procedure by which a taxpayer may apply to the local government for certification that the credit is allowed. SC Code §12-65-60. Note that the credit is not available if the facility has previously received textile mill credits or if the taxpayer owned the textile mill site immediately prior to its abandonment and the site was operational at that time. SC Code §12-65-30(D).

Definitions. Under the South Carolina Textile Communities Revitalization Act, the following definitions apply. See SC Code §12-65-20.

1. "Textile Mill" means facilities that were initially used for textile manufacturing, dying or finishing operations and for uses ancillary to those operations.
2. "Textile mill site" means the textile mill together with the land and other improvements on it that were used directly for textile manufacturing operations or ancillary uses. However, the area of the site is limited to the land located within the boundaries where the textile manufacturing, dying, or finishing facility structure is located and does not include land located outside the boundaries of the structure or devoted to ancillary uses.

3. “Ancillary Uses” are uses related to the textile manufacturing, dying, or finishing operations on a textile mill site consisting of sales, distribution, storage, water runoff, wastewater treatment and detention, pollution control, landfill, personnel offices, security offices, employee parking, dining and recreation areas, and internal roadways or driveways directly associated with such uses.
4. “Rehabilitation expenses” are expenses or capital expenditures incurred in the rehabilitation, renovation, or redevelopment of the textile mill site, including demolition costs, environmental remediation, site improvements and new construction costs, but excluding the cost of acquiring the site or the cost of personal property located at the site. For expenses to qualify for the credit, the textile mill and buildings on the site must be either renovated or demolished.
5. “Abandoned” means that at least 80% of the textile mill has been continuously closed to business or otherwise nonoperational as a textile mill for at least one year immediately preceding the date the taxpayer files a Notice of Intent to Rehabilitate. A textile mill that qualifies as abandoned may be subdivided into separate parcels, and those parcels may be owned by the same taxpayer or different taxpayers, and each parcel is deemed to be a textile mill site for purposes of determining whether each subdivided parcel has been abandoned.
6. “Placed in service” means the date the textile mill site is completed and ready for its intended use. If the site is completed and ready for use in phases or portions, each phase or portion is considered placed in service when it is completed and ready for its intended use.
7. A “local taxing entity” is 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.
8. The “local taxing entity ratio” is the percentage computed by dividing the millage rate of each local taxing entity by the total millage rate for the eligible site.

Caution: Other rules not discussed in this general summary may apply to sites purchased before January 1, 2008 or a site located on the Catawba River near Interstate 77.

§ 711.2. Incentive for Rehabilitating Abandoned Retail Facilities. The South Carolina Retail Facilities Revitalization Act, Chapter 34, Title 6 of the SC Code, was enacted to encourage the renovation, improvement, and redevelopment of abandoned retail facilities in South Carolina. It provides either a property tax credit or an income tax credit to a taxpayer that improves, renovates, or redevelops an abandoned retail facility site in South Carolina.

The taxpayer may elect to claim the property tax credit by notifying the South Carolina Department of Revenue 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. SC Code §6-34-40(D).

The Act specifies the procedures for approval that the municipality or county must follow before the property tax credit goes into effect. These include giving notice to all affected taxing entities in whose jurisdiction the textile mill site is located. If a local taxing entity does not file a timely objection, it is deemed to have consented to the granting of the credit provided the credit does not exceed the amount stated in the public hearing notice. SC Code §6-34-40(B).

If granted, the credit is equal to 25% of the rehabilitation expenses at the eligible site multiplied by 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. SC Code §6-34-40(B).

The owner of the eligible site may transfer, devise, or distribute any unused credit against property tax or income tax to the tenant of the eligible site, provided the Department receives written notification of, and approves, the transfer, devise, or distribution. SC Code §6-34-40(E).

Definitions. Under the South Carolina Retail Facilities Revitalization Act, the following definitions apply. See SC Code §6-34-30.

1. An "eligible site" is a shopping center, mall, or free standing site whose primary use was as a retail facility with at least one tenant or occupant located in a 40,000 square foot or larger building or structure that has been abandoned. However, for purposes of the property tax credit, the governing body of a county or municipality where the site is located may, by resolution, reduce the 40,000 square foot eligibility requirement by not more than 15,000 square feet. See SC Code §6-34-40(F).
2. "Abandoned" means that at least 80% of the eligible site's building or structure has been continuously closed to business or nonoperational for at least one year immediately prior to the time the determination is to be made. However, during the abandonment, the eligible site may serve as a wholesale facility for no more than one year. The eligible site's facilities only include the site's building or structure.
3. "Rehabilitation expenses" are the expenses incurred in the rehabilitation of the eligible site, excluding the cost of acquiring the eligible site or the cost of personal property maintained at the eligible site.
4. A "local taxing entity" is a county, municipality, school district, special purposes district, or any other entity or district with the power to levy ad valorem property taxes against the eligible site.
5. The "local taxing entity ratio" is the percentage computed by dividing the millage rate of each local taxing entity by the total millage rate for the eligible site.
6. "Placed in service" means the date on which the eligible site is suitable for occupancy for the purposes intended.

§ 711.3. Incentive for Installing a Fire Sprinkler System. A local taxing entity may allow a property tax credit to a taxpayer who installs a new or existing fire sprinkler system in a new or existing commercial or residential structure if the fire sprinkler system is not required by law, regulation, or code. The property tax credit is equal to 25% of the direct expenses, not including any fee charged by the utility, and is applied against real property taxes levied by the consenting local taxing entity. SC Code § 12-6-3622; see SC Code § 40-10-20 (definition of fire sprinkler system). The taxpayer may also claim an income tax credit equal to the amount of the property tax credit allowed by the local taxing entity.

The owner of the structure may transfer, devise, or distribute any unused credit to the tenant of the eligible site. To be effective, the local taxing entity must receive written notification.

§ 712. Fee in Lieu of Property Taxes.

§ 712.1. 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 3 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 Revenue Rulings 93-7 and 97-21. The Fee statutes permit a company to negotiate to pay a fee instead of paying property taxes. The 10.5% assessment ratio can be, and often is, negotiated to 6% (4% for very large investments under the Super Fee or Enhanced Investment Fee). In addition, the company and the county can agree to freeze the millage rate applicable to the property at a set millage rate, or adjust the millage rate every 5 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).

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
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	x .250	x .250
Tax Due	\$2,336,250	\$1,335,000
Savings		\$1,001,250

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

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

§ 712.2. Little Fee.

Steps in the Little Fee Process. In connection with the Little Fee, certain requirements must be satisfied:

- 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 that 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 §712.6.)

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 that are considered necessary, suitable, or useful by a sponsor. A project may also consist of, or include, an aircraft hangared or used at an airport in South Carolina. SC Code §4-12-10(2).

The project must be located in a single county, in a multicounty 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 charge against its general credit or taxing power.
- C. The purposes to be accomplished by the project are proper governmental and public purposes.
- D. 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. A sponsor affiliate may also qualify for the Fee. A “sponsor” is defined as “one or more entities which sign the inducement agreement with the county and also includes a sponsor affiliate unless the context clearly indicates otherwise.” A “sponsor affiliate” means an entity that joins with, or is an affiliate of, a sponsor and that participates in the investment in, or financing of, a project. SC Code §4-12-10.

A minimum investment amount of \$2.5 million is required for each sponsor or sponsor affiliate to qualify for the Little Fee. SC Code §4-12-30(B)(4)(a). However, the following exceptions are provided:

1. The minimum 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 1st. (See §41-712.7 “Fee in Lieu Reduced Investment Counties” for a list of qualifying counties.)
2. The minimum investment amount is deemed met if a sponsor is a nonresponsible party in a voluntary cleanup on the property pursuant to Article 7, Chapter 56, of Title 44 of the SC Code, 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).
3. In the case of a manufacturing, research and development, corporate office, or distribution facility, as defined in SC Code § 12-6-3360(M), the \$2.5 million minimum investment does not apply if the total investment at the project exceeds \$5 million for agreements executed after January 1, 2011 or existing agreements that are so amended. Otherwise, the total investment amount must exceed \$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, the sponsor has 5 years to complete its required minimum investment and 5 years to complete 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. A second extension may be approved, provided the second extension is requested before the end of the first extension period and the aggregate extension period does not exceed 5 years. Unless approved as part of the original lease documentation, any extension may be approved by resolution of county council with a copy provided to the Department within 30 days. SC Code §4-12-30(C).

Even if an extension to complete the project is granted, the required minimum investment must be made before the end of the 5 year investment period. If the required minimum investment is not made within the 5 year investment period, all property covered by the Fee will be retroactively subject to a Fee equal to the general property tax. Any time limitation period for assessment under SC Code §12-54-85 is suspended during the 5 year investment period. The sponsor 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 (a) the county approves the addition of the sponsor affiliate for the Fee, (b) the sponsor affiliate invests the minimum investment amount, and (c) the sponsor affiliate agrees to be bound by those portions of the agreements that affect the county. An agreement may provide for a process of approval of sponsor affiliates. SC Code §4-12-30(B)(4).

All investment by the sponsor affiliate must be made at the sponsor's project. The Department must be notified in writing of all sponsor and sponsor affiliates that have investments subject to the Fee within 90 days after the end of the calendar year during which the project, or pertinent phase of the project, was placed in service. 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 §4-12-30(B)(4).

With the county's approval, an entity whose investments are not being counted towards the minimum investment amount can make project expenditures during the 5 year investment period that qualify as investment expenditures subject to the Fee if the following criteria are satisfied. First, the project expenditures must be part of the original cost of the property. Second, the property must be transferred to one or more entities that are sponsors or sponsor affiliates whose investments are being considered for minimum investment purposes. Third, the property must be such as would have qualified for the Fee if it had been initially acquired by the sponsor rather than the transferor entity. Fourth, the income tax basis of the property immediately after the transfer must equal the income tax basis immediately before the transfer. However, if the income tax basis of the property after the transfer unintentionally exceeds the income tax basis before the transfer, the excess will be subject to a Fee equal to the property tax that would be due without the Fee. SC Code §4-12-30(J).

Exemption Period for Property Subject to the Fee. Generally, each piece of property may be subject to the Fee for an exemption period of no more than 30 years after it is placed in service. Before the end of the exemption period (Fee period), an extension of up to 10 years may be approved by resolution of county council upon a finding of substantial public benefit, with a copy of the resolution provided to the Department within 30 days. For projects that are completed and placed in service during more than one year, each year's investment may be subject to the Fee for 30 years or, if extended, up to 40 years, for an aggregate period of up to 50 years. SC Code §4-12-30(C)(4). Note that these Fee periods apply to agreements executed after January 1, 2011 and to earlier agreements that are modified to incorporate them. Otherwise, different Fee periods apply.

Property Eligible for Fee. Title to Fee property must be held by the county, which leases the Fee property back to the sponsor. Property that 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.
- B. Property that has never been placed in service in South Carolina.

- C. Property that was placed in service in South Carolina pursuant to an inducement agreement or other preliminary county approval before the execution of a lease agreement.
- D. Aircraft.

In the case of property that is not subject to the Fee, repairs, alterations, or modifications are not eligible for the Fee, even if they are capitalized expenditures. An exception is made for modifications to existing real property improvements that 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. SC Code §4-12-30(F).

The inducement agreement may provide that any property that 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 that 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 that 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, that is disposed of in the same property tax year that the replacement property is placed in service.
- F. Replacement property is subject to the Fee in lieu of property taxes for the remaining portion of the Fee period (exemption period) applicable to the property that it is replacing.

If there is no provision in the inducement agreement dealing with replacement property, any property placed in service after the 5 year investment period is subject to either (a) Fee payments equal to property taxes under SC Code §4-12-20 if title is held by the county or (b) 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 of Investment Expenditures and Purchases. Investment expenditures incurred by a sponsor qualify as expenditures subject to the Fee if the inducement agreement is executed within 2 years of the date the county adopts a resolution identifying the project; otherwise, only expenditures made after the inducement agreement is executed qualify. Unless the sponsor's agreement covers replacement property, all property must be purchased either: (a) before the end of the 5 year investment period or (b) before the expiration of the additional time allowed to complete the project if an extension is granted (usually 5 additional years after the investment period has ended). SC Code §4-12-30(I). In any event, the minimum investment must be completed within the 5 year investment period.

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. It may contain the millage rate, unless a separate millage rate agreement is executed. The sponsor and county may negotiate to use different assessment ratios for different assessment years or 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 parties may not reduce the assessment ratio below the lowest assessment ratio for which the sponsor qualifies under SC Code §4-12-30(D).

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: (a) on 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) on 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 they enter into an inducement agreement 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, the parties may agree that the value will be determined by appraisal by the Department, in which case the real property will be subject to reappraisal no more often than every 5 years. 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 Revenue Procedure 04-5.

Financing Agreements. A sponsor 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 that 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 and assessment ratio cannot be lowered once a millage rate agreement, or 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. Prior approval, or subsequent ratification, can occur by a letter or other writing executed by an authorized county representative as provided in an appropriate agreement, by a resolution passed by the county council, or by county council following 3 readings and a public hearing. The county has the sole discretion as to which method to use. County approval is not required in connection with transfers to sponsor affiliates or financing related transactions. If 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 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. Penalties and interest may apply if a sponsor is late in making a Fee payment or in filing a required return. 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 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 the required minimum investment or to meet any other investment or job requirements set forth in the agreement, within the applicable time period, the Fee will terminate. Once terminated, all property that was subject to the Fee will be retroactively subject to property tax. If a sponsor fails to make its Fee or 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 such 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 amount required by the agreements (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 taxes on the property. SC Code §4-12-30(B)(4)(f) and (D)(3).

Infrastructure Improvement Credit. A county, municipality, or special purpose district that receives proceeds from a Fee may provide to a sponsor a payment derived from the Fee or a credit against the Fee. However, any payment or credit must be used for the purposes outlined in SC Code §4-29-68, including the purchase of eligible infrastructure, real estate and personal property. SC Code §4-12-30(K)(3). Special rules apply in the event affected personal property is removed from the project during the Fee period. See §712.6 below.

§ 712.3. Big Fee.

Steps in the Big Fee Process. In connection with the Big Fee, certain requirements must be satisfied:

- 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 sponsor will receive the Fee as an inducement for locating in the county. The company that enters into the inducement agreement is known as the “sponsor.”
- C. Millage rate agreement—The sponsor and the county may enter into a millage rate agreement that fixes the millage rate for the entire Fee period or fixes it for the first 5 years and provides that it will be revised every 5 years. If the sponsor and the county do not execute a millage rate agreement, the millage rate is usually provided for in the inducement agreement or the lease agreement.

- 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, 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 §712.6.)

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 that are considered necessary, suitable, and useful for a sponsor. SC Code §4-29-67(A)(1)(c).

The project must be located in a single county, in a multicounty 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 §4-29-67(A)(1)(e). 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 §4-29-67(A)(1)(f).

A minimum investment amount of \$45 million is required for each sponsor or sponsor affiliate to qualify for the Big Fee. SC Code § 4-29-67(B)(3). However, the following exceptions are provided:

1. The minimum 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 1st. (See § 712.7 “Fee in Lieu Reduced Investment Counties” for a list of qualifying counties.)

2. The minimum investment amount is deemed met if a sponsor is a nonresponsible party in a voluntary cleanup on the property pursuant to Article 7, Chapter 56, of Title 44 of the SC Code, 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.
3. In the case of a manufacturing, research and development, corporate office, or distribution facility, as defined in SC Code § 12-6-3360(M), or a qualified nuclear plant facility, as defined in SC Code §4-29-67(A)(1)(d), the \$45 million minimum investment is not required of each sponsor and sponsor affiliate if the total investment at the project exceeds \$45. SC Code § 4-29-67(B)(4).

From the end of the property tax year in which the initial lease agreement is executed, a sponsor has 5 years to complete its required minimum investment and 5 years to complete 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. A second extension may be approved, provided the second extension is requested before the end of the first extension period and the aggregate extension period does not exceed 5 years. Unless approved as part of the original lease documentation, any extension may be approved by resolution of county council with a copy provided to the Department within 30 days. SC Code §4-29-67(C).

Even if an extension to complete the project is granted, the required minimum investment must be made before the end of the 5 year investment period. If the required minimum investment is not made within the 5 year investment period, all property covered by the Fee will be retroactively subject to a Fee equal to the property tax. Any time limitation period for assessment under SC Code §12-54-85 is suspended during the 5 year investment period. SC Code §4-29-67(C).

A sponsor affiliate that does not originally join in the Fee may later qualify for the Fee if (a) the county approves the addition of the sponsor affiliate for the Fee, (b) the sponsor affiliate invests the minimum investment amount, and (c) 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. An agreement may provide for a process of approval of sponsor affiliates. SC Code §4-29-67(B)(4).

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 90 days after the end of the calendar year in which the project, or pertinent phase of the project, was placed in service. 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).

With the county's approval, an entity whose investments are not being counted towards the minimum investment amount can make project expenditures during the 5 year investment period that qualify as investment expenditures subject to the Fee if the following criteria are satisfied. First, the project expenditures must be part of the original cost of the property. Second, the

property must be transferred to one or more entities that are sponsors or sponsor affiliates whose investments are being considered for minimum investment purposes. Third, the property must be such as would have qualified for the Fee if it had been initially acquired by the sponsor rather than the transferor entity. Fourth, the income tax basis of the property immediately after the transfer must equal the income tax basis immediately before the transfer. However, if the income tax basis of the property after the transfer unintentionally exceeds the income tax basis before the transfer, the excess will be subject to a Fee equal to the property tax that would be due without the Fee. SC Code §4-29-67(J).

Exemption Period for Property Subject to the Fee. Generally, each piece of Fee property may be subject to the Fee for an exemption period of no more than 30 years after it is placed in service. Before the end of the exemption period (Fee period), an extension of up to 10 years may be approved by resolution of county council upon a finding of substantial public benefit, with a copy of the resolution provided to the Department within 30 days. 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 30 years or, if extended, up to 40 years, for an aggregate period of up to 50 years. SC Code §4-29-67(C)(3). Note that these Fee periods apply to agreements executed after January 1, 2011 and to earlier agreements that are modified to incorporate them. Otherwise, different Fee periods apply.

Property Eligible for Fee. Title to Fee property must be held by the county, which leases the Fee property to the sponsor. Property that 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.
- B. Property that has never been placed in service in South Carolina.
- C. Property that was placed in service in South Carolina pursuant to an inducement agreement or other preliminary county approval before the execution of a lease agreement.
- D. Aircraft.
- E. Property that is purchased in a transaction other than a transaction between related taxpayers as determined under Section 267(b) of the Internal Revenue Code if the sponsor invests at least an additional \$45 million in the project. SC Code §4-29-67(K).

In the case of property that is not subject to the Fee, repairs, alterations, or modifications are not eligible for the Fee, even if they are capitalized expenditures. An exception is made for modifications to existing real property improvements that constitute an expansion of the improvements. SC Code §4-29-67(K).

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 in South Carolina, it becomes subject to property tax. SC Code §4-29-67(F)(1).

The inducement agreement may also provide that any property that 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 be subject to the Fee in lieu of property taxes:

- 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 that 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 that 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, that is disposed of in the same tax year that the replacement property is placed in service.
- F. Replacement property is subject to the Fee in lieu of property taxes for the remaining portion of the Fee period (exemption period) applicable to the property that 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 in SC Code §4-29-67(D)(2)(b) for determining its Fee, the Fee on the property that 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 of 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 a resolution identifying the project; otherwise, only expenditures made after the inducement agreement is executed qualify. Unless the sponsor's agreement covers replacement property, all property must be purchased either: (a) before the end of the 5 year investment period or (b) before the expiration of the additional time allowed to complete the project if an extension is granted (usually 5 additional years after the investment period has ended). SC Code §4-29-67(I). In any event, the minimum investment must be completed within the 5 year investment period.

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 executed. The sponsor and county may negotiate to use different assessment ratios for different assessment years or 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: (a) on 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) on 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). There are special provisions in the case of a qualified nuclear facility. SC Code §4-29-67(W).

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, the parties may agree that the value will be determined by appraisal by the Department, in which case the real property will be subject to reappraisal no more often than every 5 years. 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 Revenue Procedure 04-5.

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, regardless of the identity of the income tax owner of the property that 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 and discount rate cannot be lowered once a millage rate agreement, or 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. Prior approval, or subsequent ratification, can occur by a letter or other writing executed by an authorized county representative as provided in an appropriate agreement, by a resolution passed by the county council, or by county council following 3 readings and a public hearing. The county has the sole discretion as to which method to use. County approval is not required in connection with transfers to sponsor affiliates or for financing transactions. If an 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).

Termination of the Fee and Lease Agreement. If a sponsor fails to make the minimum investment or any other investment or job requirement set forth in the agreements, within the applicable time period, the Fee will terminate. Once terminated, all property that was subject to the Fee will be retroactively subject to property tax. The sponsor and the county may agree in the agreement that if the sponsor fails to make the required minimum investment, 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).

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 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 the minimum investment amount required by the agreements (based on income tax basis without regard to depreciation) or such greater amount as specified in the inducement agreement or lease agreement, the Fee is no longer available and the sponsor must pay a Fee equivalent to property taxes on the property. If the agreement is terminated by agreement or by law and the sponsor is using the net present value method to compute the Fee, the sponsor must pay the county at the time of termination 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 that was actually paid to the county under the net present value method. SC Code §4-29-67(B)(4)(b)(iii).

Infrastructure Improvement Credit. A county, municipality, or special purpose district that receives proceeds from a Fee may provide to a sponsor a payment derived from the Fee or a credit against the Fee. However, any payment or credit must be used for the purposes outlined in SC Code §4-29-68, including the purchase of eligible infrastructure, real estate and personal property. SC Code §4-29-67(L)(3). Special rules apply in the event affected personal property is removed from the project during the Fee period. See §712.6 below.

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).

§ 712.4. Simplified Fee.

Steps in the Simplified Fee Process. In connection with the Simplified Fee, there are fewer steps and agreements that 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.

Definition and Location of the 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 that are considered necessary, suitable, and useful for a sponsor. A project may also consist of, or include, an aircraft hangared or used at an airport in South Carolina. SC Code §12-44-30(16).

The project must be located in a single county, in a multicounty 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. 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 charge against its general credit or taxing power.
- C. The purposes to be accomplished by the project are proper governmental and public purposes.
- D. The benefits of the project are greater than the cost.

The county may seek assistance and advice from the Board of Economic Advisors or the Department in making its findings, and the findings must be set forth in an ordinance. SC Code §12-44-40(H)

Required Investment and Timing of the Investment. Generally, the required investment must be made by a sponsor. A sponsor affiliate may also qualify for the Fee. A “sponsor” is defined as “one or more entities which sign the 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” means an entity that joins with, or is an affiliate of, a sponsor, and that participates in the investment in, or financing of, a project. SC Code §12-44-30(19) and (20).

A minimum investment amount of \$2.5 million is required for each sponsor or sponsor affiliate to qualify for the Simplified Fee. SC Code §12-44-130(A). However, the following exceptions are provided:

1. The minimum 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 1st. SC Code §12-44-30(14). (See §712.7 “Fee in Lieu Reduced Investment Counties” for a list of qualifying counties.)
2. The minimum investment amount is deemed met if a sponsor is a nonresponsible party in a voluntary cleanup on the property pursuant to Article 7, Chapter 56, of Title 44 of the SC Code, 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).
3. In the case of a manufacturing, research and development, corporate office, or distribution facility, as defined in SC Code §12-6-3360(M), or a qualified nuclear facility, as defined in SC Code §12-44-30(17), the \$2.5 million minimum investment does not apply if the total investment at the project exceeds \$5 million. SC Code § 12-44-30(19).

For the Simplified Fee, the required minimum investment must be made before the end of the investment period. 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. There are special provisions in the case of a qualified nuclear facility. SC Code §12-44-30(2) and (13).

If the sponsor does not expect to complete the project within the investment 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. A second extension may be approved, provided the second extension is requested before the end of the first extension period and the aggregate extension period does not exceed 5 years. Unless approved as part of the original documentation, any extension may be approved by resolution of county council with a copy provided to the Department within 30 days. SC Code §12-44-30(13).

Even if an extension to complete the project is granted, the required minimum investment must be made before the end of the investment period. 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. Any time limitation period for assessment under SC Code §12-54-85 is suspended during the time period for making the required minimum investment. SC Code §§12-44-30, 12-44-40 and 12-44-140.

A sponsor affiliate that does not originally join in the Fee may later qualify for the Fee if (a) the county approves the addition of the sponsor affiliate for the Fee, (b) the sponsor affiliate invests the minimum investment amount, and (c) the sponsor affiliate agrees to be bound by those portions of the agreements that affect the county. An agreement may provide for a process of approval of sponsor affiliates. SC Code §12-44-130.

All investment by the sponsor affiliate must be made at the sponsor's project. The Department must be notified in writing of all sponsor and sponsor affiliates that have investments subject to the Fee within 90 days after the end of the calendar year during which the project, or pertinent phase of the project, was placed in service. 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 §12-44-130.

Exemption Period for Property Subject to the Fee. Generally, each piece of Fee property may be subject to the Fee for an exemption period of 30 years after it is placed in service. Before the end of the exemption period (Fee period), an extension of up to 10 years may be approved by resolution of county council upon a finding of substantial public benefit, with a copy of the resolution provided to the Department within 30 days. For projects that are completed and placed in service in more than one year, each year's investment may be subject to the Fee for 30 years or, if extended, up to 40 years. SC Code §12-44-30(2), (8), (13) and (21). Note that these Fee periods apply to agreements executed after January 1, 2011 and to earlier agreements that are modified to incorporate them. Otherwise, different Fee periods apply.

Property Eligible for the Fee. It is not necessary to transfer title to property subject to the Simplified Fee to the county. Nevertheless, property that 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.
- B. Property that has never been placed in service in South Carolina.

- C. Property that was placed in service in South Carolina pursuant to an inducement agreement or other preliminary county approval before the execution of a lease agreement.
- D. Aircraft.
- E. Property that is purchased in a transaction other than a transaction between related taxpayers as determined under Section 267(b) of the Internal Revenue Code if the sponsor invests at least an additional \$45 million in the project. SC Code §12-44-110; see SC Code §12-44-30(16).

In the case of property that is not subject to the Fee, repairs, alterations, or modifications are not eligible for the Fee, even if they are capitalized expenditures. An exception is made for modifications to existing real property improvements that constitute an expansion of the improvements. 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. If property is removed from the project, but remains within South Carolina, the property becomes subject to property tax. SC Code §12-44-50.

The Fee agreement may provide that any property that 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 that 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 that it is replacing, the excess is subject to property tax.
- 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, that is disposed of in the same property tax year that the replacement property is placed in service.
- E. Replacement property is subject to the Fee in lieu of property taxes for the remaining portion of the exemption period (Fee period) applicable to the property that 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 in SC Code §12-44-50(A)(3) for determining its Fee, the Fee on the property that is disposed of must be recomputed using the standard Fee method contained in SC Code §12-44-50(A)(1). To the extent 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 of 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 responsibilities of each party and contains the negotiated assessment ratio and the millage rate. It must be approved by the county through an ordinance.

The Fee agreement must be executed within 5 years after an inducement resolution or other action by the county identifying or reflecting the project; otherwise, any property previously purchased for the project will not qualify for the Fee. Special rules apply in the case of a qualified nuclear facility. Once the Fee agreement is executed, the exemption period for each piece of property covered by the Fee begins on the first day of the next property tax year after the property is placed in service. SC Code §§12-44-30(8) and (10), and 12-44-40.

The Fee agreement may either fix the millage rate for the entire term of the Fee or increase or decrease the millage rate every 5 years in step with the average actual millage rate applicable in the district where the project is located based on the preceding 5 year period. The initial millage rate 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: (a) on June 30th of the year preceding the year in which the Fee agreement is executed; or (b) on June 30th of the year in which the Fee agreement is executed. SC Code §12-44-50(A).

Valuation for Fee Purposes. Generally, for real property, the value is the original income tax basis for South Carolina income tax purposes without regard to depreciation; however, the parties may agree that the value will be determined by appraisal by the Department, in

which case the real property will be subject to reappraisal not more often than every 5 years. 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 Revenue Procedure 04-5.

Additional Method of Calculating Fee. The Simplified Fee allows 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” that 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, regardless of the income tax owner of the property that 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, and assessment ratio cannot be changed once the Fee agreement is executed. Nor can the length of the Fee agreement be increased, except as provided in SC Code §12-44-30(13).

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. Prior approval or subsequent ratification can occur by a letter or other writing executed by an authorized county representative as provided in the Fee agreement, by a resolution passed by the county council, or by county council following three readings and a public hearing. The county has the sole discretion as to which method to use. County approval is not required in connection with financing related transactions or transfers to sponsor affiliates. If a Fee agreement is transferred, the transferee assumes the basis that the sponsor transferor had in the real and personal property subject to the Fee for purposes of calculating the Fee. SC Code §12-44-120.

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 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 were subject to property tax. Penalties and interest may apply if a sponsor is late in making a Fee payment or in filing a required return. 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 county and the sponsor may agree to include a recapitulation of the transaction as part of the agreement. The provisions of Chapters 49, 51, and 53 of Title 12 of the SC Code 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 within the investment period, the Fee agreement will terminate. Once terminated, all property that was subject to the Fee will be retroactively subject to property taxes as of the commencement date. The sponsor must pay the county a Fee equal to the difference between the Fees 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).

The statute allows a “safety net” to a sponsor that 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 under 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 the agreement is terminated by agreement or by law and the sponsor was using the net present value method to compute the Fee, the sponsor must pay to the county at the time of termination 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.

Expiration of Exemption Period and Maintaining the Minimum Investment. After the exemption 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 such 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 required by the agreements (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 taxes on the property. SC Code §12-44-140(C).

Infrastructure Improvement Credit. A county, municipality, or special purpose district that received proceeds from a Fee may provide to a sponsor a payment derived from the Fee or a credit against the Fee. However, any payment or credit must be used for the purposes outlined in SC Code §4-29-68, including purchase of eligible infrastructure, real estate and personal property. SC Code §§12-44-30(12) and 12-44-70. Special rules apply in the event affected personal property is removed from the project during the Fee period. See §712.6 below.

Transitional Rules for Projects Under Existing Fee. Transitional rules are provided for projects that may be covered by preexisting Little Fee or Big 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.

§ 712.5. Super and Enhanced Investment Fees. Both the Little and Big Fee contain a provision that allows certain entities to apply for a Super Fee. The Simplified Fee contains an equivalent provision, but calls it an Enhanced Investment Fee. The Super or Enhanced Investment Fee may be equal to what the property tax would have been if the property was assessed at 4%. In addition to a possible assessment ratio of 4%, if a company qualifies as a sponsor with respect to 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 an extension of up to 5 additional years to complete the project. Special periods apply in the case of a qualified nuclear facility subject to the Super Fee.

If the company qualifies as a sponsor with respect to 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 an extension of up to 5 additional 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.

If a project received an extension of less than 5 years originally, the sponsor can apply to the county before the end of the existing extension period for additional time to complete the project provided that the aggregate extension cannot exceed 5 years. The county council may approve the extension by resolution and a copy of the resolution must be delivered to the Department within 30 days of the resolution being adopted.

If a business qualifying as a sponsor with respect to the Super or Enhanced Investment Fee has more than \$500 million in capital investment in this State and employs more than 1,000 people in this State, the business will have 10 years to meet the minimum investment requirements of the Super Fee and 15 years to complete the project in question.

The Fee period (exemption period) for property subject to the Super Fee is up to 40 years after the property is placed in service. For those projects placed in service in more than one year, the Fee is available for an aggregate period of up to 53 or 55 years depending on the specifics of the project. SC Code §§4-12-30(C), 4-29-67(C). Note that these Fee periods apply to agreements executed after January 1, 2011 and to earlier agreements that are modified to incorporate them. Otherwise, different Fee periods apply.

Qualifying property may be subject to the Enhanced Investment Fee for an exemption period of 30 years after the property is placed in service. For those projects placed in service in more than one year, the Fee is available for an aggregate period of up to 43 years. SC Code §12-44-30(8), (13) and (21).

If a business qualifying as a sponsor with respect to 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 may qualify for an assessment ratio as low as 4% under the Little Fee Super Fee:

- A. A single sponsor that invests at least \$150 million and creates at least 125 new full-time jobs in South Carolina. SC Code §4-12-30(D)(4)(a)(i).
- B. A single sponsor that invests at least \$400 million at a project. SC Code §4-12-30(D)(4)(a)(ii).
- C. A project that 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)(iii).

Note that the new full-time job requirements applicable in items (A) and (C) above do not apply to any taxpayer that 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 Super Fee. SC Code §4-12-30(D)(4)(b).

The following may qualify for an assessment ratio as low as 4% under the Big Fee Super Fee:

- A. A single sponsor that invests at least \$150 million and creates at least 125 new full-time jobs at the project. SC Code §4-29-67(D)(4)(a)(i).
- B. A single sponsor that invests at least \$400 million in South Carolina. SC Code §4-29-67(D)(4)(a)(ii).
- C. A project that 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 §4-29-67(D)(4)(a)(iii).

Note that the new full-time job requirements applicable in items (A) and (C) above do not apply to any taxpayer that 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 Super Fee. SC Code §4-29-67(D)(4)(b).

The following may qualify for an assessment ratio as low as 4% under the Enhanced Investment Fee:

- A. A single sponsor that invests at least \$150 million and creates at least 125 new full-time jobs at the project; however, the new full-time job requirement does not apply to a taxpayer that paid more than 50% of all property taxes actually collected in the county for more than 25 years, ending on the date of the Fee agreement. SC Code §12-44-30(7)(a).
- B. A single sponsor that invests at least \$400 million. SC Code §12-44-30(7)(b).
- C. A project that 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 §12-44-30(7)(c).

For both the Super Fee and the Enhanced Investment Fee, if a single sponsor enters into a financing arrangement, the investment or financing by a developer, lessor, financing entity, or another third person in accordance with this arrangement is considered an investment by the sponsor for purposes of meeting the investment requirements. Also, investments by a “related person” are considered to be investments by the sponsor. SC Code §§4-12-30(D)(4)(a), 4-29-67(D)(4)(a), and 12-44-30(7).

A “related person” includes any entity or person that bears a relationship to the sponsor as provided in Internal Revenue Code Section 267 and includes, but is not limited to, a limited liability company where more than 50% of the capital interest or profits is owned directly or indirectly by the sponsor or by a person or entity, or group of persons or entities, that owns more than 50% of the capital or profits in the sponsor. SC Code §12-10-80(D)(2).

§ 712.6. Special Source Revenue Bonds. In connection with a Little or Big Fee, a county (or municipality or special purpose district) where the project will be located may issue special source revenue bonds. These special source revenue bonds allow the political subdivision to finance infrastructure projects usually at or surrounding the project that enhance its economic development, and then pay back the bonds with money it receives from the Fee payments from the project. The rules regarding special source revenue bonds are contained in 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.

§ 712.7. Fee in Lieu Reduced Investment Counties. For 2010, only Allendale County qualified for the \$1 million minimum investment. For 2011, no county qualifies.

§ 713. Property Tax Reform.

The 2006 legislative session produced sweeping property tax reform. Among the most significant components were changes to the valuation of real property. Effective for property tax years after 2006, there is a 15% cap on increases in the fair market value of any parcel in the 5 year period between reassessments. This 15% cap will remain in effect until an “assessable transfer of interest” occurs, which will trigger a reappraisal not limited by the 15% cap. A non-exclusive list of events that constitute an assessable transfer of interest is provided in SC Code §12-37-3150. At the time of this writing, legislation is being considered to alter or eliminate this provision on the ground that an unrestricted reappraisal triggered by conveyance of real property discourages economic development.

Another component of the property tax reform was a “tax swap.” In exchange for a 1% sales tax increase on all items except unprepared food, accommodations and items subject to a maximum sales tax, an exemption for all property taxes (millage) imposed for school operating purposes applies to legal residences assessed based on a 4% ratio, effective beginning with the 2007 property tax year. Act No. 388, 2006 SC Acts.

School districts are reimbursed from the Homestead Exemption Fund based on the amount of property taxes that would have been collected but for the school operating millage exemption. SC Code §11-11-156. Millage associated with lease-purchase and installment-purchase agreements is deemed to be for “school operating purposes” and therefore is subject to exemption and reimbursement from the Homestead Exemption Fund. *Berkeley County Sch. Dist. v. S.C. Dep’t of Revenue*, 383 S.C. 334, 679 S.E.2d 913 (2009).

§ 714. Constitutional Issues.

§ 714.1. The Power of Local Government to Grant Exemptions. Article X, §3 of the SC Constitution mandates statewide uniformity in property tax exemptions enacted by the General Assembly. Therefore, counties may not enact local exemptions, and an act of the General Assembly so authorizing the counties is unconstitutional. *City of North Charleston v. County of Charleston*, 363 S.C. 527, 611 S.E.2d 920 (2005).

However, Article X, §3 expressly states that municipal governments can, by ordinance, exempt from municipal property taxes, for not more than 5 years, all new manufacturing establishments and all additions to existing manufacturing establishments, including

additional machinery and equipment costing \$50,000 or more. S.C. CONST. art. X, §3(g). Article X, §3 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 enter into agreements for economic development projects that make the projects exempt as “economic development property” during the period in which a fee in lieu of property taxes is paid pursuant to Chapter 44, Title 12 of the SC Code. See §§712.1, 712.4 and 712.5 above.

§ 714.2. The Meaning of “Exclusively for Public Purposes” in the Context of Public Property Leased to Private Entities. 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) that was leased to a private business. The court held:

- A. The fact that property is used by a private business entity does not alone preclude its being used exclusively for public purposes;
- B. The use of the airport authority’s property by certain private tenants, including 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, was incidental to the public use. Therefore, such property was exempt under Article X, Section 3 of the South Carolina Constitution and SC Code §12-37-220(A)(1). By contrast, the use of the airport authority’s property by two private aviation companies was primarily private: the public use was incidental to the private use. Consequently, the property leased to the private aviation companies was not exempt. 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” under the statute in effect at the time, 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 *Quirk* court, citing *Charleston County Aviation Authority v. Wasson*, *supra*, 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) (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.”

Note that 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 the discussion of the fee in lieu of property tax in §712 above.

Note further that a non-exempt lessee of exempt property may nonetheless be liable for property tax or a fee equal to the property tax. For example, SC Code §4-12-20 requires that if a county or any other 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, unless a different fee in lieu of property tax is negotiated pursuant to SC Code §4-12-30. See §712 above (concerning the fee in lieu of property tax) and §715 below (concerning ad valorem taxation of leasehold interests in certain property).

§ 714.3. No Taxation without Representation. 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.” In *Weaver v. Recreation District*, 328 S.C. 83, 492 S.E.2d 79 (1997), a taxpayer challenged the constitutionality of a statute that conferred taxing authority on a county recreation commission whose members were appointed, not elected. The commission was authorized 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.”

§ 714.4. Financing Public Schools. In *Abbeville County School District v. State*, 335 S.C. 58, 515 S.E.2d 535 (1999), the plaintiffs, including 40 school districts, instituted an action to challenge South Carolina’s statutory scheme for funding public schools.

The plaintiffs 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 trial court granted the defendants' motion, and the plaintiffs appealed to the South Carolina Supreme Court.

The South Carolina Supreme Court affirmed in part, reversed in part, and remanded the case to the trial court. The Supreme Court 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 Supreme Court dismissed the plaintiffs' equal protection claims and held that the EFA does not create a private cause of action.

On remand, the trial court rendered a decision in December 2005 on the plaintiffs' claim 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, 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 trial 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. Order, *Abbeville School District v. State*, case number 93-CP-31-0169 (December 29, 2005). An electronic copy of the order can be found at www.scschoolcase.com/Abbeville-County-Order.pdf.

The plaintiffs and the South Carolina General Assembly filed cross-appeals in the South Carolina Supreme Court. The case was argued in 2008, and a decision is pending.

§ 715. Ad Valorem Taxation of Leasehold Interests in Certain Property. When real property owned by a tax exempt entity is leased to a taxable entity, there may be 2 alternative outcomes.

First, depending on the statutory language authorizing the exemption, the lease may invalidate the exemption, so that the owner owes property tax. For example, if a church leases its property to a non-exempt lessee, its exemption under SC Code §12-37-220(A)(3) is invalidated because the statute requires that the property be actually occupied by the owner.

Alternatively, the exemption statute may extend to leased property, so that the owner continues to be exempt from property tax liability. For example, if a county leases its property to a non-exempt lessee, its exemption under SC Code §12-37-220(A)(1) continues provided

the leased property is used exclusively for public purposes, as discussed in §714.2 above. Moreover, such property is exempt if it is leased to an entity that would not be subject to property tax if the entity owned the property. SC Code §12-37-220(B)(49).

A question then arises whether the owner's exemption protects the non-exempt lessee, or whether the non-exempt lessee's leasehold interest in the property becomes subject to property tax, with the leasehold being valued as though the lessee owned the underlying real property.

Two South Carolina statutes are applicable to this issue. The first statute, SC Code §4-12-20, provides 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 pertinent statute is SC Code §12-37-950, which provides 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.

To return to the example, when a county leases its property to a non-exempt lessee, SC Code §4-12-20 provides that the lessee must pay a fee equal to the property taxes that would be due on the property if the lessee owned the property. SC Code §4-12-20; see SC Code §4-12-30 (a fee in lieu of property taxes may be negotiated). However, SC Code §4-12-20 applies only to property owned by political subdivisions, not by the state or federal government or other exempt entities. When one of these leases property to non-exempt lessees, SC Code §12-37-950 comes into play.

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 merely a valuation statute that is obsolete because it values the leasehold interest, which they view as intangible personal property. Since intangible personal property is no longer subject to property taxes in South Carolina, these practitioners argue SC Code §12-37-950 is no longer 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*, 302 S.C. 148, 394 S.E.2d 320 (1990), and *Charleston County Aviation*

Authority v. Wasson, 277 S.C. 480, 289 S.E.2d 416 (1982), both of which involved a tax exempt entity leasing property to an entity that did not qualify for a property tax exemption. However, those cases only reached the threshold issue of whether the owner's exemption remained intact after the property was leased, as it was alleged (unsuccessfully) that the leased properties were no longer used exclusively for public purposes. In neither case did the court face a claim that the owner's exemption applied to any other party's liability for property tax. Because these decisions do not address the lessees' tax liability, they are not dispositive.

On the other side of the issue is a well known South Carolina tax commentator, William J. Quirk, professor at the University of South Carolina School of Law, and some of the Department staff, who take 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.

Proponents of this view 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 shows intent 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 Distributors & Amusement Co. v. State*, 338 S.C. 634, 649, 528 S.E. 2d 647, 655 (1999).

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, 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 property 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.

One county, seeking to tax such a leasehold interest, has prevailed in the South Carolina Administrative Law Court. *Clarendon County v. TYKAT, Inc.*, Docket No. 09-ALJ-17-0458-CC (S.C. Admin. L.Ct., filed June 25, 2010) (concluding that SC Code §12-37-950 sets forth a "plain, bright-line mandate" to tax the leasehold interest where the lessor's tax exemption is uncontested). The matter is pending on appeal in the South Carolina Supreme Court.

§ 716. Impact of Declining Property Values on Assessment of Real Property. In the wake of recent economic woes, a question has arisen about the impact of declining property values on the assessment of real property in South Carolina in years between implementation of countywide reassessment programs.

Claims for a reduction in assessment based solely on a decline in value have found no support to date. In other words, absent an assessable transfer of interest (ATI), there is no authority for an assessor to reassess property values in a non-countywide reassessment year when the property was not omitted from the tax rolls, has not undergone a change in (physical) condition that would alter its value, and without specific directive from the Department of Revenue to conduct a reassessment. See *Long Cove Home Owners' Ass'n v. Beaufort County Tax Equalization Bd.*, 327 S.C. 135, 488 S.E.2d 857 (1997); *Bertrand v. Beaufort County Assessor*, Docket No. 10-ALJ-17-0560-CC (S.C. Admin. L.Ct., filed Jan. 4, 2011); SC Tax Commission Decision 93-61; SC Code §§12-37-90, 12-37-3140, 12-39-220, 12-43-210 and 12-43-215. See also 2010 Op. Atty Gen. No. ____ (June 9, 2010) (2010 WL 2678685).

For further discussion concerning valuation of real property, see §§220, 220.4 and 310 through 311 above.

§ 720. Jurisdiction of State and Local Agencies. 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.

§ 721. 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 (843) 852-3600 ext. 139

B. Business Personal Property

1. William Paradice (803) 898-5207

C. Property Tax Exemption

1. Adriane Shealy (803) 898-5482

D. Manufacturing

1. Nancy Smoak (803) 898-5462

E. Motor vehicles

1. Trish Schwartz (803) 898-5827

F. Fee in Lieu of Tax

1. Meredith Robertson (803) 898-5390

G. Anything else:

1. William Paradice (803) 898-5207

§ 724. The County Property Tax Officials.

COUNTY

ASSESSOR

AUDITOR

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Abbeville, SC 29620
864-366-5312
bgladden@abbevillecountysc.com

Brian K. Johnson
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Barnwell	Mike Hughes P.O. Box 711 Barnwell, SC 29812 803-541-1011 mfhughes@barnwellsc.com	James Fickling P. O. Box 711 Barnwell, SC 29812 803-541-1040 jgf@barnwellsc.com
Beaufort	Ed Hughes P. O. Box 458 Beaufort, SC 29901 843-470-2513 edhughes@bcgov.net	Sharon Burris P. O. Box 458 Beaufort, SC 29901 843-470-2558 sharonb@bcgov.net
Berkeley	Wilson Baggett P.O. Box 6122 Moncks Corner, SC 29461 843-719-4061 wbaggett@berkeleycountysc.gov	Janet Jurosko P. O. Box 6122 Moncks Corner, SC 29461 843-719-4039 jjurosko@berkeleycountysc.gov
Calhoun	Steve Hamilton 115 Liberty Street, Ste 107 St. Matthews, SC 29135 803-874-3613 shamilton@calhouncounty.sc.gov	Pamela Taber 101 Courthouse Drive St. Matthews, SC 29135 803-874-3623 ptaber@calhouncounty.sc.gov
Charleston	Toy Glennon P.O. Box 427 Charleston, SC 29402 843-958-4100 tgleennon@charlestoncounty.org	Peggy Moseley 2 Courthouse Square Charleston, SC 29402 843-958-4200 pmoseley@charlestoncounty.org
Cherokee	Rob Weaver P. O. Box 1405 Gaffney, SC 29342 864-487-2552 robert.weaver@cherokeecountysc.com	Merv Bishop P. O. Box 32 Gaffney, SC 29342 864-487-2543 marvin.bishop@cherokeecountysc.com

Chester	Ellis Faulkner P. O. Drawer 580 Chester, SC 29706 803-377-4177 efaulkner@chestercounty.org	Donnie Wade P.O. Drawer 580 Chester, SC 29706 803-385-2607 dwade@chestercounty.org
Chesterfield	Susie Jordan 200 W. Main St. Chesterfield, SC 29709 843-623-7362 ccao@shtc.net	Jack Rivers 200 W. Main St. Chesterfield, SC 29709 843-623-2338 ccauditor@shtc.net
Clarendon	Robert Everett P. O. Box 367 Manning, SC 29102 803-435-4423 assessor@clarendoncountygov.org	Patricia Pringle P. O. Box 697 Manning, SC 29102 803-435-2013 ppringle@clarendoncountygov.org
Colleton	Tommy Hill P. O. Box 1166 Walterboro, SC 29488 843-549-1213 thill@colletoncounty.org	James O. Hiott, Jr. P. O. Box 128 Walterboro, SC 29488 843-549-2131 jhiott@colletoncounty.org
Darlington	Kyle Johnson 1 Public Square Rm 309 Darlington, SC 29532 843-398-4180 kjohnson@darlcosc.com	Rosa D. Hudson 1 Public Square Rm 205 Darlington, SC 29532 843-398-4110 rhudson@darlcosc.com
Dillon	Steve Rogers P. O. Box 1041 Dillon, SC 29536 843-774-1412 stvnsfrg@bellsouth.net	Kay McKenzie P. O. Box 32 Dillon, SC 29536 843-774-1418 dillonaudit@aol.com
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Fairfield	Wendell Irby P. O. Drawer 60 Winnsboro, SC 29180 803-712-6520 wirby@fairfieldsc.com	Peggy G. Hensley P. O. Box 88 Winnsboro, SC 29180 803-712-6524 phensley@fairfieldsc.com
Florence	Jack Newsome 180 N. Irby St. MSC-A Florence, SC 29501 843-665-3056 jnewsome@florenceco.org	H. Wayne Joye 180 N. Irby St. Florence, SC 29501 843-665-3088 auditor@florenceco.org
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Greenville	Debbie Adkins Suite 1000 301 University Ridge Greenville, SC 29601 864-467-7300 dadkins@greenvillecounty.org	Scott Case Suite 800 301 University Ridge Greenville, SC 29601 864-467-7056 scase@greenvillecounty.org
Greenwood	Vivian Lancaster 528 Monument St. 109 Greenwood, SC 29646 864-942-8537 assessor@co.greenwood.sc.us	R. Brann Lowther 528 Monument St. 107 Greenwood, SC 29646 864-942-8543 brann@co.greenwood.sc.us
Hampton	Lester Warren P.O. Box 575 Hampton, SC 29924 803-943-7507 lwarren@hamptoncountysc.org	Teresa Williams P. O. Box 575 Hampton, SC 29924 803-914-2116 twilliams@hamptoncountysc.org
Horry	Rendel Mincey 1301 2 nd Ave., Ste. C108 Conway, SC 29526 843-915-5040 rmincey@horrycounty.org	Lois Eargle P.O. Box 1205 Conway, SC 29528 843-915-5054 eargle@horrycounty.org
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Lee	Clarence Caudill P.O. Box 309 Bishopville, SC 29010 803-484-5341 ccaudill@leecountysc.org	Cecil Stevens P. O. Box 241 Bishopville, SC 29010 803-484-5341 ext. 375 cstevens@leecountysc.org
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Marlboro	Jeff Dudley P. O. Box 62 Bennettsville, SC 29512 843-479-5602 mcassessor@bellsouth.net	Benjy Rogers P. O. Box 468 Bennettsville, SC 29512 843-479-5608 mcauditor@bellsouth.net
McCormick	Curt Arnold 133 S. Mine St. McCormick, SC 29835 864-852-2931 tca_assessor@wctel.net	Virginia Edmonds 133 S. Mine St. McCormick, SC 29835 864-852-2107 vedmunds@mccormickcountysc.org

Newberry	Mary Arrowood P. O. Box 362 Newberry, SC 29108 803-321-2125 marrowood@newberrycounty.net	Donna Lominack P. O. Box 362 Newberry, SC 29108 803-321-2105 dlominack@newberrycounty.net
Oconee	Linda Shugart 415 S. Pine St. Walhalla, SC 29691 864-638-4150 LShugart@oconeesc.com	Ken Nix 415 S. Pine St. Walhalla, SC 29691 864-638-4158 kennix@oconeesc.com
Orangeburg	Jim McClean P. O. Drawer 9000 Orangeburg, SC 29116 803-533-6220 assessor@orangeburgcounty.org	Roger Cleckley P. O Drawer 9000 Orangeburg, SC 29116 803-533-6200 rcleckley@orangeburgcounty.org
Pickens	David Day 222 McDaniel Ave B-8 Pickens, SC 29671 864-898-5871 davidd@co.pickens.sc.us	Brent Suddenth 222 McDaniel Ave B-7 Pickens, SC 29671 864-898-5895 brents@co.pickens.sc.us
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Spartanburg	Gil Bulman P. O. Box 5762 Spartanburg, SC 29304 864-596-2544 gbulman@spartanburgcounty.org	Sharon West 366 N. Church St. Spartanburg, SC 29303 864-596-2600 swest@spartanburgcounty.org
Sumter	Lath Harris 13 E. Canal St. Sumter, SC 29150 803-436-2115 lharris@sumtercountysc.org	Lauretha A. McCants 13 E. Canal St. Sumter, SC 29150 803-436-2136 lmccants@sumtercountysc.org

Union	Susan Hanvey 203 N. Herndon Street Union, SC 29379 864-429-1650 shanvey@countyofunion.com	Bradley O. Valentine 210 W. Main St. Union, SC 29379 864-429-1618 BValentine@countyofunion.com
Williamsburg	Betty Etheridge 147 W. Main St. Kingstree, SC 29556 843-355-9321 ext. 119 betty.etheridge@williamsburgcounty.sc.gov	Sally Mouzon P.O. Box 7 Kingstree, SC 29556 843-355-9321 ext. 543 sally.mouzon@williamsburgcounty.sc.gov
York	Teresa Simmons P. O. Box 57 York, SC 29745 803-684-8526 teresa.simmons@yorkcountygov.com	Amy Boheler P. O. Box 25 York, SC 29745 803-684-8501 amy.boheler@yorkcountygov.com

§ 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 (8:30 a.m. to 5:00 p.m. ET Monday-Friday). Forms may also be obtained by writing:

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

In addition, South Carolina Business One Stop, the State's online business portal, offers electronic filing for *business personal property returns (Form PT-100)* at www.scbos.sc.gov.

§ 732. The Basic Property Tax Forms.

PT- 100 Business Personal Property [Tax] Return. Note: this form should be filed online at www.scbos.sc.gov for accounting periods closing on or after December 31, 2010.

PT-139 Water and Sewer Companies Property Tax Return

PT-300 Manufacturing Property Tax Return

PT-300-I Manufacturing [Property Tax] Return Instructions

PT-401 Application for [Property Tax] Exemption

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

§ 733. Other Forms of Possible Interest.

SC2848 Power of Attorney

C-188 Request for Publications

I-231 Request for Forms