

RECEIVED

THE STATE OF SOUTH CAROLINA Jun 29 2021

In The Court of Appeals

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Case No. 14-ALJ-17-0552-CC

Appellate Case No. 2021-000031

Lowe's Home Centers, LLC

Appellant,

v.

South Carolina Department of Revenue

Respondent.

**RECORD ON APPEAL
Volume 9 of 12**

Burnet R. Maybank, III, SC Bar No. 3699
Rick Reames III, SC Bar No. 68327
Jim Rourke, SC Bar No. 79879
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
Telephone: (803) 771-8900
bmaybank@nexsenpruet.com
rreames@nexsenpruet.com
jrourke@nexsenpruet.com

John M. Allan
JONES DAY
1420 Peachtree Street NE
Suite 800
Atlanta, Georgia 30309
Telephone: (404) 581-8012
jmallan@jonesday.com

Attorneys for Appellant Lowe's Home Centers, LLC

Nicole M. Wooten
SOUTH CAROLINA
DEPARTMENT OF REVENUE
300-A Outlet Point Boulevard
Post Office Box 12265
Columbia, South Carolina 2921 1
Telephone: (803)898-1826
Nicole.Wooten@dor.sc.gov

Attorney for Respondent South Carolina Department of Revenue

INDEX

Volume 1

Final Order of December 11, 2020.....	1
Transcript of Proceedings dated April 20, 2016.....	34
Transcript of Proceedings dated June 7, 2016.....	369
Joint Exhibits	
1.....	424
2.....	435
3.....	439
4.....	441

Volume 2

Joint Exhibits	
5.....	444
6.....	452
7.....	455
8.....	497
9.....	531
10.....	567
11.....	569
13.....	572
14.....	576
15.....	580
16.....	585

Volume 3

Joint Exhibits	
17.....	599
18.....	603
19.....	606
20.....	608
21.....	706
22.....	721
23.....	724
24.....	727
25.....	730

Volume 4

Joint Exhibits

26.....	733
27.....	746
28.....	807
29.....	813
30.....	821
31.....	830
32.....	834
33.....	890
34.....	899

Volume 5

Joint Exhibits

35.....	905
36.....	912
37.....	918
38.....	920
39.....	923
40.....	927
41.....	931
42.....	935
43.....	939
44.....	950
45.....	960
46.....	969
47.....	973

Volume 6

Joint Exhibits

48.....	978
---------	-----

Volume 7

Joint Exhibits

Continuation of 48.....	1083
-------------------------	------

Volume 8

Joint Exhibits

Continuation of 48.....	1189
-------------------------	------

Volume 9

Joint Exhibits

49.....	1298
50.....	1315
51.....	1321
52.....	1332
53.....	1335
54.....	1352
55.....	1409
56.....	1415

Volume 10

Joint Exhibits

57.....	1514
58.....	1530
59.....	1637
60.....	1645
61.....	1650
62.....	1653

Volume 11

Joint Exhibits

63.....	1660
---------	------

Volume 12

Joint Exhibits

Continuation of 63.....	1804
64.....	1972

Respondent's Exhibits

1.....	1974
2.....	1976

Certificate of Counsel.....	1978
-----------------------------	------

JOINT EXHIBIT 49

UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

as promulgated by the
Appraisal Standards Board of
The Appraisal Foundation

DEFINITIONS

For the purpose of the *Uniform Standards of Professional Appraisal Practice* (USPAP), the following definitions apply:

APPRAISAL: (noun) the act or process of developing an opinion of value; an opinion of value.
(adjective) of or pertaining to appraising and related functions such as appraisal practice or appraisal services.

Comment: An appraisal must be numerically expressed as a specific amount, as a range of numbers, or as a relationship (e.g., not more than, not less than) to a previous value opinion or numerical benchmark (e.g., assessed value, collateral value).

APPRAISAL CONSULTING: the act or process of developing an analysis, recommendation, or opinion to solve a problem, where an opinion of value is a component of the analysis leading to the assignment results.

Comment: An appraisal consulting assignment involves an opinion of value but does not have an appraisal or an appraisal review as its primary purpose.

APPRAISAL PRACTICE: valuation services performed by an individual acting as an appraiser, including but not limited to appraisal, appraisal review, or appraisal consulting.

Comment: *Appraisal practice* is provided only by appraisers, while *valuation services* are provided by a variety of professionals and others. The terms *appraisal*, *appraisal review*, and *appraisal consulting* are intentionally generic and are not mutually exclusive. For example, an opinion of value may be required as part of an appraisal review and is required as a component of the analysis in an appraisal consulting assignment. The use of other nomenclature for an appraisal, appraisal review, or appraisal consulting assignment (e.g., analysis, counseling, evaluation, study, submission, or valuation) does not exempt an appraiser from adherence to the *Uniform Standards of Professional Appraisal Practice*.

APPRAISAL REVIEW: the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal, appraisal review, or appraisal consulting assignment.

Comment: The subject of an appraisal review assignment may be all or part of a report, workfile, or a combination of these.

APPRAISER: one who is expected to perform valuation services competently and in a manner that is independent, impartial, and objective.

DEFINITIONS

Comment: Such expectation occurs when individuals, either by choice or by requirement placed upon them or upon the service they provide by law, regulation, or agreement with the client or intended users, represent that they comply.¹

APPRAISER'S PEERS: other appraisers who have expertise and competency in a similar type of assignment.

ASSIGNMENT: 1) An agreement between an appraiser and a client to provide a valuation service; 2) the valuation service that is provided as a consequence of such an agreement.

ASSIGNMENT RESULTS: an appraiser's opinions and conclusions developed specific to an assignment.

Comment: Assignment results include an appraiser's:

- opinions or conclusions developed in an appraisal assignment, such as value;
- opinions of adequacy, relevancy, or reasonableness developed in an appraisal review assignment; or
- opinions, conclusions, or recommendations developed in an appraisal consulting assignment.

ASSUMPTION: that which is taken to be true.

BIAS: a preference or inclination that precludes an appraiser's impartiality, independence, or objectivity in an assignment.

BUSINESS ENTERPRISE: an entity pursuing an economic activity.

BUSINESS EQUITY: the interests, benefits, and rights inherent in the ownership of a business enterprise or a part thereof in any form (including, but not necessarily limited to, capital stock, partnership interests, cooperatives, sole proprietorships, options, and warrants).

CLIENT: the party or parties who engage an appraiser (by employment or contract) in a specific assignment.

Comment: The client identified by the appraiser in an appraisal, appraisal review, or appraisal consulting assignment (or in the assignment workfile) is the party or parties with whom the appraiser has an appraiser-client relationship in the related assignment, and may be an individual, group, or entity.

CONFIDENTIAL INFORMATION: information that is either:

- identified by the client as confidential when providing it to an appraiser and that is not available from any other source; or
- classified as confidential or private by applicable law or regulation*.

*NOTICE: For example, pursuant to the passage of the Gramm-Leach-Bliley Act in November 1999, some public agencies have adopted privacy regulations that affect appraisers. As a result, the Federal Trade Commission issued a rule focused on the protection of "non-public personal information" provided by consumers to those involved in financial activities "found to be closely related to banking or usual in connection with the transaction of banking." These activities have been deemed to include "appraising real or personal property." (Quotations are from the Federal Trade Commission, Privacy of Consumer Financial Information; Final Rule, 16 CFR Part 313.)

¹ See PREAMBLE and Advisory Opinion 21, *USPAP Compliance*.

71 **COST:** the amount required to create, produce, or obtain a property.

72 Comment: *Cost* is either a fact or an estimate of fact.

73 **CREDIBLE:** worthy of belief.

74 Comment: Credible assignment results require support, by relevant evidence and logic, to the
75 degree necessary for the intended use.

76 **EXTRAORDINARY ASSUMPTION:** an assumption, directly related to a specific assignment, which, if
77 found to be false, could alter the appraiser's opinions or conclusions.

78 Comment: Extraordinary assumptions presume as fact otherwise uncertain information about
79 physical, legal, or economic characteristics of the subject property; or about conditions
80 external to the property, such as market conditions or trends; or about the integrity of data
81 used in an analysis.

82 **FEASIBILITY ANALYSIS:** a study of the cost-benefit relationship of an economic endeavor.

83 **HYPOTHETICAL CONDITION:** that which is contrary to what exists but is supposed for the purpose of
84 analysis.

85 Comment: Hypothetical conditions assume conditions contrary to known facts about physical,
86 legal, or economic characteristics of the subject property; or about conditions external to the
87 property, such as market conditions or trends; or about the integrity of data used in an
88 analysis.

89 **INTANGIBLE PROPERTY (INTANGIBLE ASSETS):** nonphysical assets, including but not limited to
90 franchises, trademarks, patents, copyrights, goodwill, equities, securities, and contracts as distinguished from
91 physical assets such as facilities and equipment.

92 **INTENDED USE:** the use or uses of an appraiser's reported appraisal, appraisal review, or appraisal consulting
93 assignment opinions and conclusions, as identified by the appraiser based on communication with the client at
94 the time of the assignment.

95 **INTENDED USER:** the client and any other party as identified, by name or type, as users of the appraisal,
96 appraisal review, or appraisal consulting report by the appraiser on the basis of communication with the client at
97 the time of the assignment.

98 **JURISDICTIONAL EXCEPTION:** an assignment condition established by applicable law or regulation,
99 which precludes an appraiser from complying with a part of USPAP.

100 **MARKET VALUE:** a type of value, stated as an opinion, that presumes the transfer of a property (i.e., a right
101 of ownership or a bundle of such rights), as of a certain date, under specific conditions set forth in the definition
102 of the term identified by the appraiser as applicable in an appraisal.

103 Comment: Forming an opinion of market value is the purpose of many real property appraisal
104 assignments, particularly when the client's intended use includes more than one intended user.
105 The conditions included in market value definitions establish market perspectives for
106 development of the opinion. These conditions may vary from definition to definition but
107 generally fall into three categories:

- 108 1. the relationship, knowledge, and motivation of the parties (i.e., seller and buyer);
- 109 2. the terms of sale (e.g., cash, cash equivalent, or other terms); and

DEFINITIONS

3. the conditions of sale (e.g., exposure in a competitive market for a reasonable time prior to sale).

Appraisers are cautioned to identify the exact definition of market value, and its authority, applicable in each appraisal completed for the purpose of market value.

MASS APPRAISAL: the process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing.

MASS APPRAISAL MODEL: a mathematical expression of how supply and demand factors interact in a market.

PERSONAL PROPERTY: identifiable tangible objects that are considered by the general public as being "personal" - for example, furnishings, artwork, antiques, gems and jewelry, collectibles, machinery and equipment; all tangible property that is not classified as real estate.

PRICE: the amount asked, offered, or paid for a property.

Comment: Once stated, *price* is a fact, whether it is publicly disclosed or retained in private. Because of the financial capabilities, motivations, or special interests of a given buyer or seller, the price paid for a property may or may not have any relation to the *value* that might be ascribed to that property by others.

REAL ESTATE: an identified parcel or tract of land, including improvements, if any.

REAL PROPERTY: the interests, benefits, and rights inherent in the ownership of real estate.

Comment: In some jurisdictions, the terms *real estate* and *real property* have the same legal meaning. The separate definitions recognize the traditional distinction between the two concepts in appraisal theory.

REPORT: any communication, written or oral, of an appraisal, appraisal review, or appraisal consulting service that is transmitted to the client upon completion of an assignment

Comment: Most reports are written and most clients mandate written reports. Oral report requirements (see the Record Keeping section of the ETHICS RULE) are included to cover court testimony and other oral communications of an appraisal, appraisal review, or appraisal consulting service.

SCOPE OF WORK: the type and extent of research and analyses in an assignment.

SIGNATURE: personalized evidence indicating authentication of the work performed by the appraiser and the acceptance of the responsibility for content, analyses, and the conclusions in the report.

VALUATION SERVICES: services pertaining to aspects of property value.

Comment: Valuation services pertain to all aspects of property value and include services performed both by appraisers and by others.

VALUE: the monetary relationship between properties and those who buy, sell, or use those properties.

Comment: *Value* expresses an economic concept. As such, it is never a fact but always an opinion of the worth of a property at a given time in accordance with a specific definition of

DEFINITIONS

146 value. In appraisal practice, value must always be qualified - for example, market value,
147 liquidation value, or investment value.

148 **WORKFILE:** documentation necessary to support an appraiser's analyses, opinions, and conclusions.

PREAMBLE

PREAMBLE

The purpose of the *Uniform Standards of Professional Appraisal Practice* (USPAP) is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. It is essential that appraisers develop and communicate their analyses, opinions, and conclusions to intended users of their services in a manner that is meaningful and not misleading.

The Appraisal Standards Board promulgates USPAP for both appraisers and users of appraisal services. The appraiser's responsibility is to protect the overall public trust and it is the importance of the role of the appraiser that places ethical obligations on those who serve in this capacity. USPAP reflects the current standards of the appraisal profession.

USPAP does not establish who or which assignments must comply. Neither The Appraisal Foundation nor its Appraisal Standards Board is a government entity with the power to make, judge, or enforce law. Compliance with USPAP is required when either the service or the appraiser is obligated to comply by law or regulation, or by agreement with the client or intended users. When not obligated, individuals may still choose to comply.

USPAP addresses the ethical and performance obligations of appraisers through DEFINITIONS, Rules, Standards, Standards Rules, and Statements.

- The DEFINITIONS establish the application of certain terminology in USPAP.
- The ETHICS RULE sets forth the requirements for integrity, impartiality, objectivity, independent judgment, and ethical conduct.
- The COMPETENCY RULE presents pre-assignment and assignment conditions for knowledge and experience.
- The SCOPE OF WORK RULE presents obligations related to problem identification, research and analyses.
- The JURISDICTIONAL EXCEPTION RULE preserves the balance of USPAP if law or regulation of a jurisdiction precludes compliance with any part of USPAP.
- The ten Standards establish the requirements for appraisal, appraisal review, and appraisal consulting service and the manner in which each is communicated.
 - STANDARDS 1 and 2 establish requirements for the development and communication of a real property appraisal.
 - STANDARD 3 establishes requirements for the development and communication of an appraisal review.
 - STANDARDS 4 and 5 establish requirements for the development and communication of a real property appraisal consulting assignment.
 - STANDARD 6 establishes requirements for the development and communication of a mass appraisal.
 - STANDARDS 7 and 8 establish requirements for the development and communication of a personal property appraisal.
 - STANDARDS 9 and 10 establish requirements for the development and communication of a business or intangible asset appraisal.
- Statements on Appraisal Standards clarify, interpret, explain, or elaborate on a Rule or Standards Rule.
- Comments are an integral part of USPAP and have the same weight as the component they address. These extensions of the DEFINITIONS, Rules, and Standards Rules provide interpretation and establish the context and conditions for application.

192 ETHICS RULE

193 An appraiser must promote and preserve the public trust inherent in appraisal practice by observing
194 the highest standards of professional ethics.

195 An appraiser must comply with USPAP when obligated by law or regulation, or by agreement with
196 the client or intended users. In addition to these requirements, an individual should comply any time
197 that individual represents that he or she is performing the service as an appraiser.

198 Comment: This Rule specifies the personal obligations and responsibilities of the individual
199 appraiser. An individual appraiser employed by a group or organization that conducts itself in a
200 manner that does not conform to USPAP should take steps that are appropriate under the
201 circumstances to ensure compliance with USPAP.

202 This ETHICS RULE is divided into four sections: Conduct, Management, Confidentiality, and
203 Record Keeping. The Conduct, Management, and Confidentiality sections apply to all appraisal
204 practice. The Record Keeping section applies to appraisal practice performed under
205 STANDARDS 1 through 10.

206 Conduct:

207 An appraiser must perform assignments with impartiality, objectivity, and independence, and
208 without accommodation of personal interests.

209 An appraiser:

- 210 • must not perform an assignment with bias;
- 211 • must not advocate the cause or interest of any party or issue;
- 212 • must not accept an assignment that includes the reporting of predetermined opinions and
213 conclusions;
- 214 • must not misrepresent his or her role when providing valuation services that are outside of
215 appraisal practice;
- 216 • must not communicate assignment results with the intent to mislead or to defraud;
- 217 • must not use or communicate a report that is known by the appraiser to be misleading or
218 fraudulent;
- 219 • must not knowingly permit an employee or other person to communicate a misleading or
220 fraudulent report;
- 221 • must not use or rely on unsupported conclusions relating to characteristics such as race,
222 color, religion, national origin, gender, marital status, familial status, age, receipt of public
223 assistance income, handicap, or an unsupported conclusion that homogeneity of such
224 characteristics is necessary to maximize value;
- 225 • must not engage in criminal conduct; and
- 226 • must not perform an assignment in a grossly negligent manner.

227 Comment: Development standards (1-1, 3-1, 4-1, 6-1, 7-1 and 9-1) address the requirement that
228 "an appraiser must not render appraisal services in a careless or negligent manner." The above
229 requirement deals with an appraiser being grossly negligent in performing an assignment which
230 would be a violation of the Conduct section of the ETHICS RULE.

ETHICS RULE

231 If known prior to accepting an assignment, and/or if discovered at any time during the assignment,
232 an appraiser must disclose to the client, and in the subsequent report certification:

- 233 • any current or prospective interest in the subject property or parties involved; and
- 234 • any services regarding the subject property performed by the appraiser within the three
235 year period immediately preceding acceptance of the assignment, as an appraiser or in any
236 other capacity.

237 Comment: Disclosing the fact that the appraiser has previously appraised the property is permitted
238 except in the case when an appraiser has agreed with the client to keep the mere occurrence of a
239 prior assignment confidential. If an appraiser has agreed with a client not to disclose that he or she
240 has appraised a property, the appraiser must decline all subsequent assignments that fall within the
241 three year period.

242 Management:

243 An appraiser must disclose that he or she paid a fee or commission, or gave a thing of value in
244 connection with the procurement of an assignment.

245 Comment: The disclosure must appear in the certification and in any transmittal letter in which
246 conclusions are stated; however, disclosure of the amount paid is not required. In groups or
247 organizations engaged in appraisal practice, intra-company payments to employees for business
248 development do not require disclosure.

249 An appraiser must not accept an assignment, or have a compensation arrangement for an
250 assignment, that is contingent on any of the following:

- 251 1. the reporting of a predetermined result (e.g., opinion of value);
- 252 2. a direction in assignment results that favors the cause of the client;
- 253 3. the amount of a value opinion;
- 254 4. the attainment of a stipulated result (e.g., that the loan closes, or taxes are reduced); or
- 255 5. the occurrence of a subsequent event directly related to the appraiser's opinions and specific
256 to the assignment's purpose.

257 An appraiser must not advertise for or solicit assignments in a manner that is false, misleading, or
258 exaggerated.

259 An appraiser must affix, or authorize the use of, his or her signature to certify recognition and
260 acceptance of his or her USPAP responsibilities in an appraisal, appraisal review, or appraisal
261 consulting assignment (see Standards Rules 2-3, 3-6, 5-3, 6-9, 8-3, and 10-3). An appraiser may
262 authorize the use of his or her signature only on an assignment-by-assignment basis.

263 An appraiser must not affix the signature of another appraiser without his or her consent.

264 Comment: An appraiser must exercise due care to prevent unauthorized use of his or her signature.
265 An appraiser exercising such care is not responsible for unauthorized use of his or her signature.

266 Confidentiality:

267 An appraiser must protect the confidential nature of the appraiser-client relationship.

268 An appraiser must act in good faith with regard to the legitimate interests of the client in the use of
269 confidential information and in the communication of assignment results.

270 An appraiser must be aware of, and comply with, all confidentiality and privacy laws and regulations
 271 applicable in an assignment.²

272 An appraiser must not disclose: (1) confidential information; or (2) assignment results to anyone
 273 other than:

- 274 • the client;
- 275 • persons specifically authorized by the client;
- 276 • state appraiser regulatory agencies;
- 277 • third parties as may be authorized by due process of law; or
- 278 • a duly authorized professional peer review committee except when such disclosure to a
 279 committee would violate applicable law or regulation.

280 A member of a duly authorized professional peer review committee must not disclose confidential
 281 information presented to the committee.

282 Comment: When all confidential elements of confidential information and assignment results are
 283 removed through redaction or the process of aggregation, client authorization is not required for
 284 the disclosure of the remaining information, as modified.

285 Record Keeping:

286 An appraiser must prepare a workfile for each appraisal, appraisal review, or appraisal consulting
 287 assignment. A workfile must be in existence prior to the issuance of a written or oral report. A
 288 written summary of an oral report must be added to the workfile within a reasonable time after the
 289 issuance of the oral report.

290 The workfile must include:

- 291 • the name of the client and the identity, by name or type, of any other intended users;
- 292 • true copies of any written reports, documented on any type of media (A true copy is a replica
 293 of the report transmitted to the client. A photocopy or an electronic copy of the entire signed
 294 report transmitted to the client satisfies the requirement of a true copy.);
- 295 • summaries of any oral reports or testimony, or a transcript of testimony, including the
 296 appraiser's signed and dated certification; and
- 297 • all other data, information, and documentation necessary to support the appraiser's
 298 opinions and conclusions and to show compliance with USPAP, or references to the
 299 location(s) of such other documentation.

² Pursuant to the passage of the Gramm-Leach-Bliley Act in 1999, numerous agencies have adopted privacy regulations. Such regulations are focused on the protection of information provided by consumers to those involved in financial activities "found to be closely related to banking or usual in connection with the transaction of banking." These activities have been deemed to include "appraising real or personal property." (Quotations are from the Federal Trade Commission, Privacy of Consumer Financial Information; Final Rule, 16 CFR Part 313.)

ETHICS RULE

300 An appraiser must retain the workfile for a period of at least five years after preparation or at least
301 two years after final disposition of any judicial proceeding in which the appraiser provided testimony
302 related to the assignment, whichever period expires last.

303 An appraiser must have custody of his or her workfile, or make appropriate workfile retention,
304 access, and retrieval arrangements with the party having custody of the workfile.

305 An appraiser having custody of a workfile must allow other appraisers with workfile obligations
306 related to an assignment appropriate access and retrieval for the purpose of:

- 307 • submission to state appraiser regulatory agencies;
- 308 • compliance with due process of law;
- 309 • submission to a duly authorized professional peer review committee; or
- 310 • compliance with retrieval arrangements.

311 Comment: Care should be exercised in the selection of the form, style, and type of medium for
312 records to ensure that they are retrievable by the appraiser throughout the prescribed record
313 retention period.

314 A workfile must be made available by the appraiser when required by a state appraiser regulatory
315 agency or due process of law.

316 A workfile in support of a Restricted Use Appraisal Report must be sufficient for the appraiser to
317 produce a Summary Appraisal Report (for assignments under STANDARDS 2 and 8) or an
318 Appraisal Report (for assignments under STANDARD 10).

319 COMPETENCY RULE

320 An appraiser must: (1) be competent to perform the assignment; (2) acquire the necessary competency to
 321 perform the assignment; or (3) decline or withdraw from the assignment.

322 Being Competent

323 The appraiser must determine, prior to accepting an assignment, that he or she can perform the
 324 assignment competently. Competency requires:

- 325 1. the ability to properly identify the problem to be addressed; and
- 326 2. the knowledge and experience to complete the assignment competently; and
- 327 3. recognition of, and compliance with, laws and regulations that apply to the appraiser or to the
 328 assignment.

329 Comment: Competency may apply to factors such as, but not limited to, an appraiser's
 330 familiarity with a specific type of property or asset, a market, a geographic area, an intended
 331 use, specific laws and regulations, or an analytical method. If such a factor is necessary for an
 332 appraiser to develop credible assignment results, the appraiser is responsible for having the
 333 competency to address that factor or for following the steps outlined below to satisfy this
 334 COMPETENCY RULE.

335 For assignments with retrospective opinions and conclusions, the appraiser must meet the
 336 requirements of this COMPETENCY RULE at the time of the assignment, rather than the
 337 effective date.

338 Acquiring Competency

339 If an appraiser determines he or she is not competent prior to accepting an assignment, the appraiser
 340 must:

- 341 1. disclose the lack of knowledge and/or experience to the client before accepting the assignment;
- 342 2. take all steps necessary or appropriate to complete the assignment competently; and
- 343 3. describe, in the report, the lack of knowledge and/or experience and the steps taken to complete
 344 the assignment competently.

345 Comment: Competency can be acquired in various ways, including, but not limited to,
 346 personal study by the appraiser, association with an appraiser reasonably believed to have the
 347 necessary knowledge and/or experience, or retention of others who possess the necessary
 348 knowledge and/or experience.

349 In an assignment where geographic competency is necessary, an appraiser who is not familiar
 350 with the relevant market characteristics must acquire an understanding necessary to produce
 351 credible assignment results for the specific property type and market involved.

352 When facts or conditions are discovered during the course of an assignment that cause an appraiser to
 353 determine, at that time, that he or she lacks the required knowledge and experience to complete the
 354 assignment competently, the appraiser must:

- 355 1. notify the client, and
- 356 2. take all steps necessary or appropriate to complete the assignment competently, and

COMPETENCY RULE

357 3. describe, in the report, the lack of knowledge and/or experience and the steps taken to complete
358 the assignment competently.

359 Lack of Competency

360 If the assignment cannot be completed competently the appraiser must decline or withdraw from the
361 assignment.

362 SCOPE OF WORK RULE³

363 For each appraisal, appraisal review, and appraisal consulting assignment, an appraiser must:

- 364 1. identify the problem to be solved;
- 365 2. determine and perform the scope of work necessary to develop credible assignment results; and
- 366 3. disclose the scope of work in the report.

367 An appraiser must properly identify the problem to be solved in order to determine the appropriate
 368 scope of work. The appraiser must be prepared to demonstrate that the scope of work is sufficient to
 369 produce credible assignment results.

370 Comment: Scope of work includes, but is not limited to:

- 371 • the extent to which the property is identified;
- 372 • the extent to which tangible property is inspected;
- 373 • the type and extent of data researched; and
- 374 • the type and extent of analyses applied to arrive at opinions or conclusions.

375 Appraisers have broad flexibility and significant responsibility in determining the appropriate
 376 scope of work for an appraisal, appraisal review, and appraisal consulting assignment.

377 Credible assignment results require support by relevant evidence and logic. The credibility of
 378 assignment results is always measured in the context of the intended use.

379 **Problem Identification**

380 An appraiser must gather and analyze information about those assignment elements that are necessary to
 381 properly identify the appraisal, appraisal review or appraisal consulting problem to be solved.

382 Comment: The assignment elements necessary for problem identification are addressed in the
 383 applicable Standards Rules (i.e., SR 1-2, SR 3-1, SR 4-2, SR 6-2, SR 7-2 and SR 9-2). In an
 384 appraisal assignment, for example, identification of the problem to be solved requires the
 385 appraiser to identify the following assignment elements:

- 386 • client and any other intended users;
- 387 • intended use of the appraiser's opinions and conclusions;
- 388 • type and definition of value;
- 389 • effective date of the appraiser's opinions and conclusions;
- 390 • subject of the assignment and its relevant characteristics; and
- 391 • assignment conditions.

392 This information provides the appraiser with the basis for determining the type and extent of
 393 research and analyses to include in the development of an appraisal. Similar information is
 394 necessary for problem identification in appraisal review and appraisal consulting assignments.

395 Communication with the client is required to establish most of the information necessary for
 396 problem identification. However, the identification of relevant characteristics is a judgment
 397 made by the appraiser that requires competency in that type of assignment.

³ See Advisory Opinion 28, *Scope of Work Decision, Performance, and Disclosure* and Advisory Opinion 29, *An Acceptable Scope of Work*.

SCOPE OF WORK RULE

Assignment conditions include assumptions, extraordinary assumptions, hypothetical conditions, laws and regulations, jurisdictional exceptions, and other conditions that affect the scope of work. Laws include constitutions, legislative and court-made law, administrative rules, and ordinances. Regulations include rules or orders, having legal force, issued by an administrative agency.

Scope of Work Acceptability⁴

The scope of work must include the research and analyses that are necessary to develop credible assignment results.

Comment: The scope of work is acceptable when it meets or exceeds:

- the expectations of parties who are regularly intended users for similar assignments; and
- what an appraiser's peers' actions would be in performing the same or a similar assignment.

Determining the scope of work is an ongoing process in an assignment. Information or conditions discovered during the course of an assignment might cause the appraiser to reconsider the scope of work.

An appraiser must be prepared to support the decision to exclude any investigation, information, method, or technique that would appear relevant to the client, another intended user, or the appraiser's peers.

An appraiser must not allow assignment conditions to limit the scope of work to such a degree that the assignment results are not credible in the context of the intended use.

Comment: If relevant information is not available because of assignment conditions that limit research opportunities (such as conditions that place limitations on inspection or information gathering), an appraiser must withdraw from the assignment unless the appraiser can:

- modify the assignment conditions to expand the scope of work to include gathering the information; or
- use an extraordinary assumption about such information, if credible assignment results can still be developed.

An appraiser must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased.

Disclosure Obligations

The report must contain sufficient information to allow intended users to understand the scope of work performed.

Comment: Proper disclosure is required because clients and other intended users rely on the assignment results. Sufficient information includes disclosure of research and analyses performed and might also include disclosure of research and analyses not performed.

⁴ See Advisory Opinion 29, *An Acceptable Scope of Work*.

433 **JURISDICTIONAL EXCEPTION RULE**

434 **If any applicable law or regulation precludes compliance with any part of USPAP, only that part of**
435 **USPAP becomes void for that assignment.**

436 Comment: When compliance with USPAP is required by federal law or regulation, no part of
437 USPAP can be voided by a law or regulation of a state or local jurisdiction.

438 **In an assignment involving a jurisdictional exception, an appraiser must:**

- 439 1. identify the law or regulation that precludes compliance with USPAP;
440 2. comply with that law or regulation;
441 3. clearly and conspicuously disclose in the report the part of USPAP that is voided by that law
442 or regulation; and
443 4. cite in the report the law or regulation requiring this exception to USPAP compliance.

444 Comment: The JURISDICTIONAL EXCEPTION RULE provides a saving or severability
445 clause intended to preserve the balance of USPAP if compliance with one or more of its parts
446 is precluded by the law or regulation of a jurisdiction. When an appraiser properly follows
447 this Rule in disregarding a part of USPAP, there is no violation of USPAP.

448 Law includes constitutions, legislative and court-made law, and administrative rules and
449 ordinances. Regulations include rules or orders having legal force, issued by an
450 administrative agency. Instructions from a client or attorney do not establish a jurisdictional
451 exception.

STANDARD 1

STANDARD 1: REAL PROPERTY APPRAISAL, DEVELOPMENT

In developing a real property appraisal, an appraiser must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal.

Comment: STANDARD 1 is directed toward the substantive aspects of developing a credible appraisal of real property. The requirements set forth in STANDARD 1 follow the appraisal development process in the order of topics addressed and can be used by appraisers and the users of appraisal services as a convenient checklist.

Standards Rule 1-1

In developing a real property appraisal, an appraiser must:

- (a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;

Comment: This Standards Rule recognizes that the principle of change continues to affect the manner in which appraisers perform appraisal services. Changes and developments in the real estate field have a substantial impact on the appraisal profession. Important changes in the cost and manner of constructing and marketing commercial, industrial, and residential real estate as well as changes in the legal framework in which real property rights and interests are created, conveyed, and mortgaged have resulted in corresponding changes in appraisal theory and practice. Social change has also had an effect on appraisal theory and practice. To keep abreast of these changes and developments, the appraisal profession is constantly reviewing and revising appraisal methods and techniques and devising new methods and techniques to meet new circumstances. For this reason, it is not sufficient for appraisers to simply maintain the skills and the knowledge they possess when they become appraisers. Each appraiser must continuously improve his or her skills to remain proficient in real property appraisal.

- (b) not commit a substantial error of omission or commission that significantly affects an appraisal; and

Comment: An appraiser must use sufficient care to avoid errors that would significantly affect his or her opinions and conclusions. Diligence is required to identify and analyze the factors, conditions, data, and other information that would have a significant effect on the credibility of the assignment results.

- (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.

Comment: Perfection is impossible to attain, and competence does not require perfection. However, an appraiser must not render appraisal services in a careless or negligent manner. This Standards Rule requires an appraiser to use due diligence and due care.

Standards Rule 1-2

In developing a real property appraisal, an appraiser must:

JOINT EXHIBIT 50

STANDARD 7

1802 STANDARD 7: PERSONAL PROPERTY APPRAISAL, DEVELOPMENT

1803 In developing a personal property appraisal, an appraiser must identify the problem to be solved,
1804 determine the scope of work necessary to solve the problem, and correctly complete research and
1805 analyses necessary to produce a credible appraisal.

1806 Comment: STANDARD 7 is directed toward the substantive aspects of developing a credible
1807 appraisal of personal property. The requirements set forth in STANDARD 7 follow the
1808 appraisal development process in the order of topics addressed and can be used by appraisers
1809 and the users of appraisal services as a convenient checklist.

1810 Standards Rule 7-1

1811 In developing a personal property appraisal, an appraiser must:

1812 (a) be aware of, understand, and correctly employ those recognized methods and techniques that are
1813 necessary to produce a credible appraisal;

1814 Comment: This Standards Rule recognizes that the principle of change continues to affect the
1815 manner in which appraisers perform appraisal services. Changes and developments in
1816 personal property practice have a substantial impact on the appraisal profession. Important
1817 changes in the cost and manner of acquiring, producing, and marketing personal property and
1818 changes in the legal framework in which property rights and interests are created, marketed,
1819 conveyed, and financed have resulted in corresponding changes in appraisal theory and
1820 practice. Social change has also had an effect on appraisal theory and practice. To keep
1821 abreast of these changes and developments, the appraisal profession reviews and revises
1822 appraisal methods and techniques and develops methods and techniques to meet new
1823 circumstances. For this reason, it is not sufficient for appraisers to simply maintain the skills
1824 and the knowledge they possess when they become appraisers. Each appraiser must
1825 continuously improve his or her skills to remain proficient in personal property appraisal.

1826 (b) not commit a substantial error of omission or commission that significantly affects an appraisal;
1827 and

1828 Comment: An appraiser must use sufficient care to avoid errors that would significantly affect
1829 his or her opinions and conclusions. Diligence is required to identify and analyze the factors,
1830 conditions, data, and other information that would have a significant effect on the credibility
1831 of the assignment results.

1832 (c) not render appraisal services in a careless or negligent manner, such as by making a series of
1833 errors that, although individually might not significantly affect the results of an appraisal, in the
1834 aggregate affect the credibility of those results.

1835 Comment: Perfection is impossible to attain, and competence does not require perfection.
1836 However, an appraiser must not render appraisal services in a careless or negligent manner.
1837 This Standards Rule requires an appraiser to use due diligence and due care.

1838 Standards Rule 7-2

1839 In developing a personal property appraisal, an appraiser must:

- 1840 (a) identify the client and other intended users;⁷²
- 1841 (b) identify the intended use of the appraiser's opinions and conclusions;⁷³
- 1842 Comment: An appraiser must not allow the intended use of an assignment or a client's
1843 objectives to cause the assignment results to be biased.
- 1844 (c) identify the type and definition of value, and, if the value opinion to be developed is market
1845 value, ascertain whether the value is to be the most probable price:
- 1846 (i) in terms of cash; or
- 1847 (ii) in terms of financial arrangements equivalent to cash; or
- 1848 (iii) in other precisely defined terms; and
- 1849 (iv) if the opinion of value is to be based on non-market financing or financing with unusual
1850 conditions or incentives, the terms of such financing must be clearly identified and the
1851 appraiser's opinion of their contributions to or negative influence on value must be
1852 developed by analysis of relevant market data;
- 1853 Comment: When developing an opinion of value in a specified market or at a specified market
1854 level based on the potential sale of the property, the appraiser must also develop an opinion of
1855 reasonable exposure time linked to the value opinion.
- 1856 (d) identify the effective date of the appraiser's opinions and conclusions;⁷⁴
- 1857 (e) identify the characteristics of the property that are relevant to the type and definition of value
1858 and intended use of the appraisal,⁷⁵ including:
- 1859 (i) sufficient characteristics to establish the identity of the item including the method of
1860 identification;
- 1861 (ii) sufficient characteristics to establish the relative quality of the item (and its component
1862 parts, where applicable) within its type;
- 1863 (iii) all other physical and economic attributes with a material effect on value;
- 1864 Comment: Some examples of physical and economic characteristics include condition, style,
1865 size, quality, manufacturer, author, materials, origin, age, provenance, alterations, restorations,
1866 and obsolescence. The type of property, the type and definition of value, and intended use of
1867 the appraisal determine which characteristics have a material effect on value.
- 1868 (iv) the ownership interest to be valued;
- 1869 (v) any known restrictions, encumbrances, leases, covenants, contracts, declarations, special
1870 assessments, ordinances, or other items of a similar nature; and

⁷² See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

⁷³ See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

⁷⁴ See Statement on Appraisal Standards No. 3, *Retrospective Value Opinions*, and Statement on Appraisal Standards No. 4, *Prospective Value Opinions*.

⁷⁵ See Advisory Opinion 2, *Inspection of Subject Property*.

STANDARD 7

- 1871 (vi) any real property or intangible items that are not personal property but which are
1872 included in the appraisal;

1873 Comment on (i)–(vi): The information used by an appraiser to identify the property
1874 characteristics must be from sources the appraiser reasonably believes are reliable.

1875 An appraiser may use any combination of a property inspection and documents or other
1876 resources to identify the relevant characteristics of the subject property.

1877 When appraising proposed modifications, an appraiser must examine and have available for
1878 future examination, plans, specifications, or other documentation sufficient to identify the
1879 extent and character of the proposed modifications.

1880 An appraiser may not be required to value the whole when the subject of the appraisal is a
1881 fractional interest, a physical segment, or a partial holding.

- 1882 (f) identify any extraordinary assumptions necessary in the assignment;

1883 Comment: An extraordinary assumption may be used in an assignment only if:

- 1884 • it is required to properly develop credible opinions and conclusions;
1885 • the appraiser has a reasonable basis for the extraordinary assumption;
1886 • use of the extraordinary assumption results in a credible analysis; and
1887 • the appraiser complies with the disclosure requirements set forth in USPAP for
1888 extraordinary assumptions.

- 1889 (g) identify any hypothetical conditions necessary in the assignment; and

1890 Comment: A hypothetical condition may be used in an assignment only if:

- 1891 • use of the hypothetical condition is clearly required for legal purposes, for purposes
1892 of reasonable analysis, or for purposes of comparison;
1893 • use of the hypothetical condition results in a credible analysis; and
1894 • the appraiser complies with the disclosure requirements set forth in USPAP for
1895 hypothetical conditions.

- 1896 (h) determine the scope of work necessary to produce credible assignment results in accordance
1897 with the SCOPE OF WORK RULE.⁷⁶

1898 Standards Rule 7-3

1899 In developing a personal property appraisal, when necessary for credible assignment results, an
1900 appraiser must:

- 1901 (a) analyze the current use and alternative uses to encompass what is profitable, legal, and
1902 physically possible, as relevant to the type and definition of value and intended use of the
1903 appraisal;

1904 Comment: In the context of personal property, highest and best use may equate to the choice
1905 of the appropriate market or market level for the type of item, the type and definition of value,
1906 and intended use of the appraisal.

⁷⁶ See Advisory Opinion 28, *Scope of Work Decision, Performance, and Disclosure*, and Advisory Opinion 29, *An Acceptable Scope of Work*.

- 1907 (b) define and analyze the appropriate market consistent with the type and definition of value; and
- 1908 Comment: The appraiser must recognize that there are distinct levels of trade (measurable
1909 marketplaces) and each may generate its own data. For example, a property may have a
1910 different value at a wholesale level of trade, a retail level of trade, or under various auction
1911 conditions. Therefore, the appraiser must analyze the subject property within the correct
1912 market context.
- 1913 (c) analyze the relevant economic conditions at the time of the valuation, including market
1914 acceptability of the property and supply, demand, scarcity, or rarity.
- 1915 Standards Rule 7-4
- 1916 In developing a personal property appraisal, an appraiser must collect, verify, and analyze all
1917 information necessary for credible assignment results.
- 1918 (a) When a sales comparison approach is necessary for credible assignment results, an appraiser
1919 must analyze such comparable sales data as are available to indicate a value conclusion.
- 1920 (b) When a cost approach is necessary for credible assignment results, an appraiser must:
- 1921 (i) analyze such comparable cost data as are available to estimate the cost new of the
1922 property; and
- 1923 (ii) analyze such comparable data as are available to estimate the difference between cost
1924 new and the present worth of the property (accrued depreciation).
- 1925 (c) When an income approach is necessary for credible assignment results, an appraiser must:
- 1926 (i) analyze such comparable data as are available to estimate the market income of the
1927 property;
- 1928 (ii) analyze such comparable operating expense data as are available to estimate the
1929 operating expenses of the property;
- 1930 (iii) analyze such comparable data as are available to estimate rates of capitalization and/or
1931 rates of discount; and
- 1932 (iv) base projections of future income and expenses on reasonably clear and appropriate
1933 evidence.
- 1934 Comment: An appraiser must, in developing income and expense statements and cash flow
1935 projections, weigh historical information and trends, current supply and demand factors
1936 affecting such trends, and competition.
- 1937 (d) When developing an opinion of the value of a lease or leased property, an appraiser must analyze
1938 the effect on value, if any, of the terms and conditions of the lease(s).
- 1939 (e) When analyzing the assemblage of the various component parts of a property, an appraiser must
1940 analyze the effect on value, if any, of the assemblage. An appraiser must refrain from valuing
1941 the whole solely by adding together the individual values of the various component parts.
- 1942 Comment: Although the value of the whole may be equal to the sum of the separate parts, it
1943 also may be greater than or less than the sum of such parts. Therefore, the value of the whole

STANDARD 7

- 1944 must be tested by reference to appropriate data and supported by an appropriate analysis of
1945 such data.
- 1946 A similar procedure must be followed when the value of the whole has been established and
1947 the appraiser seeks to value a part. The value of any such part must be tested by reference to
1948 appropriate data and supported by an appropriate analysis of such data.
- 1949 (f) When analyzing anticipated modifications to the subject property, an appraiser must analyze the
1950 effect on value, if any, of such modifications to the extent they are reflected in market actions.
- 1951 (g) When real property or intangible items are included in the appraisal, the appraiser must analyze
1952 the effect on value of such non-personal property items.
- 1953 Comment: When the scope of work includes an appraisal of real property or intangible items,
1954 competency in real property appraisal (see STANDARD 1) or business appraisal (see
1955 STANDARD 9) is required. In addition, competency in other types of personal property
1956 outside of the appraiser's specialty area may be necessary (see STANDARD 7 and the
1957 COMPETENCY RULE).
- 1958 **Standards Rule 7-5**
- 1959 When the value opinion to be developed is market value, an appraiser must, if such information is
1960 available to the appraiser in the normal course of business:⁷⁷
- 1961 (a) analyze all agreements of sale, validated offers or third-party offers to sell, options, and listings
1962 of the subject property current as of the effective date of the appraisal; and
- 1963 (b) analyze all prior sales of the subject property that occurred within a reasonable and applicable
1964 time period, given the intended use and the type of property involved.
- 1965 Comment: The data needed for the required analyses in Standards Rule 7-5(a) and 7-5(b)
1966 may not be available or relevant in all assignments. See the Comments to Standards Rules 8-
1967 2(a)(viii), 8-2(b)(viii), and 8-2(c)(viii) for corresponding reporting requirements.
- 1968 **Standards Rule 7-6**
- 1969 In developing a personal property appraisal, an appraiser must:
- 1970 (a) reconcile the quality and quantity of data available and analyzed within the approaches used;
1971 and
- 1972 (b) reconcile the applicability and relevance of the approaches, methods and techniques used to
1973 arrive at the value conclusion(s).

⁷⁷ See Advisory Opinion 24, *Normal Course of Business*.

JOINT EXHIBIT 51

1974 **STANDARD 8: PERSONAL PROPERTY APPRAISAL, REPORTING**

1975 In reporting the results of a personal property appraisal, an appraiser must communicate each analysis,
1976 opinion, and conclusion in a manner that is not misleading.

1977 Comment: STANDARD 8 addresses the content and level of information required in a report
1978 that communicates the results of a personal property appraisal.

1979 STANDARD 8 does not dictate the form, format, or style of personal property appraisal
1980 reports, which are functions of the needs of intended users and appraisers. The substantive
1981 content of a report determines its compliance.

1982 **Standards Rule 8-1**

1983 Each written or oral personal property appraisal report must:

- 1984 (a) clearly and accurately set forth the appraisal in a manner that will not be misleading;
- 1985 (b) contain sufficient information to enable the intended users of the appraisal to understand the
1986 report properly; and
- 1987 (c) clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical
1988 conditions, and limiting conditions used in the assignment.

1989 **Standards Rule 8-2**

1990 Each written personal property appraisal report must be prepared under one of the following three
1991 options and prominently state which option is used: Self-Contained Appraisal Report, Summary
1992 Appraisal Report, or Restricted Use Appraisal Report.⁷⁸

1993 Comment: When the intended users include parties other than the client, either a Self-
1994 Contained Appraisal Report or a Summary Appraisal Report must be provided. When the
1995 intended users do not include parties other than the client, a Restricted Use Appraisal Report
1996 may be provided.

1997 The essential difference among these three options is in the content and level of information
1998 provided. The appropriate reporting option and the level of information necessary in the
1999 report are dependent on the intended use and intended users.

2000 An appraiser must use care when characterizing the type of report and level of information
2001 communicated upon completion of an assignment. An appraiser may use any other label in
2002 addition to, but not in place of, the label set forth in this Standard for the type of report
2003 provided.

2004 The report content and level of information requirements set forth in this Standard are
2005 minimums for each type of report. An appraiser must supplement a report form, when
2006 necessary, to ensure that any intended user of the appraisal is not misled and that the report
2007 complies with the applicable content requirements set forth in this Standards Rule.

⁷⁸ See Advisory Opinion 11, *Content of the Appraisal Report Options of Standards Rules 2-2 and 8-2*, and Advisory Opinion 12, *Use of the Appraisal Report Options of Standards Rules 2-2 and 8-2*.

STANDARD 8

- 2008 A party receiving a copy of a Self-Contained Appraisal Report, Summary Appraisal Report, or
2009 Restricted Use Appraisal Report in order to satisfy disclosure requirements does not become
2010 an intended user of the appraisal unless the appraiser identifies such party as an intended user
2011 as part of the assignment.
- 2012 (a) The content of a Self-Contained Appraisal Report must be consistent with the intended use of the
2013 appraisal and, at a minimum:
- 2014 (i) state the identity of the client and any intended users, by name or type;⁷⁹
- 2015 Comment: An appraiser must use care when identifying the client to ensure a clear
2016 understanding and to avoid violations of the Confidentiality section of the ETHICS
2017 RULE. In those rare instances where the client wishes to remain anonymous, an
2018 appraiser must still document the identity of the client in the workfile but may omit
2019 the client's identity in the report.
- 2020 (ii) state the intended use of the appraisal;⁸⁰
- 2021 (iii) describe information sufficient to identify the property involved in the appraisal,
2022 including the physical and economic property characteristics relevant to the assignment;
- 2023 (iv) state the property interest appraised;
- 2024 (v) state the type and definition of value and cite the source of the definition;
- 2025 Comment: Stating the definition of value also requires any comments needed to
2026 clearly indicate to the intended users how the definition is being applied.⁸¹
- 2027 When reporting an opinion of market value, state whether the opinion of value is:
- 2028 • in terms of cash or of financing terms equivalent to cash, or
2029 • based on non-market financing or financing with unusual conditions or
2030 incentives.
- 2031 When an opinion of market value is not in terms of cash or based on financing terms
2032 equivalent to cash, summarize the terms of such financing and explain their
2033 contributions to or negative influence on value.
- 2034 (vi) state the effective date of the appraisal and the date of the report;⁸²
- 2035 Comment: The effective date of the appraisal establishes the context for the value
2036 opinion, while the date of the report indicates whether the perspective of the
2037 appraiser on the market and property as of the effective date of the appraisal was
2038 prospective, current, or retrospective.

⁷⁹ See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

⁸⁰ See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

⁸¹ See Statement on Appraisal Standards No. 6, *Reasonable Exposure Time in Real Property and Personal Property Market Value Opinions*. See also Advisory Opinion 7, *Marketing Time Opinions*.

⁸² See Statement on Appraisal Standards No. 3, *Retrospective Value Opinions*, and Statement on Appraisal Standards No. 4, *Prospective Value Opinions*.

- 2039 (vii) describe the scope of work used to develop the appraisal;⁸³
- 2040 Comment: Because intended users' reliance on an appraisal may be affected by the
- 2041 scope of work, the report must enable them to be properly informed and not misled.
- 2042 Sufficient information includes disclosure of research and analyses performed and
- 2043 might also include disclosure of research and analyses not performed.
- 2044 When any portion of the work involves significant personal property appraisal
- 2045 assistance, the appraiser must describe the extent of that assistance. The signing
- 2046 appraiser must also state the name(s) of those providing the significant personal
- 2047 property appraisal assistance in the certification, in accordance with Standards Rule
- 2048 8-3.⁸⁴
- 2049 (viii) describe the information analyzed, the appraisal methods and techniques employed, and
- 2050 the reasoning that supports the analyses, opinions, and conclusions; exclusion of the
- 2051 sales comparison approach, cost approach, or income approach must be explained;⁸⁵
- 2052 Comment: A Self-Contained Appraisal Report must include sufficient information to
- 2053 indicate that the appraiser complied with the requirements of STANDARD 7. The
- 2054 amount of detail required will vary with the significance of the information to the
- 2055 appraisal.
- 2056 The appraiser must provide sufficient information to enable the client and intended
- 2057 users to understand the rationale for the opinions and conclusions, including
- 2058 reconciliation of the data and approaches, in accordance with Standards Rule 7-6.
- 2059 When reporting an opinion of market value, a summary of the results of analyzing
- 2060 the subject sales, offers, options, and listings in accordance with Standards Rule 7-5
- 2061 is required. If such information was unobtainable, a statement on the efforts
- 2062 undertaken by the appraiser to obtain the information is required. If such information
- 2063 is irrelevant, a statement acknowledging the existence of the information and citing
- 2064 its lack of relevance is required.
- 2065 (ix) state, as appropriate to the class of personal property involved, the use of the property
- 2066 existing as of the date of value and the use of the property reflected in the appraisal;
- 2067 and, when an opinion of the appropriate market or market level was developed by the
- 2068 appraiser, describe the support and rationale for that opinion;
- 2069 Comment: In the context of personal property, highest and best use may equate to the
- 2070 choice of the appropriate market or market level for the type of item, the type and
- 2071 definition of value, and intended use of the report.
- 2072 (x) clearly and conspicuously:
- 2073 • state all extraordinary assumptions and hypothetical conditions; and
- 2074 • state that their use might have affected the assignment results; and
- 2075 (xi) include a signed certification in accordance with Standards Rule 8-3.

⁸³ See Advisory Opinion 28, *Scope of Work Decision, Performance, and Disclosure* and Advisory Opinion 29, *An Acceptable Scope of Work*.

⁸⁴ See Advisory Opinion 31, *Assignments Involving More than One Appraiser*.

⁸⁵ See Advisory Opinion 2, *Inspection of Subject Property*.

STANDARD 8

2076 (b) The content of a Summary Appraisal Report must be consistent with the intended use of the
2077 appraisal and, at a minimum:

2078 Comment: The essential difference between the Self-Contained Appraisal Report and the
2079 Summary Appraisal Report is the level of detail of presentation.

2080 (i) state the identity of the client and any intended users, by name or type;⁸⁶

2081 Comment: An appraiser must use care when identifying the client to ensure a clear
2082 understanding and to avoid violations of the Confidentiality section of the ETHICS
2083 RULE. In those rare instances where the client wishes to remain anonymous, an
2084 appraiser must still document the identity of the client in the workfile but may omit
2085 the client's identity in the report.

2086 (ii) state the intended use of the appraisal;⁸⁷

2087 (iii) summarize information sufficient to identify the property involved in the appraisal,
2088 including the physical and economic property characteristics relevant to the assignment;

2089 (iv) state the property interest appraised;

2090 (v) state the type and definition of value and cite the source of the definition;

2091 Comment: Stating the definition of value also requires any comments needed to
2092 clearly indicate to the intended users how the definition is being applied.⁸⁸

2093 When reporting an opinion of market value, state whether the opinion of value is:

- 2094 • in terms of cash or of financing terms equivalent to cash, or
2095 • based on non-market financing or financing with unusual conditions or
2096 incentives.

2097 When an opinion of market value is not in terms of cash or based on financing terms
2098 equivalent to cash, summarize the terms of such financing and explain their
2099 contributions to or negative influence on value.

2100 (vi) state the effective date of the appraisal and the date of the report;⁸⁹

2101 Comment: The effective date of the appraisal establishes the context for the value
2102 opinion, while the date of the report indicates whether the perspective of the
2103 appraiser on the market and property as of the effective date of the appraisal was
2104 prospective, current, or retrospective.

⁸⁶ See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

⁸⁷ See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

⁸⁸ See Statement on Appraisal Standards No. 6, *Reasonable Exposure Time in Real Property and Personal Property Market Value Opinions*. See also Advisory Opinion 7, *Marketing Time Opinions*.

⁸⁹ See Statement on Appraisal Standards No. 3, *Retrospective Value Opinions*, and Statement on Appraisal Standards No. 4, *Prospective Value Opinions*.

- 2105 (vii) summarize the scope of work used to develop the appraisal;⁹⁰
- 2106 Comment: Because intended users' reliance on an appraisal may be affected by the
 2107 scope of work, the report must enable them to be properly informed and not misled.
 2108 Sufficient information includes disclosure of research and analyses performed and
 2109 might also include disclosure of research and analyses not performed.
- 2110 When any portion of the work involves significant personal property appraisal
 2111 assistance, the appraiser must summarize the extent of that assistance. The signing
 2112 appraiser must also state the name(s) of those providing the significant personal
 2113 property appraisal assistance in the certification, in accordance with Standards Rule
 2114 8-3.⁹¹
- 2115 (viii) summarize the information analyzed, the appraisal methods and techniques employed,
 2116 and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the
 2117 sales comparison approach, cost approach, or income approach must be explained;⁹²
- 2118 Comment: A Summary Appraisal Report must include sufficient information to
 2119 indicate that the appraiser complied with the requirements of STANDARD 7. The
 2120 amount of detail required will vary with the significance of the information to the
 2121 appraisal.
- 2122 The appraiser must provide sufficient information to enable the client and intended
 2123 users to understand the rationale for the opinion and conclusions, including
 2124 reconciliation of the data and approaches, in accordance with Standards Rule 7-6.
- 2125 When reporting an opinion of market value, a summary of the results of the analysis
 2126 of the subject sales, offers, options, and listings in accordance with Standards Rule 7-
 2127 5 is necessary. If such information was unobtainable, a statement on the efforts
 2128 undertaken by the appraiser to obtain the information is required. If such information
 2129 is irrelevant, a statement acknowledging the existence of the information and citing
 2130 its lack of relevance is required.
- 2131 (ix) state, as appropriate to the class of personal property involved, the use of the property
 2132 existing as of the date of value and the use of the property reflected in the appraisal;
 2133 and, when an opinion of the appropriate market or market level was developed by the
 2134 appraiser, summarize the support and rationale for that opinion;
- 2135 Comment: In the context of personal property, highest and best use may equate to
 2136 the choice of the appropriate market or market level for the type of item, the type and
 2137 definition of value, and intended use of the report.
- 2138 (x) clearly and conspicuously:
- 2139 • state all extraordinary assumptions and hypothetical conditions; and
 2140 • state that their use might have affected the assignment results; and
- 2141 (xi) include a signed certification in accordance with Standards Rule 8-3.

⁹⁰ See Advisory Opinion 28, *Scope of Work Decision, Performance, and Disclosure* and Advisory Opinion 29, *An Acceptable Scope of Work*.

⁹¹ See Advisory Opinion 31, *Assignments Involving More than One Appraiser*.

⁹² See Advisory Opinion 2, *Inspection of Subject Property*.

STANDARD 8

2142 (c) The content of a Restricted Use Appraisal Report must be consistent with the intended use of the
2143 appraisal and, at a minimum:

2144 (i) state the identity of the client, by name or type;⁹³ and state a prominent use restriction
2145 that limits use of the report to the client and warns that the appraiser's opinions and
2146 conclusions set forth in the report may not be understood properly without additional
2147 information in the appraiser's workfile;

2148 Comment: An appraiser must use care when identifying the client to ensure a clear
2149 understanding and to avoid violations of the Confidentiality section of the ETHICS
2150 RULE. In those rare instances when the client wishes to remain anonymous, an
2151 appraiser must still document the identity of the client in the workfile but may omit
2152 the client's identity in the report.

2153 The Restricted Use Appraisal Report is for client use only. Before entering into an
2154 agreement, the appraiser should establish with the client the situations where this
2155 type of report is to be used and should ensure that the client understands the
2156 restricted utility of the Restricted Use Appraisal Report.

2157 (ii) state the intended use of the appraisal;⁹⁴

2158 Comment: The intended use of the appraisal must be consistent with the limitation
2159 on use of the Restricted Use Appraisal Report option in this Standards Rule (i.e.,
2160 client use only).

2161 (iii) state information sufficient to identify the property involved in the appraisal;

2162 (iv) state the property interest appraised;

2163 (v) state the type of value, and cite the source of its definition;⁹⁵

2164 (vi) state the effective date of the appraisal and the date of the report;⁹⁶

2165 Comment: The effective date of the appraisal establishes the context for the value
2166 opinion, while the date of the report indicates whether the perspective of the
2167 appraiser on the market and property as of the effective date of the appraisal was
2168 prospective, current, or retrospective.

2169 (vii) state the scope of work used to develop the appraisal;⁹⁷

2170 Comment: Because the client's reliance on an appraisal may be affected by the scope
2171 of work, the report must enable them to be properly informed and not misled.
2172 Sufficient information includes disclosure of research and analyses performed and
2173 might also include disclosure of research and analyses not performed.

⁹³ See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

⁹⁴ See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

⁹⁵ See Statement on Appraisal Standards No. 6, *Reasonable Exposure Time in Real Property and Personal Property Market Value Opinions*. See also Advisory Opinion 7, *Marketing Time Opinions*.

⁹⁶ See Statement on Appraisal Standards No. 3, *Retrospective Value Opinions*, and Statement on Appraisal Standards No. 4, *Prospective Value Opinions*.

⁹⁷ See Advisory Opinion 28, *Scope of Work Decision, Performance, and Disclosure* and Advisory Opinion 29, *An Acceptable Scope of Work*.

- 2174 When any portion of the work involves significant personal property appraisal
 2175 assistance, the appraiser must state the extent of that assistance. The signing
 2176 appraiser must also state the name(s) of those providing the significant personal
 2177 property appraisal assistance in the certification, in accordance with Standards Rule
 2178 8-3.⁹⁸
- 2179 (viii) state the appraisal methods and techniques employed, state the value opinion(s) and
 2180 conclusion(s) reached, and reference the workfile; exclusion of the sales comparison
 2181 approach, cost approach, or income approach must be explained;⁹⁹
- 2182 Comment: An appraiser must maintain a specific, coherent workfile in support of a
 2183 Restricted Use Appraisal Report. The contents of the workfile must include sufficient
 2184 information to indicate that the appraiser complied with the requirements of
 2185 STANDARD 7 and for the appraiser to produce a Summary Appraisal Report.
- 2186 When reporting an opinion of market value, information analyzed in compliance
 2187 with Standards Rule 7-5 is significant information that must be disclosed in a
 2188 Restricted Use Appraisal Report. If such information was unobtainable, a statement
 2189 on the efforts undertaken by the appraiser to obtain the information is required. If
 2190 such information is irrelevant, a statement acknowledging the existence of the
 2191 information and citing its lack of relevance is required.
- 2192 (ix) state, as appropriate to the class of personal property involved, the use of the property
 2193 existing as of the date of value and the use of the property reflected in the appraisal;
 2194 and, when an opinion of the appropriate market or market level was developed by the
 2195 appraiser, state that opinion;
- 2196 Comment: In the context of personal property, highest and best use may equate to
 2197 the choice of the appropriate market or market level for the type of item, the type and
 2198 definition of value, and intended use of the report.
- 2199 (x) clearly and conspicuously:
- 2200 • state all extraordinary assumptions and hypothetical conditions; and
 - 2201 • state that their use might have affected the assignment results; and
- 2202 (xi) include a signed certification in accordance with Standards Rule 8-3.
- 2203 **Standards Rule 8-3**
- 2204 Each written personal property appraisal report must contain a signed certification that is similar in
 2205 content to the following form:
- 2206 I certify that, to the best of my knowledge and belief:
- 2207 — the statements of fact contained in this report are true and correct.
 - 2208 — the reported analyses, opinions, and conclusions are limited only by the reported
 2209 assumptions and limiting conditions and are my personal, impartial, and unbiased
 2210 professional analyses, opinions, and conclusions.

⁹⁸ See Advisory Opinion 31, *Assignments Involving More than One Appraiser*.

⁹⁹ See Advisory Opinion 2, *Inspection of Subject Property*.

STANDARD 8

- 2211 — I have no (or the specified) present or prospective interest in the property that is the
2212 subject of this report and no (or the specified) personal interest with respect to the
2213 parties involved.
- 2214 — I have no bias with respect to the property that is the subject of this report or to the
2215 parties involved with this assignment.
- 2216 — my engagement in this assignment was not contingent upon developing or reporting
2217 predetermined results.
- 2218 — my compensation for completing this assignment is not contingent upon the
2219 development or reporting of a predetermined value or direction in value that favors
2220 the cause of the client, the amount of the value opinion, the attainment of a stipulated
2221 result, or the occurrence of a subsequent event directly related to the intended use of
2222 this appraisal.
- 2223 — my analyses, opinions, and conclusions were developed, and this report has been
2224 prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- 2225 — I have (or have not) made a personal inspection of the property that is the subject of
2226 this report. (If more than one person signs this certification, the certification must
2227 clearly specify which individuals did and which individuals did not make a personal
2228 inspection of the appraised property.)¹⁰⁰
- 2229 — no one provided significant personal property appraisal assistance to the person
2230 signing this certification. (If there are exceptions, the name of each individual
2231 providing significant personal property appraisal assistance must be stated.)

2232 Comment: A signed certification is an integral part of the appraisal report. An appraiser who
2233 signs any part of the appraisal report, including a letter of transmittal, must also sign this
2234 certification.

2235 In an assignment that includes only assignment results developed by the personal property
2236 appraiser(s), any appraiser(s) who signs a certification accepts full responsibility for all
2237 elements of the certification, for the assignment results, and for the contents of the appraisal
2238 report. In an assignment that includes real property, business or intangible asset assignment
2239 results not developed by the personal property appraiser(s), any personal property appraiser(s)
2240 who signs a certification accepts full responsibility for the personal property elements of the
2241 certification, for the personal property assignment results, and for the personal property
2242 contents of the appraisal report.

2243 When a signing appraiser(s) has relied on work done by appraisers and others who do not sign
2244 the certification, the signing appraiser is responsible for the decision to rely on their work.
2245 The signing appraiser(s) is required to have a reasonable basis for believing that those
2246 individuals performing the work are competent. The signing appraiser(s) also must have no
2247 reason to doubt that the work of those individuals is credible.¹⁰¹

2248 The names of individuals providing significant personal property appraisal assistance who do
2249 not sign a certification must be stated in the certification. It is not required that the description
2250 of their assistance be contained in the certification, but disclosure of their assistance is
2251 required in accordance with Standards Rule 8-2(a), (b), or (c)(vii), as applicable.¹⁰²

¹⁰⁰ See Advisory Opinion 2, *Inspection of Subject Property*.

¹⁰¹ See Advisory Opinion 5, *Assistance in the Preparation of an Appraisal*.

¹⁰² See Advisory Opinion 31, *Assignments Involving More than One Appraiser*.

2252 Standards Rule 8-4

2253 To the extent that it is both possible and appropriate, an oral personal property appraisal report must
2254 address the substantive matters set forth in Standards Rule 8-2(b).

2255 Comment: See the Record Keeping section of the ETHICS RULE for corresponding
2256 requirements.

STANDARD 9

2257 STANDARD 9: BUSINESS APPRAISAL, DEVELOPMENT

2258 In developing an appraisal of an interest in a business enterprise or intangible asset, an appraiser must
2259 identify the problem to be solved, determine the scope of work necessary to solve the problem, and
2260 correctly complete the research and analyses necessary to produce a credible appraisal.

2261 Comment: STANDARD 9 is directed toward the substantive aspects of developing a credible
2262 appraisal of an interest in a business enterprise or intangible asset.

2263 Standards Rule 9-1

2264 In developing an appraisal of an interest in a business enterprise or intangible asset, an appraiser must:

2265 (a) be aware of, understand, and correctly employ those recognized approaches, methods and
2266 procedures that are necessary to produce a credible appraisal;

2267 Comment: Changes and developments in the economy and in investment theory have a
2268 substantial impact on the business and intangible asset appraisal profession. Important
2269 changes in the financial arena, securities regulation, financial reporting requirements, and law
2270 may result in corresponding changes in appraisal theory and practice.

2271 (b) not commit a substantial error of omission or commission that significantly affects an appraisal;
2272 and

2273 Comment: An appraiser must use sufficient care to avoid errors that would significantly affect
2274 his or her opinions and conclusions. Diligence is required to identify and analyze the factors,
2275 conditions, data, and other information that would have a significant effect on the credibility
2276 of the assignment results.

2277 (c) not render appraisal services in a careless or negligent manner, such as by making a series of
2278 errors that, although individually might not significantly affect the results of an appraisal, in the
2279 aggregate affect the credibility of those results.

2280 Comment: Perfection is impossible to attain, and competence does not require perfection.
2281 However, an appraiser must not render appraisal services in a careless or negligent manner.
2282 This Standards Rule requires an appraiser to use due diligence and due care.

2283 Standards Rule 9-2

2284 In developing an appraisal of an interest in a business enterprise or intangible asset, an appraiser must:

2285 (a) identify the client and other intended users;¹⁰³

2286 (b) identify the intended use of the appraiser's opinions and conclusions;¹⁰⁴

2287 Comment: An appraiser must not allow the intended use of an assignment or a client's
2288 objectives to cause the assignment results to be biased.

2289 (c) identify the standard (type) and definition of value and the premise of value;

¹⁰³ See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

¹⁰⁴ See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

JOINT EXHIBIT 52

<http://www.smetoolkit.org/smetoolkit/en/content/en/1079/Business-Valuation-Methods>

[Home](#) > Business Valuation Methods

Overall Rating:

• Currently
2.0/5
Stars.

 [Share](#)  [Print Version](#)  [Email](#)

SME Toolkit [Print](#) www.smetoolkit.org

Business Valuation Methods

Adapted from content excerpted from the [American Express® OPEN Small Business Network](#)

There are a number of instances when you may need to determine the market value of a business. Certainly, buying and selling a business is the most common reason. Estate planning, reorganization, or verification of your worth for lenders or investors are other reasons.

Valuing a company is hardly a precise science and can vary depending on the type of business and the reason for coming up with a valuation. There are a wide range of factors that go into the process -- from the book value to a host of tangible and intangible elements. In general, the value of the business will rely on an analysis of the company's cash flow. In other words, its ability to generate consistent profits will ultimately determine its worth in the marketplace.

Business valuation should be considered a starting point for buyers and sellers. It's rare that buyers and sellers come up with a similar figure, if, for no other reason, than the seller is looking for a higher price. Your goal should be to determine a ballpark figure from which the buyer and the seller can negotiate a price that they can both live with. Look carefully at the numbers, but keep in mind this caution from Bryan Goetz, president of Capital Advisors, Inc., a business appraiser: "Businesses are as unique and complex as the people who run them and are not capable of being valued by a simplistic rule of thumb."

Here are some of the common methods used to come up with a value.

- [Asset valuation](#)
- [Capitalization of income valuation](#)
- [Owner benefit valuation](#)
- [Multiplier or market valuation](#)

Asset Valuation

Asset valuation is used when a company is asset-intensive. Retail businesses and manufacturing companies fall into this category. This process takes into account the following figures, the sum of which determines the market value:

- Fair market value of fixed assets and equipment (FMV/FA) - This is the price you would pay on the open market to purchase the assets or equipment.
- Leasehold improvements (LI) - These are the changes to the physical property that would be

This approach finds the value of a business by using an "industry average" sales figure as a multiplier. This industry average number is based on what comparable businesses have sold for recently. As a result, an industry-specific formula is devised, usually based on a multiple of gross sales. This is where some people have trouble with these formulas, because they often don't focus on bottom line profits or cash flow. Plus, they don't take into account how different two businesses in the same industry can be.

Here are a few industry multiplier examples, as mentioned in "The Complete Guide to Buying a Business" by Richard Snowden (Amacom, 1994):

- Travel agencies - .05 to .1 X annual gross sales
- Ad agencies - .75 X annual gross sales
- Retail businesses - .75 to 1.5 X annual net profit + inventory + equipment

To find the right multiplier for your industry, you can try contacting your trade association. Another option is to utilize the services of a broker or appraiser who specializes in businesses such as yours.

[\[Back to top\]](#)

Copyright © 1995-2015, American Express Company. All Rights Reserved.

Back to [Home](#)  [Share](#)  [Print Version](#)  [Email](#)

Discussion

JOINT EXHIBIT 53

Standard on Valuation of Personal Property

Approved December 2005

International Association of Assessing Officers

The assessment standards set forth herein represent a consensus in the assessing profession and have been adopted by the Executive Board of the International Association of Assessing Officers. The objective of these standards is to provide a systematic means by which concerned assessing officers can improve and standardize the operation of their offices. The standards presented herein are advisory in nature and the use of, or compliance with, such standard is purely voluntary. If any portion of these standards is found to be in conflict with state law or the Uniform Standards of Professional Appraisal Practice (USPAP), USPAP and state law shall govern.

Acknowledgments This revision of the 1996 Standard on the Valuation of Personal Property was begun in 2004 under the direction of Kenneth C. Uhrich, Gary McCabe, CAE and Scott McAlpine members of the IAAO Technical Standards Committee. The standard also benefited from the support, recommendations, and thorough reviews of Lisa A. Hobart, PPS; Neal R. Cook, MAI; Jim Todora, CAE, MAI; Joyln Stotts; Nancy Tomberlin; Val Courtright; David Savedra; Steve D. Pruitt; Bruce Woodzell, and the IAAO Personal Property Section. At the time of adoption of the standard by the IAAO Executive Board, the IAAO Technical Standards Committee was composed of Peter L. Davis, chair, Alan S. Dornfest, AAS; Gary McCabe, CAE, Scott McAlpine; Bill Marchand, and Kenneth C. Uhrich.

Published by
International Association of Assessing Officers
314 W 10th St
Kansas City, Missouri 64105-1616
816/701-8100
Fax: 816/701-8149
<http://www.iaao.org>

Library of Congress Catalog Card Number: ISBN 0-88329-158-4

Copyright (c) 2005 by the International Association of Assessing Officers
All rights reserved.

No part of this publication may be reproduced in any form, in an electronic retrieval system or otherwise, without the prior written permission of the publisher.

Printed in the United States of America.

Contents

1. Scope.....	5
2. Introduction.....	5
3. Definition of Personal Property	5
4. Discovery of Personal Property	5
5. Reporting of Personal Property.....	6
6. Verification and Auditing	7
6.1 Authority.....	7
6.2 Audit Program	7
6.3 Quality Assurance.....	8
7. Valuation	8
7.1 Trade Level.....	8
7.2 Valuation Techniques.....	8
7.2.1 Cost Approach	8
7.2.2 Sales Comparison Approach	9
7.2.3 Income Approach	9
7.3 Valuation Guidelines for Tangible Personal Property.....	10
7.3.1 Machinery and Equipment.....	10
7.3.2 Furniture and Fixtures.....	10
7.3.3 Leased Equipment	10
7.3.4 Inventories.....	11
7.3.5 Supplies.....	11
7.3.6 Consigned Goods	11
7.3.7 Imports and Exports	11
7.4 Valuation Guidelines for Intangible Personal Property.....	11
7.5 Compliance with USPAP	11
Selected References	12
Glossary	13

Standard on Valuation of Personal Property

1. Scope

This standard is intended to provide recommendations for defining, classifying, discovering, reporting, verifying, and valuing personal property for ad valorem tax purposes. It is beyond the scope of this standard to address unique valuation issues that may arise in the appraisal of personal property associated with public utilities, telecommunications, railroads, or similar properties.

2. Introduction

The purpose of this standard is to present methods and techniques that assessing officers can use to achieve uniform and equitable personal property valuations. Effective administration of a personal property assessment system depends, in part, on legislation and regulations that provide clear direction for determining the proper status of personal property for assessment and taxation. Such administration also requires an adequate budget to obtain the resources necessary to assess personal property accurately and equitably.

3. Definition of Personal Property

Property means an aggregate of things or rights to things whose possession is protected by law.

Two broad categories of property are real and personal. "Real property is the rights, interests, and benefits connected with *real estate*. Real estate is the physical parcel of land, improvements to the land (such as clearing and grading), improvements attached to the land (such as paving and buildings), and appurtenances (such as easements that cross the parcel or give access to the parcel). Personal property is defined by exception: property that is not real is personal. The salient characteristic of personal property is its movability without damage either to itself or to the real estate to which it is attached" (International Association of Assessing Officers 1990, 76).

Personal property by its nature is not permanently attached and therefore is movable. Criteria for distinguishing whether an item is real or personal property in a particular situation usually include intent of owner, means of attachment, contribution to highest and best use of the property (real estate), relevant case law including sales and use tax cases if considered relevant, and statutory, regulatory, and legal guidelines.

Personal property is divisible into two classes—tangible and intangible. Examples of tangible personal property are material items such as animals, marine vessels, aircraft, motor vehicles, furniture and fixtures, machinery and equipment, tools, dies, jigs, patterns, and stock in trade (in-

cluding inventories held for resale, supplies, and materials in process). Examples of intangible personal property are representations of rights of ownership to property—cash, shares, annuities, patents, stocks, bonds, notes receivable, insurance policies, accounts receivable, licenses, contracts, franchises, money market certificates, certificates of deposit, and copyrights—as well as goodwill.

An assessment statute should explicitly define the types of personal property subject to and exempt from assessment and taxation. State and provincial agencies should provide supporting rules, regulations, and guidelines as required. Legislation should also explicitly define the situs (location for tax purposes) of personal property and should specify a common assessment date for all taxing authorities.

4. Discovery of Personal Property

The extent to which personal property can be assessed depends upon its discovery. Complete discovery requires adequately trained staff and supporting resources. Taxation agencies should be empowered to issue binding rules and regulations covering the discovery of personal property. Disclosure of personal property is often contingent on identifying the owner of the property. Sources that may be useful in the discovery of personal property and its owners include the following:

- previous assessment records and previous personal property statements or returns
- physical inspection (on-site review)
- personal property listing form, return, rendition, declaration, or statement
- real property field appraiser reports and the property characteristic file
- audits (desk, office, field, or correspondence)
- state, provincial, and local sales tax permits
- federal, state, provincial, municipal, and county business licenses and registrations
- building permits
- chambers of commerce membership lists
- new business listings from news media
- public records (such as trade name records, Uniform Commercial Code [UCC] forms, corporation charters, partnership articles, and assumed name notices)
- property transfer documents, including recorded bill(s) of sale

- classified advertisements
- telephone directories
- city directories
- accounting records, including financial statements
- various state and federal tax returns (usually restricted to audit records)
- Internet research on business operations and contacts
- Web sites, specifically leasing and sales
- advertisement flyers
- other resources that can be helpful include access to governmental databases—Department of Motor Vehicles (DMV) or Department of Revenue records providing lists of manufactured home owners or lists of corporate taxpayers by jurisdiction.

Once the property has been discovered and the owner identified, an appraiser should inspect the property and establish an account or record for the owner (or business). The appraiser should speak to the owner, manager, or other authorized person; explain the purpose of the visit; and obtain the necessary data. A standard form or checklist, showing the date of inspection, should be used to verify ownership, the nature of the property, and the situs as of the assessment date.

Information that should be obtained about a business includes the following:

- name of the business
- type of business (e.g., restaurant or hotel)
- type of ownership (e.g., sole proprietorship, partnership, franchise, or corporation)
- mailing address of the business
- name and address of the owner(s)
- telephone number of the business
- name/title of the person supplying the information
- name, address, and telephone number of the party keeping records for the business
- beginning date of the business within the assessment jurisdiction
- e-mail addresses
- North American Industrial Classification System codes (NAICS) (formerly known as Standard Industrial Codes [SIC] in the U.S.)

Fiscal year information that should be obtained about the personal property of the business includes the following:

- a complete listing of all tangible personal property, including machinery, equipment, furniture, fixtures, computers, and other tangible fixed assets with their location, year purchased and year manufactured, and acquisition or construction cost together with what is included in this cost amount, such as shipping, freight, sales tax, licenses, and so forth
- a complete listing, with full descriptions and costs, of all leasehold improvements, noting which items may already be assessed as real property
- a complete listing of leased equipment with the name and address of the lessor, information on the equipment (including name of manufacturer, date of manufacture, description, model number, serial number, list price, and original cost, if available), lease number, and terms of lease (if possible, a copy of the lease agreement should be obtained)
- a complete listing of loaned or consigned items including a brief description (e.g., vending machines), and the name and address of their owner(s)
- a complete listing of items in inventory, rented or leased as part of the business' normal operation

5. Reporting of Personal Property

The physical inspection and listing of individual personal property items is dictated by time, financial resources, and the availability of trained personnel. Typically, these constraints require the use of a reporting form (also called a rendition, return, schedule, or listing) completed by the taxpayer or the taxpayer's agent. All reporting forms should be subject to audit by the assessor, or the assessor's agent, to determine the accuracy and validity of the information provided in the return document. The assessor should mail reporting forms or make them available early enough to allow for their timely completion. Forms and instructions should also be available on the assessor's Web site. The assessor's mailing address and telephone number should always be included on the listing form. Web sites and all documents sent from the assessor's office should include the office's e-mail address.

The first year a taxpayer files a reporting form, the information reported should include a listing of all personal property giving a description, date acquired, and original acquisition or construction cost of each item. If an item was acquired used, the manufacture date and historic cost of the item should be determined if possible. In subsequent years, the taxpayer may be asked to report

only additions and deletions to the initial listing, with appropriate details and costs. This system promotes verification and valuation accuracy. Value trending and depreciation factors can be applied to each item individually or to a group of items, such as furniture, fixtures, and equipment (FF&E), acquired in a given year.

The form should contain sufficient instructions to help the taxpayer prepare and file a complete and accurate listing of all taxable personal property. The instructions on the form should also specify the reporting method required and give specific instructions on how to report construction in progress, acquisition costs (including installation, freight, taxes of all types, and fees), and expensed and fully depreciated assets as well as leased assets. The form should contain a statement that all listings are confidential and are subject to audit.

Implementation of an electronic filing process should be considered in order to provide a high level of customer service. The American National Standards Institute (ANSI) has approved electronic data interchange standards through the Accredited Standards Committee (ASC X12 transaction data sets). This standard enables taxpayers with accounts in multiple jurisdictions to efficiently automate the annual filing of personal property returns.

6. Verification and Auditing

6.1 Authority

Statutes should contain enabling language for regulatory compliance and enforcement measures. Such laws should give assessors and their representatives authority to examine the property, books, papers, and accounts of taxpayers. Statutes should also provide appropriate penalties for those who fail to file timely returns, file inaccurate information, or deny the assessor access to property and records. Further, statutes should require property owners to file personal property statements in each jurisdiction in which the owners have personal property.

6.2 Audit Program

The assessor should establish an audit program designed to facilitate the full and proper listing of all taxable personal property in the assessment jurisdiction. In general, emphasis should be placed on the audit of new accounts, major accounts, accounts with significant changes from the previous year, and accounts that are suspected of being inaccurately reported based on objective analysis.

Statistically valid sampling techniques should be employed to ensure that the audit program is equitable. The purpose of an audit is to verify that all taxable personal property items have been reported and that the information given is accurate. A physical inspection may help to verify the completeness of reports.

To ensure fair and equitable treatment, the scope of an

audit program must be clearly defined before the process begins. For example, in establishing audit criteria, it may be useful to identify particular industry segments for examination to maximize resources in a given year or assessment cycle. Audit programs may include one or more of the following activities:

- Review listing changes from one year to the next with taxpayer contact if there are questions.
- Review correctness of data before making changes: contact taxpayers requesting additional information as necessary.
- Request that government revenue agency depreciation schedules be submitted with all listings.
- Obtain copies of government revenue agency depreciation schedules for (specify percentage) of total filings.
- Obtain actual copies of ledger listings from (specify percentage) of total filings.
- For mail audits, request specific documentation from selected accounts or business types.
- Physically inspect and audit records of specifically targeted accounts or business types.
- Physically inspect and audit (specify percentage) of all personal property accounts each year

When conducting a detailed audit with inspection, the appraiser examines a detailed plant fixed-asset ledger or similar record, if available, that provides information on each item such as asset description, serial number, manufacturer, date of purchase, date of installation, location, acquisition cost, depreciation charges, and retirement provisions. The appraiser verifies that assessable items have been completely and accurately reported. Assessable costs may include charges for installation, freight, taxes, and fees (if applicable), unless specifically excluded by law.

Attention should be directed to standby equipment, permanently idled equipment, retired or fully depreciated equipment, and uninstalled equipment. Regardless of book value, such equipment and inventory should be listed and valued unless specifically exempted. Idle, retired, abandoned, or fully depreciated property may not have a value-in-use and may be reported on the company's books as having \$0.00 value, but the property may have a value-in-exchange. The amount of value-in-exchange should be determined based on market research of used machinery and equipment of similar use and condition. The status of personal property as of the assessment date is critical to determining an item's assessability or taxability (ratatability).

The appraiser should compare total reported costs with

those shown in the general ledger or balance sheet in order to verify that all property has been reported. The appraiser should be familiar with the nature of the cost being reported (original, acquisition [new or used], replacement, impaired) and the nature of the cost found on the general ledger (book, net book, market). Recent changes in reporting requirements by the United States Federal Accounting Standards Board attempt to tie depreciation life to market evidence such as leases.

The appraiser should verify that leased items, for which the business is either the lessor or lessee, have been properly reported and assigned to the correct party. If leasehold improvements exist, the appraiser should ensure that they are being assessed on either the real property roll or the personal property roll.

Simultaneous review of real and personal property records can also help to ensure complete assessment of property.

Time and cost considerations sometimes dictate that the appraiser will not be able to verify the proper reporting of each item of personal property at each site or business being audited. Often, verifying a sampling of major items listed in the detailed plant ledger, a walk-through inspection, and an examination of the general ledger, balance sheet, or other appropriate records will suffice. It may also be helpful to check a sample of recent invoices to see if the taxable assets have been accurately reported. The overall objective of the audit and verification process is to promote proper reporting.

State and provincial agencies may establish audit programs as part of their oversight or equalization and assessment responsibilities. Assessment jurisdictions may complete taxpayer audits or may be allowed to employ private auditing firms to complete the reviews. Larger jurisdictions will sometimes offer audit services to smaller jurisdictions for a fee or jurisdictions may combine audit resources in other ways.

6.3 Quality Assurance

Quality assurance methods and techniques used for personal property are similar to those used for real property. Verification of reported data against independent sources is a good way to check the accuracy of the reported costs and inventory of items listed.

Section 10 of the *IAAO Standard on Ratio Studies* (1999) provides comprehensive guidance for assessors planning to conduct a quality assurance program for personal property.

7. Valuation

7.1 Trade Level

All approaches to personal property valuation should consider trade level, which refers to the production and distribution stages of a product. The appraiser should

recognize three distinct basic levels of trade: the manufacturing level, the wholesale level, and the retail level. Incremental costs (such as freight, overhead, handling, installation, and sales taxes paid on installed costs) are added to a product as it advances from one level of trade to the next, thereby increasing its value as a final, in-service product. Thus the value of goods will differ, depending on their level of trade. The appraiser should value personal property at its current level of trade, theoretically to a buyer within that same trade level. Such considerations are particularly important in inventory valuation.

7.2 Valuation Techniques

The cost, sales comparison, and income approaches should be considered in the appraisal of personal property as long as the market within the trade level is in equilibrium. If demand exceeds supply or supply exceeds demand, i.e., unbalanced markets, one or more of the three approaches may produce distorted results. The degree of dependence on any one approach could also change with the availability of reliable data. Units of comparison, such as value of personal property per square foot, for comparable properties can be used to check the value estimates derived from the standard appraisal approaches. Such units of comparison can also be used when the data required for other approaches are unavailable. Examples include cost/value per square foot of FF&E in an office building or cost/value per square foot of inventory for a retail business.

The valuation method and techniques employed should be based on the appraiser/assessor's value standards. In most jurisdictions, market value is defined by value-in-exchange, that is, the value to the next buyer as of the lien date, and highest and best use principles. The highest and best use of an asset will likely be as fully installed and operational to its maximum productivity.

7.2.1 Cost Approach

Costs used in the cost approach can be original construction cost, new or used acquisition cost, replacement, or reproduction costs. Allocated cost can be used if items are purchased in bulk, although often only original or acquisition costs are readily available for personal property assessment purposes. The cost approach provides an estimate of value based on the depreciated cost of the property. In applying the cost approach to personal property, the appraiser must identify make and model number, year acquired, and total acquisition costs, including installation, freight, taxes, and fees. The acquisition costs should then be trended and depreciated as appropriate to reflect current market values. Acquisition costs of equipment obtained pursuant to a lease-purchase agreement should include the total payments, not just the final payment. If financing costs are factored into

the lease payments, an adjustment to the "selling price" may be required.

The assessor should recognize that appraisal and accounting practices for depreciating personal property may differ. Accounting practices provide for recovery of the cost of an asset (the return of the asset), whereas appraisal practices strive to estimate a value related to the current market and should consider both return of the asset and return on the asset. A productive asset may continue to have value at the end of its scheduled life or conversely, an asset may lose its value prior to the end of its scheduled life. Appraisal practice must consider accrued depreciation in the forms of physical deterioration, functional obsolescence, and external (economic) obsolescence. The appraiser/auditor should also be familiar with the purchase accounting methods used by businesses in their jurisdiction. A company's depreciation schedule should provide life tables for various asset categories.

The restoration or modification of machinery or equipment may be treated differently for assessment and accounting purposes. For accounting purposes, the restoration/modification cost may be entered as a different asset, whereas the appraiser/assessor would add the cost to the original item and adjust the effective age of the asset.

Useful guidelines in the form of depreciation schedules or tables are available from state or provincial assessing authorities, professional valuation companies, and appraisal publishing firms. Because the personality of a business normally is acquired throughout the year, acceptable depreciation schedules will permit the full year's depreciation or will consider the average age of six months (half-year convention). Generally, these guides are sufficiently accurate for use in mass appraisal of property. If guides do not exist for specific types of personal property, it is recommended that they be developed. Depreciation schedules can be developed from a study of asset lives and resale prices. The schedules can be asset specific or for general categories such as personal computers or furniture and fixtures. Most schedules base annual depreciation on a percentage of original cost or replacement cost.

However, there can be particular types of property where standard depreciation schedules may not apply and an accurate depreciation estimate can only be made by using an alternate method. One such method is the capitalization of income (rent) loss due to the inefficiency of the property. It is similar to the practice in real estate valuation of calculating the depreciation due to rent loss caused by internal or external forces. An example would be if an existing machine can only run eight hours per day, but a modern replacement can run ten hours per day, the loss in revenue from the two hours of non-production could be capitalized and the amount subtracted from the replacement cost. Whether the obsolescence

was functional or economic would depend on whether the forces reducing the production hours were internal or external. The appraiser/assessor's experience and judgment should inform their decision of whether to use a standard schedule, develop a new schedule, or apply an alternate method of calculating depreciation.

7.2.2 Sales Comparison Approach

The sales comparison approach may have limited application for appraising machinery and equipment used in business because sales of used items are generally few and are often liquidation sales, which typically are not at market value, or are bulk asset purchases. In such circumstances, list prices including delivery costs and sales taxes, when supported by the marketplace, can be good indicators of value. Used assets acquired in bulk purchases may have been sold in an arm's-length transaction so market data may be evident. The value of an individual item to the entire sale price (purchase price allocation) may be available in the buyer's records.

Care must be taken to assure that the property is valued at the proper level of trade. Trade and cash discounts should be subtracted from the list prices, particularly if the equipment sold is still at the wholesale level of trade. If reliable sales data are available, the adjustment process can be applied in the same manner as for real property. If an adjustment for time of sale is made, the adjustment may be negative due to additional accrued depreciation of the property or positive due to inflation.

7.2.3 Income Approach

The income approach produces an estimate of the present worth of income to be received in the future. To apply this approach, the appraiser must estimate the income stream over the remaining economic life of the subject property. This is an important concept; the future income-generating capacity of personal property is typically short-lived compared to real estate. The direct capitalization technique (Income divided by Rate equals Value [$I/R=V$]) can be used if the single-year income applied is indicative of the annual income for the remaining life of the asset and the capitalization rate reflects the recapture period of the asset. Personal property can also be valued using a yield capitalization technique, which values the changing productivity (income) of the asset over its projected remaining life more accurately than $I/R=V$. Many industries use gross income multipliers (GIM) or gross rent multipliers (GRM) to value personal property that has typical and similar operating expenses. When applying the income approach to value personal property, it is important to capitalize income from the rental of an asset not the income of the business that owns the asset.

Typical gross incomes may differ under various leasing

arrangements; lessors may be able to supply average gross revenues for each type and model. The historical pattern of net income streams, together with an analysis of current leasing patterns, will suggest the likely shape of future income streams. The capitalization technique chosen should be consistent with the anticipated income stream.

When reliable lease data on equipment leases are available, the income approach can provide good value estimates. Lessors should be required to document operating expenses to be deducted from the gross income. These expenses include management expenses directly associated with the production of lease revenue, equipment maintenance expenses, and the like.

Developing an appropriate capitalization rate is a critical step in the capitalization process. Capitalization rates contain provisions for return on the investment (discount rate) and capital recovery (return of the investment), as discussed in the cost approach. In addition, property taxes may be accounted for as a component of the capitalization rate. (See *Standard on Mass Appraisal of Real Property* [IAAO 2002].)

Data on the economic lives of various types of personal property can be obtained from a number of sources. Lessors are perhaps the best source, although typical economic lives should be documented with dates of acquisition and disposal of actual items. U.S. federal tax guidelines for modified accelerated cost recovery systems (MACRS) can be helpful as a starting point. Economic life data can also be used to estimate recapture rates. When the income approach is applied, consideration should be given to the salvage or scrap value, if any, when the property has reached the end of its normal life expectancy (remaining economic life equals 0). An analysis of resale values of used equipment can be helpful in determining salvage value.

In cases where property is both sold and leased, gross income multipliers (GIM) should be developed. Gross income multipliers can provide reliable value estimates for personal property items that have similar operating expenses, discount rates, and remaining economic lives.

7.3 Valuation Guidelines for Tangible Personal Property

As discussed in section 7.2, the cost, sales comparison, and income approaches should be considered in the appraisal of tangible personal property. However, certain types of personal property do not readily lend themselves to development of all three generally accepted approaches. If sufficient sales data are available to support use of the sales comparison approach, it should receive primary consideration. In many instances, however, sufficient sales data are not available, and in these instances, more

reliance should be placed on the cost approach or the income approach. The assessor must always consider the quality and quantity of the available market data.

The following are procedures typically used in the valuation of common types of tangible personal property.

7.3.1 Machinery and Equipment

Machinery and equipment (M&E) are items of personal property used in the normal conduct of business that are not permanently attached to the real estate and, unlike inventory, are not intended to be sold. Utility and ability to produce income are factors that influence the economic life of machinery and equipment. The market value of machinery and equipment typically follows a declining path once the assets are acquired and put into operation due to normal wear and tear and technological changes. Salvage or scrap value should be considered at the end of economic life.

The most common approach for the valuation of machinery and equipment is the cost approach, although the sales comparison approach should receive primary consideration when adequate data are available. In particular, small equipment, for which there is often an active resale market, may lend itself to valuation by the sales comparison approach.

Machinery and equipment can be classified as short-lived (computer) or long-lived (drill press), so not all M&E can be grouped together for depreciation purposes.

7.3.2 Furniture and Fixtures

The procedures described for the appraisal of machinery and equipment are generally used in the appraisal of furniture and fixtures (F&F). Because F&F generally have similar lives, they are often grouped into one item for depreciation purposes.

7.3.3 Leased Equipment

Valuation of leased equipment is complicated by such factors as the wide variety of leased equipment, the variety of leasing arrangements, rapidly changing technologies, and changing market conditions. These factors can cause the quality and quantity of available market data to vary.

The income approach is often used in valuing leased equipment because data on sales and rental rates are usually available. When sales data are available, emphasis should be given to income multipliers derived from market data.

The cost approach may be used cautiously in the valuation of leased equipment because markups of cost to list prices vary from one company to another on the same type of equipment and also vary with the level of trade. If manufactured cost is the only information that is reported,

the appraiser should obtain more data from the lessor or compare the equipment in question with similar equipment of known cost.

7.3.4 Inventories

The term inventories includes specific categories of goods held for resale in the course of business, goods in the process of production (termed goods in process), and raw materials.

Whether certain types of goods are classified as inventories or as something else will change depending on the trade level at which the appraisal is being made. Machinery and other equipment that remain classified as inventories at the manufacturing, wholesale, and retail levels become machinery and equipment upon reaching the end user.

Inventory valuation, both for goods in process and for finished goods, should include the value of labor, materials, and overhead expended during production.

There are many methods for estimating the value of inventories. Some of the more common ones are:

- last in, first out (LIFO)
- first in, first out (FIFO)
- weighted average
- lower of cost or market

The most commonly used method for ad valorem purposes is lower of cost or market. First in, first out (FIFO) is also an acceptable measure of inventory replacement costs. Taxpayers often use last in, first out (LIFO) for income tax purposes, but it does not reflect inventory value for property tax purposes. The weighted average method provides for distribution of inventory costs throughout the year.

Caution should be exercised when inventory values are estimated from the owner's accounting records because most accounting systems use an original acquisition cost basis for pricing inventory and this does not necessarily reflect market value as extracted from the marketplace, which may be more or less than original cost.

7.3.5 Supplies

Supplies are stocks of goods that are intended to be consumed during the production process, but are not part of the raw materials inventory that is processed into the finished product. Examples of supplies include chemicals, clothing, pallets, paper, shipping materials, fuels, and repair parts. Unlike inventory, supplies are not held for resale. Supplies should be valued at their acquisition cost.

7.3.6 Consigned Goods

Consigned goods are personal property in the possession of an agent, held for sale by that agent. They should be valued, at the appropriate level of trade, as part of the consignor's inventory.

7.3.7 Imports and Exports

Assessors should be aware of the legal status of import and export merchandise in order to determine its taxable status. If there is no exemption provided by statute, then the techniques for estimating the value of inventories should be used for valuing imports and exports.

7.4 Valuation Guidelines for Intangible Personal Property

The discovery, reporting, verification, and proper valuation of intangible personal property is difficult and can be expensive. The methods for discovering, reporting, verifying, and auditing intangibles are the same as for tangible personal property. Pertinent information includes type of asset, name of issuer, date of acquisition, legal life, expected useful life, face value or par value, market value, and dividends or other income. Individual research can lead to sources that provide information on the selling prices of intangible personal property.

Statutes should provide concise guidance on the assessment of intangible personal property. The benefit/cost ratio of intangible personal property taxation is such that many states have exempted intangible personal property from taxation. For a listing of state and provincial treatment of intangible property, see *Property Tax Policies and Administrative Practices in Canada and the United States* (IAAO 2000).

Those states that continue to assess intangible property primarily do so for public utilities by using a unit valuation method. When centrally assessed property is not held by a public utility, the separation of tangible from intangible value may be required. Recent letter rulings and case law should be researched to provide guidance in this area. Careful review should underscore the purpose, use, and how necessary and integral the identified intangible personal property is to the taxable tangible personal property. This review could entail the examination of the taxpayer's books, records, and filings with regulatory agencies.

7.5 Compliance with USPAP

IAAO requires that all appraisal work performed by its members in the United States and Canada be compliant with the *Uniform Standards of Professional Appraisal Practice* (USPAP) of the Appraisal Foundation (2005 [updated annually]) and the *IAAO Code of Ethics and Standards of Professional Conduct* (2005). USPAP Stan-

dards relevant to the valuation of personal property are Standard 6: Mass Appraisal, Development and Reporting; Standard 7: Personal Property Appraisal, Development; and Standard 8: Personal Property Appraisal, Reporting. Standard 6 defines the appropriate form for developing mass appraisal methods and the structure for reporting the results. Standards 7 and 8 provide guidance on the proper process to follow so that the results are based on sound conclusions and are well documented. USPAP contains adequate jurisdictional exceptions to accommodate the various provisions of state, county, and municipal laws.

Selected References

- American Society of Appraisers (ASA). 1989. *Appraising machinery and equipment*. New York: McGraw-Hill, 209.
- This text is a detailed compilation of information on the appraisal of machinery and equipment. All forms of depreciation are described and their application to personal property illustrated.*
- Appraisal Foundation, Appraisal Standards Board. 2005 [updated annually]. *Uniform standards of professional appraisal practice*. Washington, DC: The Appraisal Foundation, Appraisal Standards Board.
- Two of these mandatory standards refer to personal property—Standard 7: Personal Property Appraisal, Development, and Standard 8: Personal Property Appraisal, Reporting.*
- California State Board of Equalization, Assessment Standards Division. 2003. *The appraisal of equipment, inventory and supplies. Assessors handbook 571*. Sacramento: California State Board of Equalization, Assessment Standards Division.
- This handbook contains an excellent discussion of valuation methods. Although written to conform with California law, much of the discussion is of general interest. The board also publishes General audit guidelines (Assessors handbook 504) and Management of the business property program (Assessors handbook 503). Comprehensive personal property manuals are also issued by other states or assessing jurisdictions and can be accessed via Internet on government Web sites.*
- Gossett, J.F. 1984. Assessment law notes: Problems in intangibles taxation. *Property Tax Journal* 3(4):277–88.
- This article reviews case law dealing with many aspects of intangible personal property assessment and valuation, for example, who should pay, situs, valuation, exemptions, and discrimination.*
- International Association of Assessing Officers (IAAO). Various dates. Bibliographic service. Kansas City, MO: IAAO.
- Bibliographic computer databases are available through the IAAO library on various aspects of personal property assessment. The databases can be searched to provide customized listings. Databases relevant to personal property valuation are as follows:*
- Assessment manuals in the United States.* 196 citations.
 - Provincial assessment manuals in Canada.* 69 citations.
 - Price guides for personal property.* 255 citations.
 - Leases, lease interests, leased equipment, and possessory interests.* 199 citations.
 - Issues in intangibles valuation.* 101 citations.
- In addition to the computerized databases, a printed bibliography, *Tangible personal property: Valuation, assessment, and taxation*, Section 1: Assessment methods and practices and tax policies, is available.
- International Association of Assessing Officers (IAAO). 1990. *Property appraisal and assessment administration*. Chicago: IAAO.
- This comprehensive text on assessment administration discusses personal property briefly.*
- International Association of Assessing Officers (IAAO). 1996. *Property assessment valuation*. 2nd ed. Chicago: IAAO.
- This introductory textbook contains a substantial chapter on personal property assessment.*
- International Association of Assessing Officers (IAAO). 1999. *Standard on ratio studies*. Chicago: IAAO.
- International Association of Assessing Officers (IAAO). 2000. *Property tax policies and administrative practices in Canada and the United States (Taxonomy Study)*. Chicago: IAAO.
- International Association of Assessing Officers (IAAO). 2002. *Standard on mass appraisal of real property*. Chicago: IAAO.
- International Association of Assessing Officers (IAAO). 2005. *IAAO code of ethics and standards of professional conduct*. http://www.iaao.org/publications/code_of_ethics.asp.
- International Association of Assessing Officers (IAAO). Various dates. Course and workshop manuals. Kansas City, MO: IAAO.
- Course 500: Assessment of personal property.
 - Workshop 552: Basic personal property auditing.
 - Workshop 553: Advanced personal property auditing.
 - Workshop 550: Basics of fixed asset valuation.

Workshop 551: Valuation of machinery and equipment—Advanced concepts.

O'Keefe, K.M. 1983. The classification issue and the law of fixtures: A chattel by any other name. *Journal of State Taxation* 2(1):37–57.

A survey of case law on the law of fixtures, focusing on the attachment doctrine, the institutional doctrine, the integrated industrial plan doctrine, and the material injury test. Illinois, New Jersey, and California are featured. See also the article following O'Keefe's—Hymen, M.A. Commercial property assessments: Criteria for classifying personal property as real estate. 59–66.

Skaiff, M.S. 1974. Computerized personal property valuation models. *International Property Assessment Administration* 7:194–201.

A paper that examines the use of computers in the administrative function (computation of assessed values, bills, and rolls) and in the analysis of the valuation function (including determination of property life).

U.S. Department of the Treasury. 2004. *Publication 946: How to depreciate property*. Washington, DC: U.S. Department of the Treasury, Internal Revenue Service.

Glossary of Terms

Acquisition cost. The cost used in accounting to represent the purchase price of an asset. If installation and other associated costs are included, this cost should be referred to as total acquisition cost.

Chattel. An item of tangible movable or immovable property except real estate, freehold, and things (such as buildings) connected with real property.

Consigned goods. A type of inventory in the possession of a selling agent but owned by another party. The seller has no equity, no control of price or sale, and receives none of the profit (as such) from sale of the property (but may receive a sales commission).

Construction in progress. Property that is in a process of change from one state to another, such as the conversion of personal property from inventory to fixed asset by installation or the conversion of personalty to realty by becoming a fixture.

Discovery. The process whereby the assessor identifies all taxable property in the jurisdiction and ensures that it is included on the assessment roll.

Economic life. The period of time over which an asset's operation is economically feasible. The economic life may or may not be equivalent to the physical life of the asset.

External (economic) obsolescence. The loss in appraisal value (relative to the cost of replacing a property with

property of equal utility) resulting from causes outside the property that suffers the loss. Usually locational in nature in the depreciation of real estate, it is more commonly marketwide in personal property and is generally considered to be economically unfeasible to cure.

Effective age. An age assigned to an asset based on a combination of its actual age and condition.

Finished goods. Inventory at the end stage of a manufacturing process. Finished goods are the result of combining raw materials with labor, capital, machine time, and other components of production.

First in, first out (FIFO). An inventory cost-accounting procedure whereby unsold inventory, including inventory carried over from prior years, is valued at the price most recently paid for inventory purchases.

Fixed assets. Personal property that has been brought to the point of highest and best use, that is, it is fully installed and used to produce income in an economically feasible manner. In a business: permanent assets required for the normal conduct of a business.

Fixture. Generally, an asset that has become part of real estate through attachment in such a manner that its removal would result in a loss in value to either the asset or the real estate to which the asset is affixed.

Goods held for sale or resale. Any inventory held for sale by a wholesaler, distributor, or retailer after having passed through one or more other levels of trade.

Goods in process. Inventory, formerly raw materials, that has begun to undergo the manufacturing process that will result in finished goods.

Historical cost. The cost new to the first owner of personal property.

Intangible property. That class of personal property in which value is based on evidence of ownership rather than physical or tangible characteristics, for example, notes, bonds, insurance, patents, and accounts receivable.

Inventory. The group of personal property items whose value is exhibited by value-in-exchange, that is, ownership is solely for the purpose of sale rather than use.

In-transit goods. Personal property that is in movement from one jurisdiction to another. In-transit goods are not assessable because they lack situs.

Last in, first out (LIFO). An inventory cost-accounting procedure whereby unsold inventory, including inventory carried over from the prior year, is valued at the prices paid for the earliest inventory purchases.

Leasehold improvements. Items of personal property, such as furniture and fixtures associated with a lessee (the tenant), that have been affixed to the real property owned by a lessor.

Lower of cost or market. An inventory accounting concept which states that the present value of inventory is based on the lower of either historic cost or current selling price (example: obsolete inventory items).

Original cost. The cost as recorded on the books of the current owner.

Remaining economic life (REL). The number of years in the future during which the operation of an asset is anticipated to be economically feasible, often expressed as a percentage of the total economic life (REL %).

Situs. The taxable location of an asset. For personal property, situs may be the physical location of the property or, in the instance of highly mobile property, the more-or-less permanent location of the property owner.

Supplies. A type of personal property, usually treated as inventory, that is consumed as part of the process of bringing other assets to a saleable condition.

Tangible property. Property whose value is measured in accordance with its actual physical presence.

Trade level. Refers to the production and distribution stages of a product. Appraisers recognize three distinct levels of trade: the manufacturing level, the wholesale level, and the retail level. Personal property should be assessed at the trade level at which it is found. The valuation of the inventory of one owner should be based on the price for which it would be exchanged with a similar

business at the same trade level, for example, from one manufacturer to another. Value-in-exchange increases as a property moves from manufacturing through to retail levels of trade.

Trending factor. A figure representing the increase in selling price over a period of time. Trending accounts for the relative difference in the value of a dollar between two periods.

Unit cost. A valuation guideline expressing the relationship between cost or value of inventory or fixed assets and some unit of measure, for example, cost per square foot or per employee.

Value-in-exchange. The amount an informed purchaser would offer for personal property under given market conditions.

Value-in-use. The value applied to furniture, fixtures, and equipment as installed and in-use for generation of income or performing its function.

Weighted average. A method of inventory cost accounting whereby inventory is valued according to the unit price of all units owned throughout the year. It is calculated by dividing total acquisition cost of all inventory by the number of units owned.

Assessment Standards of the International Association of Assessing Officers

DECEMBER 2005

Standard on Valuation of Personal Property

AUGUST 2004

Guide to Assessment Administration Standards

AUGUST 2004

Standard on Manual Cadastral Maps and Parcel Identifiers

AUGUST 2004

Standard on Property Tax Policy

SEPTEMBER 2003

Standard on Automated Valuation Models

JULY 2003

Standard on Administration of Monitoring and Compliance Responsibilities

JULY 2003

Standard on Digital Cadastral Maps and Parcel Identifiers

JANUARY 2003

Standard on Facilities, Computers, Equipment, and Supplies

FEBRUARY 2002

Standard on Contracting for Assessment Services

FEBRUARY 2002

Standard on Mass Appraisal of Real Property

JULY 2001

Standard on Assessment Appeal

JULY 2001

Standard on Public Relations

JULY 2001

Standard on Valuation of Property Affected by Environmental Contamination

DECEMBER 2000

Standard on Professional Development

JULY 1999

Standard on Ratio Studies



To order any standards listed above or to
check current availability and pricing, go to:
<http://www.iaao.org/publications/standards.html>

JOINT EXHIBIT 54

South Carolina Department of Revenue Legislative Update for 2002



Governor James H. Hodges
Elizabeth A. Carpentier, Director

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

Deana West
South Carolina Department of Revenue
P. O. Box 125
Columbia, SC 29214

South Carolina Department of Revenue Management

Elizabeth Carpentier
Director

(803) 898-5040
e-mail: carpene@sctax.org

Harry Cooper
General Counsel and Deputy Director
for Law & Compliance

(803) 898-5140
e-mail: cooperh@sctax.org

Ike Nooe
Deputy Director for Processing, Licensing,
and Support Services

(803) 898-5500
e-mail: nooei@sctax.org

South Carolina Department of Revenue
Post Office Box 125
Columbia, SC 29214
e-mail: www.sctax.org

TAX LEGISLATIVE UPDATE

FOR 2002

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

CATEGORY OF LEGISLATION	PAGE #
1. Income Taxes and Withholding.....	2
2. Property Taxes and Fees in Lieu of Property Taxes	12
3. Sales and Use Taxes	21
4. Miscellaneous	
Administrative and Procedural Matters	24
Miscellaneous Taxes.....	29
Other Items (including local taxes).....	31
Regulatory Matters	39
5. Regulations	44

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

INCOME TAXES AND WITHHOLDING

House Bill 4695 (Act No. 220)

Income Tax Conformity

Code Section 12-6-40(A) has been amended to update South Carolina's income tax laws to conform to the Internal Revenue Code of 1986 as amended through December 31, 2001, and includes its effective date provisions.

Effective Date: April 22, 2002

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

South Carolina College Investment Program - Amendments

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

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

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

4. Defines the term "qualified plan" to mean any plan qualified under Section 529 of the Internal Revenue Code of 1986, as amended. Previously, the statute referred to a "qualified investment account."

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

Effective Date: Tax years beginning after 2002.

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

Volunteer Hazardous Materials Response Team – New Individual Income Tax Deduction

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

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

Effective Date: Taxable years beginning after 2002.

Senate Bill 852, Section 8. A (Act No. 334) (See also House Bill 4337, Section 1. B (Act No. 363))

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

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

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

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

Effective Date: Applies for estimated taxes due after 2002.

Senate Bill 852, Section 8. B and C (Act No. 334)
(See also House Bill 4337, Sections 1. C and D (Act No. 363))

Corporate Extensions of Time to File – Federal Extension Accepted

Code Section 12-6-4980(B) has been amended to allow the Department to accept a federal corporate extension when a taxpayer is not required to make a payment of tax with the extension and the taxpayer has been granted a federal income tax return extension. Further, Code Section 12-20-20(C) has been amended to allow an extension of time for filing a corporate annual report.

Effective Date: June 24, 2002

Senate Bill 886, Section 1 (Act No. 332)

Job Tax Credit – New “Distressed County” Ranking

Code Section 12-6-3360, providing a job tax credit for certain businesses creating new full time jobs, allows a credit for new jobs based, in part, on the number of new jobs created and the location of the taxpayer’s facility. This section has been amended as follows:

1. A new county ranking category – “distressed county” – has been created. Distressed counties are the twelve South Carolina counties with a combination of the highest unemployment rate and lowest per capita income, notwithstanding any other adjustments to county designations required by other provisions of the statute. Prior to this amendment, South Carolina’s counties were ranked in one of four categories - “least developed,” “under developed,” “moderately developed,” or “developed.”
2. The job tax credit is \$8,000 per year for each new job created in a “distressed” county. The credit continues to be \$4,500 per year for each job created in a “least developed” county, \$3,500 in an “under developed” county, \$2,500 in a “moderately developed” county, and \$1,500 in a “developed” county. The statute continues to allow a company located in a multi-county industrial park an additional \$1,000 credit per year.

3. Taxpayers that operate retail facilities and service related industries in a distressed county qualify for the job tax credit. Taxpayers that operate retail facilities and service related industries in a "least developed" county continue to qualify for the job tax credit.

4. The \$5,500 maximum credit limitation that may be claimed for any tax year per employee under the job tax credit and the credit for hiring family independence recipients does not apply to employees in a distressed county.

Note: The Department periodically publishes Revenue Informational Bulletins listing rankings of South Carolina's 46 counties for job tax credit purposes. This information can be obtained from the Department's website at www.sctax.org.

Effective Date: June 18, 2002

Senate Bill 886, Section 5 (Act No. 332)

Credit for Hiring Family Independence Recipient – Employees in a "Distressed County"

Code Section 12-6-3470, providing a credit to employers who employ persons who receive family independence payments within South Carolina for three months immediately before becoming employed, has been expanded to provide that if an employer is located in a South Carolina county designated as a "distressed" county and employs a former family independence recipient to work full time in that county, the employer is allowed an additional \$175 credit per qualifying employee for each full month during the first 36 months of employment. The statute continues to allow the additional \$175 credit per employee for each qualifying year for an employer located in a South Carolina county designated as a "least developed" county.

Effective Date: June 18, 2002

House Bill 4548, Section 4 (Act No. 280)

Brownfields Voluntary Cleanup Program Credit – New Corporate Income Tax Credit

Code Section 12-6-3550 has been added to provide a corporate income tax credit for costs of voluntary cleanup activity by a nonresponsible party pursuant to the Brownfields Voluntary Cleanup Program in Title 44, Chapter 56, Article 7.

The credit is summarized as follows:

1. The credit is equal to 50% of the cleanup expenses paid or accrued or cash contributions for site cleanup conducted during the tax year the tax credit application is submitted. The total credit is limited to \$50,000 per tax year. Any unused credit up to \$100,000 may be carried forward 5 years. Multiple taxpayers working jointly to clean up a single site are allowed the credit in the same proportion as their contribution to payment of clean up costs.

2. In the third year of cleanup, as evidenced by the Department of Health and Environmental Control (DHEC) issuing a certificate of completion for the site, the taxpayer is allowed an additional 10% of the total cleanup costs, not to exceed \$50,000.

3. To qualify for the credit, the taxpayer must have entered into a nonresponsible party voluntary cleanup contract with DHEC pursuant to Code Section 44-56-750.
4. The taxpayer must file a tax credit application with DHEC annually in order to obtain a tax credit certificate. The tax credit application and required documentation must be received by DHEC by December 31.
5. Information included with the application form must include: (a) copies of contracts, invoices or payment records involving the actual costs incurred for the tax year related to the site rehabilitation and (b) a copy of an independent certified public accountant report attesting to the accuracy and validity of the costs.
6. DHEC will issue a tax credit certificate upon review of the application and documentation before April 1st if it determines that the applicant has met all requirements. The taxpayer must pay DHEC's administrative review costs pursuant to Code Section 44-56-750(D).
7. DHEC may revoke or modify any written decision granting eligibility for partial tax credits if it is discovered that the taxpayer submitted false information. DHEC and the taxpayer will notify the Department of Revenue of any change in the tax credit claimed.

Effective Date: For eligible cleanup expenses incurred after 2001, for taxpayers receiving a certification of completion from the Department of Health and Environmental Control after May 28, 2002.

House Bill 4548, Section 5 (Act No. 280)

Brownfields Voluntary Cleanup Program Participants – Additional Job Tax Credit

Code Section 12-6-3360(E), providing an additional \$1,000 job tax credit for taxpayers located in a multi county industrial park, has been amended to provide an additional \$1,000 job tax credit per year for 5 years for taxpayers who create new full time jobs located on property where a response action has been completed pursuant to a nonresponsible party voluntary cleanup contract pursuant to Title 44, Article 7, Chapter 56. This additional credit is not allowed to a responsible party.

Effective Date: For jobs created after May 28, 2002, for taxpayers receiving a certification of completion from the Department of Health and Environmental Control after May 28, 2002.

Historic Rehabilitation Credit – New Income Tax Credits

Code Section 12-6-3535 has been added to enact the "South Carolina Historic Rehabilitation Incentive Act" to provide for two nonrefundable income tax credits. These credits are:

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

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

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

Definitions. The term "certified historic residential structure" is defined in Code Section 12-6-3535(B)(1) as a structure or portion of a structure that is an owner-occupied personal residence if the residence is not actively used in a trade or business, held for the production of income, or held for sale or disposition in the ordinary course of the taxpayer's trade or business; and that is:

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

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

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

Additional Credit Provisions

1. An S corporation, limited liability company, or partnership that qualifies for this credit may pass the credit earned through to each shareholder, member, or partner. The amount of the credit allowed a shareholder, member, or partner is equal to the shareholder's percentage of stock ownership, member's interest in the limited liability company, or partner's interest in the partnership for the taxable year multiplied by the amount of the credit earned by the entity. The credit earned pursuant to this section by an S corporation owing corporate level income tax must be used first at the entity level. Only the remaining credit passes through to each shareholder.
2. Additional work done by the taxpayer while the credit is being claimed, for a period of up to 5 years, must be consistent with the Secretary of the Interior's Standards for Rehabilitation. During this period, the State Historic Preservation Officer may inspect and review additional work to the certified historic structure or certified historic residential structure. If this work is not consistent with the Standards for Rehabilitation, the taxpayer and Department must be notified in writing and any unused portion of the credit, including carry forward, is forfeited.
3. The South Carolina Department of Archives and History will develop applications and promulgate regulations to administer the certification process. A taxpayer may appeal a decision of the State Historic Preservation Officer to a committee of the State Review Board.

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

(See also House Bill 4337, Section 2 (Act No. 363)

Investment Credit Property Basis Reduction— Technical Correction

Code Section 12-6-1130(9), providing a deduction for the amount of the basis reduction to Section 38 property under applicable sections of the Internal Revenue Code, has been amended to update the applicable Internal Revenue Code Section reference to Section 50(c) from Sections 48(q) and 49(d).

Effective Date: June 24, 2002

Senate Bill 852, Sections 7, F and H (Act No. 334)

Job Development Credit – (Refunds of Wage Withholding) - Audited Report by CPA No Longer Required; New Department Audit Fee

The auditing and reporting requirements of a business claiming more than \$10,000 of job development credits in a calendar year have been amended. The changes are:

1. Code Section 12-10-80(A)(9) has been amended to delete the requirement that the report itemizing the sources and uses of the funds be prepared by an independent certified public accountant.
2. Code Section 12-10-80(A)(9) has been amended to add a provision that the Department will audit each qualifying business claiming over \$10,000 of job development credits in one calendar year at least once every three years to verify proper sources and uses of funds.
3. Code Section 12-10-105 has been added to provide that a \$1,000 annual fee must be remitted to the Department by each business receiving over \$10,000 of job development credits in one calendar year. This fee will be used to reimburse the Department for costs incurred in auditing reports itemizing the sources and uses of the funds as required under Code Section 12-10-80(A).

Effective Date: June 24, 2002

Job Development Credit – Use of Funds Expanded

Code Section 12-10-80(C)(3), authorizing the expenditure of the job development credit for certain purposes, has been expanded to include the following:

1. Training for all relevant employees that enable a company to export or increase a company's ability to export its products, including training for logistics, regulatory, and administrative areas connected to the company's export process and other export process training that allows a qualified company to maintain or expand its business in South Carolina.
2. Apprenticeship programs.
3. Relocation expenses associated with new national corporate headquarters, as defined in Code Section 12-6-3410(J)(1)(a), that qualify for the personal property portion of the headquarters credit in Code Section 12-6-3410(D).

Effective Date: June 24, 2002

Senate Bill 886, Sections 2, 3, and 4 (Act No. 332)

Job Development Credit – New Distressed County Ranking

The provisions in Chapter 10 of Title 12 have been amended as follows with the addition of the "distressed" county ranking:

1. Code Section 12-10-80, containing the general job development credit provisions, and Code Section 12-10-81, containing job development provisions for tire manufacturers, have been expanded to provide that a business in a "distressed" county may claim 100% of the maximum allowable job development credit. The statute continues to allow 100% of the maximum allowable job development credit to be retained by a business located in a "least developed" county, 85% of the maximum allowable job development credit to be retained by a business located in an "under developed" county, 70% of the maximum allowable job development credit to be retained by a business located in a "moderately developed" county, and 55% of the maximum allowable job development credit to be retained by a business located in a "developed" county. The difference between the maximum job development credit and the job development credit actually claimed is remitted to the State Rural Infrastructure Fund.
2. Code Section 12-10-85(B), providing that Rural Infrastructure Fund grants must be available to benefit "least developed" counties, has been expanded to include "distressed" counties. Further, up to 25% of the funds annually available in excess of \$10 million must be set aside for grants to areas of "underdeveloped," "moderately developed," and "developed" counties. The Rural Infrastructure Fund is administered by the Coordinating Council for Economic

Effective Date: June 18, 2002

House Bill 4878, Part IB, Section 27, Proviso 27.18 (Act No. 289)

Note: This temporary proviso, enacted in the last legislative session, was reenacted this year.

Job Development Credit – Fees

This proviso allows the Council to increase the application fee for qualification for the Enterprise Zone Program from \$2,000 to \$4,000, \$500 of which must be shared with the Department. The Council is also authorized to establish an annual renewal fee of \$500 for qualifying businesses receiving job development credits which is to be shared equally with the Department for the purposes of meeting administrative, data collection, credit analysis, cost benefit analysis, reporting and other statutory obligations.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2002 through June 30, 2003. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2003.

House Bill 4878, Part IB, Section 64, Proviso 64.12 (Act No. 289)

Note: This temporary proviso, enacted in the last legislative session, was reenacted this year

Fees Charged for Infrastructure Credit Comfort Letter

This proviso allows the Department to impose a \$35 fee for each informal, nonbinding, letter concerning eligibility for the infrastructure credit under Code Section 12-20-105. A qualifying company subject to the license tax imposed on South Carolina property and gross receipts, such as a power company, gas company, or telephone company, may claim an infrastructure credit for 100% of the amount paid in cash, up to \$300,000 a year, for qualifying infrastructure for an eligible project.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2002 through June 30, 2003. Unless reenacted by the General Assembly in the next legislative session, the fees provided by this Act expire on June 30, 2003.

PROPERTY TAXES AND FEES IN LIEU OF PROPERTY TAXES

House Bill 1005 (Act No. 271)

Property Tax - Assessment and Appeal Changes

Code Section 12-60-2510(A)(1) has been amended to provide that for property tax assessments made by a county assessor in a reassessment year, substantially all these property tax assessment notices to taxpayers must be mailed by October 1st of the implementation year. If substantially all of the notices are not mailed by October 1st, the prior year's property tax must be the basis for all tax assessments for the current year. Previously, the notices had to be mailed by February 1st of the implementation year. Additionally, the assessment notice must now contain the value of the property as limited by Code Section 12-37-223A, if applicable. Code Section 12-37-223A limits increases in value of certain property in a county if the residents of the county vote to cap the value of such property.

Code Section 12-60-2510(A)(3) has been amended to provide that in years in which there is a notice of a property tax assessment, the taxpayer has 90 days from the date the assessor mails the notice of assessment to appeal the assessment. Previously, the taxpayer had 30 days to appeal.

Effective Date: May 28, 2002

Senate Bill 852, Section 15 (Act No. 334)

Certification for 4% Legal Residence Assessment Ratio - Clarified

Code Section 12-43-220(c), allowing a 4% assessment ratio for a South Carolina primary residence, has been clarified. An applicant for the 4% assessment ratio must certify under penalties of perjury that he or she does not claim to be a legal resident of a jurisdiction other than South Carolina for any purpose.

Effective Date: June 24, 2002

House Bill 3601 (Act No. 336)

Primary Residence Vacation Property - 4% Assessment Ratio

Code Section 12-43-220(c)(6) has been added to provide that a purchaser who purchases residential property with the intent that it shall become his primary residence, but the property is subject to vacation rentals as provided in Title 27, Chapter 50, Article 2 for no more than 90

days, may apply for the 4% assessment ratio when the purchaser actually occupies the property. If the owner actually occupies the property within 90 days of acquiring ownership and otherwise qualifies, the 4% ratio will apply retroactively to the date ownership was acquired.

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

House Bill 4386 (Act No. 297)

Legal Residence – Assessment Ratio and Homestead Exemption

Code Section 12-37-252(C) has been added to provide that the personal representative of a deceased taxpayer's estate may apply for the homestead exemption under Code Section 12-37-250 and the 4% assessment ratio provided for by Code Section 12-43-220(c). The timeliness of the filing and the property tax years they apply to are determined by the property tax years open immediately before the taxpayer's death.

Code Section 12-37-252(D) has been added to provide that a person who applies for the homestead exemption under Code Section 12-37-250 and was qualified for the exemption in the prior tax year in addition to the current tax year may be certified for the exemption not to extend beyond the immediate preceding tax year.

The deadline for filing an application for the 4% assessment ratio and the homestead exemption and for claims for refunds thereunder for property tax year 2001 is extended through August 3, 2002.

Effective Date: Applies for property tax years beginning after 2000.

House Bill 4548, Section 6 (Act No. 280)

Brownfields Voluntary Cleanup Program – New Property Tax Exemption

Code Section 12-37-220(B)(44) has been added to provide that, subject to approval of the county governing body, property and improvements subject to a nonresponsible party voluntary cleanup contract for which a certificate of completion has been issued by the Department of Health and Environmental Control pursuant to Article 7, Chapter 56 of Title 44 are exempt from county ad valorem property taxes for 5 years. The exemption applies beginning with the taxable year in which the certificate of completion is issued.

Effective Date: For projects receiving a certification of completion from the Department of Health and Environmental Control after May 28, 2002.

Low Income Housing Property Tax Exemption - Expanded

Code Section 12-37-220(B)(1)(e) has been added to exempt from ad valorem property taxes all property of nonprofit housing corporations or solely-owned instrumentalities of these corporations which are devoted to providing housing to low or very low income residents. A nonprofit housing corporation must satisfy the safe harbor provisions of Internal Revenue Service Revenue Procedure 96-32 to qualify for this exemption.

Effective Date: June 24, 2002

House Bill 4883, Section 1 (Act No. 222)

Portion of Great Pee Dee River Designated as "Scenic River"

Code Section 49-29-230(7) has been added to designate that portion of the Great Pee Dee River located between the U.S. Highway 378 bridge crossing and downstream to the U.S. Highway 17 bridge crossing the river as a "scenic river." After a perpetual easement under the South Carolina Scenic Rivers Act is granted, the property is exempt from ad valorem property taxes under Code Section 49-29-100. The taxpayer may deduct from South Carolina income taxes the fair market value of the easement granted pursuant to Code Section 49-29-100.

Effective Date: April 22, 2002

House Bill 4878, Part IB, Section 72, Proviso 72.95 (Act No. 289)

Personal Property Tax Relief Fund and Trust Fund for Tax Relief

The Personal Property Tax Relief Fund was established pursuant to Code Section 12-37-2735 in 1999 to allocate funds among South Carolina's 46 counties for the purpose of reducing property taxes on personal motor vehicles. This proviso reduces the amount in the Personal Property Tax Relief Fund from \$20 million to zero, notwithstanding the provisions in Code Section 12-37-2735.

Further, this proviso provides that if a county imposes a local sales and use tax to exempt all or a portion of personal motor vehicles from property taxes, and a sales tax rate of 2% of gross proceeds of sales is insufficient to offset the property taxes not collected, then sufficient amounts must be credited to the Trust Fund for Tax Relief established under Code Section 11-11-150 to make up any shortfall in the manner provided for by Code Section 4-10-540(A).

Effective Date: July 1, 2002

Motor Vehicle License Tax Year

The Department of Public Safety will implement system changes to ensure that once a newly acquired vehicle's tax year is set for an owner, either by initial registration and licensing of the vehicle or by transferring a license from another vehicle to the newly acquired vehicle, that tax year cannot be changed for that owner unless an error was made in setting the original tax year. A vehicle's tax year may be transferred to another vehicle only once by an individual owner of that vehicle, regardless of any break in ownership.

Effective Date: October 1, 2002

House Bill 3014 (Act No. 275)

Nonregistered Vehicles

Code Section 56-3-150, concerning registration of a vehicle of a nonresident, has been amended to allow a county auditor to request information about a South Carolina nonregistered motor vehicle and the domicile of the owner of the vehicle if the public records show that the person owns or leases real or personal property in that county. The owner or operator of the nonregistered vehicle must respond within 30 days with a sworn written statement that describes each vehicle owned or operated by him, the registration location for each vehicle, the date each vehicle was first owned or operated by him, and affirms that the owner has not established domicile in the county. The written request from the auditor must be delivered in person, or sent by certified mail, return receipt requested to the nonresident's last known address, and must be based on a creditable report that the person may own or operate a nonregistered vehicle and that the nonresident may own or lease real or personal property in the county. The determination regarding whether the report is credible is within the discretion of the auditor.

The penalty for willfully failing to respond to an inquiry from the county if the vehicle is later determined to be a nonregistered vehicle, or for filing a false statement or otherwise willfully violating this statute is a fine of not more than \$1,000, imprisonment for not more than 1 year, or both. Additionally, the owner of the nonregistered vehicle must pay twice the amount of personal property taxes that are due and owing on the vehicle as well as all other nonregistered vehicles, owned now or earlier, as if the vehicle had been registered lawfully. Penalties and interest must also be paid.

Effective Date: May 29, 2002

Lexington County Watercraft and Outboard Motors

For property tax years beginning after 1999, the Department of Natural Resources may not transfer a certificate of title on a watercraft or outboard motor if it has notice that Lexington County property taxes are due on the watercraft or outboard motor. If transfer of title has been denied, a tax receipt from the official charged with collecting the tax in the owner's county of residence must be accepted as proof that the taxes have been paid. The bill of sale or title to the watercraft or outboard motor must have a certification that the property taxes for property tax years beginning after 1999 have been paid. At least annually, the appropriate Lexington County official must forward a list of delinquent taxes due on watercraft and outboard motors to the Department of Natural Resources.

Used watercraft and outboard motors acquired on or after October 3, 2000, which are obtained from a licensed dealer or an individual, are considered free and clear of the lien for Lexington County property taxes for property tax years before the 2000 property tax year. The Lexington County Treasurer or other official charged with collection of delinquent ad valorem taxes will seek collection of the delinquent taxes only from the previous owner of the used watercraft or outboard motor, not including a licensed boat dealer. Property taxes paid on watercraft and outboard motors for property tax years before 2000 are not refundable.

Effective Date: June 7, 2002

Senate Bill 852, Section 17 (Act No. 334)

Multicounty Park Fee in Lieu

Code Section 12-2-90(B) has been added to provide that for purposes of the collection and enforcement of the "fee in lieu of tax" the fee will be treated like a property tax and the owners must file returns and pay a fee in lieu of taxes as if it were a property tax. All provisions relating to collection and enforcement of property taxes, including penalty provisions, but excluding Code Section 12-54-155 (substantial understatement of tax), apply to a "fee in lieu of taxes" under this section. The provisions of Code Section 12-2-90 are in addition to any other provisions of law relating to the collection and enforcement of other forms of payments in lieu of taxes. See Code Sections 12-44-90, 4-12-30(Q), and 4-29-67(S).

For purposes of this section, "fee in lieu of tax" means the amount required to be paid by the owners or lessees of any property in an industrial or business park pursuant to the provisions of Section 13(D) of Article VIII of the SC Constitution and its implementing statutes. See Code Sections 12-2-90(A) and 4-1-170.

Effective Date: June 24, 2002

FEE IN LIEU PROVISIONS

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

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

Below is a summary of amendments made to the Fee provisions.

Senate Bill 852, Sections 2 and 7 (Act No. 334)

All Fees – Extension of Time for Filing Returns

Code Sections 4-12-30(Q), 4-29-67(S), and 12-44-90(H) have been added to provide that the Department may, for good cause, allow additional time for filing required Fee returns. The extension may not exceed 60 days from the date the return is due. An extension request must be filed on or before the date the return is due and an extension request cannot be granted to a taxpayer who has been granted an extension for a previous period and has not fulfilled the requirements of the previous period.

Effective Date: June 24, 2002

Senate Bill 852, Sections 3, 4, and 5 (Act No. 334)

All Fees – Summary Document and Bill

Code Sections 4-12-45, 4-29-67(X), and 12-44-55 have been added to require additional filings in connection with a Fee in lieu transaction.

All agreements entered into under a Fee in lieu transaction, must include as the first portion of

1. The legal name of all parties to the agreement;
2. The county and street address of the project and property subject to the agreement;
3. The minimum investment agreed upon;
4. The length and term of the agreement;
5. The assessment ratio applicable for each year of the agreement;
6. The millage rate applicable for each year of the agreement;
7. A schedule showing the amount and calculation of the Fee for each year of the agreement;
8. A schedule showing the amount to be distributed annually to each of the affected taxing entities;
9. A statement which answers:
 - a. Is the project located in a multicounty park?
 - b. Is disposal of property subject to the Fee allowed?
 - c. Are infrastructure credits or special source revenue bonds allowed for the project?
 - d. Is the net present value method being used?
 - e. Is replacement property allowed?
10. Any other features of the agreement which may affect the calculation of items 7 and 8.
11. What effect there may be on the schedules described in 7 and 8 above of any feature listed in items 9 or 10, not already reflected in the schedules described in items 7 and 8.
12. Which party or parties to the agreement is/are responsible for updating the summary document.

The auditor of the county is required to prepare a bill for each installment of the Fee according to the schedule in 7 above or as modified pursuant to items 10, 11, or 12 above, and payment must be distributed to the affected taxing entities as provided in the schedule in 8 above unless modified pursuant to items 10, 11, and 12 above.

Effective Date: June 24, 2002

Senate Bill 852, Sections 1 and 7 (Act No. 334)

All Fees – Project Completion Period Extended

Code Sections 4-12-30(C)(2), 4-29-67(C)(2), and 12-44-30(13) have been amended to provide that if an investor (sponsor) does not anticipate completing the project within the time period for making the minimum investment (generally 5 to 8 years), the investor (sponsor) may apply to the county before the end of the time period for making the minimum investment for an extension of up to 5 years to complete the project. Previously, a 2 year extension was available. The time for making the minimum investment may not be extended.

Effective Date: June 24, 2002

All Fees – Brownfields Voluntary Cleanup Program Costs Part of Investment

Code Sections 4-12-30(B)(3), 4-29-67(B), and 12-44-30(14), which address the minimum level of investment to qualify for a Fee, have been amended to provide that investments may include amounts expended by a sponsor or an affiliate of such sponsor as a nonresponsible party in a voluntary cleanup contract on the property pursuant to Article 7, Chapter 56 of Title 44 if the Department of Health and Environmental Control has issued a certificate of completion of the cleanup. If the cleanup amounts equal at least \$1 million, the investment requirements of the Fee will be deemed to be met.

Effective Date: For projects receiving a certification of completion from the Department of Health and Environmental Control after May 28, 2002.

Senate Bill 675 (Act No. 207)

Tax Increment Financing for Redevelopment Projects in Municipalities – Amendments

Tax increment financing allows tax revenues attributable to increases in the value of the property in a "redevelopment project area," which is designated by a municipality, to be used to finance redevelopment projects that will improve the redevelopment project area. The following changes have been made to the municipal tax increment financing laws in Chapter 6 of Title 31.

1. The definition of "redevelopment project" in Code Section 31-6-30(6) has been expanded to provide that a redevelopment project may be located outside of the redevelopment project area provided the municipality makes specific findings of benefit to the redevelopment project area and the project area is located within the municipal limits.
2. Code Section 31-6-70 has been amended to provide that if 10 years have passed from the time a redevelopment project area is designated, and the municipality has not issued the initial obligations, at the end of the 10 year period, the municipality must adopt an ordinance terminating the designation of the redevelopment project area. The statute used to provide for a 5 year period before termination was necessary.
3. Code Section 31-6-80 has been amended to provide that if a redevelopment project, or any portion of it, is to be located outside the redevelopment project area, the municipality must, by resolution, make a specific finding of benefit to the redevelopment project area and provide written notice to the affected taxing district. No further action is required of the municipality.

Questions concerning tax increment financing should be directed to the Comptroller General.

Effective Date: April 22, 2002

Municipal Tax Sale Can Be Held at Same Place County Tax Sale Held

Code Section 5-7-300 has been amended to provide that a delinquent tax sale for the purpose of collecting municipal taxes which is held in conjunction with a delinquent tax sale for the purpose of collecting county taxes may be held at the public place in the county that is designated by the county.

Effective Date: March 5, 2002

Senate Bill 852, Section 10 (Act No. 334)

Index of Taxpaying Ability -- Date Changed

Code Section 59-20-20(3) has been amended to provide that the Department must provide a preliminary index of taxpaying ability to the State Department of Education and the auditor of each county by December 1st of each year. Under prior law, the preliminary index had to be provided by November 1st.

Effective Date: June 24, 2002

SALES AND USE TAXES

House Bill 4337, Section 4. A (Act No. 363)

Sales Tax Discount - Increase for Electronic Filing

Code Section 12-36-2610 allows a discount to retailers who file their sales and use tax return and pays taxes due on or before the final due date (including any date to which the time for making the return and paying the tax has been extended pursuant to Code Section 12-54-70).

In general, the maximum discount allowed during any one State fiscal year may not exceed \$3,000. The statute has been amended to increase that discount to a maximum of \$3,100 if the retailer files his sales and use tax returns electronically.

Effective Date: July 1, 2002

Senate Bill 852, Section 6 (Act No. 334)

Streamlined Sales Tax

The Streamlined Sales Tax Project is an effort created by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. The Project is proposing uniform definitions, simplified audit and administrative procedures, and emerging technologies to substantially reduce the burdens of tax collections. The Streamlined Sales Tax System is focusing on improving sales and use tax administrative systems for both local and remote sellers and for all types of commerce.

The Streamlined Sales Tax System will provide sellers the opportunity to use one of three technology models. A seller may select Model 1 where a Certified Service Provider performs all the seller's sales tax functions. A seller may select Model 2, a Certified Automated System that only performs the sales or use tax calculation. A larger seller with nationwide sales that has developed its own proprietary sales tax software may select Model 3 and have its own system certified by the states. In addition, some sellers may choose to continue to use their current systems and still enjoy the other benefits of simplification.

Chapter 35 of Title 12 established the "Simplified Sales and Use Tax Administration Act." Code Section 12-35-50 provides that the Department shall enter into the Streamlined Sales and Use Tax Agreement to simplify and modernize sales and use tax administration to reduce the burden of tax compliance for all sellers and for all types of commerce.

Code Section 12-35-30 provides that South Carolina should participate in multi-state discussions to develop a simplified system for sales and use tax. The Act also establishes basic guidelines

for any agreement reached among the states. The Agreement will set forth the legislative and other requirements each state must comply with in order to participate.

To continue this process and to participate in the system established by the Streamlined Sales Tax Project to simplify and modernize sales and use tax administration, South Carolina will need to enact legislation in future years to comply with the final agreement.

Effective Date: June 24, 2002

Senate Bill 852, Sections 11 and 12 (Act No. 334)

Prepaid Wireless Calling Arrangements

Code Section 12-36-910 imposes the sales tax on the gross proceeds of sales of tangible personal property, laundry, dry cleaning, dyeing and pressing services, electricity, charges for the ways or means for the transmission of the voice or messages, the fair market value of property manufactured and used or consumed by its manufacturer, and prepaid wireless calling arrangements.

The provisions of this Act clarified two provisions of this section. The first was enacted to clarify that prepaid wireless calling arrangements are not subject to the tax as a charge for the ways or means for the transmission of the voice or message. In other words, prepaid wireless calling arrangements are only taxed once – as a prepaid wireless calling arrangement under Code Section 12-36-910(B)(5) and not as a charge for the ways or means under Code Section 12-36-910(B)(3).

The second clarification concerns the effective date for the sourcing, in accordance with the Mobile Telecommunications Sourcing Act in Title 4 of the United States Code, of mobile telecommunication services subject to the tax as charges for the ways or means for the transmission of the voice or message. Under this clarification, the sourcing of mobile telecommunication services under the provisions of the Mobile Telecommunications Sourcing Act will apply to bills rendered after August 1, 2002.

Effective Date: June 24, 2002 for the clarification of taxation of prepaid wireless calling arrangements and August 1, 2002, (for bills rendered after August 1, 2002) for sourcing mobile telecommunications in accordance with the Mobile Telecommunications Sourcing Act.

House Bill 4878, Part IB, Section 72, Proviso 72.82 (Act No. 289)

This temporary proviso, enacted in the last legislative session, was reenacted this year.

Private Schools – “Use Tax” Exemption

Purchases of tangible personal property for use in private primary and secondary schools, including kindergarten and early childhood education programs, are exempt from the use tax if

the school is exempt from income taxes under Internal Revenue Code Section 501(c)(3). This exemption does not apply to purchases subject to sales tax.

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

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2002 through June 30, 2003. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2003.

House Bill 4878, Part IB, Section 19, Proviso 19.10 (Act No. 289)

This temporary proviso, enacted in the last legislative session, was reenacted this year.

State Museum - Exempt from Admissions Tax

This proviso exempts the State Museum from remitting admissions tax to the Department. The museum must earmark an amount equivalent to the tax in its budget for the purpose of promoting and marketing the museum.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2002 through June 30, 2003. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2003.

ADMINISTRATIVE AND PROCEDURAL MATTERS

House Bill 4878, Part IB, Section 64, Proviso 64.14 (Act No. 289)

20% Collection Assistance Fee—Imposed on Unpaid Tax Debt

Under this proviso, tax debts that are at least 120 days old will be assessed a 20% collection fee. This 20% fee is imposed on the overdue tax; it is not imposed if the taxpayer enters into and timely makes all payments required. The 20% collection fee is effective for all tax debts that remain outstanding on December 3, 2002, and is effective for all debts incurred after December 1, 2002. The Department may waive the fee to the same extent as if it was a penalty.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2002 through June 30, 2003. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2003.

House Bill 4878, Part IB, Section 64, Proviso 64.15 (Act No. 289)

Installment Agreement – New Fee Imposed

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

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2002 through June 30, 2003. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2003.

House Bill 4878, Part IB, Section 64, Proviso 64.12 (Act No. 289)

Certificate of Compliance – Fee Increase

This proviso increases the fee charged by the Department for the issuance of a certificate of compliance from \$35 to \$60. A certificate of compliance is prima facie evidence that the tax has been paid, the return has been filed, or information has been supplied as required. Requests are

often made for transactions involving bank loans; issuing stock; and purchasing a business, real estate, or assets of a business.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2002 through June 30, 2003. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2003.

House Bill 3286 (Act No. 291)
(See also House Bill 4878, Part IB, Section 72, Proviso 72.57 (Act No. 289))

Returned Check – Service Charge Increase

This proviso allows any state agency to collect a service charge as provided in Code Section 34-11-70 to cover the costs associated with the processing and collection of dishonored instruments or electronic payments where the amount is not paid due to insufficient funds or the instrument has an incorrect or insufficient signature on it. Code Section 34-11-70 has been amended to increase the charge for returned checks from \$25 to \$30. Previously, the service charge was \$25, or \$30 for checks over \$100.

Effective Date: June 3, 2002

House Bill 4879, Part X, Section A (Act No. 356)
(See also House Bill 4878, Part IB, Section 64, Proviso 64.1 (Act No. 289))

Fees to Recover Certain Department Administrative Costs

Code Section 12-4-390(A) has been added to codify a temporary proviso that allows the Department to collect and retain fees to recover the costs of the production, purchase, handling, and mailing of documents, publications, records and data sets.

Effective Date: July 1, 2002

House Bill 4337, Section 4. B (Act No. 363)

Electronic Funds Transfer – Participation Amount Lowered

Code Section 12-54-250 provides that consistent with the cash management policies of the State Treasurer, the Department may require that any person with a \$15,000 or more corporate income tax liability, sales tax liability, withholding tax liability, or certain types of miscellaneous tax liabilities in one tax period during the previous 12 months pay their tax liabilities in funds immediately available to the State. Such payments are made through South Carolina's Electronic Funds Transfer Program. Code Section 12-54-250 has been amended to lower the participation

amount from \$20,000 to \$15,000. The Department continues to encourage any taxpayer that does not meet the \$15,000 threshold to voluntarily participate in the program.

Effective Date: July 1, 2002

House Bill 4337, Section 4. C (Act No. 363)

Outstanding Debts Collected by the Department – Definition of Governmental Entity

Code Section 12-4-580(D)(1), concerning the Department's authority to collect any outstanding liabilities owed a governmental entity, has been amended to delete debts owed to private institutions of higher learning from the definition of governmental entity.

Effective Date: July 1, 2002

Senate Bill 852, Section 9 (Act No. 334)

Debt Setoff – "Claimant Agency" Expanded

The Setoff Debt Collection Act in Chapter 56 of Title 12 allows the Department to assist a claimant agency in the collection of any delinquent account or debt by setting off the debt from any refunds due the debtor from the Department. Code Section 12-56-20(1) has been amended to add to the definition of "claimant agency" any other governmental or quasi governmental entity of any state or the United States.

Effective Date: June 24, 2002

Senate Bill 204 (Act No. 225)

Family Privacy Protection Act - Established

Chapter 2 of Title 30 has been added to establish the Family Privacy Protection Act of 2002. The Act requires all state agencies, boards, commissions, departments, and other state entities to develop privacy policies and procedures to ensure that the collection of personal information pertaining to citizens of South Carolina is limited to such personal information required by any such state entity and necessary to fulfill a legitimate public purpose. Further, Code Section 30-2-50(A) provides that a person or private entity shall not knowingly obtain or use any personal information obtained from a public body for commercial solicitation directed to any person in this State.

Effective Date: May 1, 2002

(See also House Bill 4878, Part 1B, Section 64, Proviso 64.20 (Act No. 289))

Disclosure of Information to the Department of Health and Human Services

Code Section 12-54-240(B), pertaining to the prohibition of disclosure of records and returns by Department employees, has been amended to add and codify subitem (23) to provide that the Department may disclose any information on any return that has been filed with the Department to the Department of Health and Human Services for the purpose of verifying Medicaid eligibility.

Effective Date: July 1, 2002

House Bill 4878, Part 1B, Section 72, Proviso 72.45 (Act No. 289)

Regulatory Audit of Laws, Regulations, and Provisos

All State agencies, including the Department, must conduct a jurisdictional audit for the purpose of identifying laws, regulations, and provisos which are not being used or no longer need to be regulated. After identifying these laws, repeals are to be drafted for submission to the appropriate standing committee of the General Assembly by January 31, 2003.

Effective Date: July 1, 2002

Senate Bill 852, Section 18 (Act No. 334)

Joint Committee on Taxation – Established

Chapter 41 of Title 2 has been added to establish a Joint Committee on Taxation. The nine member committee will (1) make a detailed study of South Carolina's revenue laws, (2) provide for the revision of revenue laws so as to develop a more easily understandable and workable system, (3) recommend changes in the basic tax structure and in the rates, (4) make a report of the economic impact of the South Carolina tax structure upon the business enterprises of various types of industry as compared with other southeastern states, and (5) make recommendations for long-range revenue planning.

The Committee will make recommendations to the General Assembly and the Governor by June 30, 2006, at which time the committee will be dissolved.

Effective Date: June 24, 2002

Tax Reprieve (Amnesty) Program – October 15, 2002 through December 2, 2002

The Tax Reprieve Program was enacted to encourage South Carolina taxpayers to clear up unpaid tax debts relating to all taxes collected by the Department for tax periods ending on or before December 31, 2001.

Under the Tax Reprieve Program, taxpayers meeting the requirements will have penalties due as of September 30, 2002, and one-half the interest due as of September 30, 2002, waived. The Tax Reprieve Program will begin on October 15, 2002, and will end on December 2, 2002.

The Tax Reprieve Program is available to all taxpayers – individuals, partnerships, limited liability companies, corporations, nonprofit organizations, and any other organization or association who meet the following requirements:

1. The taxes or fees due must be for periods which end on or before December 31, 2001.
2. The Department must have issued the taxpayer a notice of proposed assessment or a notice of assessment for the taxes, fees, interest, penalties, and costs due.
3. The taxpayer must not be the subject of a state tax related criminal investigation or criminal prosecution as of October 14, 2002.
4. The taxpayer must pay all taxes or fees with respect to every notice of proposed assessment and notice of assessment sent to the taxpayer by the Department, plus one-half the interest due as of September 30, 2002, and all costs. Penalties due as of September 30, 2002 and one-half the interest due as of September 30, 2002 will be waived.
5. Full payment must be made during the period of October 15, 2002, through December 2, 2002.

Reprieve does not apply to any municipal or county property taxes or the following civil violations:

12-28-1730(F)	Penalty for Selling or Using Dyed Motor Fuel on Highways
12-21-2738	Penalty for Failure to Comply with Coin-Operated Device Law
12-21-2748	Penalty for Failure to Place Identification on Coin-Operated Device
12-21-2804	Penalty Violation of Video Game Machine Act
12-54-90	Revocation of License for Failure to Comply with Tax Laws
12-54-43(H)	Penalty for Failure to Obtain License, Affix Stamps, or Follow Law
12-21-3960	Penalty for Violating Bingo Law
12-21-4140	Penalty for Violating Bingo Law
Title 61	Penalties for Violation of Liquor, Beer and Wine Laws in Title 61

taxpayers who fail to pay tax debts under the tax reprieve program will be subject to a 20% collection fee on all tax debt that has remained unpaid for 120 or more days after first notice. The 20% collection fee is effective for all tax debts incurred before December 1, 2002 which remain outstanding on December 3, 2002, and is effective for all debts incurred after December 1, 2002.

Effective Date: The Tax Reprieve Program will begin on October 15, 2002, and will end on December 2, 2002.

MISCELLANEOUS TAXES

House Bill 3663 (Act No. 217)

Ordering of Credits for Estate Taxes

Code Section 12-16-20(2), defining the term "federal credit," has been amended to construe the term so as to take full advantage of the credit as allowed by Internal Revenue Code Section 2011, "Credit for State Death Taxes," but (a) only after taking into account other federal estate tax credits permitted by the Internal Revenue Code and (b) not in excess of the amount necessary to reduce the federal estate tax to zero.

Effective Date: Applies to the calculation of South Carolina estate taxes due on or after April 22, 2002.

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

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

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

Chapter 24 of Title 12 imposes a deed recording fee on transfers of realty, a portion of which is credited to the State's general fund. This Act requires that 25 cents of the State portion of the fee that is credited to the State general fund be credited the South Carolina Conservation Bank Trust Fund. However, in a fiscal year when the General Assembly in the annual general appropriations act provides less appropriations than what was provided for the previous year to at least one-half of the state agencies or departments contained in the budget or in any year when the Budget and Control Board orders across the board cuts to state agencies and departments in the manner

provided by law, no further transfer of debt recording fees may be credited to the trust fund for the fiscal year or balance of the fiscal year.

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

House Bill 4878, Part IB, Section 8, Proviso 8.30 (Act No. 289)

Hospital Tax Revenue

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

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2002 through June 30, 2003. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2003.

House Bill 4878, Part IB, Section 8, Proviso 8.40 (Act No. 289)
(See also House Bill 4498 (Act No. Unassigned))

Nursing Home Bed Franchise Fees – Imposed and Suspended

House Bill 4498 established a nursing home bed franchise fee beginning February 1, 2002. The annual fee was to be calculated based on total patient days served by the nursing home multiplied by a \$3 per patient day fee for State fiscal year ending June 30, 2002, and a \$4 per patient day fee for State fiscal year ending June 30, 2003. The fee was payable monthly.

A temporary proviso in House Bill 4878 suspended the nursing home bed franchise fee for the State fiscal year July 1, 2002 through June 30, 2003.

Effective Date: The franchise fee was effective February 1, 2002. The suspension of the franchise fee by the temporary proviso is effective for the State fiscal year July 1, 2002 through June 30, 2003.

Motor Carrier Provisions – Repealed Statutes

Code Section 58-23-350 which provided that motor carriers of property, except for those carrying household goods and hazardous waste for disposal, could not operate in this State without a Class E certificate of compliance from the Department, has been repealed. Also, Code Section 58-23-640 which allowed the Department to charge a \$5 fee for each identifier and Code Section 58-23-650 which allowed the Department to enter into reciprocal agreements with other states allowing motor carriers to register in one base state have been repealed and replaced with similar statutes, Code Sections 56-3-661, 56-3-662, and 56-3-663, which transfer these responsibilities and authority to the Department of Public Safety.

Effective Date: June 3, 2002

OTHER ITEMS (including local taxes)

Senate Bill 290 (Act No. 441)

Government-Owned Telecommunications Service Providers

Title 58, Chapter 9, Article 23 has been added to provide that “government-owned telecommunications service providers” are subject to the same local, state, and federal regulatory, statutory, and other legal requirements as non-government-owned telecommunications service providers. The Act provides several other requirements and limitations that will be imposed on government-owned telecommunications service providers.

A government-owned telecommunications service provider is defined as a state or local political subdivision or person or entity providing telecommunications services to the public for hire over a facility, operation, or system that is directly or indirectly owned by, operated by, or a financial benefit obtained by, or derived from, an agency or entity of the State or any local government. The term does not include the State Budget and Control Board for services provided as of this article’s effective date nor does it include a state or local governmental entity or agency that receives a financial benefit solely from leasing or renting property that is not, in and of itself, a facility used to provide telecommunications service.

For tax purposes, a government-owned telecommunications service provider must pay and collect taxes each year as though they were a non-government-owned telecommunications service provider including: (1) all state taxes, including corporate income taxes, (2) all local taxes and fees, including business license taxes under Code Section 58-9-2230 and franchise fees and, (3) all property taxes. A government-owned telecommunications service provider must determine and collect its tax as though it were non-government owned and is entitled to the same deductions as a non-government owned telecommunications service provider. A government-

owned telecommunications service provider must remit to the general fund of the government entity owning the telecommunications provider, an amount equal to all taxes and fees the provider is required to pay.

Code Section 58-9-2630(D) provides that the taxpayer confidentiality provisions of Title 12 do not apply to filings of government-owned telecommunications service providers. Additionally, all telecommunications service providers are required to file an annual report with the Department reporting the total gross of retail communications which are subject to the business license tax under Code Section 58-9-2220. This information is available to any entity, or its agent, who is authorized to collect a tax on retail communications. This information may only be used by an entity, or its agent, for purposes of determining the accuracy of tax returns, filings and payment of taxes, and may not be disclosed or provided in any manner to any other person.

Effective Date: July 1, 2002

Senate Bill 852, Section 13 (Act No. 334)

“Responsible Party” for State and Local Tax Collected But Not Remitted

Code Section 12-54-195, providing that a “responsible person” may be held liable, individually and personally for sales and use tax collected by a retailer from its customers but not remitted to the Department, has been amended to apply to local sales and use tax collected by the Department on behalf of a political subdivision in South Carolina, as well as to state sales and use tax. In addition, it clarifies that the responsible party is liable for the tax, penalties, and interest from the date the tax was due.

Effective Date: June 24, 2002

House Bill 4878, Part IB, Section 64, Proviso 64.17 (Act No. 289)

Local Option Sales Tax Collections – County Allocations

The Department administers and collects local option sales taxes on behalf of the counties. Under this proviso, the Department is allowed to make adjustments within the county allocations for the State fiscal year of July 1, 2001 through June 30, 2002 during the next State fiscal year of July 1, 2002 through June 30, 2003.

Effective Date: This temporary proviso is effective for the State fiscal year July 1, 2002 through June 30, 2003. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2003.

7. Code Section 4-10-340(A) has been amended to provide that if the reimposition of an existing sales and use tax is approved in a referendum, the tax is imposed immediately following termination of the current tax.
8. A transitional provision was added for counties that already held referendums providing for such bonds. These counties may continue to collect the tax and repay the bonds from the sales tax proceeds, but the tax may not be calculated for any period longer than the maximum provided for in the referendum.

Effective Date: June 24, 2002

Senate Bill 1131 (Act No. 326)

Richland County School Districts Sales and Use Tax

The Richland County School Districts Property Tax Relief Act has been enacted. The 1% sales and use tax within Richland County authorized by this Act may be imposed upon (1) the adoption of an approving resolution by each of the boards of trustees of the three school districts in Richland County and (2) the subsequent approval of the imposition of the tax by referendum open to all qualified electors residing in Richland County. The approving resolutions must specify the maximum time, stated in calendar years, not to exceed 20, for which the tax must be imposed, the date upon which the referendum is held, the precincts and polling places for the referendum, and the question to appear on the referendum ballot. The approving resolutions, upon adoption, must be forwarded to the Richland County Registration and Elections Commission.

The proceeds of the tax must be distributed to the three school districts in Richland County. The boards of trustees of each of the school districts, before the expenditure of the proceeds of the tax, must by resolution determine the specific purposes for which the proceeds of the tax as distributed must be expended. The proceeds must be applied to (1) reduce ad valorem property taxes imposed to pay debt service on general obligation bonds or (2) otherwise defray the cost of capital improvements within each school district, as determined by resolution of the boards of trustees of the respective school districts.

The tax terminates upon the earlier of (1) the final day of the maximum time specified for the imposition or (2) 60 days following the filing with the Department of certified copies of resolutions adopted by the boards of trustees of each of the three Richland County school districts each requesting termination of the tax.

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

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

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

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

Effective Date: June 18, 2002

Senate Bill 1195 (Act No. Unassigned)

Pickens County School District Sales and Use Tax

The School District of Pickens County School Bond Property Tax Relief Act has been enacted. The 1% sales and use tax within Pickens County authorized by this Act may be imposed upon (1) the adoption of an approving resolution by the school district and (2) the subsequent approval of the imposition of the tax by referendum open to all qualified electors residing in Pickens County. The approving resolution must specify the maximum time, stated in calendar years, calendar quarters, or a combination of them, not to exceed 20 years, for which the tax must be imposed and must also specify the improvements to be financed through the issuance of general obligation bonds of the school district together with the imposition of the tax.

The tax terminates on the final day of the maximum time specified in the imposition (but not more than 20 years) or, if earlier, upon payment of the final maturing installments of principal of the bonds to which the application of the tax is authorized, or upon payment of the final maturing installments of principal of general obligation bonds issued to refund the bonds.

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

Those persons required to pay the use tax must identify the county in which the tangible personal

the county in which consumption of the tangible personal property occurs. Taxpayers subject to the sales tax on accommodations who own or manage rental units in more than one county must separately report the gross proceeds from business done in each county.

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

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

Effective Date: June 6, 2002

House Bill 4464 (Act No. 174)

Florence County School District 1 - Allowed to Issue Bonds and Increase Millage

This Act authorizes the Board of Trustees of Florence County School District 1 to issue general obligation bonds to provide funds necessary to meet its cost of operations and maintenance. The amount of bonds may not exceed the lesser of (1) the available 8% debt limit as prescribed by Article X, Section 15 of the South Carolina Constitution or (2) the difference between the total amount of state appropriations anticipated in the school district's budget for fiscal year 2001 - 2002 as originally adopted and the actual amount of state funds which the school district will receive for fiscal year 2001 - 2002, plus issuance costs. The bonds must mature no more than 15 months from the date of issuance. The Florence County Auditor is required to levy a tax on all taxable property in the school district sufficient to pay the interest and principal on the bond.

In addition, the Act authorizes the Board to increase the millage on all taxable property located in Florence County School District 1. The amount of additional millage authorized for fiscal year 2002 - 2003 is the amount necessary to replace any decrease in state appropriations to the school district from the amount of state appropriations anticipated in the school district's budget for fiscal year 2001 - 2002 as originally adopted. For fiscal year 2003 - 2004, the Board must reduce the millage rate by the number of mills that were levied pursuant to this Act subject to adjustment pursuant to Act No. 239 of 1981.

Effective Date: February 12, 2002

Florence County School District 1 - Referendum to Allow Increase in Millage

This joint resolution authorizes a referendum to be held on May 7, 2002, to determine if the Florence County School District 1 Board of Trustees may annually raise the millage for school operations by 5 mills over the millage levied for the prior year. In no event may the increase in millage exceed 20 mills over a 5 year period. The millage increase would be in addition to any increase in millage required to comply with the Education Improvement Act local maintenance of effort.

If the proposed millage exceeds the increase authorized annually or over a 5 year period, the increase must be approved through an additional referendum.

The provisions of the joint resolution are designed to supplement the changes made by Act No. 174 and not replace them.

Effective Date: March 28, 2002

House Bill 1052 (Act No. Unassigned)

Marion County School District 7 - May Increase Millage

The Marion County Board of Education may levy additional property tax millage annually in Marion County School District 7 to fund school facilities in the district acquired by the Board of Education. The additional millage may not exceed 25 mills and may not be imposed for more than 20 years. The revenue raised must not be included in the annual calculation of Marion County School District 7's local financial effort per pupil for noncapital programs for purposes of Code Section 59-21-1030 (which requires a school district to maintain a certain level of per pupil financial effort). If the Board wants to levy additional millage in excess of these limits, it must be approved in a referendum.

Effective Date: April 5, 2002

House Bill 5191 (Act No. 338)

Dillon County Millage and Distribution of Funds

The school millage imposed for fiscal year 2001 - 2002 in Dillon County for school purposes is reimposed for fiscal year 2002 - 2003, however, the 10 mills levied for debt service or school buildings and the .5 mills levied for the Dillon County Technical Center must be used for general

senior operating purposes and operations with 10% allocated to Dillon School District 2, 15% to Lakeview area schools, and 15% to Latta area schools.

Effective Date: May 21, 2002

House Bill 5238 (Act No. 434)

Dillon County Millage Increased

Beginning with fiscal year 2002 - 2003, the school tax millage for Dillon County is increased by 1 mill with proceeds used for Northeast Technical College.

Effective Date: June 24, 2002

House Bill 1313 (Act No. Unassigned)

York County School District 4 – May Increase Millage

For fiscal year 2002 - 2003 only, the Board of Trustees for York County School District 4 (Fort Mill) may impose an additional property tax not to exceed four mills for the operations of that district.

Effective Date: July 1, 2002

House Bill 3851, Section 1 (Act No. 312)

Local Accommodations Tax Expenditures - Amendments

Code Section 6-1-530(A) has been expanded to allow local accommodations tax funds collected pursuant to Title 6, Chapter 1, Article 5 to also be used to fund tourism-related lands and water access, in addition to beach access and renourishment.

Effective Date: June 5, 2002

House Bill 3851, Sections 2 and 3 (Act No. 312)
(See also House Bill 4878, Part IB, Section 72, Proviso 72.100 (Act No. 289))

Accommodations Oversight Provisions - Amendments

Title 6, Chapter 4 addresses the allocation and expenditure of funds from the 2% state accommodations tax. Under the provisions of the law, counties and municipalities must spend the funds for certain purposes, most of which are designed to encourage tourism in the area

1. Code Section 6-4-5(2) has been amended to eliminate a reference to the South Carolina Tax Oversight Committee since it no longer exists.
2. Code Section 6-4-5(5) defining "tourist" has been deleted. The definition of "tourist" previously provided that a tourist was any person traveling to and staying in places outside his usual environment for one night or more for leisure, business, or any other purpose. (See also Act No. 289, effective July 1, 2002, which provided that the term "tourist" as used in Section 6-4-10 will not apply to museums or to festivals, arts and cultural events, or the sponsoring organization of these events.)
3. Code Section 6-4-25(A) has been amended to provide that municipalities or counties receiving more than \$50,000 (previously \$25,000) from the accommodations tax in county areas collecting more than \$50,000 must appoint an advisory committee to make recommendations on the expenditure of accommodations tax revenue.

Effective Date: June 5, 2002

REGULATORY MATTERS

Senate Bill 852, Section 16 (Act No. 334)

Bingo Laws

Article 24 of Chapter 21 of Title 12 establishes the rules for managing, conducting, and operating a bingo game and operation. The bingo law has been amended as follows:

1. In order to be a promoter, a person must now be licensed as a professional solicitor by the Secretary of State. (Code Section 12-21-3920(4))
2. Bingo may only be played during a twelve-hour session between the hours of 12:00 p.m. and 2:00 a.m. (Code Section 12-21-3920(6))
3. The Department now has 45 days (instead of 30 days) to approve or reject a bingo application based on the requirements of the statute. (Code Section 12-21-3950(B))
4. Bingo cards must sell for face value and may not be given to players as prizes or for free. (Code Section 12-21-3990(A)(1))
5. At the conclusion of each game, the bingo operation must announce the prize awarded (specifically stating the dollar amount or value of the merchandise) before the next game begins. (Code Section 12-21-3990(A)(2))

7. The bingo operation may hold special promotions during the session offering players prizes other than from the play of bingo. These prizes may not exceed \$100 in cash or merchandise per session, may not be paid out of the bingo account, and may not be in the form of gambling or a game of chance. Also, there can be no additional charge to players to participate in a special promotion. (Code Section 12-21-4000(15))
8. The number of sessions a Class B bingo licensee may conduct has increased from 3 sessions per week to 5 sessions per week. (Code Section 12-21-4020(2))
9. The promoter may now deposit the gross proceeds from the session less the amount paid out as prizes into the bingo checking account. The promoter, if authorized to make the deposit, must furnish evidence to the nonprofit organization's representative that the deposit was made timely and such evidence must be delivered to the nonprofit organization's representative no later than the next business day following the day of the bingo session on which the proceeds were obtained. (Code Section 12-21-4080(A))
10. If a deficit occurs in the bingo checking account, money, other than from the conduct of bingo, may now be deposited in the bingo checking account in the form of a loan – 50% from the promoter and 50% from the nonprofit organization. Detailed information substantiating the loan must be maintained. (Code Section 12-21-4090(C))
11. An organization or promoter seeking clarification on the play or operation of a bingo game may submit to the Department's Regulatory Section a written request seeking a determination as to whether a certain or specific action constitutes a violation of the bingo laws. A conference may be requested upon the receipt of the clarification request. (Code Section 12-21-4120)
12. Vouchers, which must be purchased from the Department in order to purchase bingo paper, may now be paid by check, cash, or any electronic method in addition to certified checks. If a check is returned by the bank for any reason, then the bingo operation must make all future payments by certified funds. (Code Section 12-21-4270)
13. The operation of bingo games excludes machines and lottery games, including video poker lottery games, prohibited by Code Sections 12-21-2710, 16-19-40, and 16-19-50. (Code Section 12-21-4005)

Effective Date: October 1, 2002

Liquor and Wine Tastings – Retail Liquor Stores

Code Section 61-6-1035 has been added to allow the sampling of wines containing over 16% by volume of alcohol, cordials, and other distilled spirits sold in a retail alcoholic liquor store if the sampling is conducted as follows:

1. No sample may be offered from more than four products at any one time.
2. No more than one bottle of each of the four products to be sampled may be opened.
3. The sampling must be held in a designated tasting area of the retail liquor store and all open bottles must be visible at all times. All open bottles must be removed at the conclusion of the tasting.
4. Samples must be less than one-half ounce for each product sampled.
5. No person may be served more than one sample of each product.
6. No sampling may be offered for longer than four hours.
7. At least ten days before the sampling, a letter detailing the specific date and hours of the sampling must be mailed first class to the South Carolina Law Enforcement Division.
8. No sample may be offered to, or allowed to be consumed by, an intoxicated person or a person under the age of 21. This person must not be allowed to loiter on the store premises.
9. The tastings must be conducted by the manufacturer or an agent of the manufacturer, and must not be conducted by a wholesaler, retailer, or employee of a wholesaler or retailer.
10. No retail alcoholic liquor store may offer more than one sampling per day.

Effective Date: July 1, 2002

Discounts – Retail Liquor Stores

Code Section 61-6-1560 has been added to allow a retail dealer, wholesaler, or producer to offer discounts on alcoholic liquors or nonalcoholic items through the use of premiums, coupons, or stamps redeemable by mail.

Effective Date: July 1, 2002

House Bill 4426, Section 2 (Act No. 353)

Lottery Tickets – Sales in Retail Liquor Stores

Code Section 61-6-1540 has been amended to allow the sale of lottery tickets authorized under the South Carolina Education Lottery Act (Chapter 150 of Title 59) in retail liquor stores.

Effective Date: July 16, 2002

House Bill 4878, Part IB, Section 64, Proviso 64.19 (Act No. 289) (See also House Bill 4426, Section 1 (Act No. 353))

Local Option Permits – Municipalities

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

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

The temporary proviso in Act No. 289 states that local option permits "may be issued in all parts of a municipality when any part of the municipality has been approved for issuance of such permits." Essentially, if a municipality is located in more than one county, then local option permits may be issued for any part of the municipality as long as one of the counties in which the municipality is located has approved the referendum for Sunday sales.

Under the legislation enacted in Act No. 353, Code Section 61-6-2010 has been amended to allow a municipality located in more than one county to order a referendum on the question of the issuance of local option permits in all parts of a municipality when as a result of a favorable vote in a county referendum permits may be issued in only the parts of the municipality located

in that county. This will allow the citizens of a municipality to determine, through a referendum, if they want to continue to allow local option permits to be issued for all parts of the municipality.

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

Effective Date: The temporary proviso in Act No. 289 is effective for the State fiscal year July 1, 2002 through June 30, 2003. Unless reenacted by the General Assembly in the next legislative session, the provisions of this Act expire on June 30, 2003.
Act No. 353 is effective July 16, 2002.

REGULATIONS

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

Document No. 2662	Amendment of Various Tax and Regulatory Regulations
Document No. 2636	Repeal of Various Tax and Regulatory Regulations
Document No. 2658	Reorganization of Sales and Use Tax Regulations
Document No. 2650	Amendment or Repeal of Various Alcoholic Beverage Regulations
Document No. 2695	Repeal of Outdated Alcoholic Beverage Regulations
Document No. 2651	Repeal of Alcoholic Liquor Advertising Regulations

The following provides a detailed listing of all regulations repealed or amended in each document. The final notice concerning each document, including the text of the new regulations, was published in the State Register on June 28, 2002, and can be found at www.lpitr.state.sc.us/regnsrch.htm.

Document No. 2662

Amendment of Various Tax and Regulatory Regulations

The General Assembly approved the amendment of the following administrative, regulatory, license tax, income tax, and property tax regulations to change references from the former Tax Commission to the Department and to correct references to various code sections that were changed in recodification of administrative and income tax laws in Title 12 in previous years.

Administrative Regulations	
117-1	Supplying of Identifying Numbers
117-2	Retention of Books and Records and the Use of Microfilm Reproduction of Books and Records
Alcoholic Liquor, Beer and Wine, and License Tax Regulations	
117-12	Collection and Payment of Tax and the Maintaining of Records
117-20	Sales or Exchanges with other Wholesalers

117-20	Soft Drinks - Exemptions
117-49	Classification of Industrial Customers
Income Tax Regulations	
117-61	Tax Liability of Stockholders
117-73	Related Expenses Defined
117-74	Allocation of Out-of-State Income and Losses
117-81	Tax Credit to Residents of this State Upon Income from a Partnership Taxed in Another State
117-83	Copies of Withholding Statements
117-87.17	Unrelated Business
117-87.20	Information Reports
117-87.32	Active Duty Military Pay
117-88.1	Determining Net Income of Building and Loan Associations
117-88.2	Earnings Paid to Shareholders
117-89.1	Annual Reports of Public Utilities
117-91.1	Nonresident Employees Operating Common Carriers
117-91.7	The One-half Rule
117-92.1	Entire Net Income
117-92.3	Federal Income Tax Deduction
Property Tax Regulations	
117-115	General Requirements for Ratio Study
117-116	Form to Provide Tax Commission with Information for Ratio Studies
117-124.2	Licensed Automotive Vehicles and Airplanes
117-124.3	Manufacturing Plants Constructed Pursuant to the Industrial Revenue Bond Act
117-126	Use Value Procedure for Cropland and Timberland
117-127	Computation of Index of Taxpaying Ability for School District

Effective Date: June 28, 2002

Repeal of Various Tax and Regulatory Regulations

The General Assembly approved the repeal of the following sales tax, property tax, administrative, estate tax, income tax, license tax, and regulatory regulations since they are no longer needed due to changes in the law.

Type Tax	Regulation	Regulation Title
Sales Tax	117-174.38	Automobile Dealer's Demonstrator
	117-174.221	Vendor's Discount
Property Tax	117-109	Determining the Fair Market Value of the Inventory Merchandise of Merchants
	117-124.14	Inventory Tax – Alcoholic Liquors
	117-121	Mobile Homes Located on Leased Land Assessed as Real Property
	117-107	Assessment of Manufacturers' Property
	117-108	Assessment of Property of Merchants
Administrative	117-5	Appeals Procedure by Which a Person May Contest the Authority of the Commission to Promulgate a Proposed Regulation.
	117-4	Procedure for Appeal to the Tax Commission from a County Board of Tax Appeals when the Statute Providing for such Appeal Fails to Specify the Manner in Which the Appeal is to be Made or the Grounds Therefore and Limits the Appeal to "Relief as Afforded by General Law"
	117-3	Appeal Procedure Before County Tax Board of Appeals
Estate Tax	117-181.1	Rules and Regulations
	117-181.2	Transfer of Securities, Deposits or Other Assets
	117-181.3	Transfer of Contents of Safe Deposit Boxes
Income Tax	117-60	Nonresidents Having Income from a Business in this State Subject to Tax
	117-75	When Sales Allocated to State of the Purchaser
	117-76	Nonresident Partners of a Partnership May File Single Return
	117-77	Filing of a Consolidated Return for Two or More Corporations
	117-79	Extension of Time for Filing and Tentative Returns Required
	117-80	Application for Refund of Deceased
	117-82	Income Tax in Another State Defined
	117-84	Bond for Nonresidents Conducting a Temporary Business

117-00	Filing of Reports and Annual License Fees of Corporations
117-86	Foreign Corporation Defined
117-87.54	Definitions of "Taxable," "State," and "Net Income Tax" in Connection with the Allocation Formula
117-87.69	Allocation and Apportionment of Income
117-87.74	Nonresident Aliens
117-87.78	Retirement Benefits Paid to Public School Teachers and State Employees Living in this State
117-89.3	License Fees - Professional Associations
117-91.2	Withholding on Casuals
117-91.3	Withholding of Rents
117-91.4	Withholding on Rentals Paid to Nonresidents
117-91.5	Relieve Residents Working Without the State from Double Withholding
117-91.6	Agricultural Labor
117-91.8	Qualification to do Business
117-91.9	Credit for Tax Withheld by an Employee Even Though Not Paid to Tax Commission by Employer
117-91.11	When Federal Forms W-2, W-4 and 1099 are Acceptable by the South Carolina Tax Commission
117-95.1	Agreement for Withholding of Income Tax
License Tax	117-32 Stamps Required on Certain Articles
	117-33 Records
	117-36 Cigarettes Displayed in Vending Machines
	117-37 Cigars
	117-44 Documentary Stamps - Sale of by Others
	117-45.1 South Carolina Documentary Stamps must be Affixed before Instrument is Recorded
	117-46 Base of the Documentary Stamp Tax When Consideration Received for Property Transferred Does Not Have a Readily Ascertainable Fair Market Value
Video Game	117-191.1 Technical Standards for Video Game Machines
	117-191.2 Technical Standards for Location Controller
	117-191.3 Remote Shutdown of a Machine or Machines

Effective Date: June 28, 2002

Reorganization of Sales and Use Tax Regulations

The General Assembly approved the repeal of Article 7 of Chapter 117 of the SC Code of Regulations (SC Regulations 117-145 through 117-178) and the creation Article 11. Under this reorganization, 225 sales and use tax regulations were combined into 35 so that all regulations concerning one subject matter can be found in one place in the regulation code. For example, all issues concerning agriculture can be found in one regulation under Regulation 117-301. This regulation has several "subsections" numbered 117-301.1, 117-301.2, etc. This reorganization also incorporates longstanding Department policy with respect to building materials used in the construction of commercial housing for poultry and livestock; meals sold to or by medical institutions, colleges, and universities; charges by hotels and similar facilities; transactions involving state and local governments; and the calculation of the tax when a manufactured home is sold with furniture, appliances, and other items.

New Regulation	Repealed/Former Regulation	Subject Matter
117-300	117-145, 117-174.86, 117-175.1, and 117-175.2	Retail Licenses
117-301	117-174.8, 117-174.9, 117-174.10, 117-174.12, 117-174.14, 117-174.15, 117-174.16, 117-174.17, 117-174.18, 117-174.19, 117-174.20, 117-174.21, 117-174.22, 117-174.23, 117-174.24, 117-174.25, 117-174.26, 117-174.27, 117-174.28, 117-174.84, 117-174.85, 117-174.87, 117-174.198, 117-174.199, 117-174.237, 117-174.243, 117-174.252, and 117-174.255	Agriculture
117-302	117-173, 117-174.30, 117-174.31, 117-174.35, 117-174.42, 117-174.46, 117-174.49A, 117-174.50, 117-174.61, 117-174.80, 117-174.83, 117-174.88, 117-174.102, 117-174.103, 117-174.117, 117-174.120, 117-174.121, 117-174.122, 117-174.123, 117-174.124, 117-174.125, 117-174.126, 117-174.127, 117-174.128, 117-174.129, 117-174.130, 117-174.132, 117-174.134, 117-174.135, 117-174.136, 117-174.137, 117-174.138, 117-174.139, 117-174.140, 117-174.141, 117-174.142, 117-174.143, 117-174.144, 117-174.145, 117-174.146, 117-174.148, 117-174.149, 117-174.172, 117-174.173, 117-174.174, 117-174.175, 117-174.176, 117-174.177, 117-174.178, 117-174.179, 117-174.209, 117-	Manufacturers, Processors, Compounders, Miners and Quarriers

	117-222, 117-174.220, 117-174.222, 117-174.230, 117-174.236, 117-174.244, 117-174.245, 117-174.246, 117-174.248, and 117-174.258	
117-303	117-174.232, 117-174.233, 117-174.234, 117-174.241 and 117-175.3	Laundries
117-304	117-174.92, 117-174.93, 117-174.94, 117-174.95, 117-174.96, 117-174.97, 117-174.98 and 117-174.100	State and Local Government
117-305	117-174.113, 117-174.114, 117-174.115, and 117-174.116	Meals
117-306	117-162, 117-163, 117-174.32, 117-174.33, 117-174.191, and 117-174.192	Repairs
117-307	117-174.101	Hotels, Motels and Similar Facilities
117-308	117-162, 117-163, 117-166, 117-167, 117-169, 117-174.33, 117-174.153, 117-174.158, 117-174.160, 117-174.161, 117-174.162, 117-174.163, 117-174.205, 117-174.206, 117-174.263, 117-174.264 and 117-174.266	Services
117-309	117-164, 117-165, 117-168, 117-174.36, 117-174.39, 117-174.40, 117-174.89, 117-174.90, 117-174.104, 117-174.109, 117-174.110, 117-174.165, 117-174.208, 117-174.218, 117-174.225, 117-174.231, 117-174.247 and 117-174.259	Retailers
117-310	117-156, 117-174.214 and 117-174.215	Freight and Delivery Charges
117-311	117-174.54, 117-174.55, 117-174.56, 117-174.114, 117-174.180, 117-174.181, 117-174.182, 117-174.183, 117-174.184, 117-174.185 and 117-174.186	Railroads
117-312	117-174.68, 117-174.78, 117-174.79, 117-174.91, 117-174.105, 117-174.164, 117-174.201, 117-174.222 and 117-174.260	Containers and Other Packaging Material
117-313	117-174.202, 117-174.203, 117-174.204 and 117-174.261	Labor
117-314	117-174.6, 117-174.7, 117-174.45, 117-174.47, 117-174.53, 117-174.62, 117-174.63, 117-174.131, 117-174.157, 117-174.170, 117-174.171 and 117-174.249	Construction
117-315	117-174.166, 117-174.167 and, 117-174.168	Newspaper
117-316	117-174.213 and 117-174.251	Books
117-317	117-176.1 and 117-176.2	Reposessed Property
117-318	117-174.48, 117-174.59, 117-174.106, 117-174.238, 117-174.240, 117-174.253 and 117-174.265	Gross Proceeds of Sales and Sales Price

117-217	117-174.220 and 117-174.239	117-174.220 and 117-174.239	117-174.220 and 117-174.239
117-320	117-174.220 and 117-174.239	117-174.220 and 117-174.239	Use Tax
117-321	117-174.81 and 117-174.207	117-174.81 and 117-174.207	Ships
117-322	117-154	117-154	Casual and Isolated Sales
117-323	117-177	117-177	Residential Heating
117-324	117-174.82	117-174.82	Dual Business
117-325	117-174.196	117-174.196	Bulk Sales
117-326	117-174.41	117-174.41	Saving and Loan Associations
117-327	117-174.107	117-174.107	Leased Departments
117-328	117-174.250	117-174.250	Radio and TV Stations
117-329	117-174.235	117-174.235	Communications
117-330	117-174.262	117-174.262	Automatic Data Processing
117-331	117-174.254	117-174.254	Airport Fixed Based Operators
117-332	117-174.257	117-174.257	Medicine and Prosthetic Devices
117-333	117-157	117-157	Donors and Goods Given Away for Advertising Purposes
117-334	117-170	117-170	Interstate Commerce
117-335	117-178	117-178	Manufactured and Modular Homes
117-336	117-160.5	117-160.5	Definition of a Facility

In addition, the following regulations are repealed due to changes in the law, recent court cases, or because they are no longer needed as a result of the sales and use tax regulation reorganization project.

Repealed Regulation	Subject Matter
117-174.38	Automobile Dealer=s Demonstrator
117-174.62	Contractor=s Liability
117-174.178	Materials Used in Processing by Paper Manufacturers
117-174.188	Religious Publications
117-174.221	Vendor=s Discount
117-175.4	Partnerships

Effective Date: June 28, 2002

Amendment or Repeal of Various Alcoholic Beverage Regulations

The General Assembly approved the amendment of various alcoholic beverage regulations to change references from the former Alcoholic Beverage Commission to the Department or the State Law Enforcement Division and to correct references to various code sections that were changed in recodification of the alcoholic beverage laws in Title 61 in previous years.

The General Assembly also approved the repeal of some outdated provisions. The affected regulations are as follows:

Amended or Repealed Regulation	Regulation Title
7-2	Applications
7-6	Licensed Premises
7-7	Maintenance of Records
7-8 (Repealed)	Inspection of Premises
7-9	Purchase or Possession by Person Under Twenty-one Years of Age
7-10	Retail Liquor Dealers
7-11	Measurements
7-13	Destruction of Two-ounce Containers
7-14	Private Functions
7-16	Purchase of Minibottles from Retail Liquor Dealers
7-17	Sale and Consumption at Nonprofit Organizations
7-19	Restaurants
7-21	Application
7-22	Display of License
7-25 (Repealed)	Inspection of Premises
7-26	Violations
7-27	Stipulations
7-31	Possession or Consumption of Alcoholic Liquors by Person Under Twenty-one Years of Age
7-33	Records to be Maintained on Licensed Premises
7-35	Transfer of Alcoholic Liquor Between Retail Stores
7-36	Purchases by Retail Dealer from Licensed Wholesaler Only; Purchases for Exclusive Use Prohibited
7-41	Natural Wines Defined
7-42 (Repealed)	Readvertising Not Necessary in Same Fiscal Year
7-48 (Repealed)	Corporations, Associations, etc. Responsible for all Violations on Premises
7-51 (Repealed)	Inspection, Refusal of
7-52	Underage Violations - Multiple Offenses
7-55	Measurements from Location to School, Church or Playground

7-60	Merchandise Other Than for Wines or Alcoholic Liquors Cannot be Advertised or Displayed
7-61	Time of Sale
7-62	Open Containers of Wine as Well as Alcoholic Liquors in Retail Liquor Stores
7-63	Dishonored Checks to Wholesalers
7-70	Person Under 21 - Violation to Allow Possession and Consumption of Alcoholic Liquors on Premises
7-71	Person Under 21 - Violation to Allow Possession and Consumption of Beer or Wine on Premises
7-72	Wines Sold by Beer and Wine Wholesalers
7-75 (Repealed)	Offers in Compromise Must be in Writing
7-76 (Repealed)	Clubs, Associations, etc., Responsible for all Violations
7-82 (Repealed)	Inspection of Premises Must be Permitted
7-85	Vending Machines for Beer Prohibited
7-86	Delivery or Removal of Beer and Wine During Restrictive Hours
7-88	Prima Facie Evidence of Sale
7-89	Stipulations, Acceptance of
7-92	USDA Food Stamps Not Accepted in Payment for Beer or Wine
7-93	Sales by Retailer to Another Retailer for Resale
7-95	Beer and Wine Permit and Sale and Consumption License Must be in the Same Name
7-99	Refund on Permit Applications.
7-99	Sign Required Under Section 61-9-455; Size and Lettering

Effective Date: June 28, 2002

Repeal of Outdated Alcoholic Beverage Regulations

The General Assembly approved the repeal of the following alcoholic beverage regulations since they are no longer needed due to changes in the law.

Repealed Regulation	Regulation Title
7-4	Reconsideration of Applications
7-19.1	Rehearings, Location of
7-30	Rehearing, Request for - Location
7-45	Offers in Compromise Must be in Writing
7-57	No Reconsideration on an Application Within Two Years
	Previously Denied as to Person
7-87	Hearing, After Denial
7-96	Rehearings, Location of

Effective Date: June 28, 2002

Document No. 2651

Repeal of Alcoholic Beverage Advertising Regulations

The General Assembly approved the repeal of regulations 7-34 and 7-49, concerning alcoholic liquor advertising by wholesalers and retailers, since the U.S. Supreme Court, in *44 Liquormart v. Rhode Island*, 517 U.S. 484 (1996), held unconstitutional a similar Rhode Island statute that prohibited price advertising of alcoholic liquors.

Effective Date: June 28, 2002

JOINT EXHIBIT 55

State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214
Website Address: <http://www.sctax.org>

SC REVENUE INFORMATIONAL BULLETIN #02-15

SUBJECT: Reorganized Sales and Use Tax Regulations
(Sales and Use Tax)

DATE: August 20, 2002

REFERENCE: Code of Regulations, Chapter 117, Article 7 (Repealed)
Code of Regulations, Chapter 117, Article 11 (Enacted June 28, 2002)
State Register, June 28, 2002 - Document Number 2658

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 2000)
S.C. Code Ann. Section 1-23-10(4) (Supp. 2001)
SC Revenue Procedure #99-4

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

Reorganized Sales and Use Tax Regulations

Article 7 of Chapter 117 of the SC Code of Regulations (SC Regulations 117-145 through 117-178) has been repealed and new regulations concerning sales and use tax have been promulgated in a new Article 11. Under this reorganization, sales and use tax regulations are combined so that all regulations concerning one subject matter can be found in one regulation and therefore one place in the regulation code. In addition, each regulation has several "subsections" numbered in a manner to allow future issues concerning the subject matter to be added and still be in the same place in the regulation code as similar issues. For example, all issues concerning agriculture can be found in one regulation, Regulation 117-301. This regulation has several "subsections"

numbered 117-301.1, 117-301.2, and so on. This reorganization reduces the number of regulations from 225 to 37. These new regulations also incorporate longstanding department policy with respect to building materials used in the construction of commercial housing for poultry and livestock, meals sold to or by medical institutions, colleges and universities, charges by hotels and similar facilities, transactions involving state and local governments, and the calculation of the tax when a manufactured home is sold with furniture, appliances and other items. The new regulations are organized as follows:

<u>Regulation Number</u>	<u>Subject</u>
117-300	Retail Licenses
117-301	Agriculture
117-302	Manufacturers, Processors, Compounders, Miners and Quarriers
117-303	Laundries
117-304	State and Local Government
117-305	Meals
117-306	Repairs
117-307	Hotels, Motels and Similar Facilities
117-308	Services
117-309	Retailers
117-310	Freight and Delivery Charges
117-311	Railroads
117-312	Containers and Other Packaging Material
117-313	Labor
117-314	Construction
117-315	Newspaper
117-316	Books
117-317	Repossessed Property
117-318	Gross Proceeds of Sales and Sales Price
117-319	Warehousemen
117-320	Use Tax
117-321	Ships
117-322	Casual and Isolated Sales
117-323	Residential Heating
117-324	Dual Business
117-325	Bulk Sales
117-326	Saving and Loan Associations
117-327	Leased Departments
117-328	Radio and TV Stations
117-329	Communications
117-330	Automatic Data Processing
117-331	Airport Fixed Based Operators
117-332	Medicine and Prosthetic Devices

Regulation Number**Subject**

117-333	Donors and Goods Given Away for Advertising Purposes
117-334	Interstate Commerce
117-335	Manufactured and Modular Homes
117-336	Definition of Facility

Cross-Reference to Repealed Sales and Use Tax Regulations

<u>New Regulation</u>	<u>Repealed/Former Regulation</u>	<u>Subject Matter</u>
117-300	117-145, 117-174.86, 117-175.1, and 117-175.2	Retail Licenses
117-301	117-174.8, 117-174.9, 117-174.10, 117-174.12, 117-174.14, 117-174.15, 117-174.16, 117-174.17, 117-174.18, 117-174.19, 117-174.20, 117-174.21, 117-174.22, 117-174.23, 117-174.24, 117-174.25, 117-174.26, 117-174.27, 117-174.28, 117-174.84, 117-174.85, 117-174.87, 117-174.198, 117-174.199, 117-174.237, 117-174.243, 117-174.252, and 117-174.255	Agriculture
117-302	117-173, 117-174.30, 117-174.31, 117-174.35, 117-174.42, 117-174.46, 117-174.49A, 117-174.50, 117-174.61, 117-174.80, 117-174.83, 117-174.88, 117-174.102, 117-174.103, 117-174.117, 117-174.120, 117-174.121, 117-174.122, 117-174.123, 117-174.124, 117-174.125, 117-174.126, 117-174.127, 117-174.128, 117-174.129, 117-174.130, 117-174.132, 117-174.134, 117-174.135, 117-174.136, 117-174.137, 117-174.138, 117-174.139, 117-174.140, 117-174.141, 117-174.142, 117-174.143, 117-174.144, 117-174.145, 117-174.146, 117-174.148, 117-174.149, 117-174.172, 117-174.173, 117-174.174, 117-174.175, 117-174.176, 117-174.177, 117-174.178, 117-174.179, 117-174.209, 117-174.210, 117-174.212, 117-174.216, 117-174.227, 117-174.228, 117-174.229, 117-174.230, 117-174.236, 117-174.244, 117-174.245, 117-174.246, 117-174.248, and 117-174.258	Manufacturers, Processors, Compounders, Miners and Quarriers

New Regulation	Repealed/Former Regulation	Subject Matter
117-303	117-174.232, 117-174.233, 117-174.234, 117-174.241 and 117-175.3	Laundries
117-304	117-174.92, 117-174.93, 117-174.94, 117-174.95, 117-174.96, 117-174.97, 117-174.98 and 117-174.100	State and Local Government
117-305	117-174.113, 117-174.114, 117-174.115, and 117-174.116	Meals
117-306	117-162, 117-163, 117-174.32, 117-174.33, 117-174.191, and 117-174.192	Repairs
117-307	117-174.101	Hotels, Motels and Similar Facilities
117-308	117-162, 117-163, 117-166, 117-167, 117-169, 117-174.33, 117-174.153, 117-174.158, 117-174.160, 117-174.161, 117-174.162, 117-174.163, 117-174.205, 117-174.206, 117-174.263, 117-174.264 and 117-174.266	Services
117-309	117-164, 117-165, 117-168, 117-174.36, 117-174.39, 117-174.40, 117-174.89, 117-174.90, 117-174.104, 117-174.109, 117-174.110, 117-174.165, 117-174.208, 117-174.218, 117-174.225, 117-174.231, 117-174.247 and 117-174.259	Retailers
117-310	117-156, 117-174.214 and 117-174.215	Freight and Delivery Charges
117-311	117-174.54, 117-174.55, 117-174.56, 117-174.114, 117-174.180, 117-174.181, 117-174.182, 117-174.183, 117-174.184, 117-174.185 and 117-174.186	Railroads
117-312	117-174.68, 117-174.78, 117-174.79, 117-174.91, 117-174.105, 117-174.164, 117-174.201, 117-174.222 and 117-174.260	Containers and Other Packaging Material
117-313	117-174.202, 117-174.203, 117-174.204 and 117-174.261	Labor
117-314	117-174.6, 117-174.7, 117-174.45, 117-174.47, 117-174.53, 117-174.62, 117-174.63, 117-174.131, 117-174.157, 117-174.170, 117-174.171 and 117-174.249	Construction
117-315	117-174.166, 117-174.167 and, 117-174.168	Newspaper
117-316	117-174.213 and 117-174.251	Books
117-317	117-176.1 and 117-176.2	Repossessed Property
117-318	117-174.48, 117-174.59, 117-174.106, 117-174.238, 117-174.240, 117-174.253 and 117-174.265	Gross Proceeds of Sales and Sales Price
117-319	117-174.223 and 117-174.224	Warehousemen
117-320	117-174.220 and 117-174.239	Use Tax

New Regulation	Repealed/Former Regulation	Subject Matter
117-321	117-174.81 and 117-174.207	Ships
117-322	117-154	Casual and Isolated Sales
117-323	117-177	Residential Heating
117-324	117-174.82	Dual Business
117-325	117-174.196	Bulk Sales
117-326	117-174.41	Saving and Loan Associations
117-327	117-174.107	Leased Departments
117-328	117-174.250	Radio and TV Stations
117-329	117-174.235	Communications
117-330	117-174.262	Automatic Data Processing
117-331	117-174.254	Airport Fixed Based Operators
117-332	117-174.257	Medicine and Prosthetic Devices
117-333	117-157	Donors and Goods Given Away for Advertising Purposes
117-334	117-170	Interstate Commerce
117-335	117-178	Manufactured and Modular Homes
117-336	117-160.5	Definition of a Facility

In addition, the following regulations have been repealed due to changes in the law, recent court cases, or because they are no longer needed as a result of the sales and use tax regulation reorganization project.

Repealed Regulation	Subject Matter
117-174.38	Automobile Dealer=s Demonstrator
117-174.62	Contractor=s Liability
117-174.178	Materials Used in Processing by Paper Manufacturers
117-174.188	Religious Publications
117-174.221	Vendor=s Discount
117-175.4	Partnerships

Where to Find the New Sales and Use Tax Regulations

The final notice concerning this document, which includes the text of the new regulations, was published in the State Register on June 28, 2002 and can be found at <http://www.lpittr.state.sc.us/regnsrch.htm> by typing in Document Number 2658.

JOINT EXHIBIT 56

Prior versions of Regulations

DOR RESP LOWES'S 1088

117-174.43 CONT.

merchants and others for packaging property that is to be sold to the public.

117-174.44 BOTTLERS, SOFT DRINKS

Soft drink bottlers are engaged in manufacturing and compounding, therefore, are authorized to purchase free of the tax (1) machines used directly in manufacturing and compounding; (2) the ingredient and component parts of the product manufactured or compounded for sale; (3) materials and products used directly in converting, processing or fabricating such ingredients or components and (4) fuel for use in producing the product of their manufacture for sale.

117-174.45 BUILDING MATERIALS

Sales of building materials to contractors, builders, or landowners for resale or use in the form of real estate are retail sales in whatever quantity sold.

Building materials when purchased by builders, contractors, or landowners for use in adding to, repairing or altering real property are subject to either the sales or use tax at the time of purchase by such builder, contractor, or landowner. "Building materials" as used in the Sales and Use Tax Law includes any material used in making repairs, alterations or additions to real property. "Builders," "contractors," and "landowners" mean and include any person, firm, association or corporation making repairs, or additions to real property. The term "building materials" includes such tangible personal property as lumber, timber, nails, screws, bolts, structural steel, elevators, reinforcing steel, cement, lime, sand, gravel, slag, stone, telephone poles, fencing, wire, electric cable, brick, tile, glass, plumbing supplies, plumbing fixtures, pipe, pipe fittings, prefabricated buildings, electrical fixtures, built-in cabinets and furniture, sheet metal, paint, roofing materials, road building materials, sprinkler systems, air conditioning systems, built-in-fans, heating systems, floorings, floor furnaces, crane ways, crossties, railroad rails, railroad track accessories, tanks, builders hardware, doors, door frames, window frames, water meters, gas meters, well pumps, and any and all other tangible personal property which becomes a part of real property.

None of the property designated as "building material" comes within the machine exemption, except such items as can be identified at the time of purchases as a part or an attachment or replacement for a machine used in a manufacturing, designed and manufactured for such use, customarily so used, and necessary to the operation of the

S-29

S-112, 1/89

DOR RESP LOWES'S 1089

117-174.45 CONT.

completed machine. Such bulk items as lumber, cement, random or stock length structural steel, brick, paint, and common nails could never come within the exemption. Such items as pumps, prefabricated processing tanks, steam boilers, structural steel when purchased prefabricated to special design for a machine part, may come within the machine exemption. The materials from which these parts or attachments are fabricated are not exempted. When the landowner or contractor purchases the materials from which he may make a boiler, or pump or tank, he must pay tax to the seller or direct to the state as the case may be.

117-174.46 WOOD PRESERVERS

Persons or firms engaged in the business of treating lumber or lumber products (wood preserving) which they own and treat for sale and on which they perform some operation other than the mere injection of preservatives, or preparation incident to such injection, are deemed to be manufacturers within the meaning of the sales and use tax statute. On the other hand, when the business of such person or firm is merely the injection or preparation incident to the injection of preservatives such person or firm is deemed to be a processor. Fuel is exempted to those wood preservers whose activities bring them within the classification of manufacturers as outlined above. Machinery, in either case, used directly in the wood preserving process may be purchased free of the tax under the machine exemption. Treated lumber or lumber products sold by wood preserving companies are subject to the tax based upon the selling price thereof without any deductions on account of materials used, labor or service costs, or any other expenses whatsoever.

The basis of the tax in the case of a wood preserver treating lumber belonging to others is made to depend upon the manner in which his records are kept. If kept in such a manner as to show the sale of preservatives separately from the price charged for services rendered, the tax falls only on the amount charged for the preservatives sold. If his records do not reflect this separation in charges, he is liable for tax based upon the full amount charged.

117-174.47 ELEVATORS

The component parts of an elevator constitute building materials within the meaning of the act. The sale of elevator components to contractors, builders or landowners for use in the form of real estate is, therefore, a retail sale notwithstanding that the purchaser constructs therefrom an elevator which ultimately becomes the property of others.

S-30

S-112, 1/89

DOR RESP LOWES'S 1090

117-174.80 CONT.

on account of the cost of materials used labor or service charges or any other expenses which are a part of the sale. Laboratories engaged in manufacturing tangible personal property are entitled to purchase free of the tax tangible personal property which becomes a part of the tangible personal property or products manufactured for sale or property which is used directly in fabricating, converting or processing the tangible personal property for sale. Such laboratories are also entitled to purchase free of the tax, machines, to include parts and attachments therefore, used in manufacturing tangible personal property.

Where the dentist operates in a dual capacity, both as a dentist and as a dental laboratory, he is regarded as a manufacturer with respect to the laboratory phase of the business. Tax is due measured by the reasonable and fair market value of tangible personal property fabricated for use in filling his own prescriptions, and both the license and the tax apply with respect to sales made by him on prescription of other dentists.

Dental supply houses make sales of tangible personal property such as platinum, gold, silver, cement for fillings, instruments, chairs, drills, medicines and other supplies and equipment to dentists. All such sales are sales for use and must bear the tax. All sales by dental supply houses to dental laboratories other than those in the second paragraph hereinabove are also sales at retail subject to the tax.

117-174.81 DRY DOCK

A dry dock is subject to the sales or use tax, whichever applies. A dry dock is not a "vessel" nor is it a "barge" exempted from the sales or use tax.

117-174.82 DUAL BUSINESSES

Operators of businesses who are both making retail sales and withdrawing for use from the same stock of goods are to purchase at wholesale all of the goods so sold or used and report both retail sales and withdrawals for use under the sales tax law.

This ruling applies only to those who actually carry on a retail business having a substantial number of retail sales and does not apply to contractors, plumbers, repairmen, and others who make isolated or accommodation sales and who have not set themselves up as being engaged in selling. Where only isolated sales are made, tax should be paid on all of the taxable property purchased with no sales

S-38

S-112, 1/89

DOR RESP LOWES'S 1091

117-174.82 CONT.

tax return being required of the seller making such isolated or "accommodation" sales.

117-174.83 ENGRAVERS

Engravers are entitled to purchase at wholesale, tax-free, materials which become components of engravings and other tangible personal property produced for sale. Where the engraver qualifies as a manufacturer, machines used in the manufacturing of engravings and other tangible personal property come within the machine exemption. Supplies, materials and equipment not becoming a component of the product to be sold, or not constituting a machine used in manufacturing, are subject to the sales or use tax, whichever may apply.

Sales of engravings to manufacturers for use in manufacturing tangible personal property for sale are exempted from the tax under the provisions of §12-35-550(17) as parts or attachments to machines used in manufacturing or processing tangible personal property for sale.

117-174.84 FUEL, SALES OF TO COTTON GINNERS FOR DRYING COTTON

The sale or sales of fuel, not otherwise exempted, to cotton ginnings for use in drying cotton is subject to the tax.

117-174.85 FUEL FOR CURING GRAIN

Fuel for use in curing grain in grain elevators for storage or sale may be purchased free of the South Carolina sales or use tax in accordance with the exemption found at Paragraph 18 of §12-35-550.

117-174.86 FAIRS, CARNIVALS, CONCESSIONAIRES AT ATHLETIC STANDS AND OTHER PUBLIC EXHIBITIONS

Operators of fairs, carnivals, concessionaire stands sell tangible personal property from booths which they operate. These sales are subject to the tax which must be remitted by the operator who controls or directs the management of such booths. The single retail license shall cover sales of tangible personal property made from all stands under the immediate management or control of each operator. A separate license will not be required for each change of location provided the operator furnishes the Tax Commission an itinerary giving a schedule of locations and dates. In no case shall the

S-39

S-112, 1/89

DOR RESP LOWES'S 1092

117-174.223 WAREHOUSEMEN, SALES TO

All property purchased for use in operating places of storage are subject to sales or use tax, whichever may apply, including all tickets, labels, receipt forms, heating or cooling equipment, fire protection equipment, pest control supplies and equipment, compressors, containers, and crating materials and any and all other supplies, materials, or equipment purchased for a use incidental to the storing or warehousing of property of any kind of character.

Note, however, that warehousemen may also be engaged in the business of selling, processing, or manufacturing for sale, in which event the supplies and equipment used in such activities will be taxable or not in accordance with the rules applying to the use of property for such purposes.

117-174.224 WAREHOUSEMEN, SALES MADE BY

Receipts of warehousemen from their services in storing, handling, packing, crating, delousing, etc., property for others are not subject to the sales tax. Any materials used incidental to the rendering of such services are taxable on the sale to the warehousemen.

When, however, warehousemen buy and sell property as a regular course of business such sales, if not otherwise exempted, are subject to the sales tax, including sales of goods held on consignment and including transactions in which the warehouseman acts as a broker selling goods not actually owned by him or in his possession at the time he accepts the order.

Warehousemen are subject to tax with respect to sales of second-hand property forfeited to them in the operation of their warehousing business where such sales are numerous and a substantial amount and where the selling of such second-hand property is a regular and continuous practice. Where such sales of second-hand property are in such number that they might be considered casual, isolated or accommodation sales, they are not required to be reported in sales tax returns filed with this department.

117-174.225 WITHDRAWALS FROM STOCK, MERCHANTS

To be included in gross proceeds of sales is the money value of property purchased at wholesale for resale purposes and subsequently withdrawn from stock for use or consumption by the purchaser at wholesale.

The value to be placed upon such goods is the price at which these

S-86

S-112, 1/89

DOR RESP LOWES'S 1093

117-174.225 CONT.

goods are offered for sale by the person withdrawing them. All cash or other customary discounts which he would allow to his customers may be deducted; however, in no event can the amount used as gross proceeds of sales be less than the amount paid for the goods by the person making the withdrawal.

117-174.226 SALES FOR RESALE

Licensed retailers may make purchases free of the sales or use tax of tangible personal property which they ordinarily and customarily resell. Purchases of tangible personal property by licensed retailers for use or consumption and not for resale are sales at retail, and the tax thereon must be paid at the time of such sale.

117-174.227 CHEMICALS, USED IN COMPOUNDING WATER FOR SALE

Municipalities and others engaged in the business of producing water for sale are deemed to be engaged in compounding with respect to the use of chemicals, such as soda, ash, alum, chlorine, etc., used by them in treating water for sale.

117-174.228 ODORANTS, USED IN COMPOUNDING GAS FOR SALE

Gas companies and others purchase at wholesale free of the tax odorants used in compounding gas for sale.

117-174.229 RAW MATERIALS - COMPOUNDERS - MANUFACTURERS

The ingredients and/or materials purchased by compounders and manufacturers to become a part of the property compounded or manufactured for sale are purchased at wholesale, tax-free, by such compounders and manufacturers.

Containers - The containers used by manufacturers and compounders to package their products for shipment or sale are purchased at wholesale, tax-free, by the manufacturers and compounders.

Labels - Labels purchased by manufacturers and compounders to be used to identify their products and which pass on to the purchasers of the products are purchased at wholesale, tax-free, by the manufacturers and compounders. Address stickers and shipping tags are not purchased at wholesale.

P-87

S-112, 1/89

DOR RESP LOWES'S 1094

117-174.245 CONT.

the sales and/or use tax under §12-35-550, Paragraphs (8) and (19).

117-174.246 PAPERMAKERS SUPPLIERS

Persons in the business of collecting old and used paper (waste paper) for the purpose of grading, sorting and packaging the same for sale or resale to paper mills are deemed to be processors. Purchases by them of machines for use in processing such paper are entitled to the exemption found at §12-35-550(17).

117-174.247 SIGN COMPANIES - OUTDOOR ADVERTISERS

A person engaged in the business of erecting, on properties owned or controlled by him, signs for the display of products of a second party for a consideration is deemed to be engaged in the business of selling a service. A tax is due measured by the purchase price of all tangible personal property used or consumed by such person as additions or improvements to realty.

A person engaged in the business of designing, fabricating and erecting signs on properties of another, for the display of that person's products, is deemed to be a retailer. The gross proceeds of the sale of such signs are subject to the tax. If the signs are leased or rented, the lease or rental proceeds are subject to the tax.

A person engaged in both of the above businesses shall pay the tax in accordance with the applicable provisions as set forth hereinabove.

A person who designs and constructs a sign as defined in the second paragraph above may, if all statutory requirements are met, be considered a manufacturer.

117-174.248 ICE CREAM FREEZERS

Ice cream freezers of the type used on trucks or in retail outlets for the making of ice cream are subject to the sales tax.

117-174.249 SALES OF BUILDING MATERIALS

Sales of building materials for use in adding to, repairing or altering real property, are subject to the sales or use tax at the time of purchase even though the property erected therefrom may be subsequently leased or rented to the person who owns or controls the

S-93

S-112, 1/89

DOR RESP LOWES'S 1095

117-174.249 CONT.

land on which the property is situate. Examples include, but are not limited to, building materials used in constructing grain storage tanks, silos, pre-engineered buildings and other structures.

Conversely, subject to the tax are proceeds from the sale or lease of a manufactured unit delivered and/or set in place on lands owned or controlled by a person other than the seller or lessor. Examples include, but are not limited to, mobile homes, manufactured classrooms and motel units.

117-174.250 RADIO AND TELEVISION STATIONS

Act 495 of the 1967 General Assembly [§12-35-550(26)] serves to exempt from the measure of the tax levied, assessed or payable, "The gross proceeds of the sale of electricity to radio and television stations for use in producing programs or broadcasting," and

"The gross proceeds of the sale of all supplies, technical equipment and machinery used by radio and television stations for use in producing programs or broadcasting. For the purpose of this subsection, radio, and television stations shall be deemed to be manufacturers."

In light of the last sentence hereinabove, another statutory exemption (§12-35-550(17)) is available. It reads that there is exempted from the measure of the tax levied, assessed or payable, "The gross proceeds of the sale of ...machines used in...compounding, processing and manufacturing of tangible personal property; provided that the term 'machines,' as used in this article, shall include the parts of such machines, attachments and replacements therefor which are used, or manufactured for use, on or in the operation of such machines and which are necessary to the operation of such machines and are customarily so used; but this exemption shall not include automobiles or trucks..."

An AM radio station is defined as a broadcasting station licensed by the Federal Communications Commission for the transmission of radiotelephone emissions primarily intended to be received by the general public and operated on a channel in the band 535-1605 kc/s. An FM radio station, including noncommercial educational radio stations, would come within the same definition except that it is operated on a channel in the band 88.1-107.9 mc/s. A television broadcasting station would also come within the same definition except that it is licensed to transmit both visual and aural radio telephone emissions and is to be operated in the 54-890 mc/s frequency.

SOUTH CAROLINA STATE REGISTER

**PUBLISHED BY
THE LEGISLATIVE COUNCIL
of the
GENERAL ASSEMBLY**

**STEPHEN T. DRAFFIN, DIRECTOR
LYNN P. BARTLETT, EDITOR**

**P.O. BOX 11489
COLUMBIA, SC 29211
TELEPHONE (803) 734-2145**

Published June 28, 2002

Volume 26 Issue No.6

**This issue contains notices, proposed regulations, emergency regulations, final
form regulations, and other documents filed in the Office of the Legislative
Council, pursuant to Article 1, Chapter 23, Title 1, Code of Laws of South
Carolina, 1976.**

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

DOR RESP LOWE'S 1816

SOUTH CAROLINA STATE REGISTER

An official state publication, the *South Carolina State Register* is a temporary update to South Carolina's official compilation of agency regulations--the *South Carolina Code of Regulations*. Changes in regulations, whether by adoption, amendment, repeal or emergency action must be published in the *State Register* pursuant to the provisions of the Administrative Procedures Act. The *State Register* also publishes the Governor's Executive Orders, notices or public hearings and meetings, and other documents issued by state agencies considered to be in the public interest. All documents published in the *State Register* are drafted by state agencies and are published as submitted. Publication of any material in the *State Register* is the official notice of such information.

STYLE AND FORMAT

Documents are arranged within each issue of the *State Register* according to the type of document filed:

Notices are documents considered by the agency to have general public interest.

Notices of Drafting Regulations give interested persons the opportunity to comment during the initial drafting period before regulations are submitted as proposed.

Proposed Regulations are those regulations pending permanent adoption by an agency.

Pending Regulations Submitted to the General Assembly are regulations adopted by the agency pending approval by the General Assembly.

Final Regulations have been permanently adopted by the agency and approved by the General Assembly.

Emergency Regulations have been adopted on an emergency basis by the agency.

Executive Orders are actions issued and taken by the Governor.

2002 PUBLICATION SCHEDULE

Documents will be accepted for filing on any normal business day from 8:30 A.M. until 5:00 P.M. All documents must be submitted in the format prescribed in the *Standards Manual for Drafting and Filing Regulations*.

To be included for publication in the next issue of the *State Register*, documents will be accepted no later than 5:00 P.M. on any closing date. The modification or withdrawal of documents filed for publication must be made by 5:00 P.M. on the closing date for that issue.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Submission Deadline	1/11	2/8	3/8	4/12	5/10	6/14	7/12	8/9	9/13	10/11	11/8	12/13
Publishing Date	1/25	2/22	3/22	4/26	5/24	6/28	7/26	8/23	9/27	10/25	11/22	12/27

REPRODUCING OFFICIAL DOCUMENTS

Documents appearing in the *State Register* are prepared and printed at public expense. Media services are encouraged to give wide publicity to documents printed in the *State Register*.

PUBLIC INSPECTION OF DOCUMENTS

Documents filed with the Office of the State Register are available for public inspection during normal office hours, 8:30 A.M. to 5:00 P.M., Monday through Friday. The Office of the State Register is in the Legislative Council, Fourth Floor, Reimbert C. Dennis Building, 1000 Assembly Street, in Columbia. Telephone inquiries concerning material in the *State Register* or the *South Carolina Code of Regulations* may be made by calling (803) 734-2145.

ADOPTION, AMENDMENT AND REPEAL OF REGULATIONS

To adopt, amend or repeal a regulation, an agency must publish in the *State Register* a Notice of Drafting; a Notice of the Proposed Regulation that contains an estimate of the proposed action's economic impact; and, a notice that gives the public an opportunity to comment on the proposal. If requested by twenty-five persons, a public hearing must be held at least thirty days after the date of publication of the notice in the *State Register*.

After the date of hearing, the regulation must be submitted to the General Assembly for approval. The General Assembly has one hundred twenty days to consider the regulation. If no legislation is introduced to disapprove or enacted to approve before the expiration of the one-hundred-twenty-day review period, the regulation is approved on the one hundred twentieth day and is effective upon publication in the *State Register*.

EMERGENCY REGULATIONS

An emergency regulation may be promulgated by an agency if the agency finds imminent peril to public health, safety or welfare. Emergency regulations are effective upon filing for a ninety-day period. If the original filing began and expired during the legislative interim, the regulation can be renewed once.

REGULATIONS PROMULGATED TO COMPLY WITH FEDERAL LAW

Regulations promulgated to comply with federal law are exempt from General Assembly review. Following the notice of proposed regulation and hearing, regulations are submitted to the *State Register* and are effective upon publication.

EFFECTIVE DATE OF REGULATIONS

Final Regulations take effect on the date of publication in the *State Register* unless otherwise noted within the text of the regulation.

Emergency Regulations take effect upon filing with the Legislative Council and remain effective for ninety days. If the original ninety-day period begins and expires during legislative interim, the regulation may be refilled for one additional ninety-day period.

SUBSCRIPTIONS

Subscriptions to the *South Carolina State Register* are available electronically through the South Carolina Legislature Online website at www.scsenate.sc.gov via an access code, or in a printed format. Subscriptions run concurrent with the State of South Carolina's fiscal year (July through June). The annual subscription fee for either format is \$95.00. Payment must be made by check payable to the Legislative Council. To subscribe complete the form below and mail with payment. Access codes for electronic subscriptions will be e-mailed to the address submitted on this form.

X-----X-----X

South Carolina State Register Subscription Order Form

Name		Title	
Firm			
Mailing Address			
Billing Address (if different from mailing address)			
Contact Person(s)		E-mail Address	
Phone Number		Fax Number	
Number of subscriptions: (Cost is \$95 per subscription. Checks payable to: Legislative Council)			
Electronic			
Printed			

Mail this form to:
South Carolina State Register
Lynn P. Bartlett, Editor
P.O. Box 11489
Columbia, SC 29211
Telephone (803) 734-2145

South Carolina State Register Vol. 26, Issue 6
June 28, 2002

DOR RESP LOWE'S 1819

TABLE OF CONTENTS

PART ONE MAILED UNDER SEPARATE COVER

REGULATIONS SUBMITTED TO THE GENERAL ASSEMBLY

Status and Legislative Review Expiration Dates	1
--	---

GOVERNOR'S EXECUTIVE ORDERS

No. 2002-11	Petition for Annexation, Georgetown County	3
No. 2002-12	Establish the Palmetto Greatest Generation Project Council.....	3
No. 2002-13	Mass Flown Half-Staff in Tribute to Michael J. Rao	4
No. 2002-14	Transportation of Plutonium on South Carolina Roads and Highways	5
	Prohibited.....	5

NOTICES

HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF

ERRATA: Doc. No. 2614, R.30-1, Statement of Policy (Instruction Line Correction).....	11
Doc. No. 2697, R. 61-30, Environmental Protection Fees (Instruction and Citation Correction).....	11

Cancellation and Rescheduling of Public Hearing on Document No. 2736, Air Pollution.....	7
Certification of Need.....	7
Maternal and Child Health Block Grant Public Hearing	12
Stroller Site Settlement - Carbene of America Corp	12
Stroller Site Settlement - Macalloy Corporation.....	14
State Underground Petroleum Environmental Response Bank (SUPERB).....	15

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

2003 Social Services Block Grant Pre-Expenditure Report	16
---	----

LABOR, LICENSING AND REGULATION, DEPARTMENT OF

Occupational Safety and Health Standards.....	19
---	----

NOTICES OF DRAFTING REGULATIONS

EDUCATION, BOARD OF

Textbook Samples, Test Security, Homebound Instruction, Special Education, Assessment Program	20
Early Childhood Programs, Career Centers, Graduation Requirements, Community Partnerships	20
Teacher Grants, Defined Program Grades 9-12, Comprehensive Planning, Accreditation Criteria, Deregulation.....	21

South Carolina State Register Vol. 26, Issue 6
June 28, 2002

DOR RESP LOWE'S 1820

Teacher Certification, Teacher Education Program Approval, Teacher Evaluation	22
TABLE OF CONTENTS	

HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF	
Office of Ocean and Coastal Resource Management	
Statement of Policy, Enforcement, Specific Project Standards for Tidelands and Coastal Waters (Docks and Bulkheads).....	22
Environmental Protection Fees.....	23
Statement of Policy, Specific Project Standards for Beaches and the Beach/Dune System, Activities Allowed Seaward of Baseline (Permitting of Groins Seaward of the Baseline).....	24
Activities Allowed Seaward of Baseline (Construction of Piers).....	24
REVENUE, DEPARTMENT OF	
Administrative Matters.....	25
Codification of Tax Regulations.....	25

PROPOSED REGULATIONS

EDUCATION, STATE BOARD OF	
Document No. 2744	Intervention Where Quality of Education in a Local School District Is Impaired..... 27
HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF	
Document No. 2743	Classified Water..... 28

FINAL REGULATIONS

ARCHIVES AND HISTORY, DEPARTMENT OF	
Document No. 2668	General Retention Schedule for State Personnel Records..... 33
EDUCATION, STATE BOARD OF	
Document No. 2684	Renewal of Credentials..... 36
Document No. 2682	Requirements for Initial Certification at the Advanced Level..... 39
Document No. 2679	Summer Programs..... 44
Document No. 2681	Policies and Procedures and Unit Standards for Teacher Education Programs..... 46
HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF	
Document No. 2720	Communicable Diseases..... 47
Document No. 2697	Coastal Zone - Applying for a Permit, Decision on a Permit..... 54
Document No. 2673	Environmental Protection Fees..... 58
Document No. 2735	Hazardous Waste Management..... 65
Document No. 2715	Infectious Waste Management..... 83
Document No. 2672	Retail Food Establishment Inspection Fees..... 86
Document No. 2670	Standards of Performance for Asbestos Projects..... 88

TABLE OF CONTENTS

PART TWO

FINAL REGULATIONS

HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF

Document No. 2646	Standards for the Permitting of Agricultural Animal Facilities	1
Document No. 2698	Standards for Stormwater Management and Sediment Reduction	111
Document No. 2719	Vital Statistics	113
Document No. 2721	Waste Combustion and Reduction	131

INSURANCE, DEPARTMENT OF

Document No. 2705	Deposits Required of Insurers	139
Document No. 2706	Health Maintenance Organizations	140
Document No. 2704	Salvage and Subrogation	149

LABOR, LICENSING AND REGULATIONS, DEPARTMENT OF

Document No. 2686	Recording and Reporting Occupational Injuries and Illnesses	149
-------------------	---	-----

LOTTERY COMMISSION

Document No. 2694	South Carolina Education Lottery	172
-------------------	--	-----

NATURAL RESOURCES, DEPARTMENT OF

Document No. 2710	Non-game and Endangered Species	187
-------------------	---------------------------------------	-----

REVENUE, DEPARTMENT OF

Document No. 2650	ABC Name and Cite Change	191
Document No. 2662	Administrative, License, Income and Property Tax	203
Document No. 2695	Alcoholic Beverage Regulations (Repeal)	217
Document No. 2651	Alcoholic Liquor Advertising	218
Document No. 2636	Sales, Property, Administrative, Estate, Video Game, Income Tax (Repeal) ..	219
Document No. 2658	Sales Tax	221

REGULATIONS SUBMITTED TO GENERAL ASSEMBLY 1

In order by General Assembly review expiration date
The history, status, and full text of these regulations are available on the
South Carolina General Assembly Home Page: www.scstatehouse.net

REG NO.	RAT. FINAL No. ISSUE	SUBJECT	EXP. DATE	AGENCY
2541	R109	SR25-7 Lie Comm Residential Care Facilities		Department of Health and Envir Control
2533	R111	SR25-9 Criminal Justice Information System		Law Enforcement Division
2607	R160	SR26-1 State Human Resources		Budget and Control Board
2557		SR26-2 Req for Additional Area of Certification		Board of Education
2581		SR26-2 Continuing Insurance Education		Department of Insurance
2600		SR26-2 Need-based Grants Program		Commission on Higher Education
2601		SR26-2 Palmetto Fellows Scholarship Program		Commission on Higher Education
2549		SR26-2 Types and Levels of Credential Classif		Board of Education
2602		SR26-2 Hunt Units and Wildlife Management		Department of Natural Resources
2566		SR26-4 Graduation Requirements		Board of Education
2616		SR26-4 Well Standards		Department of Health and Envir Control
2518		SR26-4 Perinatal Care		Department of Health and Envir Control
2618		SR26-4 Hunt Units and WMAs		Department of Natural Resources
2621		SR26-4 Retail Managers/Finance Managers		LLR: Manufactured Housing Board
2586		SR26-5 Definition of a Limousine		Public Service Commission
2613		SR26-5 Assessment Program		Board of Education
2526		SR26-5 Licensing Nonpublic Postsecondary Ed Instu		Commission on Higher Education
2614		SR26-5 Defin, Permits, Sis for Tidelands Coastal		Department of Health and Envir Control
2623	R 253	SR26-5 Standards for Permitting Body Piercing		Department of Health and Envir Control
2523		SR26-5 Nitrogen Oxides		Department of Health and Envir Control
2525		SR26-5 Student Loan Corp		Commission on Higher Education
2631		SR26-5 Staff Leasing Services		Department of Consumer Affairs
2540		SR26-5 Hazardous Waste management		Department of Health and Envir Control
2643		SR26-5 Operation of Health Maintenance Org		Department of Health and Envir Control
2637		SR26-5 Classified Waters		Department of Health and Envir Control
2615		SR26-5 Public Swimming Pools		Department of Health and Envir Control
2630		SR26-5 Drought Planning Response		Department of Natural Resources
2639		SR26-5 End-of-Course Tests		Board of Education
2664	R 279	SR26-5 Requirements for Limited License		LLR: Board of Medical Examiners
2678	R 197	SR26-5 SC National Guard Student Loan Prog		Commission on Higher Education
2660	R 243	SR26-5 Standards for Licensing Hospices		Department of Health and Envir Control
2657		SR26-5 Seasons, Limits, Methods, Use WMA's		Department of Natural Resources
2685		SR26-5 Real Property Owned by Department		Department of Natural Resources
2661		SR26-5 State Primary Drinking Water		Department of Health and Envir Control
2671		SR26-5 Standards for Wastewater Facility Construction		Department of Health and Envir Control
2690	R 288	SR26-5 Trout Harvest		Department of Natural Resources
2667	R 225	SR26-4 General Retention Schedule for State Financial Records		Department of Archives and History
2668		SR26-6 General Retention Schedule for State Personnel Records		Department of Archives and History
2669	R 226	SR26-4 General Retention Schedules for County Records		Department of Archives and History
2666	R 224	SR26-4 General Retention Schedules for State Administrative Records		Department of Archives and History
2681		SR26-6 Teacher Education Program Approval		Board of Education
2631		SR26-6 Alcoholic Liquor Advertising		Department of Revenue
2630		SR26-6 ABC Name and Cite Change		Department of Revenue
2662		SR26-6 Administrative, License, Income and Property Tax		Department of Revenue
2695		SR26-6 (Repeal) Alcoholic Beverage Regulations		Department of Revenue
2636		SR26-6 (Repeal) Sales, Prop, Admin, Estate, Video Game, Income Tax		Department of Revenue
2658		SR26-6 Sales Tax		Department of Revenue
2698		SR26-6 Standards for Stormwater Management and Sediment Reduction		Department of Health and Envir Control
2672		SR26-6 Retail Food Establishment Inspection Fees		Department of Health and Envir Control
2697		SR26-6 Environmental Protection Fees		Department of Health and Envir Control
2670		SR26-6 Standards of Performance for Asbestos Projects		Department of Health and Envir Control
2679		SR26-6 Summer Programs		Board of Education
2682		SR26-6 Requirements for Initial Certification at the Advanced Level		Board of Education
2694		SR26-6 Education Lottery		Education Lottery Commission
2684		SR26-6 Renewal of Credentials		Board of Education
2704		SR26-6 Salvage and Subrogation (Repeal)		Department of Insurance
2705		SR26-6 Deposits Required of Insurers		Department of Insurance

South Carolina State Register Vol. 26, issue 6
June, 28, 2002

DOR RESP LOWE'S 1823

2 REGULATIONS SUBMITTED TO GENERAL ASSEMBLY

DOC NO.	RAI FINAL NO. ISSUED	SUBJECT	EXP DATE	AGENCY
2706		SR26-6 Health Maintenance Organizations		Department of Insurance
2713		SR26-6 Environmental Protection Fees		Department of Health and Envir Control
2746		SR26-6 Standards for the Permitting of Agricultural Animal Facilities		Department of Health and Envir Control
2686	R 391	SR26-6 Recording and Reporting Occupational Injuries and Illnesses		Department of Labor, Licensing and Regulation
2627	R 267	SR26-5 General Family Independence Programs		Department of Social Services
2687	R 246	SR26-5 General Food Stamp Program		Department of Social Services
2610		In Car Camera Videoing - Equipment		Department of Public Safety
2663		Bonds for Water and Wastewater Utilities		Public Service Commission
2710	R 394	SR26-6 Non-Game and Endangered Species		Department of Natural Resources
2711		Foster Care		Department of Social Services
2723		School Incentive Reward Program		Board of Education
2643	R 450	Requirements for Trade and Industrial Certification		Board of Education
2720	R 366	SR26-6 Communicable Diseases		Department of Health and Envir Control
2719	R 323	SR26-6 Vital Statistics		Department of Health and Envir Control
2721	R 368	SR26-6 Waste Combustion and Reduction		Department of Health and Envir Control
2714	R 367	SR26-6 Infectious Waste Management Regulations		Department of Health and Envir Control
2709		Nonpublic Postsecondary Institutions		Commission on Higher Education
2712		Residential Group Care Organizations for Children		Department of Social Services
2729		Fees		I.L.R. Board of Pharmacy
2731		Diseases and Health Documentation		Clemson University
2727		Witchweed Characterization		Clemson University
2733		Examination		I.L.R. Board of Chiropractic Examiners
2732		Advertising and Solicitation		I.L.R. Board of Chiropractic Examiners
2730		Criminal Justice Academy Training Regulations		Department of Public Safety

REQUESTED TO WITHDRAW (120 DAY REVIEW PERIOD TOLLED)

DOC NO.	DATE	SUBJECT	AGENCY
2753	4/24/01	Food Stamp Program	Department of Social Services

RESOLUTION INTRODUCED TO DISAPPROVE (120 DAY REVIEW PERIOD TOLLED)

DOC NO.	DATE	SUBJECT	AGENCY
2360	1/17/01	LIFE Scholarship	Commission on Higher Education
2629	4/6/02	Specific Project Study for Tatelands Coastal	Department of Health and Envir Control

WITHDRAWN:

DOC NO.	DATE	SUBJECT	AGENCY
2764	1/09/02	Accreditation Criteria	Board of Education
2761	3/27/02	Highway Patrol, Wrecker Regulations	Department of Public Safety
2610	4/12/02	Percentage Storm or Wind/Hail Deduct	Department of Insurance
2722	4/23/02	Team Physicians Limited Practice Permitted	I.L.R. Board of Medical Examiners

NOTE: 2003 EXPIRATION DATES WILL BE CALCULATED AT A LATER DATE.

FINAL REGULATIONS 203

7-92. Sales by Retailer to Another Retailer for Resale.

It shall be unlawful for a person who holds a retail beer and wine permit or a retail beer permit to sell to any other holder of a retail beer and wine permit or retail beer permit for the purpose of resale of beer and/or wine.

Every holder of a valid wholesale beer and wine permit shall service every holder of a valid retail beer, or beer and wine permit, with store-door delivery on at least a weekly basis within the territory designated by the producer. The violation of this regulation shall result in the suspension or revocation of the wholesale beer and wine permit, or a monetary penalty in lieu thereof.

7-93. Beer and Wine Permit and Sale and Consumption License Must be in the Same Name.

Where a person applies for or holds a beer and wine permit or a license for the sale and consumption of alcoholic beverages in sealed containers of two nunces or less, or both, both the permit and the license will be required to be applied for in the same name.

7-95. Refund on Permit Applications.

When an application for a beer or beer and wine permit is approved by the South Carolina Department of Revenue and is not used, a request for the refund of the application fee must be received by the department within the fiscal year for which the permit was issued, and in no event will a refund of an application fee be made unless a request is received by the department within sixty (60) days of the date the permit was issued. An Agent of the department or the State Law Enforcement Division must verify in writing that the permit was not used.

7-99. Signs Required Under Section 61-4-70 and 61-6-1530; Size and Lettering.

The lettering on the signs required under Section 61-4-70 and 61-6-1530 shall be no smaller than one-half inch and the sign shall be posted in a conspicuous place behind the bar if the permit is for on-premise consumption or at the check-out counter if the permit is for off-premise consumption. Failure to post this sign in a proper manner shall constitute a violation against the permit.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with the proposed regulation.

Document No. 2662
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

Regulations:

ADMINISTRATIVE REGULATIONS	
117-1	Supplying of Identifying Numbers
117-2	Retention of Books and Records and the Use of Microfilm Reproduction of Books and Records
ALCOHOLIC LIQUOR, BEER AND WINE AND LICENSE	

South Carolina State Register Vol. 26, Issue 6
June 28, 2002

DOR RESP LOWE'S 2127

204 FINAL REGULATIONS

TAX REGULATIONS	
117-12	Collection and Payment of Tax and the Maintaining of Records
117-20	Sales or Exchanges with other Wholesalers
117-31	Change in Distributors
117-38	Soft Drinks - Exemptions
117-40	Classification of Industrial Customers
INCOME TAX REGULATIONS	
117-61	Tax Liability of Stockholders
117-73	Related Expenses Defined
117-74	Allocation of Out-of-State Income and Losses
117-81	Tax Credit to Residents of this State Upon Income from a Partnership Taxed in Another State
117-83	Copies of Withholding Statements
117-87.17	Unrelated Business
117-87.20	Information Reports
117-87.32	Active Duty Military Pay
117-88.1	Determining Net Income of Building and Loan Associations
117-88.2	Earnings Paid to Shareholders
117-89.1	Annual Reports of Public Utilities
117-91.1	Nonresident Employees Operating Common Carriers
117-91.7	The One-half Rule
117-92.1	Entire Net Income
117-92.3	Federal Income Tax Deduction
PROPERTY TAX REGULATIONS	
117-115	General Requirements for Ratio Study
117-116	Form to Provide Tax Commission with Information for Ratio Studies
117-124.2	Licensed Automotive Vehicles and Airplanes
117-124.3	Manufacturing Plants Constructed Pursuant to the Industrial Revenue Bond Act
117-126	Use Value Procedure for Cropland and Timberland
117-127	Computation of Index of Taxpaying Ability for School District

Synopsis:

The South Carolina Department of Revenue is considering amending various administrative, license tax, income tax, and property tax regulations to change references to the former tax commission to the Department of Revenue and to correct references to various code sections that have been changed due to recodification of administrative and income tax laws in Title 12.

Instructions: Amend the following Regulations to read:

FINAL REGULATIONS 205

Text:

ADMINISTRATIVE REGULATIONS

117-1. Supplying of Identifying Numbers.

Any person required to make a return, statement, or document to the South Carolina Department of Revenue shall include in such return, statement, or other document such identifying numbers as may be prescribed for securing proper identification of such person.

117-2. Retention of Books and Records and the Use of Microfilm Reproduction of Books and Records.

For the purpose of the administration of taxes and licenses imposed under the provisions of Title 12, every person liable for taxation is required to keep such permanent books of account or records including inventories, as are sufficient to establish the amount of gross income, the deductions, required to be shown on any return and such other matters as are required to be shown on any return required.

Such books or records are required to be kept at all times available for inspection by agents or auditors of the South Carolina Department of Revenue, and shall be retained for at least four years after the return was filed or due to be filed, whichever is later.

ALCOHOLIC LIQUOR, BEER AND WINE AND LICENSE TAX REGULATIONS

117-12. Collection and Payment of Tax and the Maintaining of Records.

The General Assembly in Section 12-33-250, provided for the collection and payment of the license taxes levied by Sections 12-33-230 and 12-33-240 in the same manner and under the same conditions as the taxes imposed by Sections 12-33-410 and 12-33-460. The payment of taxes levied by Sections 12-33-410 and 12-33-460 is provided for by Section 12-33-480 and requires the same on or before the twentieth day of the month next succeeding the month in which the tax accrues. A report is required on or before the twentieth of each month on forms prescribed by the South Carolina Department of Revenue stating the number of cases of alcoholic liquors sold during the preceding month.

The licensed wholesaler must maintain adequate and complete records. Such records shall be available for examination and review by the department.

117-20. Sales or Exchanges with other Wholesalers.

Each wholesale beer and wine dealer shall report all sales purchases or exchanges of their products with other wholesale dealers to the South Carolina Department of Revenue on such forms as may be prescribed by the department. Such information must be reported to the department along with the wholesale dealer's monthly report not later than the 20th day of the month following the month in which the sale purchase or exchange occurred. Failure to timely report such information in full as provided herein for any reason shall constitute a violation of this Regulation for which the department may suspend or revoke all permits held by such dealer or impose a monetary penalty of not less than \$20.00 nor more than \$100.00 upon the holder thereof.

*South Carolina State Register Vol. 16, Issue 6
June 28, 2002*

DOR RESP LOWE'S 2129

206 FINAL REGULATIONS

117-21. Change in Distributors.

It has been called to the attention of the South Carolina Tax Department of Revenue by certain members of the General Assembly, who have filed statements thereabout with the said department, that it was not the intention of the South Carolina General Assembly in enacting Section 12-21-1330 of the 1976 Code to require the filing of the ninety day written notice with the department by manufacturers and wholesalers prior to any change in their distributors, or in the territories of their distributors, where both the manufacturer and the wholesaler mutually agree in writing to waive the said ninety day written notice requirement.

Based upon the aforementioned declaration of legislative intent pertaining to the enactment of Section 12-21-1330, the South Carolina Department of Revenue, in instances where both the manufacturer affected and the wholesaler affected mutually agree in writing to waive the aforesaid ninety day notice prior to change in their distributors or in the territory of their distributors, will consider the filing of the waiver agreement with the department sufficient compliance with the provisions of said Section 12-21-1330.

Until the mutually executed waiver agreement is duly filed with the department, and in form and content acceptable to the department, the waiver of the notice requirements of Section 12-21-1330 shall not become effective.

117-38. Soft Drinks--Exemptions.

Any "bottled soft drink" for which exemption is claimed under Section 12-21-1880 of the 1976 South Carolina Code of Laws must be registered with the South Carolina Department of Revenue. No such drinks shall be entitled to the exemption until such registration shall have been accomplished as prescribed herein. Registration shall be accomplished by the filing of an affidavit of exemption by the bottler on forms to be prescribed by the department. In addition to the affidavit to be filed by the bottler, such bottler shall obtain and file simultaneously an affidavit from his franchising manufacturer on forms to be prescribed by the department.

As a further requirement to qualify for the exemption the "bottled soft drink" lid or crown, or in the instance of bottled soft drinks offered for sale in sealed cartons or containers, must have the name and address of the bottler clearly indicated thereon.

All "bottled soft drinks", which are not registered and for which the required affidavits of exemption are not on file, and which do not show the name and address of the bottler in the manner prescribed herein, or which do not have affixed thereto the required revenue stamps, lids, or crowns, shall be subject to confiscation.

117-49. Classification of Industrial Customers.

Hereafter, the South Carolina Department of Revenue will use Division (D), Manufacturing, Standard Industrial Classification Manual, Bureau of the Budget, 1967, as a guide to classify "industrial customers", as such term is used in Section 12-23-10 of the 1976 Code.

Persons engaged in the business of manufacturing, generating and selling electric power must furnish to the department a list, on or before January 31 and July 31 of each year, of industrial customers for which an exemption is claimed for the preceding periods, June through December and January through June, respectively. Such lists must show the name, address, KWH consumption and the standard two-digit classification code as provided in the Standard Industrial Classification Manual.

INCOME TAX REGULATION

117-61. Tax Liability of Stockholders.

When a business continues operating, after cancellation of the corporation charter as a result of non-payment of license fee, the stockholders are required to file a Partnership Return, and each stockholder/partner is liable for income tax on his individual share of the profits, as provided in Section 12-6-510.

117-73. Related Expenses Defined.

The term "related expenses" as used in Section 12-6-2220 shall mean any cost incurred, directly or indirectly, in connection with investments for the production of income or future income which is or will be specifically and directly allocable under this section or costs incurred in the acquisition, sale or exchange of real, tangible or intangible property.

117-74. Allocation of Out-of-State Income and Losses.

Income or loss realized by resident individuals or partnerships from an established business, or from the lease or rental of tangible personal property or real property, the situs of which is in another state, shall be allocated to the state in which the business or property is located. Except, income of a resident individual or partnership, derived from personal services, shall be allocated to this State as provided in Section 12-6-2220(6).

However, in the case of a resident individual or partnership, conducting a business of a unitary or homogenous nature, partly within and partly without this State, such income or loss shall be apportioned in accordance with the provisions of Sections 12-6-2250 through 12-6-3360.

117-81. Tax Credit to Residents of this State Upon Income from a Partnership Taxed in Another State.

Where an individual resident of this State is a partner of a partnership rendering personal services in South Carolina and another State, the distributive share of the partnership income received by the resident partner is taxable in this State and he will be allowed the tax credit provided in Section 12-6-3400.

117-83. Copies of Withholding Statements.

The copy of the withholding statement furnished to the employee by the employer, as required under Section 12-8-1540, designated for attachment to the employee's income tax return, must be attached to the income tax return of the employee. Failure to comply may result in the non-issuance of a refund.

117-87.17. Unrelated Business.

The phrase "transacting or conducting his business partly within and partly without this State" as used in Section 12-6-2210, is applicable to a single business operation, which is unitary or homogenous and is carried on both within and without the State. A taxpayer operating two or more unrelated businesses, each of which is entirely within and without the State, shall not be subject to the provisions of this section, but shall determine the South Carolina net income on the basis of separate accounting. A taxpayer operating a unitary or homogenous business within and without the State and an unrelated business either entirely within or without shall be subject to the allocation formulas with respect to the unitary or homogenous business but not with respect to the unrelated

208 FINAL REGULATIONS

business. The income from the unrelated business shall be directly assignable to the State where such business is conducted.

117-87.20. Information Reports.

Information reports required under Section 12-6-4950, shall not apply to payments made to banks or to any organization exempt from South Carolina income tax, under Section 12-6-550.

117-87.32. Active Duty Military Pay

1. Military pay in general: Under the provisions of Sections 12-6-510, 12-6-560, and 12-6-570, military pay is reportable for South Carolina income tax purposes.

2. Nonresident armed services personnel: Under the Soldiers' and Sailors' Civil Relief Act, members of the armed services, who are legal residents of other states stationed within South Carolina by virtue of military orders, are not subject to South Carolina income tax on their service pay. They are, however, subject to tax on any other income earned in South Carolina which would be taxable to a nonresident. Income earned in South Carolina by wives of servicemen is taxable to South Carolina.

The personal exemptions and deductions of a nonresident serviceman's wife must be prorated in ratio to her adjusted gross income within this State to her entire adjusted gross income wherever earned. She would not be entitled to claim exemptions for dependents unless she could prove that she furnishes more than fifty percent of their support for the entire year.

There is nothing in the Soldiers' and Sailors' Civil Relief Act or in the South Carolina statutes which would prevent a serviceman from changing his legal residence. To effect a change of legal residence, however, there must not only be an intention of making the new location the domicile of the serviceman, but also there must be the factual establishment of a domicile in the new location.

The establishment of a permanent residence (or domicile) in a new state ordinarily requires physical presence of the person in the state long enough to establish evidence of having taken up residence in the state. Some of the tests or factors to consider in determining such permanent residence (or domicile) include the following:

- (a) Place of birth.
- (b) Permanent residence of father.
- (c) Family connections, close friends.
- (d) Address given for military purposes.
- (e) Payment of state bonus (in most cases when a state pays a bonus to a serviceman, the serviceman must be a permanent resident to be eligible).
- (f) Civic ties, church membership, club or lodge membership.
- (g) Bank account or business connections.
- (h) Payment of state income taxes.
- (i) Continuous car registration and driver's license.
- (j) Listing of "legal" or "permanent" address on Federal tax returns.
- (k) Voting by absentee ballot.
- (l) Occasional visits or spending one's leave "at home."
- (m) Ownership of a home.
- (n) Execution of approved certificates or other statements indicating permanent residence.
- (o) Expression of intention.

Our administrative policy is in accord with the military services and the courts, including Federal courts, which, when arbitrating disputes over residency, have consistently held that a legal residence (or domicile) is not abandoned until a definite residence is established elsewhere.

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

DOR RESP LOWE'S 2132

FINAL REGULATIONS 209

3. Resident armed services personnel: For the purpose of reporting military income to South Carolina, the word "resident" means an individual who is a legal resident of this State, whether stationed in this State or in some other State or country. Unless he submits evidence that he has established legal residence in another State or territory and abandoned any domicile in this State, an individual will be presumed to be a resident of South Carolina if he entered military service while a resident of this State. As a resident, such individual will be required to report income from all sources to South Carolina.

The following may be used as a guide to determine the income tax liability of those servicemen determined to be South Carolina residents:

(a) Taxable service income: Taxable service income includes base pay, longevity pay, flight pay, foreign service pay, submarine pay, jump pay, and re-enlistment pay bonus.

(b) Exempt service income: Income not taxable to servicemen includes enlisted men's subsistence and quarters allowances, officers' subsistence and quarters allowances, family allowances under Servicemen's Dependency Allowance Act.

(c) Allowable deductions: Deductions may be claimed by servicemen for insignia, swords, excessive cost of caps (for naval commanders, army and air force colonels, and officers of higher rank), and cost of altering uniforms necessitated by change in rank. (The expenses for which a deduction is allowed are only those expenses actually paid for which no reimbursement is received. The cost of uniforms and cleaning of same is not allowed to members of the armed forces on full-time duty on the basis that the uniform replaces ordinary street clothes and as such is a personal expense.)

(d) Non-deductible items: In the case of individuals on full-time duty, no deduction is allowed for such items as uniforms, fatigues, laundering or cleaning, ordinary tailoring of uniforms.

117-88.1. Determining Net Income of Building and Loan Associations.

In accordance with Section 12-13-30 any additions to reserves which are required by law, regulation or direction of appropriate supervisory agency must be allowed as a deduction in determining net income but the burden is upon the savings and loan association and/or building and loan association to show what the regulatory agency required.

117-88.2 Earnings Paid to Shareholders

For the purposes of Section 12-13-20, a deduction shall be allowed for earnings paid to shareholders in an amount equal to the earnings actually paid out and/or credited to each shareholder's account. Earnings credited to a reserve account for future payments shall not qualify for this deduction.

117-89.1. Annual Report of Public Utilities.

Gross receipts, as used in Section 12-20-100, shall include all receipts from operations within the State, and also other profit and loss items with a local situs. Intangible income from intangibles used in the conduct of the business within this State shall be included in gross receipts.

117-91.1. Nonresident Employees Operating Common Carriers.

Nonresident employees engaged in the actual operation of common carriers moving from a point without South Carolina into or through the State and return, shall not be deemed to have earned an income within the meaning of Chapter 6, with respect to their compensation for personal services upon such common carriers.

117-91.7. The One-half Rule.

A particular employee may receive wages subject to withholding and also remuneration that is exempt from withholding. In such a case all remuneration paid during the payroll period is treated alike; that is, it is all treated

*South Carolina State Register Vol. 26, Issue 6
June 29, 2002*

210 FINAL REGULATIONS

as wages on which withholding is required, or it is all treated as exempt from withholding. The following rules apply:

(1) If one-half or more of any payroll period (not in excess of 31 days) is spent in earning wages subject to withholding, then withholding is required on all remuneration paid to the employee (including the "exempt" remuneration).

(2) If more than one-half of any payroll period (not in excess of 31 days) is spent in earning exempt remuneration described in Section 12-8-320, then no withholding is required on any wages paid to the employee.

117-92.1. Entire Net Income.

The term "entire net income" as used in Section 12-11-20 shall include income derived from any source whatsoever including interest on obligations of the United States, the United States Government or its possessions or of any state and any political subdivision thereof.

117-92.3. Federal Income Tax Deduction.

Banks reporting on a cash basis may deduct Federal income estimated tax payments in the year in which they are paid.

Cash basis banks using a method other than above may convert by using ten year conversion period as permitted under Regulation 117-92.2.

PROPERTY TAX REGULATIONS

117-115 General Requirements for Ratio Study.

SECTION 1. General Requirements. In accordance with Act 208, the South Carolina Department of Revenue shall annually make a ratio study of all the counties in the state to determine if the level of appraisal and/or assessment and the degree of equity has been achieved as required by law. This information shall be obtained initially from the assessor and field checked when necessary by personnel from the department. The sales that best reflect market value sales will be used to make an analysis to determine the level of appraisal and/or assessment and the degree of equity. If a county has a median appraisal level for all property as a whole or any class higher than 105 percent or lower than 80 percent of fair market value, it shall be deemed unacceptable by the department. If the index of inequality reaches a rating of higher than 15 percent for the county as a whole or any class of property, it shall be deemed unacceptable by the department. However, in the classification of agricultural when there is an insufficient number of market sales to determine the level of appraisal or the index of inequality, the department shall make a determination as to whether or not reassessment is required.

SECTION 2. Average Appraisal. The median shall be the criteria to determine the level of appraisal or assessment for all property as a whole or for any class.

SECTION 3. Index of Appraisal or Assessment Inequality. The index of inequality is defined as: one half the difference between the ratio of the third and first quartile values over the median ratio.

$$1/2(Q3 - Q1)$$

Median

The answer when computed is registered as a percent. Whenever this formula is used on all property as a whole or any class with a rating above 15 percent, it shall be deemed unacceptable by the department.

*South Carolina State Register Vol. 26, Issue 6
June 28, 2012*

FINAL REGULATIONS 211

SECTION 4. Appraisals in Lieu of Sales. Whenever a county lacks sufficient market value sales to make an accurate ratio study for the county as a whole or any class, the department shall make appraisals of real property which shall be used in lieu of sales in ascertaining level of assessment and the degree of equity.

SECTION 5. Valuation of Agricultural Property Based on Use. The department shall make studies to determine if agricultural real property is being appraised based on use as prescribed by law. The department shall make necessary studies to estimate what the market value of agricultural real property is when the highest and best use is for agricultural purposes.

SECTION 6. Counties' Failure to Meet the Requirements of the Law. Ratio studies will be made from market value sales taking place from Jan. 1 through Dec. 31 of each year and the county shall be notified of the findings of the ratio study on or before June 1.

When a county fails to meet the standards herein prescribed, the department shall notify the county assessor and governing body by June 1 that the county fails to meet the standards and that a reassessment program must be immediately initiated which must be completed within two years from the date of the notice or unless a one-year extension is granted within the two-year period because of extreme circumstances. All corrections in market sales reported for the preceding calendar year must be made to the department on or before March 21 of the year in which the reassessment program is to be implemented.

A failure to implement an acceptable reassessment program by June 1 of the year in which implementation of the program is required will mandate an order to the county auditor to abate or reduce the assessed value of all other classes of property at the level of assessment of the real property included in the program.

117-116 Form to Provide Department of Revenue with Information for Ratio Studies

Under the authority provided for in Section 12-4-550(1) of the 1976 Code, all counties shall furnish to the South Carolina Department of Revenue the information provided for on forms furnished by the department except for transfers which involve a true consideration of less than \$100 and sales of properties that the sale price does not include the same land area and improvements as shown on the assessment roll or appraisal record. This information shall be forwarded to the department within 45 days after the deed has been recorded commencing with all deeds recorded after Dec. 31, 1975.

Effective Jan. 1, 1988, the information furnished shall be on forms provided by the department or in an electronic form such as a computer tape that is approved by the department. The county assessor shall furnish the information for all real property transfers except transfers which are by death or time share properties. The information shall be furnished to the department on a monthly basis by the last day of the following month. However, if the information is furnished to the department in electronic form such as a computer tape that is approved by the department it shall be furnished to the department for each calendar year on or before the following Jan. 31 next succeeding. If the county wishes to furnish this information more frequently, they may do so. The following information shall be furnished by the assessor to the department when available.

- 1.County
- 2.Deed book and page
- 3.Seller, Mailing Address and Social Security or Federal Identification Number
- 4.Purchaser and mailing address
- 5.Date of sale
- 6.Tax district and school district
- 7.Total consideration - sale price
- 8.Number of acres
- 9.Number of lots
- 10.Improved or unimproved

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

212 FINAL REGULATIONS

11. Tax map number
12. Major legal classification at time of transfer (residential, agricultural, all other, department jurisdiction, manufacturing or utility, government or exempt)
13. Appraised value (market value) - land, improvements, total-condominiums and property with common areas, only the total is required.
14. Appraised use value (if applicable)
15. Appraisal district (optional)
16. Sub-classification (optional)
17. If it split off another parcel
18. Indicate if new owner might qualify to be exempt
19. Indicate if the sale is a true sale (market value). If no, why?

The assessor will indicate one of the following reasons:

- a. What sold does not match the appraisal record
- b. Family sale
- c. Gift
- d. Personal or other property included
- e. Mortgage assumption cannot be determined
- f. Foreclosure sale
- g. Partial interest
- h. Contract sale or bond for sale (if old)
- i. Other (with explanation)

117-124.2 Licensed Automotive Vehicles and Airplanes.

The return of property to the South Carolina Department of Revenue for property assessment purposes shall not include licensed automotive vehicles or airplanes. Such licensed automotive vehicles and airplanes shall be returned to local county authorities for property assessment purposes.

For the purpose of this regulation, "licensed automotive vehicles" means vehicles that are licensed by the South Carolina Department of Public Safety as provided by law.

117-124.3 Manufacturing Plants Constructed Pursuant to the Industrial Revenue Bond Act.

The lessee of all manufacturing plants constructed pursuant to the Industrial Revenue Bond Act, Act No. 103, 55, Statutes at Large, 120, shall file a return with the South Carolina Department of Revenue in the same manner as if owned by the lessee. The department shall value and calculate an assessment for the manufacturing plant in the same manner as if owned by the lessee and furnish the assessment to the county in which it is located as information so that the county, school districts and other political units may determine such rental charge as required by law which would be equivalent to the ad valorem tax that would result if such property were privately owned.

117-126 Use Value Procedure for Cropland and Timberland.

Act 618 of 1976, provides that implementation of the use value procedures for timberland and cropland, as provided in Section 12-43-220 of the 1976 Code, as amended, shall be the responsibility of the South Carolina Department of Revenue. Under this authority, the department declares the use of its Use Value Manual to be mandatory with respect to its use by county assessors for assessment of cropland and timberland. The manual must be used exactly as furnished, except as provided in this regulation.

The following schedules of values for cropland and timberlands, and the Interim Use Value Procedure are made a part of this regulation.

*South Carolina State Register Vol. 26, Issue 6
June 29, 2012*

CROPLAND

Cropland has been separated into seven production classes. Section 12-43-220(d) of the 1976 Code, as amended, provides for the valuation of cropland at its fair market value for such agricultural use by the capitalization of typical net income. The procedure used to capitalize typical net income is as follows:

(1) Cropland is valued based on production levels for the different soil types using corn and soybeans as the only crops. The levels of production for classes one through five were obtained from the Soil Conservation Service Publication, National Cooperative Soil Survey, adjusted for typical yields, as required by Section 12-43-220(d) of the 1976 Code, as amended.

The following yields are established as representing typical production levels:

Class 1	36 Bushels Soybeans 88 Bushels Corn
Class 2	32 Bushels Soybeans 80 Bushels Corn
Class 3	28 Bushels Soybeans 72 Bushels Corn
Class 4	26 Bushels Soybeans 68 Bushels Corn
Class 5	24 Bushels Soybeans 64 Bushels Corn

Class 6 Insufficient Returns

Class 7 Saltwater Marsh

(2) The price per bushel of corn and soybeans was obtained from the South Carolina Crop and Livestock Reporting Service for the years 1976, 1977 and 1978.

(3) The production levels multiplied by the prices per bushel resulted in the average gross income for corn and soybeans for an acre of cropland.

(4) Expenses were then subtracted from the gross income to arrive at net income. The various expenses are as follows:

(a) Variable costs were obtained from Clemson University. These are general farming expenses and fertilizer.

(b) Fixed costs of the farm operation were also obtained from Clemson University.

(c) An overhead charge was used based on 8 % of the variable cost listed in (a). This percentage was based on a study made by Clemson University.

214 FINAL REGULATIONS

(d) A management cost was used based on 10 percent of the variable, fixed and overhead cost as outlined in (a), (b) and (c) above. This percentage was derived from the 1979 publication Cost of Producing Selected Crops.

These four expense categories were deducted from gross income to arrive at net income.

(5) The last step in the procedure is to capitalize net income into value by use of a capitalization rate which is composed of the following:

(a) An interest rate which is the average coupon rate of all bonds which the Federal Land Bank of Columbia has outstanding for the crop years used in obtaining prices. (See (2) above.) This component is defined in Section 12-43-220(d).

(b) A local property tax component was derived by using the average millage rate for the crop years used (see (2) above) multiplied by the assessment ratio.

(c) A risk component of 15 percent was used which is equivalent to a complete crop loss every 6 2/3 years.

(d) An illiquidity component of .3 percent was used and was recommended by Clemson University.

The capitalization rate is determined by adding items (a), (b) and (d) and by application of the risk component in (c).

In order to reflect market value, the variable factors for prices (item (2)), expenses shown in item (4) (a) and (b), and factors of the capitalization rate shown in item (5) (a) and (b) shall be adjusted as often as the department deems necessary, but no less than every three years. When it is necessary to adjust these factors, the department shall adjust the values set forth in Schedule 1, accordingly.

No other factors listed above may be adjusted without an amendment to the regulation.

A listing of the soil types with the appropriate class designated is shown in the attached appendix. The following schedule includes a low value, the average and a high value for each class. The average must be used except when written justification for a different value is made on the property record card or the appraisal card. In no event, however, may the value be less than the low value nor above the high value. Variables, including field size, ingress and egress and locations would be among the factors which may contribute to a situation requiring an adjustment to the average.

FINAL REGULATIONS 215

SCHEDULE 1

CROPLAND VALUE PER ACRE

SOIL CLASS	VALUE RANGE AVERAGE		
	Low	Average	High
1	410	445	475
2	275	300	320
3	175	190	210
4	120	130	140
5	60	70	80
6	40	50	60
7	10		

Timberland has been separated into seven (7) production classes in each of four provinces, as outlined in the map which follows Schedule 2. The counties within each province shall be shown in the manual. The classes were determined by the site index for various soils as published by the Soil Conservation Service in the National Cooperative Soil Survey.

Section 12-43-220(d) of the 1976 Code, as amended, provides for the valuation of timberland at its fair market value for such agricultural use by the capitalization of typical net income. The procedure used to capitalize typical net income is as follows:

(1) Timberland is valued based on the potential yield of the timberland site measured by the capability of the soils to produce timber with good management.

The following yields are established as representing typical production levels:

	<u>Site Index</u>	<u>Cords Per Acre</u>
Class 1	96+	1.7
Class 2	86-95	1.5
Class 3	76-85	1.2
Class 4	66-75	1.0
Class 5	51-65	.8
Class 6	Partially Suitable for Timber	
Class 7	Saltwater Marsh	

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

216 FINAL REGULATIONS

(2) The weighted price per cord was obtained from Volumes and Stumpage Values of Forest Products by Counties for 1976, 1977 and 1978.

(3) The production levels multiplied by the weighted price per cord resulted in the average gross income per acre of timberland.

(4) The only expense which was used to determine net income was the management cost per acre. A cost of \$2.75 per acre was used.

(5) The last step in the procedure is to capitalize net income into value by use of a capitalization rate which is composed of the following:

(a) An interest rate which is the average coupon rate of all bonds which the Federal Land Bank of Columbia has outstanding for the crop years used in obtaining prices. (See (2) above.) This component is defined in Section 12-43-220(d).

(b) A local property tax component was derived by using the average millage rate for the crop years used (See (2) above) multiplied by the assessment ratio.

(c) A risk component of 6 2/3 percent was used which is equivalent to a loss every 15 years.

(d) An illiquidity component of .3 percent was used and was recommended by Clemson University.

The capitalization rate is determined by adding items (a), (b) and (d) and by application of the risk component in (c).

In order to reflect market value, the variable factors for prices (item (2)); expense (item (4)), and factors of the capitalization rate shown in item (5)(a) & (b) shall be adjusted as often as the department deems necessary, but no less than every three years. When it is necessary to adjust these factors, the department shall adjust the values set forth in Schedule 2, accordingly. No other factors listed above may be adjusted without an amendment to the regulation. The manual will contain details of the methodology for arriving at the final values. A listing of the soil types with the appropriate class designated is shown in the attached appendix. The following schedule includes a low value, the average and a high value for each class. The average must be used except when written justification for a different value is made on the property record card or the appraisal card. In no event, however, may the value be less than the low value nor above the high value. Variables, including field size, ingress and egress and location, would be among the factors which may contribute to a situation requiring an adjustment to the average.

117-127 Computation of Index of Taxpaying Ability for School District.

Section 59-20-20 of the 1976 Code as amended, requires the South Carolina Department of Revenue to compute the index of taxpaying ability for each school district in South Carolina. The index is to be furnished the Department of Education on or before Feb. 1 of each year. When the index is computed, a number of properties may be under appeal both on the county and state level that effects a school district's index.

Because property under appeal is not legally a part of the tax base, the department must not consider the appraisal or assessment of property under appeal when computing the index. The uncontested amount of the valuation or assessment will, however, be considered when the property owner agrees to pay the tax due on the uncontested amount.

FINAL REGULATIONS 217

When the assessment is finally determined, any difference between the final assessment and the uncontested assessment shall be added to the current years tax duplicate for each taxable year involved. The difference shall be included in the current years property values for purposes of calculating the index for that year.

The Department of Revenue shall maintain the necessary records for property under appeal where the assessment was made in the first instance by the department. The county assessor shall maintain the necessary records regarding other property under appeal. The assessor shall also notify the department of the value of the property currently under appeal, the value of that resolved, and of any additional assessment. The assessor shall furnish this information to the department on or before Dec. 31 of the tax year in question.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with the proposed regulation.

Document No. 2695
DEPARTMENT OF REVENUE
CHAPTER 7

Statutory Authority: 1976 Code Section 12-4-320

Regulation	Regulation Title
7-4	Reconsideration of Applications
7-19.1	Rehearings, Location of.
7-30	Rehearing, Request for--Location.
7-45	Offers in Compromise Must be in Writing.
7-57	No Reconsideration on an Application Within Two Years Previously Denied as to Person.
7-87	Hearing, After Denial.
7-96	Rehearings, Location of.

Synopsis:

The South Carolina Department of Revenue is considering repealing various alcoholic beverage regulations since they are no longer needed due to changes in the law.

Instructions: Repeal Regulations

Text:

No text is necessary since the proposal is only repealing regulations no longer needed due to changes in the law.

Fiscal Impact Statement: No Impact

218 FINAL REGULATIONS

Document No. 2651
DEPARTMENT OF REVENUE
CHAPTER 7
Statutory Authority: 1976 Code Section 12-4-320

Regulations

- | | |
|------|--|
| 7-34 | Advertisements, Retail and Wholesale |
| 7-49 | Revolving Lights, etc., Advertising Merchandise, etc. Prohibited; Window Displays Restricted |

Synopsis:

The South Carolina Department of Revenue is proposing repealing SC Regulations 7-34 and 7-49 concerning alcoholic liquor advertising by wholesalers and retailers since the U.S. Supreme Court, in 44 Liquormart v. Rhode Island, 517 U.S. 484 (1996), held unconstitutional a similar Rhode Island statute that prohibited price advertising of alcoholic liquors.

Instructions: Repeal Regulations 7-34 and 7-49

Text:

No text is necessary since the proposal is only repealing regulations no longer needed since a ruling by the U.S. Supreme Court, in 44 Liquormart v. Rhode Island, 517 U.S. 484 (1996), held unconstitutional a similar Rhode Island statute that prohibited price advertising of alcoholic liquors.

Fiscal Impact Statement:

There will be no cost to the state or local political subdivision expenditures in complying with the proposed regulation. The benefits associated with the proposed changes to the state or local political subdivisions are uncertain.

FINAL REGULATIONS 219

Document No. 2636
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

Regulations:

Type Tax	Regulation	Regulation Title
Sales Tax	117-174.39	Automobile Dealer's Demonstrator
	117-174.221	Vendor's Discount
Property Tax	117-109	Determining the Fair Market Value of the Inventory Merchandise of Merchants
	117-124.14	Inventory Tax - Alcoholic Liquors
	117-121	Mobile Homes Located on Leased Land Assessed as Real Property
	117-107	Assessment of Manufacturers' Property
	117-108	Assessment of Property of Merchants
Administrative	117-5	Appeals Procedure by Which a Person May Contest the Authority of the Commission to Promulgate a Proposed Regulation.
	117-4	Procedure for Appeal to the Tax Commission from a County Board of Tax Appeals when the Statute Providing for such Appeal Fails to Specify the Manner in Which the Appeal is to be Made or the Grounds Therefor and Limits the Appeal to "Relief as Afforded by General Law".
	117-3	Appeal Procedure Before County Tax Board of Appeals.
Estate Tax	117-181.1	Rules and Regulations
	117-181.2	Transfer of Securities, Deposits or Other Assets
	117-181.3	Transfer of Contents of Safe Deposit Boxes.
Income Tax	117-60	Nonresidents Having Income from a Business in this State Subject to Tax.
	117-75	When Sales Allocated to State of the Purchaser.
	117-76	Nonresident Partners of a Partnership May File Single Return.
	117-77	Filing of a Consolidated Return for Two or More Corporations.
	117-79	Extension of Time for Filing and Tentative Returns Required.
	117-80	Application for Refund of Deceased.
	117-82	Income Tax in Another State Defined.
	117-84	Bond for Nonresidents Conducting a Temporary Business.
	117-85	Filing of Reports and Annual License Fees of Corporations.
	117-86	Foreign Corporation Defined.
	117-87.54	Definitions of "Taxable", "State" and "Net Income Tax" in Connection with the Allocation Formula.
	117-87.69	Allocation and Apportionment of Income.

South Carolina State Register Vol. 26, Issue 6
June 28, 2002

220 FINAL REGULATIONS

	117-87.74	Nonresident Aliens
	117-87.78	Retirement Benefits Paid to Public School Teachers and State Employees Living in this State
	117-89.3	License Fees--Professional Associations.
	117-91.2	Withholding on Casuals.
	117-91.3	Withholding of Rents
	117-91.4	Withholding on Rentals Paid to Nonresidents.
	117-91.5	Relieve Residents Working Without the State from Double Withholding.
	117-91.6	Agricultural Labor.
	117-91.8	Qualification to do Business.
	117-91.9	Credit for Tax Withheld by an Employee Even Though Not Paid to Tax Commission by Employer.
	117-91.11	When Federal Forms W-2, W-4 and 1099 are Acceptable by the South Carolina Tax Commission.
	117-95.1	Agreement for Withholding of Income Tax.
License Tax	117-32	Stamps Required on Certain Articles.
	117-33	Records
	117-36	Cigarettes Displayed in Vending Machines.
	117-37	Cigars.
	117-44	Documentary Stamps--Sale of by Others.
	117-45.1	South Carolina Documentary Stamps must be Affixed before Instrument is Recorded.
	117-46	Base of the Documentary Stamp Tax When Consideration Received for Property Transferred Does Not Have a Readily Ascertainable Fair Market Value.
Video Game	117-191.1	Technical Standards for Video Game Machines.
	117-191.2	Technical Standards for Location Controller.
	117-191.3	Remote Shutdown of a Machine or Machines.

Synopsis:

The South Carolina Department of Revenue is considering repealing various sales tax, property tax, administrative, estate tax, license tax, video game and income tax regulations since they are no longer needed due to changes in the law.

Instructions: Repeal Regulations

Text:

No text is necessary since the proposal is only repealing regulations no longer needed due to changes in the law.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation.

FINAL REGULATIONS 221

Document No. 2658
DEPARTMENT OF REVENUE
CHAPTER 117
 Statutory Authority: 1976 Code Section 12-4-320

Regulations: All Sales and Use Tax Regulations in Article 7 of Chapter 117
 (Regulations 117-145 through 117-178)

Synopsis:

The South Carolina Department of Revenue is proposing the repeal of Article 7 of Chapter 117 of the SC Code of Regulations (SC Regulations 117-145 through 117-178) and the creation of thirty-seven new regulations concerning sales and use tax in a new Article 11. Under the proposal, sales and use tax regulations are combined so that all regulations concerning one subject matter can be found in one regulation and therefore one place in the regulation code. In addition, each regulation would have several "subsections" numbered in a manner to allow future issues concerning the subject matter to be added on and still be in the same place in the regulation code as other similar issues. For example, all issues concerning agriculture can be found in one regulation under Regulation 117-301. This regulation has several "subsections" numbered 117-301.1, 117-301.2, and so on. The project reduces the number of regulations from 225 to 37. The proposal also incorporates longstanding department policy with respect to building material used in the construction of commercial housing for poultry and livestock, meals sold to or by medical institutions, colleges and universities, charges by hotels and similar facilities, transactions involving state and local governments, and the calculation of the tax when a manufactured home is sold with furniture, appliances and other items. This proposal organizes and numbers the regulations as follows:

Regulation Number	Subject
117-300	Retail Licenses
117-301	Agriculture
117-302	Manufacturers, Processors, Compounders, Miners and Quarries
117-303	Laundries
117-304	State and Local Government
117-305	Meals
117-306	Repairs
117-307	Hotels, Motels and Similar Facilities
117-308	Services
117-309	Retailers
117-310	Freight and Delivery Charges
117-311	Railroads
117-312	Containers and Other Packaging Material
117-313	Labor
117-314	Construction
117-315	Newspaper
117-316	Books
117-317	Reposessed Property
117-318	Gross Proceeds of Sales and Sales Price
117-319	Warehousemen
117-320	Use Tax
117-321	Ships
117-322	Casual and Isolated Sales

*South Carolina State Register Vol. 26, Issue 6
 June 28, 2002*

DOR RESP LOWE'S 2145

222 FINAL REGULATIONS

117-323	Residential Heating
117-324	Dual Business
117-325	Bulk Sales
117-326	Saving and Loan Associations
117-327	Leased Departments
117-328	Radio and TV Stations
117-329	Communications
117-330	Automatic Data Processing
117-331	Airport Fixed Based Operators
117-332	Medicine and Prosthetic Devices
117-333	Donors and Goods Given Away for Advertising Purposes
117-334	Interstate Commerce
117-335	Manufactured and Modular Homes
117-336	Definition of a Facility

Instructions: Repeal all Regulations in Article 7 of Chapter 117 (SC Regulations 117-145 through 117-178), and add the following Regulations in a new Article for Sales and Use Tax Regulations

Text:

117-300 Retail License

As a condition precedent to doing business in this state, every retailer shall obtain a retail license for each retail outlet.

117-300.1 Doing Business in South Carolina

Every retailer making sales of tangible personal property for storage, use or other consumption in this state, who:

1. Maintains a place of business;
2. Qualifies to do business;
3. Solicits and receives purchases or orders by agent or salesman

must obtain from the department a retail license.

117-300.2 Vending and other Coin-Operated Machines Dispensing Tangible Personal Property

For the purpose of determining the licenses required by persons engaged in the business of operating vending or coin-operated machines dispensing cigarettes and soft drinks in closed containers in this state, each point from which the service for such machines or other tangible personal property originates, shall be considered to be a retail outlet and a retail license must be obtained for each such point of service.

117-300.3 Operation of Deceased Licensed Retailer's Business by Personal Representative of His Estate.

The personal representative of the estate of a deceased licensed retailer may, upon filing with the department a certified copy of Letters Testamentary or Letters of Administration, as the case may be, and upon the approval of the department, continue the operation of the business covered by the license for purposes only of administering the estate.

FINAL REGULATIONS 223

117-300.4 Application for Transfer.

A licensed retailer may, upon written application and approval by the department, have transferred his retail dealer's license from one location to another without incurring additional license tax liability. This rule is for application only in cases where there is an abandonment of the licensed business location and a simultaneous moving to a new location. The licensed retailer making application for transfer must surrender his license of original issue and indicate on the license the address of his new location.

117-300.5 Fairs, Carnivals, Concessionaires at Athletic Stands and Other Public Exhibitions.

Operators of fairs, carnivals and concessionaire at athletic stands and other public exhibitions sell tangible personal property from booths which they operate. These sales are subject to the tax which must be remitted by the operator who controls or directs the management of such booths. The single retail license shall cover sales of tangible personal property made from all stands under the immediate management or control of each operator. A separate license will not be required for each change of location provided the operator furnishes the department an itinerary giving a schedule of locations and dates.

Persons conducting games of chance or skills at fairs, carnivals, circuses and other public exhibitions who deliver merchandise as prizes are deemed consumers of such articles. Property for use as outlined above purchased from without the state is subject to the tax based upon the reasonable and fair market value thereof at the time and place where used. The term "reasonable and fair market value" shall mean the retail selling price of the particular property involved in the absence of affirmative proof to the contrary. The taxable event in such cases occurs at the time of withdrawal of such property for use as prizes or gifts. Purchases in this state, of tangible personal property to be used as gifts or prizes, are subject to the sales tax. The purchaser thereof must pay his supplier the tax.

117-300.6 Partnership.

When a partner drops out of a partnership during the year, it is not necessary for the surviving partner to purchase a new retail license to cover the remainder of the fiscal year.

117-301 Agriculture

The South Carolina sales and use tax law provides many exemptions from the tax for the agriculture industry. The exemptions are found in Code Section 12-36-2120 and include exemptions for livestock, feed, insecticides, chemicals, fertilizers, containers, labels, machinery, fuel, electricity, gas, and building materials. In order to obtain an exemption, all provisions of the exemption must be met. This regulation will explain these exemptions in more detail.

In many of the subsections of this regulation, examples of items exempt and not exempt are provided. These examples are not all inclusive.

117-301.1 Livestock

The sale of livestock is exempt from the tax under Code Section 12-36-2120(4). Livestock is defined as domesticated animals customarily raised in South Carolina farms for use primarily as beasts of burden or food. Livestock also means mammals raised for their pelts or furs.

The practical result of the above is to exempt from the tax horses, mules, cattle, swine, sheep, goats, rabbits, ostriches and any other animals raised as food for human consumption, domesticated fish produced for human consumption, and chinchillas

224 FINAL REGULATIONS

Animals such as dogs, cats, reptiles, fowls (excepts baby chicks and poultis), minnows, worms, fish (excepts those cultivated for human consumption), and animals of a wild nature are not considered livestock.

117-301.2 Feed

The sale of feed used in the production and maintenance of livestock, as defined Regulation 117-301.1, is exempt from the tax under Code Section 12-36-2120(5). Horse feed, rabbit feed used in the production and maintenance of rabbits for human consumption, and feed used in the production and maintenance of fly, fingerlings and fish are exempt.

117-301.3 Insecticides, Chemicals, Fertilizers, Soils Conditioners, Seeds and Seedlings

Insecticides, chemicals, fertilizers, soils conditioners, seeds and seedlings used solely in the production for sale of farm, grove, vineyard or garden products are exempt under Code Section 12-36-2120(6). This exemption includes:

(a) explosives (chemicals) used solely in the production for sale of farm, grove, vineyard or garden products.

(b) medicines (chemicals) used solely in the production for sale of livestock.

(c) insecticides, chemicals, fertilizers, soils conditioners, seeds and seedlings used solely in the production for sale of timber and timber products, nursery products, and poultry and poultry products.

(d) insecticides and chemicals, including washing powder, soap, etc., used by dairy operators at the dairy barn in the production for sale of products of the dairy.

(e) bull semen used solely in the production for sale of livestock.

This exemption does not apply to liquid petroleum gas used for burning grass and weeds around farm crops.

117-301.4 Containers and Labels

Containers and labels used in preparing agriculture products for sale and used in preparing turpentine gum, gum spirits of turpentine, and gum resins for sale are exempt under Code Section 12-36-2120(7). For the purposes of this exemption, "containers" means boxes, crates, bags, bugging, ties, barrels, and other containers.

This exemption applies to bags sold to:

(a) wholesale grain and feed dealers for use as furnished containers of corn and oats.

(b) cotton dealers or ginneries for use as furnished containers of cotton seed.

(c) produce dealers for use as furnished containers of potatoes, cabbage, etc.

(d) peanut hullers for use as furnished containers of peanut kernels, hulls, and vines.

(e) nurserymen for use as furnished containers of nursery stock.

Wrapping paper, wrapping twine, paper bags, and containers, used incident to the sale and delivery of tangible personal property are exempt under Code Section 12-36-2120(14).

FINAL REGULATIONS 225

The above exemptions do not apply to tobacco (wine used by farmers incident to the curing of tobacco).

117-301.5 Farm Machinery

The sale of farm machinery that is used in planting, cultivating or harvesting farm crops for sale is exempt under Code Section 12-36-2120(16). This exemption also applies to replacement parts and attachments. For purposes of this exemption, the terms "planting," "cultivating," and "harvesting" are defined as follows:

"Planting" includes all necessary steps in the preparation of the soil prior to, and including, the planting and sowing of the seed.

"Cultivating" includes the loosening of the soil around growing plants, control of moisture content in the soil, and weed and pest control.

"Harvesting" begins with the gathering of the crop and ends when the crop is placed in a temporary or permanent storage area. It also includes the additional preparation for storage or sale of certain crops such as the curing of tobacco, grains, and peanuts and the grading and packaging of peaches, cucumbers, tomatoes, etc.

The sale of bulk coolers (farm dairy tanks) used in the production and preservation of milk on dairy farms and machines used in the production of poultry and poultry products on poultry farms when such products are sold in the original state of production or preparation for sale are also exempt under Code Section 12-36-2120(16).

The following machines qualify for this exemption:

(a) machinery used in constructing terraces, drainage and irrigation ditches, dikes used to control the water level in cultivated fields, and land clearing prior to cultivation of the soil.

(b) machinery specially designed for irrigation purposes, including pumps, pipes, spigots, etc., when sold for use in the cultivation of farm crops.

(c) farm wagons used in planting, cultivating or harvesting farm crops.

(d) pasteurizing machines, cooling machines, mechanical separators, homogenizing machines and bottling machines used by dairies in the production of milk for sale. Milking machines do not come within the exemption for farm machinery.

(e) machines used in the production of poultry and poultry products for sale when incorporated into and made a part of an automated system. This includes automated bulk feed bins placed either inside or outside the building when such bins are connected to automatic feeding systems; the auger conveying feed from bulk feed bins to the automated feeder system; roll-up curtains (hand crank and motorized) to control light and room temperature; automatic chain feeders; auger and pan feeders; automatic waterers, valves, and accessories, brooders-all types, winching systems used to raise and lower brooders to control room temperature and also to facilitate cleaning; electric debeakers; egg washing machinery; egg grading machinery; egg candling machinery; time clocks for controlling lights or machinery; automated nests only; belt gathering systems for nests; laying cages when a part or attachment to an automated feeding and/or watering system; mechanically operated feed carts; bulk feed bodies (the vehicles on which these bodies are mounted are subject to the tax as well as nonmechanized carts); automatic clean-out systems for cage houses; small tractor or Bobcat used for clean-out of poultry houses; machinery used to cool eggs; humidifiers for egg rooms; auxiliary power generators; ventilation equipment for poultry houses (to include fans and motorized shutter assemblies); electric heat tapes (water warmers); monorail system for use in conveying eggs in process; automatic medication proportioners; incubators; scales used in loading mixing buggies to gauge the amount of feed per chicken; electric shockers and wire over automatic troughs; electrified wire fences would be subject to the tax unless exempt under Section 12-36-2120(45)); vibrators; infrared brooders (heat lamps used primarily to brood quail); and incinerators.

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

226 FINAL REGULATIONS

Examples of properties not exempted from the tax under Section 12-36-2120(16) are building materials, fencing and fence posts, hand tools, range waterers and feeders (unless completely mechanized), egg baskets and stackers, hand trucks and nonmechanized egg carts, dollies, brooding paper and guards, nesting materials, boots, gloves, hand-operated sprayers and powder dusters, mouse traps (all types), leg bands, wing bands, and nest eggs. (Note: Some of these items may be exempt under Section 12-36-2120(45).)

(f) animal and motor drawn or operated implements such as plows, harrows, hay rakes, mowers, cultivators, and planters.

(g) machinery used in planting, cultivating, and harvesting timber products.

(h) tobacco curers (not including flues and fumaces).

(i) a flatbed trailer or a stock trailer used for hauling farm crops (i.e. hay, corn, peaches) if the flatbed trailer or stock trailer is used substantially in planting, cultivating, or harvesting such farm crops for sale in their original state of production or preparation for sale.

(j) animal and motor drawn or operated tobacco transplanters

(k) portable power saws for use in planting, cultivating, or harvesting farm crops may be purchased free of the tax. The term "farm crops" includes forest products or products of the forests.

(l) skidders used in logging operations, when used either by sawmills or by contract loggers.

(m) machinery purchased by operators of commercial fisheries and used directly in fishing operations, such as motor operated watercraft and nets attached to booms or cranes for lowering into the sea bed.

(n) machinery purchased by commercial crabbers and used directly in crabbing operations, such as motors, mechanical capstans, and crab traps when such traps are hoisted by capstans.

This exemption does not apply to:

(a) automobiles and trucks.

(b) machinery used in constructing fences and buildings and repairing machinery and equipment.

(c) farm implements which are not animal and motor drawn or operated, such as hoes, pitchforks, and shovels.

(d) tobacco thermometers.

(e) a flatbed trailer or a stock trailer used for hauling tractors, harvesting equipment or cattle or for hauling farm crops from a storage area to market or to a buyer.

(f) tobacco transplanters which are not animal and motor drawn or operated.

(g) greenhouses.

117-301.6 Fuel

South Carolina State Register Vol. 26, Issue 6
June 28, 2002

DOR RESP LOWE'S 2150

FINAL REGULATIONS 227

Fuel used in farm machinery and farm tractors used in planting, cultivating, or harvesting farm crops and fuel used to cure agricultural products is exempt under Code Sections 12-36-2120(15) and 12-36-2120(18). This applies to fuel used in curing grain in grain elevators for storage or sale.

117-301.7 Electricity and Gas

The following sales of electricity and gas are exempt:

(a) sales of electricity and natural and liquefied petroleum gas to farmers for use in the production of livestock or milk (Code Section 12-36-2120(32)).

(b) sales of electricity for irrigating farms crops (Code Section 12-36-2120(44)).

Sale of electricity and gas to farmers for other uses are taxable.

117-301.8 Building Materials, Supplies, Fixtures and Equipment for Commercial Housing of Poultry and Livestock

Sales of building material, supplies, fixture, and equipment used in the construction, repair, or improvement a commercial housing of poultry or livestock, or that becomes part of a self-contained enclosure or structure designed, constructed and used for the commercial housing of poultry or livestock, are exempt under Code Section 12-36-2120(45).

This exemption applies to:

(a) wood chips for use on the floors of self-contained enclosures or structures specifically designed, constructed, and used for the commercial housing of poultry.

(b) fencing and fencing supplies when used to surround an area on all sides in order to protect livestock or poultry raised or maintained for commercial purposes. The exemption is applicable when the fencing and fencing supplies are used within a building such as a barn or a chicken house or used to surround a field that is specifically set aside and used for livestock or poultry that is raised or maintained for commercial purposes.

(c) watering tubs, feed troughs, and hay feeders placed within a fenced in area specifically set aside and used for livestock or poultry, provided the livestock and poultry within the enclosure are being raised or maintained for commercial purposes.

The exemption does not apply to fencing and fencing supplies used to surround a field where crops are grown.

117-301.9 Sales by Farmers

Sales of farm products are exempt if sold in their original state of production and sold by the farmer or a member of the farmer's immediate family. This exemption not only applies to sales of farm products by individuals; it also applies to sales by corporations and other entities. The exemption applies to food products, ornamental plants, timber, and grass sod.

The exemption is not applicable if the farmer processes his product beyond the usual and customary preparation for sale. For example, where a farmer also operates a processing plant, he cannot claim the exemption for sales of these processed products.

117-301.10 Hatcheries

228 FINAL REGULATIONS

The hatchery operator may purchase under his retail license hatchery eggs for use in hatching baby chicks for sale. Hatchery eggs may be sold free of the tax to a hatchery operator not having a retail license, provided, the seller thereof takes from such operator a certificate that the property is for resale either in the original form or as baby chicks or as full grown chickens. Hatcheries engaged in the business of hatching baby chicks for others from eggs grown by those other persons (custom hatching) are rendering a service which is not subject to the tax.

117-302 Manufacturers, Processors, Compounders, Miners, and Quarries

Manufacturers, processors, compounders, miners, and quarries enjoy several exclusions and exemptions from the sales and use taxes. The exclusions can be found in Code Section 12-36-120 and includes containers, ingredients and component parts, and items used directly in manufacturing, compounding or processing tangible personal property for sale. The exemptions can be found in Code Section 12-36-2120 and include exemptions for coal, coke, fuel, electricity, and machines. This regulation will explain these exclusions and exemptions in more detail.

In many of the subsections of this regulation, examples are provided. These examples are not all inclusive.

117-302.1 Ingredients and Component Parts and Items Used Directly

Purchases of tangible personal property are not subject to the tax under Code Section 12-36-120 if the tangible personal property:

- (a) becomes an ingredient or component part of tangible personal property manufactured or compounded for sale; or,
- (b) is used directly in manufacturing, compounding or processing tangible personal property for sale. By "used directly" is meant that the materials or products so used come in direct contact with and contribute to bring about some chemical or physical change in the ingredient or component properties during the period in which the fabricating, converting or processing takes place. It is not necessary that such materials or products be used up or entirely consumed, provided there is a compliance with the requirements set forth herein.

These exclusions apply to:

- (a) odorants purchased by gas companies and used in compounding gas for sale.
- (b) chemicals, such as soda, ash, alum, chlorine, etc., used in treating water for sale by municipalities and others engaged in the business of processing or compounding water for sale.
- (c) refrigerants used by manufacturers to produce ice for sale.
- (d) acetylene, oxygen, and other gases sold to manufacturers or compounders which enter into and become an ingredient or component part of the tangible personal property or products which he manufactures or compounds for sale, or which are used directly in fabricating, converting, or processing the materials or products being manufactured or compounded for sale.
- (e) plates attached by the manufacturer to his product for identification purposes and which become a part of the product.

These exclusions do not apply to sales of acetylene, oxygen, and other gases for use by repairmen, welders, dentists, junk dealers, and others are subject to the sales or use tax, whichever applies.

117-302.2 Containers

The sale of materials, containers, cores, labels, sacks or bags used incident to the sale and delivery of tangible personal property or used by manufacturers, processors, or compounders in shipping tangible personal property are not subject to sales and use taxes.

"Materials" is defined to include, among other things, wrapping paper, twine, strapping, nails, staples, wire, lumber, cardboard, adhesives, tape, waxed paper, plastic materials, aluminum foils, and pallets used in packaging tangible personal property incident to its sales and delivery and used by manufacturers, processors, or compounders in shipping tangible personal property.

"Containers" is defined to include, but are not limited to, such items as, paper, plastic or cloth sacks, bags, boxes, bottles, cans, cartons, drums, barrels, kegs, carboys, cylinders, and crates.

"Cores" is defined to include spools, spindles, cylindrical tubes and the like on which tangible personal property is wound.

This exclusion applies to:

(a) labels affixed to manufactured articles to identify such products only when such labels are passed on to the ultimate consumer of such products.

(b) excelsior, cellulose wadding, paper stuffing, sawdust and other packing materials used to protect products in transit. Also excluded from the exemption are materials such as strapping and dunnage to temporarily brace or block tangible personal property within trucks and railroad cars as a protection during shipment.

(c) hogsheads, when used by a manufacturer, compounder or processor for the purpose of packaging tobacco for shipment or sale.

This exclusion does not apply to:

(a) address stickers and shipping tags.

(b) materials such as dry ice and rust preventives used to preserve property during shipment.

117-302.3 Coal, Coke or Other Fuel

Code Section 12-36-2120(9) directs that only certain classes of purchasers may buy free of the tax coal, coke or other fuel.

Coal, coke or other fuel sold to manufacturers, quarriers and miners for use in manufacturing, quarrying or mining tangible personal property for sale or for the production of by-products or for the generation of electric power or energy for use in manufacturing tangible personal property for sale.

Coal, coke or other fuel sold to manufacturers, quarriers, miners, or processors for the generation of heat or power used in manufacturing, quarrying, mining, or processing tangible personal property for sale.

This exemption applies to fuel used to control plant atmosphere as to temperature and/or moisture content, in the quality control of tangible personal property being manufactured or processed for sale.

117-302.4 Electricity

230 FINAL REGULATIONS

Electricity used by manufacturers, miners, quarriers, and processors to manufacture, mine, quarry, or process tangible personal property for sale is exempt from the tax under Code Section 12-36-2120(19).

Sales of electricity to manufacturers, miners, quarriers, and processors for use in operating machines manufacturing, mining, quarrying, or processing tangible personal property for sale and electricity to provide lighting necessary to the operation of such machines are exempted from the sales and use tax. This exemption applies to electricity used to control plant atmosphere as to temperature and/or moisture content, in the quality control of tangible personal property being manufactured or processed for sale.

Sales of electricity for any other purpose are subject to the tax, such as but not limited to, electricity used in administrative offices, supervisory offices, parking lots, storage warehouses, maintenance shops, safety control, comfort air conditioning, elevators used in carrying personnel, housekeeping equipment and machinery, machines used in manufacturing tangible personal property not for sale, cafeterias, canteens, first aid rooms, supply rooms, water coolers, drink boxes, unit heaters and waste house lights.

117-302.5 Machines

Machines used in manufacturing, processing, compounding, mining, or quarrying tangible personal property for sale, and the replacement parts and attachments to such machines, are exempt from the sales and use tax under Code Section 12-36-2120(17).

Parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of machines are also exempt, provided the parts, attachments or replacements are used on or in the operation of such machines, manufactured for use on or in the operation of such machines, necessary to the operation of such machines, and must be customarily so used. These restrictions are interpreted to mean that the part or attachment must be purchased in the form in which it will be used by the manufacturer without any fabrication or alteration by him, except the usual and customary minor adjustment, (except as stated below) and that it is a standard part or attachment customarily used and, further, that the machine or machinery on which it is used would not do the work for which it was designed if it were not used. This, of course, exempts all parts and attachments without which the machine would do no work, and, in addition, it exempts parts and attachments designed to increase the efficiency of the machine.

Manufacturers, processors, compounders, miners or quarriers are entitled to purchase at wholesale, free of the sales or use tax, materials used by them in the building of machines for the purpose of manufacturing or compounding tangible personal property for sale. It should be noted that only those materials are exempt to manufacturers, processors, compounders, miners or quarriers which are used by them in building machines for the purpose of manufacturing or compounding tangible personal property for sale. This ruling would not be for application in the case of the use of property in the nature of building materials from which there is erected a "structure," which upon completion might be used for producing tangible personal property for sale.

Electricity is tangible personal property and is characterized as such in the law. Therefore, its production is considered as manufacturing and all machinery used for the generation, such as boilers, engines, condensers, generators, and transformers and their attachments, are exempt. Electrical equipment used as direct controls of machinery used in manufacturing is considered as part of manufacturing machinery and as such is exempt. All wires, fixtures, etc., used in lighting are taxable.

Materials or equipment which might constitute a machine or machinery when not used for processing or manufacturing are not exempted.

This exemption applies to:

(a) trucks too large to be lawfully used upon the highways of this state, when used in quarry pits for transporting rock or granite from the blasting site to the crushing machine.

*South Carolina State Register Vol. 26, Issue 6
June 28, 1992*

FINAL REGULATIONS 231

- (b) sand handling and sand condition machines used by manufacturers or processors for conditioning and transporting, while in process, and for use in mold making.
- (c) tanks which are a part of the chain of processing operations.
- (d) patterns which become parts or attachments for molding machines when purchased by a manufacturer for his use.
- (e) mechanically operated devices used in making molds from sand for use in manufacturing tangible personal property for sale.
- (f) machines used in measuring, or weighing, and packaging by manufacturers, compounders and processors when such machines are a part of the "production line" machinery and are used to put the product in condition for sale on the open market for the purpose for which it was produced.
- (g) machines used in weighing and sacking cement and lime when used by the manufacturer.
- (h) machines used to measure and sack corn meal when used by the manufacturer.
- (i) machines used by soft drink bottlers for measuring and bottling their product.
- (j) transformers used in manufacturing and processing tangible personal property for sale, used by producers or distributors of electricity which process the electricity, and all transformers used by other manufacturers, processors, or compounders as a part of their manufacturing, processing, or compounding machinery. Capacitors and voltage regulators are similar to and have the same exemption as transformers.
- (k) machines used by cotton ginner in their processing operations.
- (l) pasteurizing machines, cooling machines, mechanical separators, homogenizing machines and bottling machines used by dairies in processing milk for sale. The machine exemption does not extend to cover milking machines.
- (m) boiler tubes used in repairing boilers used to furnish heat or power used in manufacturing tangible personal property for sale.
- (n) machines used by persons in the business of producing scrap iron and other metals from junk for resale to steel mills and/or foundries, such as hydraulic baling presses (to compress sheet steel into bales), cranes (to feed scrap metals to baling press), and alligator shears (to cut scrap steel to predetermined sizes).
- (o) machines used by dental laboratories in manufacturing for sale plates, bridgework, artificial teeth and other prosthetic devices.
- (p) machines used in processing and manufacturing by electric power companies including all producing stationary machines in an electric power generating house, stationary, processing machines located in substation houses and transformers, pole or otherwise.
- (q) starters, switches, circuit breakers and other electrical equipment which are parts of, or attachments of machines, come within the machine exemption. In order to be exempt this equipment must be either attached directly to the machine or be immediately adjacent thereto. Switchboards and control boards and cabinets controlling the general electrical supply system are not considered to be parts or attachments of machines used in manufacturing. (Note, however, that, switchboards, automatic or manually operated, which serve to operate exempt machinery may be classified a part or attachment thereto, provided, same are attached thereto or located

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

232 FINAL REGULATIONS

within the same structure or compound.) The general rule is that power distribution machinery for operating machines used in processing and manufacturing tangible personal property which starts at the main switch within the factory building or compound is exempt.

(r) machines used directly in the wood preserving process by persons engaged in the business of treating lumber or lumber products (wood preserving) which they own and treat for sale.

(s) gas pressure regulators located in the lead off from the gas main.

(t) machines used directly in the meatpacking process by meatpackers whose activities include the curing of meats and the production of animal by-products such as lard, sausages, or lankage.

(u) machines used directly by ice manufacturers in manufacturing or compounding ice for sale.

(v) machines used to condition air (including humidification systems) for quality control during the manufacturing process of tangible personal property made from natural fibers and synthetic materials. This exemption applies to the pipes and duct used to distribute the processed air to the production areas within the plant.

(w) recording instruments attached to manufacturing machines.

(x) machines used directly by a manufacturer in the tire recapping process.

(y) machines used by municipalities in processing or compounding water for sale.

(z) belting purchased for use on a particular machine used in manufacturing tangible personal property for sale even though such belting may not be purchased to the exact length required.

(aa) machines manufactured for and customarily used in removing sawdust from saws in sawmills manufacturing lumber for sale when such machines are attached to or a part of the sawing mechanism and machines manufactured for and customarily used to remove waste material from planners, edgers, and other manufacturing machines used in sawmills manufacturing lumber for sale when such machines are attached to or a part of the planner, edger, or other manufacturing machine. Note, however, the removal or disposal of waste materials is not of itself a manufacturing process on which a claim for exemption could be based. The waste removal machinery must be an attachment of an exempt machine to come within the exemption.

(bb) machines purchased by persons in the business of collecting old and used paper (waste paper) for the purpose of grading, sorting and packaging the same for sale or resale to paper mills.

(cc) insulation for pipe coverings, tank coverings, and boiler insulation purchased by a paper manufacturer from the vendor in its final prefabricated form for a specific insulation job, provided it does not have to be cut and fitted at the paper mill. Certain fabrication is permissible around valve openings, pipe openings at pipe joints, etc. Note, where insulation is purchased in blocks, such blocks are to be considered as taxable, except as noted above with respect to the purchase of material in building a machine used in manufacturing, processing, or compounding tangible personal property for sale.

This exemption does not apply to:

(a) warehouse machines used only for warehouse purposes, such as loading and unloading, storing, or transporting raw materials or finished products.

(b) storage tanks and piping leading to and from storage tanks and piping bringing gas or water into the plant.

(c) power lines bringing electricity into the plant.

(d) dippers used for measuring purposes in a textile bleachery, dye or finishing plant.

(e) machines used for maintenance purposes.

(f) pipe, valves, fittings, etc., regardless of size, which are purchased by paper manufacturers specifically for use in drinking water lines, fire protection lines, or for transmission of water from source to water treatment plant, or from water treatment plant itself.

(g) piping furnished and installed along with pump houses and well connections by a contractor when intended for use by a paper manufacturer to supply his plant with the water necessary to the manufacturer of paper.

117-302.6 Pollution Control Machines

Code Section 12-36-2120(17) exempts from the sales or use tax the gross proceeds of the sale of machines used in mining, quarrying, compounding, processing and manufacturing of tangible personal property and the term "machine" includes parts of such machines, attachments and replacements therefor which are used or manufactured for use on or in the operation of such machines and which are necessary to the operation of such machines and which are customarily so used ... Frequently, these machines cannot be operated when the same pollute beyond regulated levels and in compliance with orders of agencies of the United States or of this state to abate or prevent pollution caused or threatened by the operation of such machines it is necessary to install other machines that are designed and operated exclusively for the purpose of abating or preventing this pollution. The purpose of this regulation is to classify the machines, their parts or attachments, as machines used in mining, quarrying, compounding, processing or manufacturing of tangible personal property when the same are installed and operated for compliance with an order of an agency of the United States or of this state to prevent or abate pollution caused or threatened by the operation of other machines used in the mining, quarrying, compounding, processing and manufacturing of tangible personal property.

The term "machine" as defined in Section 12-36-2120(17) shall include machines, their parts and attachments, when the same are necessary to comply with the order of an agency of the United States or of this state for the prevention or abatement of pollution that is caused or threatened by any machines used in the mining, quarrying, compounding, processing and manufacturing of tangible personal property.

Any person engaged in the business of mining, quarrying, compounding, processing and manufacturing of tangible personal property shall furnish the department a certified statement from the ordering agency that any machine for which the exemption is claimed is necessary to prevent or abate pollution caused or threatened by the operation of other machines that are used in the mining, quarrying, compounding, processing or manufacturing of tangible personal property.

The order referred to herein must be issued by the agency of the United States or of this state that is primarily charged with the duty of preventing or abating the pollution.

117-302.7 Outside Signs, Furnished.

Outside signs furnished by a manufacturer to his customers, when such signs are furnished without cost to the customers, are subject to sales or use tax when purchased by the manufacturer. These signs are not purchased to be resold nor are they purchased as a component of the property manufactured for sale by the manufacturer.

117-302.8 Patterns, Sales.

234 FINAL REGULATIONS

Certain manufacturers in the operation of their businesses purchase for their customers patterns which are used by the manufacturers in the production of property for sale to their customers. When such patterns are received by the manufacturers, they are then sold to the manufacturers' customers. The manufacturers purchase these patterns at wholesale and sell them to their customers at retail. The manufacturers' sale to their customers are subject to tax even though the customer is a nonresident of South Carolina and even though the pattern, after use by the manufacturer in South Carolina, may be shipped to the customer outside the state.

117-303 Laundry, Launderette, Cleaning, Dyeing or Pressing Establishments

Code Sections 12-36-910 and 12-36-1310 impose the sales and use taxes on the "gross proceeds accruing or proceeding from the business of providing or furnishing any laundering, dry cleaning, dyeing, or pressing service, but does not apply to the gross proceeds derived from coin-operated laundromats and dry cleaning machines."

The gross proceeds accruing or proceeding from the business of providing or furnishing "any laundering, dry cleaning, dyeing or pressing service," is construed to mean all charges made by such businesses including charges for repairing, altering, storing, pick-up, and delivery of the product so laundered, dry cleaned, dyed or pressed.

Code Section 12-36-2120(24) exempts from the sales and use taxes "supplies and machinery used by laundries, cleanings, dyeing, pressing, or garment or other textile rental establishments in the direct performance of their primary function, but not sales of supplies and machinery used by coin-operated laundromats."

A machine exempted from the tax under Code Section 12-36-2120(24) is construed to mean any machine used in the "production line" of such laundry, launderette, cleaning, dyeing or pressing establishment, beginning with the marking of the garment for identification and ending with the wrapping or preparation of the garment for return to customer and any machine used in the cleaning production line of a garment or textile rental establishment for the purpose of cleaning garments and textiles for rent to customers.

Supplies are determined to mean supplies, including fuel, that are necessary to work with or on the garment in order to perform the primary function of the laundry, launderette, cleaning, dyeing or pressing business or supplies, including fuel, used in the cleaning production line of a garment or textile rental establishment for the purpose of cleaning garments and textiles for rent to customers. The exemption for supplies does not include equipment such as desks, chairs, typewriters, adding machines, cash registers, change machines, counters, delivery equipment, or any administrative or advertising supplies or equipment.

117-303.1 Retailers' License-Laundries, Launderettes, Cleaning, Dyeing or Pressing Establishments.

Each pickup and/or delivery point shall constitute a separate branch or establishment of the business.

117-303.2 Rug and Carpet Cleaning

Persons operating places of business for the purpose of cleaning and/or dyeing of rugs must be licensed and must report and pay the sales tax measured by the gross proceeds derived from this cleaning or dyeing service. Such persons would be entitled to the exemptions found at Section 12-36-2120(24).

A person performing what is commonly referred to as janitorial service, that is washing windows, blinds, floors, rugs, upholstery, all or part thereof, in the home or place of business of his customers, is not liable for the license, but must pay the tax on all items of tangible personal property used in the performance of these services. This would also be true of a person whose sole business is the cleaning of rugs and carpets in the home or place of business of his respective customers.

*South Carolina State Register Vol. 26, Issue 6
June 23, 2002*

Where a person or company operates in a dual capacity, which is to say, cleaning and dyeing of rugs in his own business establishment and also cleaning of rugs and carpets in the home or place of business of his customer, he would be liable for the license and the tax measured by the gross proceeds of the entire business, unless he can separate the two. Where he can satisfactorily separate the two, he should pay the tax on all supplies, machinery, equipment, etc., used in his house to house cleaning but would be entitled to the statutory exemptions at his plant and would he owe the tax there on the gross proceeds from his cleaning and dyeing operations.

117-303.3 Furnishing Laundry Services, Etc. to Ships

The gross proceeds accruing or proceeding from the business of providing or furnishing any laundering, dry cleaning, dyeing or pressing service, to ships for use or consumption aboard such ships in intercoastal trade or foreign commerce are exempt from the tax by reason of Code Section 12-36-2120(13).

117-303.4 Cleaning, Glazing, Dyeing and Stoning Furs

The gross proceeds accruing or proceeding from the cleaning, glazing and/or dyeing of furs are subject to the tax. Charges for storage, as such, when made separate and apart from any charges for cleaning, glazing and/or dyeing of furs are excluded from the measure of the tax.

117-304 Sales to, or Purchases by, the State, Counties, Municipalities and Other Political Subdivisions of the State

Sales of tangible personal property by the State, counties, municipalities and other political subdivisions of the State (e.g. schools, sheriff offices, municipal housing authorities, welfare agencies) are subject to the sales tax, unless such sales fall within the provisions of Regulation 117-304.1 (transfers by State agencies to other agencies, counties or municipalities at cost) or are otherwise exempt. (See Code Sections 12-36-2120 and 12-36-2130 for the exemptions.)

Sales to, or purchases by, the State, counties, municipalities, and other local political subdivisions (e.g. schools, sheriff offices, municipal housing authorities, welfare agencies) of tangible personal property are subject to the sales and use tax, unless such sales fall within the provisions of Regulation 117-304.1 (transfers by State agencies to other agencies, counties or municipalities at cost) or are otherwise exempt. (See Code Sections 12-36-2120 and 12-36-2130 for the exemptions.)

"Tangible personal property" includes laundry and dry cleaning services, electricity, certain communications services, accommodation services and certain other services that are subject to the sales and use taxes under Chapter 36 of Title 12. Therefore, transactions with the State or its political subdivision involving these services are subject to the sales and use tax, unless such sales fall within the provisions of Regulation 117-304.1 (transfers by State agencies to other agencies, counties or municipalities at cost) or are otherwise exempt.

117-304.1 Transfers Between Agencies and Between the State and its Political Subdivisions

An agency of the State of South Carolina is not deemed to be engaged in the business of selling tangible personal property at retail when transferring tangible personal property to another agency of the State or to a county or to a municipality if the consideration for the transfer only reimburses the transferring agency for its cost and expenses in conveying the property; provided transferring agency has paid tax on the initial purchase of the tangible personal property.

236 FINAL REGULATIONS

Where, however, a State agency sells tangible personal property to persons other than another State agency, county, or municipality for use or consumption, such sales shall be considered retail sales subject to the tax. The agency making the sale is required to be licensed as a retailer under the terms and provisions of the sales and use tax law.

117-305 Meals

Depending on the institution, meals to students, patients, guests, visitors, passengers, and other customers may be handled in a variety of ways. The following will address the application of the sales and use tax to these various transactions and institutions.

117-305.1 Educational Institutions

Colleges and universities sell or provide meals and other foods in a variety of ways.

Meals are provided to students in a cafeteria under a board plan. Under such plans, students will purchase all their meals (breakfast, lunch and dinner) for an entire semester or year at the beginning of the school year. This is usually done at the same time students pay their tuition and other fees. Typically, the student who signs up for one of the board plans is given a card that is used by the student to obtain the meals.

In addition, students who participate in a limited board plan may purchase individual meals sold by the college or university in the cafeteria. For example, one board plan may furnish meals to students Monday through Friday. A student under this limited plan may from time to time choose to purchase an individual meal in the cafeteria on Saturday or Sunday.

Employees, visitors and students who do not participate in a board plan may also purchase meals sold by the college or university in the cafeteria. Generally, these meals are purchased on an individual basis; however, some colleges and universities sell tickets that entitles the purchaser to several meals.

Also, colleges and universities may sell meals and food to students and others at canteens, snack bars, and other places around the campus. In addition, food may be sold at concession stands at sporting and theatrical events.

Finally, colleges and universities may contract with food service companies to sell or furnish meals on campus. Under such contracts, the food service company will either be an agent of the institution or will sell the meals to the institution, who has sold the meals to the students via a board plan.

Meals Served Under Board Plan

1. Sales to an educational institution of unprepared food products, for use in furnishing meals under a board plan, are retail sales subject to the sales tax or the use tax.

2. Sales to a food service company of unprepared food products, for use in furnishing meals under a board plan, are retail sales subject to the sales tax or the use tax if the food service company is the agent of the educational institution.

3. Sales by food service companies of meals to an educational institution or directly to the students, as part of a board plan, are retail sales subject to the sales or the use tax if the food service company is merely under contract with the educational institution and is not the agent of the educational institution.

FINAL REGULATIONS 237

For additional information concerning sales by, and purchases from, suppliers (including information on resale certificates), see sections 117-305.3 and 117-305.4 below.

Cash or Other Food Sales, Not Under a Board Plan

1. Sales by an educational institutions of meals and other foods (including the purchase of tickets that entitles the purchaser to several meals), other than those furnished under a board plan, are retail sales subject to the sales tax or the use tax.
2. Sales of meals and other foods by a food service company as the agent of an educational institution, other than those furnished under a board plan, are retail sales subject to the sales tax or the use tax.
3. Sales of meals and other foods by a food service company, other than those furnished under a board plan, are retail sales of the food service company subject to the sales or the use tax.

For additional information concerning sales by, and purchases from, suppliers (including information on resale certificates), see sections 117-305.3 and 117-305.4 below.

117-305.2 Medical Institutions

Medical institutions, such as hospitals, infirmaries, and nursing homes, may sell or provide meals and other foods in a variety of ways.

As part of the professional medical services provided, patients are furnished meals during their stay at the institution.

Meals and other foods are also sold to employees, visitors and others in cafeterias, canteens, and snack bars.

As with colleges and universities, medical institutions may contract with food service companies to sell or furnish meals at the hospital, infirmary, etc., either as agents or on some other basis.

Meals and Other Food Served to Patients as part of Medical Care

1. Sales to a medical institution of unprepared food products, for use in furnishing meals and other food to patients as part of their medical care, are retail sales subject to the sales tax or the use tax.
2. Sales to a food service company of unprepared food products, for use in furnishing meals and other food to patients as part of their medical care, are retail sales subject to the sales tax or the use tax if the food service company is the agent of the medical institution.
3. Sales by food service companies of meals to a medical institution, for use in furnishing meals and other food to patients as part of their medical care, are retail sales subject to the sales or the use tax if the food service company is merely under contract with the medical institution and is not the agent of the medical institution.

For additional information concerning sales by, and purchases from, suppliers (including information on resale certificates), see 117-305.3 and 117-305.4 below.

Meals and Other Food Served or Sold to Employees, Visitors and Others (Cafeterias, Canteens, Snack Bars, Etc.)

238 FINAL REGULATIONS

1. Sales by a medical institution of meals and other foods, other than those furnished to patients as part of their medical care, are retail sales subject to the sales or the use tax.

2. Sales of meals and other foods by a food service company as the agent of a medical institution, other than those furnished to patients as part of their medical care, are retail sales of the medical institution subject to the sales tax or the use tax.

3. Sales of meals and other foods by a food service company, other than those furnished to patients as part of their medical care, are retail sales of the food service company subject to the sales or the use tax.

For additional information concerning sales by, and purchases from, suppliers (including information on resale certificates), see 117-305.3 and 117-305.4 below.

117-305.3. Educational and Medical Institutions and Food Service Companies Making Both Retail Sales and Withdrawing for Use from the Same Stock of Goods

Educational and medical institutions and food service companies that are making both retail sales and withdrawing for use from the same stock of goods are to purchase at wholesale all of the goods so sold or used. They will then report retail sales based on gross proceeds of sales and withdrawals for use based on the property's fair market value. In order for this provision to apply, the educational or medical institution must have a substantial number of retail sales. To comply with this provision, educational and medical institutions should present to their suppliers a Form ST-8A - Resale Certificate. This will allow the suppliers to sell these goods at wholesale to the educational or medical institution.

117-305.4 Suppliers Selling Unprepared Food Products to Educational and Medical Institutions and to Food Service Companies

Educational and medical institutions and food service companies are purchasing unprepared food products at retail for use in preparing meals under a board plan. Therefore, businesses selling unprepared food products to these institutions and companies should sell such products at retail, unless the purchaser provides them a Form ST-8A - Resale Certificate. Receipt of the resale certificate will allow suppliers to sell these goods at wholesale, free of the tax, to these educational and medical institutions and food service companies.

Educational and medical institutions and food service companies should not provide their suppliers a resale certificate, Form ST-8A, unless they will be re-selling the product or are doing so to comply with the provisions of SC Regulation 117-324.

117-305.5 Exemption Meals Sold to School Children

Meals sold within school buildings, not for profit, to school children are exempted from the sales tax by Section 12-36-2120(10). This exemption is construed to include only sales of meals to pupils of kindergartens, grammar and high schools, either public or private, where it can be shown that there is no profit therefrom and where the sales are made within the school building. Schools operating school lunch programs are required to obtain a retail license and remit the tax on all sales of meals to persons other than school children.

Meals sold by any public or private educational institution or their agent, other than those exempted by Section 12-36-2120(10), described above, are subject to the sales tax when a separate charge per meal is made to the consumer. This includes cash sales, sales at special events and meals sold by commissaries at such institutions. Tax on these sales must be remitted by the institution to the department based on gross proceeds.

Educational institutions operating boarding facilities where meals and beverages are furnished without a separate charge being made or where a lump sum charge is made by the month or by the term are deemed to be the users or consumers of the prepared meals if same are purchased or acquired, or the users or consumers of the

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

FINAL REGULATIONS 239

unprepared food products if such educational institutions or their agents purchase such products and prepare the meal. The seller of such prepared meals shall be required to report and remit the tax due on the gross proceeds of such prepared meals to the educational institution. The seller of unprepared food products to an educational institution or its agent purchasing such products and preparing the meals shall be required to report and remit the tax due on the gross proceeds of such raw foodstuffs.

Sales to consumers of prepared meals, foodstuffs or beverages on educational institution premises by an entity other than the educational institution or its agent, are sales at retail and the seller is required to obtain a retail license for each location, and report and remit the tax due on the gross proceeds of such sales.

Note: See Code Section 12-36-110 for the application of the tax to vending machine sales.

117-305.6 Meals Furnished Employees, Restaurants.

Meals served by employers to their employees as part of the latter's compensation are not taxable sales. Where, however, a separate charge is made for the same by the employer and either paid for by the employee or deducted from his wages, the transaction is a sale subject to tax.

117-305.7 Meals Served by Railroads, Airlines, Etc.

Sales of meals, drinks, etc., by railroads, airlines, pullman, steamships, or other transportation companies within this state are subject to the sales tax.

Meals, etc., served by such transportation companies as a part of the transportation service, for which no separate charge is made, are not required to be reported as retail sales by the companies. In such instances the companies are considered to be the consumers of the foods, etc., served and will be required to pay tax thereon to the suppliers.

117-305.8 Meals Served by Boarding Houses.

Food furnished by operators of boarding houses is not considered to be sold at retail when the charge for such food is a lump sum covering meals for a week or for a month when such food is not offered for sale to the general public. The supplier of foodstuffs is liable for the sales tax on sales to the operator at the time of the sale to him. The boarding house operator is considered to be the user of the materials he purchases.

Note, however, in instances where the boarding house operator is liable for the license and the tax under Section 12-36-920 he is liable for the tax measured by his gross proceeds of sales of meals plus gross proceeds derived from the rental or charges for rooms, lodgings, or accommodations furnished to transients. In this instance the properties which become a component of the meals prepared for sale are purchased at wholesale, tax-free. All other items of tangible personal property, such as heating and cooking fuels, furniture, linens, appliances, radios, and television sets are subject to the tax at the time of purchase by the boarding house operator.

117-306 Repairs

Materials used in repairing, for taxing purposes, fall into the following classes:

(a) Materials which pass to the repairman's customers and which do not lose their identity when used by the repairman and which are a substantial part of their repair job (such as auto repair parts, radio tubes, and condensers) are sold at retail by the repairman. He must report sales tax on such sales, including tax on the service incidental thereto. He may, however, if making separate agreements to sell the repair parts and to perform the labor and service required, remit tax only upon the price of the parts if his records and his invoices clearly show a separation of the amounts received from sales of parts and from the rendering of services.

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

240 FINAL REGULATIONS

(b) Materials which pass to the repairman's customer but which lose their identity when used by the repairman or which are inconsequential in amount, such as paint, solder, and tack, are considered to have been used or consumed by the repairman and are taxable at the time of sale to him.

(c) Materials which are used or consumed by the repairman and which do not pass on to his customer are supplies and taxable when sold to the repairman.

(d) Materials which fall in class (b) or (c) are purchased at wholesale for use by a repairman who, in addition to using such materials as a repairman, sells the same kinds of materials for use by others. These materials become subject to the sales tax upon their withdrawal for use by the repairman. Note, however, that a repairman is not to be considered a vendor unless he carries a stock of goods and sells outright therefrom a substantial amount. If the repairman makes only isolated sales or "accommodation" sales, he is not to be licensed as a seller under the sales tax law, in which case his supplier is liable for the tax.

In all instances materials are taxable when sold to repairmen for use in making repairs where such materials lose their identity as a result of such use. For instance, solder used in welding, paint used in automobile refinishing, thread used in mending clothing, cloth used in reupholstering. In all instances where the shape or composition of the repair material is materially changed, such altered or changed material is considered to have been used or consumed by the repairman, and, for that reason, subject to tax when sold to him. No tax on this material is to be collected by the repairman from his customer.

In instances where repair materials and repair parts are passed to the repairman's customers without change, except necessary and customary minor adjustments, such parts or materials may be purchased at wholesale by the repairman licensed under the law. The repairman is then liable for sales tax on such sales of materials and parts to his customers.

117-306.1 Repairs to Machines.

(a) When repairs to machines require only service or service with the use of an inconsequential amount of materials, the amount received is not subject to tax.

(b) When material and service are used in making repairs to machines exempted under the machine exemption and when the materials used consist of standard replacement parts customarily used on such machines, neither service nor materials are subject to tax.

(c) When material and service are used in repairing machines not exempted and when there is no separation in the billing, both materials and services are to be included in gross proceeds of sales.

(d) When material and service are used in repairing taxable machines with service and materials shown separately, the material only is subject to the tax.

(e) Materials are taxable in any event when sold to repairmen for use in making repairs where such materials lose their identity as a result of such use. For instance, paint, solder, lumber, and sheet metal.

117-306.2 Automobile Repair Shops.

Materials which pass to the repairman's customer and which do not lose their identity when used by the repairman and which are a substantial part of the repair job (such as automobile parts, accessories, tires, tubes and batteries) are sold at retail by the repairman. He must report sales tax on such sales, including tax on the service incidental thereto. He may, however, if making separate agreements to sell the repair parts and to

FINAL REGULATIONS 241

perform the labor and services required, remit tax only upon the price of the parts if his records and his invoices clearly show a separation of the amounts received from sales of parts and from the rendering of services.

Materials which pass to the repairman's customer but which lose their identity when used by the repairman or which are inconsequential in amount (such as paint, solder and upholstery tacks) are considered to have been used or consumed by the repairman and are taxable at the time of sale to him.

The painting of automobiles is a service by the painter. Receipts from such painting are not taxable. The paint, supplies, etc., used or consumed by the painter are taxable when sold to him.

Materials which are used or consumed by the repairman and which do not pass on to his customer (such as tools, equipment, paint remover, upholstery cleaner and tire cleaner) are taxable when sold to the repairman.

117-306.3 Jewelry Repairmen.

The jewelry repairman is deemed to be engaged primarily in rendering services when he repairs property belonging to others. He is the purchaser for use or consumption of tangible personal property used by him in rendering such services. Consequently, the sales by the supply house to the jewelry repairman of articles of machinery and equipment and of such supplies as springs, crystals, jewel staffs, gold, silver solder and other materials used incident to the repair operation are sales at retail within the meaning of the sales and use tax law. Receipts of the jewelry repairman from watch, clock or other jewelry repair are not subject to the tax.

The sales of watches, clocks, watch bands, watch chains, and other items of jewelry or property of like nature constitutes sales of tangible personal property and as such bear the tax. The repairman making sales of such property is required to hold a retail license and to remit directly to the department the tax on such sales.

117-306.4 Shoe Repairmen.

The shoe repairman is deemed to be engaged primarily in rendering services when he repairs property belonging to others. He is the purchaser for use or consumption of tangible property used by him in rendering such services. Consequently, the sale to the shoe repairman of articles of machinery and equipment and such supplies as sole leather, rubber heels, thread, nails and other findings for use in connection with rendering such services are sales at retail within the meaning of the sales and use tax law.

The sale of shoe laces, second hand shoes, package products and other like property constitutes sales of tangible personal property and as such bear the tax. The repairman making sales of such property is required to hold a retail license and to remit directly to the department the tax on such sales.

117-307 Hotels, Motels, and Similar Facilities

Code Section 12-36-920 imposes a sales tax upon accommodations and "additional guest charges." The term 'additional guest charge' means an amount which is added to the guest's room charge for a specific amenity or service for the guest."

Therefore, charges for rooms, lodgings and accommodations are taxed at 7%, while other charges for other services provided at the hotel, when over and above the services customarily provided with the room, are taxed at 5% as an "additional guest charge." However, if an "additional guest charge" would be taxed under other provisions of the sales and use tax law (Chapter 36 of Title 12), then such charges are not taxed as an "additional guest charge."

It should therefore be noted that the determination as to what services, if any, are over and above the services customarily provided with the room must be based on all of the facts and circumstances.

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

242 FINAL REGULATIONS

The burden of proof that a charge is an additional guest charge, and not part of the price for the room, rests with the taxpayer. Failure to prove that a particular charge is for a service that is over and above the services customarily provided with the room will subject the charge to the 7% tax rate.

117-307.1 Examples of the Application of Tax to Various Charges Imposed by Hotels, Motels, and Other Facilities

The following questions and answers are intended to provide guidance with respect to the provisions of Code Section 12-36-920.

Telephone Charges

1.Q. If a hotel charges \$100.00 for a room, and that price includes the room and use of the phone for local calls, what tax rate applies to the \$100.00?

A. The \$100.00 charge would be subject to a tax rate of 7%. The use of the phone is a part of the services offered and provided with the room for the \$100.00. Therefore, it is not an additional guest charge.

2.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$5.00 per day for the availability of the phone for local calls, what tax rate applies to each of the charges?

A. The \$80.00 room charge and the \$5.00 telephone charge are taxed at 7%. The availability of a phone is a part of the services offered and provided with a room. The \$5.00 is charged whether or not the guest uses the phone. Therefore, it is not an additional guest charge when the charge is based on a per day rate.

3.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$1.00 per local phone call, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%. Each \$1.00 phone charge is taxed at 5%. The availability of a phone is a part of the services offered and provided with a room; however, the use of the phone for a local call is over and above the services customarily provided with the room. Guests expect to pay a charge for each local call made from the room phone. Therefore, the \$1.00 is an additional guest charge when the charge is based on a per call basis.

4.Q. If a hotel charges \$80.00 for a room, and the customer is also charged \$20.00 for various long distance calls made, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%, while the remaining charges for the long distance calls are taxed at 5% as additional guest charges. The Department, in Decision #92-11 held that the charges for long distance telephone calls were not otherwise taxed under Chapter 36 and were therefore taxable as additional guest charges.

Maid Service

5.Q. If a hotel charges \$100.00 for a room, and that price includes maid service, what tax rate applies to the \$100.00?

A. The \$100.00 charge would be subject to a tax rate of 7%. Since the maid service is a service provided with the room, it is not an additional guest charge.

6.Q. If a hotel charges \$80.00 for a room, and the customer also must pay a mandatory \$20.00 charge for maid service, which may or may not be separately stated, what tax rate applies to each of the charges?

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

FINAL REGULATIONS 243

A. The \$80.00 room charge and the \$20.00 maid service charge are taxed at 7%. The maid service is part of the services provided with the room. The fact that it may be separately charged does not necessarily make the charge an additional guest charge. In this case the maid service is mandatory, and therefore, the actual charge for the room is \$100.00 which is taxed at 7%.

7.Q. If a rental agency charges \$800.00 per week for a condominium unit, and the customer also must pay a mandatory \$50.00 charge for maid service at the end of the week, what tax rate applies to each of the charges?

A. The \$800.00 weekly unit charge and the \$50.00 maid service charge are taxed at 7%. The maid service is part of the services provided with the unit. The fact that it may be separately charged does not necessarily make the charge an additional guest charge. The maid service is mandatory, and therefore, the actual charge for the unit is \$850.00, which is taxed at 7%.

8.Q. If a rental agency charges \$800.00 per week for a condominium unit, and the customer is required to leave the unit in a clean condition, what tax rate applies to each of the charges if the customer has the option to have the rental agency clean the unit at the end of the week for \$50.00?

A. The \$800.00 weekly unit charge is taxed at 7% and the \$50.00 maid service charge is taxed at 5%. The \$50.00 optional maid service is provided over and above the services provided with the unit. The \$50.00 is therefore an additional guest charge subject to the tax at 5%.

9.Q. If a rental agency charges \$800.00 per week for a condominium unit, a mandatory \$50.00 charge for maid service at the end of the week, and the customer has the option to receive daily maid service for \$20.00 a day, what tax rate applies to each of the charges?

A. The \$800.00 weekly unit charge and the \$50.00 maid service charge are taxed at 7%. The maid service is part of the services provided with the unit. The maid service is mandatory, and therefore, the actual charge for the unit is \$850.00, which is taxed at 7%. The \$20.00 optional maid service is provided over and above the services provided with the unit. The \$20.00 is therefore an additional guest charge subject to the tax at 5%.

In-room Movies

10.Q. If a hotel charges \$100.00 for a room, and that price includes the in-room movies at no extra charge, what tax rate applies to the \$100.00?

A. The \$100.00 charge would be subject to a tax rate of 7%. The availability of in-room movies is a part of the services offered and provided with the room for the \$100.00. Therefore, it is not an additional guest charge.

11.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged a mandatory fee of \$5.00 per day for in-room movies (whether or not the guest watches any movies), what tax rate applies to each of the charges?

A. The \$80.00 room charge and the mandatory \$5.00 in-room movie charge are taxed at 7%. The availability of in-room movies is a part of the services offered and provided with a room. The \$5.00 is charged whether or not the guest watches the movies. Therefore, it is not an additional guest charge when the charge is based on a per day rate and the guest is charged whether or not the movies are watched.

12.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$7.00 for each in-room movie he watched, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%. The \$7.00 movie charge is taxed at 5%. The availability of in-room movies is a part of the services offered and provided with a room; however, the charge for viewing a

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

244 FINAL REGULATIONS

movie is over and above the customary charge for the room. Guests expect to pay a charge for each movie viewed. Therefore, the \$7.00 is an additional guest charge when the charge is based on a separate charge for watching the movie. The tax on this additional guest charge is the liability of the hotel, regardless of whether or not service is being provided by a third party or the hotel itself.

Meals

13.Q. If a hotel charges \$100.00 for a room, and that price includes a continental breakfast for the guest, what tax rate applies to the \$100.00?

A. The \$100.00 charge is taxed at 7%. Since the continental breakfast is provided with the room, it is not an additional guest charge. (The withdrawal of the food from the hotel's inventory is subject to the sales tax based on its fair market value. See Code Section 12-36-90 and Code Section 12-36-110.)

14.Q. If a hotel charges \$100.00 for a room, and also charges the guest a separately stated \$20.00 "club" fee, what tax rate applies to each of the charges? (The "club" fee, for that extra \$20.00, provides the guest access to a buffet meal that is not available to other guests.)

A. The Department, in Decision #92-32, held that the separately stated charge of \$20.00 was not part of the charge for the room but a retail sale of the meal to the guest. Therefore, the charges are taxed as follows: 7% tax applies to the \$100.00 charge for the room and 5% tax applies to the \$20.00 charge for the meal. The meal is not taxed as an additional guest charge under Code Section 12-36-920(B) since it is otherwise taxed at 5% under Chapter 36 - Code Section 12-36-910.

Linens

15.Q. If a rental agency charges \$800.00 per week for a condominium unit, and the customer has the option to rent linens for \$50.00 for the week, what tax rate applies to each of the charges?

A. The \$800.00 weekly unit charge is taxed at 7%. The rental of the linens is optional and not part of the services provided with the unit for the \$800.00 charge. The \$50.00 rental of the linens is not an additional guest charge since the rental charge for the linens is a sale of tangible personal property and is otherwise taxed at 5% under Chapter 36 - Code Section 12-36-910.

Golf and Other Tourist Packages

16.Q. If a hotel has a "golf package" for \$100.00 per night, and the customer is entitled to a room at the hotel, one round of golf at a golf course at no extra charge, and a meal at no extra charge, what tax rate applies?

A. The \$100 charge would be subject to the 7% tax, except any portion forwarded to the golf course for payment of the green fee and any portion forwarded to the restaurant for payment of the meal. However, see the one exception in the "Note" in Example #1.

The following examples best explain this answer:

Example #1: The hotel receives \$100 from the guest for the golf package. The hotel pays the golf course \$30 for the guest's green fee and pays the restaurant \$5 for the guest's meal.

The hotel would be liable for the 7% tax on \$65 (\$100 - \$35). The golf course would be liable for the 5% admissions tax on \$30 and the restaurant would be liable for 5% sales tax on the sale of the meal. This calculation must be made on a guest by guest basis. In other words, the 7% tax due will be determined for each guest by multiplying 7% by the total charge for the package less the portion forwarded to the golf course for payment of the green fee and the portion forwarded to the restaurant for payment of the meal.

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

FINAL REGULATIONS 245

Note: If the hotel's guest is unable to play golf that day ("No-Show") (but still received the meal), and under terms of the golf package the guest will not be required to pay the "green fee portion" of the package, the hotel would be liable for the 7% tax on the amount it received from the guest less the amount paid by the hotel to the restaurant. For example, if the hotel determined that the "green fee portion" of the \$100 package was \$30 and required the guest to only pay \$70 for that day, then the hotel would be liable for the 7% tax on \$65 and the restaurant would be liable the 5% sales tax on the sale of meal.

If the hotel's guest is unable to play golf that day ("No-Show") (but still received the meal), and under terms of the golf package the guest must still pay the hotel the full \$100, the hotel would be liable for the 7% tax on the "accommodations portion" of the package. The golf course would not be liable for the 5% admissions tax since the guest did not play golf and the golf course did not receive an admissions fee from the hotel. However, the hotel is liable for the 5% tax on the other portion of the \$100 paid by the guest since it now represents an additional guest charge for the service of making the golf arrangements that were not used. This additional guest charge will be equal to the green fee that the hotel would have had to pay to the golf course. In other words, if the hotel would have been required to pay \$30 had the guest played golf, then the additional guest charge would be \$30. As such, the hotel would be liable for the 7% tax on \$65 and the 5% tax (as an additional guest charge for the service) on \$30 and the restaurant would be liable for the 5% sales tax on the sale of the meal.

Example #2: The hotel receives \$100 from the guest for the golf package. The hotel pays the restaurant \$5 for the guest's meal. The hotel has an agreement with the golf course to pay the golf course \$30 for the guest's green fee. When a guest does play golf, the hotel pays the \$30; however, the hotel will receive money back from the golf course at a later date to help pay for the hotel's advertisements of its golf packages.

The hotel would be liable for the 7% tax on \$65 (\$100 - \$35). The golf course would be liable for the 5% admissions tax on \$30 and the restaurant would be liable for the 5% sales tax on the sale of the meal. The fact that the hotel will receive a portion of the money back in the future does not affect the taxation of the charges. It is merely an expense of the golf course that is paid to the hotel.

Notes: 1. To ensure the 7% tax is not circumvented by sending most of the package charge to the golf course and then later having a large portion of it returned to the hotel as "advertising," the amount paid to the golf course and returned to the hotel to pay for advertising must be reasonable and supported by the books and records of both taxpayers. Otherwise, the Department will assess taxes according to a reasonable breakdown of room charges, green fees, and meal charges.

2. Other tourist packages, such as tennis, honeymoon, and entertainment packages, handled in a similar manner would be taxed in the manner described above for golf packages.

Bike Rentals

17.Q. If a hotel charges \$100.00 per night for a room, and the customer has the option to rent a bike to travel around the resort area for \$10.00 a day, what tax rate applies to each of the charges?

A. The \$100.00 hotel charge is taxed at 7%. The rental of the bike is optional and not part of the services provided with the room for the \$100.00 charge. The \$10.00 is not an additional guest charge since the rental charge for the bike is a sale of tangible personal property and is otherwise taxed at 5% under Chapter 36.

18.Q. If a hotel charges \$100.00 per night for a room, and the hotel allows the guest to reserve a bike at no extra charge to travel around the resort, what tax rate applies to the charge?

A. The \$100.00 hotel charge is taxed at 7%. The availability of the bike is a part of the services provided with the room for the \$100.00 charge and is therefore not an additional guest charge.

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

246 FINAL REGULATIONS

Newspapers

19.Q. If a hotel charges \$80.00 for a room, and the guest receives a newspaper that is delivered to the guest's door in the morning, what tax rate applies to the charge?

A. The \$80.00 room charge is taxed at 7%. The newspaper is not an additional guest charge since the newspaper is part of the services provided with the room for the \$80.00 charge.

20.Q. If a hotel charges \$80.00 for a room, and the customer is charged \$2.00 for a newspaper that is delivered at the guest's request, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%, while the charge for the newspaper, as an additional guest charge, is taxed at 5%. The newspaper that is provided for \$2.00 is over and above the services customarily provided with the room at the hotel.

Valet Parking

21.Q. If a hotel charges \$80.00 for a room, and there is no additional charge to the customer for valet parking, what tax rate applies to the charge?

A. The \$80.00 room charge is taxed at 7%.

22.Q. If a hotel charges \$80.00 for a room, and the customer is also charged \$15.00 for valet parking, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%, while the \$15.00 charge for the valet parking, as an additional guest charge, is taxed at 5%.

23.Q. If a person is not a guest at a hotel, but is attending an event at the hotel, is a \$15.00 charge for valet parking subject to the tax as an additional guest charge?

A. The \$15.00 charge for valet parking is not subject to the sales tax. It is not an additional guest charge since, in order to be taxable, the charge must be in addition to a room rental charge. This charge is not in addition to another charge.

Meeting Rooms

24.Q. If a hotel charges \$80.00 for a guest room, and there is no additional charge to the customer for the use of a meeting room, what tax rate applies to the charge?

A. The \$80.00 guest room charge is taxed at 7%.

25.Q. If a hotel charges \$80.00 for a guest room, and the customer is also charged \$35.00 for the use of a meeting room, what tax rate applies to each of the charges?

A. The \$80.00 guest room charge is taxed at 7%, while the \$35.00 charge for the meeting room, as an additional guest charge, is taxed at 5%.

26.Q. Is a \$35.00 charge for the use of the meeting room by a person who is not a guest at the hotel, subject to the tax as an additional guest charge?

FINAL REGULATIONS 247

A. The \$35.00 charge for the meeting room is not subject to the sales tax. It is not an additional guest charge since, in order to be taxable, the charge must be in addition to a room rental charge. This charge is not in addition to another charge.

Note: If the meeting room is being rented by an organization that is conducting a seminar, workshop, conference, or similar meeting at the hotel, the charge for the meeting room is taxed at 5% as an additional guest charge if the organization is also renting guest rooms at the hotel for officers or members of the organization, invited speakers, or others.

Other Services

27.Q. If a hotel charges \$100.00 for a room, and the room contains a refreshment bar so the guest may avail himself of alcoholic drinks, non-alcoholic drinks, or snacks at no extra cost, what tax rate applies to the \$100.00?

A. The \$100.00 room charge is taxed at 7%.

28.Q. If a hotel charges \$80.00 for a room, and the room contains a refreshment bar so the guest may avail himself of alcoholic drinks, non-alcoholic drinks, or snacks at a set price per item, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%, while the charges for each item the guest consumes from the refreshment bar is taxed at a rate of 5% as a sale of tangible personal property under Code Section 12-36-910. These charges are not additional guest charges since they are "otherwise taxed" under Chapter 36.

Cancellations

29.Q. If a person reserves and pays for sleeping accommodations at a hotel, but does not cancel the reservation or does not cancel the reservation by the prescribed time set by the hotel, is the charge for the accommodations retained by the hotel subject to the tax even though he will not use the sleeping accommodations?

A. While the sleeping accommodations were not used, the person had the right to use such sleeping accommodations. Therefore, the sleeping accommodations were "furnished" and the charge by the hotel for such sleeping accommodations is subject to the tax. See Question #30 for information concerning when accommodations are canceled but an administrative fee or deposit is charged or retained.

30.Q. If a person makes reservations with a hotel for sleeping accommodations, but the reservations are canceled by such person or by the hotel, is an administrative fee or deposit charged or retained by the hotel as a result of the cancellation subject to the tax?

A. An administrative fee or deposit retained or charged by a hotel when reservations for sleeping accommodations are canceled is not subject to the sales tax.

Note: See Question #29 for information concerning when accommodations are canceled or otherwise not used but a charge for the sleeping accommodations is made or retained by the hotel. See also Question #16, Example #1. Note, for the taxation of a tourist package when sleeping accommodations are furnished but the guest does not use a portion of the package (i.e. the guest pays for a golf package but does not play golf).

Note: This regulation references tax rates of 7% for the sales tax on accommodations, 5% for the sales tax on additional guest charges, and 5% for the sales tax on sales or rentals of tangible personal property. Counties may now impose several types of local option sales and use taxes as well as other local taxes imposed upon the

248 FINAL REGULATIONS

furnishing of accommodations and the sale of prepared meals. Some of these taxes are collected by the Department of Revenue on behalf of the county imposing the tax and others are collected by the county itself.

117-307.2 Purchases by Hotels, Motels and Other Facilities

Hotels, lodging houses, apartment houses, tourist camps and the like are subject to the sales or use tax, whichever may apply at the time of purchase for use or consumption of beds, bedding, carpets, shades, curtains, linens, uniforms, supplies, fuel for heating and cooking, air conditioning equipment, etc.

117-307.3 Certain Facilities Not Subject to the Tax

The tax also applies to the gross proceeds from the rental or charges for any rooms, lodgings or accommodations furnished to transients by any hotel, inn, tourists court, motel, residence, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration, except where such facilities consist of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of such facilities. The gross proceeds derived from the lease or rental of accommodations supplied to the same person for a period of 90 continuous days shall not be considered proceeds from transient.

117-307.4 Rentals in Excess of Ninety Days Not Subject to the Tax - Airlines, Bus Companies, Etc.

A business, usually an airline, bus company or railroad, will reserve a certain number of rooms in a hotel for use by its personnel. Usually the hotel is guaranteed a certain minimum occupancy. The hotel is paid for the number of rooms that are occupied and would not necessarily furnish the same rooms each time. Such proceeds derived from the rentals of the accommodations supplied would be subject to the sales tax.

A business rents from a hotel certain specific rooms on a continuing basis. These rooms are occupied by authorized personnel of the corporation, on a daily basis. The hotel is paid for the specific number of rooms that are rented, whether they are used or not.

Transactions of this nature would not be subject to the tax if the contract remains in force for a time in excess of 90 continuous days.

117-307.5 Certain Exchanges of Accommodations Exempt from the Tax

Code Section 12-36-2120(31) exempts from the sales tax on accommodations the gross proceeds accruing or proceeding from "vacation time sharing plans, vacation multiple ownership interests, and exchanges of interests in vacation time sharing plans and vacation multiple ownership interests as provided by Chapter 32 of Title 27, and any other exchange of accommodations in which the accommodations to be exchanged are the primary consideration."

117-307.6 Accommodations Furnished to the Federal Government or Federal Government Employees

Charges for hotel and motel accommodations to a federal employee on official government business are exempt from sales tax pursuant to Code Section 12-36-2120 if the accommodations are purchased directly by the federal government.

Therefore, the 7% sales tax on accommodations is not applicable when:

1. The federal government is billed directly by the retailer;
2. The federal employee pays by government check; or,

FINAL REGULATIONS 249

3. The federal employee pays by government credit card and the federal government is billed directly by the credit card company.

Charges for hotel and motel accommodations to a federal employee on official government business are subject to the sales tax if the accommodations are purchased by the federal employee, even if the employee is reimbursed for the charges. This includes transactions in which:

1. The federal employee pays by personal check; or,
2. The federal employee pays by credit card, is billed directly by the credit card company, and is reimbursed by the federal government.

NOTE: The presentation by a federal employee of a tax exemption certificate issued by the federal government is not sufficient to exempt the transaction from the tax. In order to be tax exempt, a transaction involving a tax exemption certificate must also meet one of the above requirements.

117-308 Professional, Personal, and Other Services

The receipts from services, when the services are the true object of the transaction, are not subject to the sales and use tax, unless the sales and use tax is specifically imposed by statute on such services (i.e. accommodation services, communication services). The following subsections of this regulation will discuss various types of services. It should also be noted that several businesses, in addition to selling nontaxable services, also sell tangible personal property and should be licensed to report the tax.

This list is not all-inclusive as to services offered in South Carolina, as to services offered by a particular profession, or as to sales made by a particular profession.

117-308.1 Professional Services

Receipts from the performance of professional services are not subject to the sales tax.

The property used incidental to the performance of such services by licensed medical doctors, dentists, doctors of veterinary medicine, oculists, optometrists, lawyers, accountants, civil engineers, and other licensed professional men is subject to tax on its sale to such persons.

Note however, that a doctor, etc., may in addition to rendering a service, also be in the business of making sales of tangible personal property. For instance, a doctor may sell medicines.

In those cases where professional men are regularly engaged in the business of selling tangible personal property at retail, they must obtain a retail license and remit the taxes due on such sales.

117-308.2 Dentists.

Dentists use and consume equipment, supplies, and medicines in rendering professional service, which equipment, supplies and medicines, etc., are taxable at the time of its purchase by the dentists. Note: Sales of dental prosthetic devices to dentists are exempt from the tax.

117-308.3 Doctors.

Doctors are the consumers of the supplies, medicines, office furniture and fixtures and special tools and equipment they use in the practice of their profession. Sales of such supplies and equipment to doctors are retail sales and subject to the sales tax.

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

250 FINAL REGULATIONS

It is only when a doctor has a stock of drugs from which he makes numerous and substantial retail sales that he is required to have a retail license and to remit sales tax directly to the department.

117-308.4 Lawyers.

Lawyers use law books, supplies, and equipment, which books, supplies and equipment are taxable.

117-308.5 Veterinarians.

Veterinarians are deemed to be the users or consumers of the property they purchase, whether used in the rendering of professional services or sold outright as part of the veterinarian practice and not furnished as a part of professional services rendered.

117-308.6 Architects.

Architects are not considered to be engaged in the business of selling tangible personal property when they render professional services in the forming of original plans, designs and specifications. Also considered to be proceeds from the rendition of professional services are charges for the sale of these original design concepts which have been changed as a result of elevation and/or other architectural modifications to a customer's specific requirements.

Sales by architects of all reproductions of such plans, designs or specifications, unaltered or unmodified in any way, are deemed to be subject to the sales or use tax.

117-308.7 Ophthalmologists, Oculists and Optometrists.

Ophthalmologists, oculists and optometrists are engaged primarily in rendering professional services and when they furnish, replace, or repair eye glasses, lenses or other such ophthalmic materials for their patients in connection with their services, the gross receipts from such services are not taxable, but they must pay the tax as consumers to their suppliers on all materials purchased by them for use in the performance of such service.

The optician is the maker and seller of eyeglasses. He does not examine eyes, but merely fills prescriptions supplied by the ophthalmologist, oculist or optometrist and must charge the tax on all sales by him to users or consumers. The optician is required to obtain a retail license and collect and remit the tax on the gross proceeds of such sales.

All persons or companies, whether opticians, optometrists, or otherwise, making sales of such property as sun glasses, barometers, telescopes, binoculars, opera glasses, etc., are required to have a retail license and collect the sales tax upon the sales of such items of merchandise to the consumer or user thereof.

Likewise, ophthalmologists, oculists and optometrists who are also opticians must pay a tax based on the reasonable and fair market value of all tangible personal property withdrawn for use by them in filling their own prescriptions.

The term "reasonable and fair market value" is held to mean the retail sales price at which the property is offered for sale to the public in the absence of affirmative proof of the contrary. In no event can it be less than the cost of materials used, to include fabrication and service labor, and all other expenses which are a part of preparing the property for the patient, except that it shall not include charges for professional services in connection with examining the patient.

117-308.8 Hospitals, Infirmarys, Sanitariums, Nursing Homes and like Institutions

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

FINAL REGULATIONS 251

Hospitals, infirmaries, sanitariums, nursing homes and like institutions are engaged primarily in the business of rendering services. They are not liable for the sales tax with respect to their gross proceeds or receipts from meals, bandages, dressings, drugs, x-ray photographs and other tangible personal property where such property is used in the rendering of the primary medical service to patients. This is true irrespective of whether or not such tangible items are billed separately to their patients. Hospitals, infirmaries, sanitariums, nursing homes and like institutions are deemed to be the users or consumers of such tangible personal property and the instate sellers of these items are required to report and remit the tax due on the sale of such property to the hospitals, infirmaries, sanitariums, nursing homes, and like institutions or in the case of out-of-state purchases, use tax shall be reported and remitted by the purchaser.

Where meals and beverages are furnished by hospitals, infirmaries, sanitariums, nursing homes and like institutions to the patient as a part of their primary medical service, with or without a separate charge being made, the hospitals, infirmaries, sanitariums, nursing homes and like institutions are deemed to be the users or consumers of the prepared meal if same is purchased or acquired or the users or consumers of the unprepared food products if the hospitals, infirmaries, sanitariums, nursing homes and like institutions purchase such products and prepare the meal.

Sales of meals, foodstuffs or beverages by hospitals, infirmaries, sanitariums, nursing homes or like institutions to members of the staff, nurses, attendants, employees, visitors or patients, other than those meals furnished as a part of the primary medical service rendered, are sales at retail and such institution is required to obtain a retail license for each location and report and remit the sales tax on the gross proceeds of such sales, to include sales for cash, credit, payroll deduction and sales at special event functions. This includes sales made in institutions, cafeterias, snack bars, canteens and commissaries.

Where drugs, prosthetic devices and other supplies are furnished to their patients as a part of the medical service rendered, such hospitals, infirmaries, sanitariums, nursing homes and like institutions are deemed to be users or consumers of such drugs, prosthetic devices and other supplies.

Gases such as oxygen, etc., sold to hospitals, medical doctors, dentists, and others for professional use are subject to the sales or use tax, whichever may apply.

117-308.9 Advertising Agencies.

Advertising agencies are engaged primarily in the business of selling services. These rely on expertise in advertising strategy, in media buying, in graphic arts production and in other specialized fields to secure and retain clients.

These companies purchase and/or produce finished advertising materials such as radio and television spots and newspaper, magazine and billboard ads, and contract with local and network radio and television stations, newspaper and magazine publishers, outdoor advertising companies, transit advertising companies (bus, taxi and airline) and other media for time or space to air or display these programs.

In the development and execution of a complete advertising campaign, advertising agencies may also share responsibilities with clients in the development of products or services to include, as an example, creation of a trademark, determination of a price, selection or creation of channels of distribution of the products and/or dealership and appraisal of competition.

Receipts of advertising agencies from the furnishing of these professional services are not subject to the sales or use tax. The tax is due, however, on all tangible personal property purchased by these agencies for use in the performance of such services irrespective of whether such property is acquired in the name and for the account of the advertising agencies or their respective principals.

117-308.10 Bookbinders and Paper Cutters.

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

252 FINAL REGULATIONS

Persons engaged in the business of binding books, magazines or other printed matter belonging to another, render nontaxable services. Sales of equipment, materials and supplies to bookbinders for use in performing such services are taxable.

If a bookbinder binds his own printed matter and sells the finished products to users or consumers, or makes and sells at retail loose-leaf binders or other articles, he must remit the tax on the entire receipts from such sales.

A person engaging in the business of paper-cutting, folding, gathering, padding or punching circulars, office forms or other printed matter belonging to others, renders nontaxable services. Sales of tangible personal property to such persons for use or consumption in the performance of these services are taxable.

Materials used by bookbinders in repairing textbooks are subject to the tax.

117-308.11 Jewelry Repairmen.

The jewelry repairman is deemed to be engaged primarily in rendering services when he repairs property belonging to others. He is the purchaser for use or consumption of tangible personal property used by him in rendering such services. Consequently, the sales by the supply house to the jewelry repairman of articles of machinery and equipment and of such supplies as springs, crystals, jewel staffs, gold, silver solder and other materials used incident to the repair operation are sales at retail within the meaning of the law. Receipts of the jewelry repairman from watch, clock or other jewelry repair are not subject to the tax.

The sales of watches, clocks, watch bands, watch chains, and other items of jewelry or property of like nature constitutes sales of tangible personal property and as such bear the tax. The repairman making sales of such property is required to hold a retail license and to remit directly to the department the sales tax on such sales.

117-308.12 Shoe Repairmen.

The shoe repairman is deemed to be engaged primarily in rendering services when he repairs property belonging to others. He is the purchaser for use or consumption of tangible property used by him in rendering such services. Consequently, the sale to the shoe repairman of articles of machinery and equipment and such supplies as sole leather, rubber heels, thread, nails and other findings for use in connection with rendering such services are sales at retail within the meaning of the law.

The sale of shoe laces, second-hand shoes, package products and other like property constitutes sales of tangible personal property and as such bear the tax. The repairman making sales of such property is required to hold a retail license and to remit directly to the department the sales tax on such sales.

117-308.13 Barber and Beauty Shops.

Barber and beauty shop operators primarily render personal services. They are the purchasers for use or consumption of such tangible personal property as is used or consumed incidentally in the rendering of such personal service.

Barber and beauty shops are not, however, relieved from collecting and reporting the tax on sales of tangible personal property, for use or consumption, such as package cosmetics, hair tonics, lotions, and like articles, when sold apart from the rendering of personal services to the purchasers thereof.

117-308.14 Taxidermists

FINAL REGULATIONS 253

Persons practicing the art of taxidermy are deemed to be performing a service the receipts from which are not subject to the sales or use tax. A tax is due, however, on all purchases of tangible personal property for use in the performance of such services.

117-308.15 Automobile Painters

The painting of automobiles is a service by the painter. Receipts from such painting are not taxable. The paint, supplies, etc., used or consumed by the painter are taxable when sold to him.

117-308.16 Painters.

Persons doing any kind of painting where the only tangible personal property supplied by them is the paint which they apply, are primarily rendering a service and not making retail sales. The receipts from such painting are not subject to the sales tax. All of the paint, tools, brushes, equipment, and supplies purchased by painters are subject to the sales tax or use tax, whichever applies, at the time of sale to the painter.

Note, however, that where painters sell painted signs, furniture, or articles which they have manufactured or purchased for painting for resale purposes, such painters are selling such manufactured or processed articles, which sales are subject to the sales tax. The paint and other materials used as a component part of articles to be sold are purchased tax free at wholesale.

Where painters are both consuming paints, etc., in rendering services and consuming from the same stock the same kind of property in producing property for sale, and where the use in production is continuous and a substantial part of the total business, and where suitable records are kept revealing costs of all materials used in contract painting, and costs of materials used in producing for sale, the painter using the materials for both purposes will be allowed to purchase all of the dual purpose materials at wholesale, tax-free, and pay sales tax on the basis of gross receipts from property sold at retail, plus the total cost of all materials used, consumed, or furnished by him in his contract painting business.

Where the painter is in such a dual business and his records are not kept to reveal his sales and the cost of property used in contract painting, he shall be required to pay sales or use tax on all his purchases and in addition will be required to report and pay sales tax on all of his sales of property at retail.

Such consumable supplies as brushes, thinners, paint remover, tools, sandpaper, etc., are, in any event, taxable when purchased by the painter.

117-309 Retailers

The following addresses the application of the sales and use tax to the transactions of some retailers. The list of retailers is not all inclusive and the types of transactions discussed for each retailer are not all inclusive. In addition to selling tangible personal property, some of these retailers may also provide services, some of which are sold in conjunction with tangible personal property and other which are not sold in conjunction with tangible personal property.

117-309.1 Florists

Where florists sell through telegraphic delivery association the following rules will apply:

1. On all orders taken by a South Carolina florist and telegraphed to a second florist in South Carolina for delivery in this state, the sending florist will be held liable for the sales tax measured by his receipts from the total amounts collected from the customer.

254 FINAL REGULATIONS

2. In cases where a South Carolina florist receives an order pursuant to which he gives telegraphic instructions to a second florist located outside South Carolina for delivery of flowers to a point outside South Carolina, tax will likewise be owing with respect to the total receipts of the sending florist from the customer who placed the order.

3. In cases where a South Carolina florist receives telegraphic instructions from other florists located either within or outside of South Carolina for the delivery of flowers, the receiving florist will not be held liable for tax with respect to any receipts which he may realize from the transaction. In this instance, if the order originated in South Carolina, the tax will be payable by the South Carolina florist who first received the order and gave the telegraphic instructions to the second florist.

117-309.2 Photographers, Photo Finishers, and Photo Copiers

Photographers operating photographic studios for the purpose of taking photographs and portraits are primarily engaged in the business of selling tangible personal property to their customers and such sales are taxable.

In cases where individuals deliver pictures to photographers or photographic studios for tinting or coloring, the receipts from such tinting or coloring would not be subject to tax, since such a charge would be the result of service rendered.

Where individuals deliver to what are commonly known as photo finishers, films for developing by the latter, the charge made by photo finishers for actual developing of the films is compensation for a service and does not represent receipts from the sale of tangible personal property. If, however, the photo finisher supplies or sells to his customer, for whom he may be developing the film, printed pictures, the charge for such prints or pictures would constitute a sale at retail, which would be taxable. In such cases, if the photo finisher does not segregate the charge for developing of the films from the charge for prints or pictures, the total amount of the charge to the customer would be taxable. Photostatic copies produced and sold by a photostat producer to purchasers for use, and not for purpose of resale, constitute sales of tangible personal property at retail and are taxable.

117-309.3 Printers

Printers are engaged in the business of producing tangible personal property and their sales of printed matter such as catalogues, books, letterheads, bills, envelopes, folders, advertising circulars, and the like, to purchasers who use or consume these articles are sales at retail. A printer may not deduct from the selling price of such tangible personal property charges for the labor or service of performing the printing even though such labor or service charges may be billed to the customer separately from the charge for the stock. Such labor or service is embodied in and becomes a part of the tangible personal property sold. Where printers purchase from the United States Post Office, cards and envelopes stamped for postage, and imprint thereon various legends for customers, the printers must pay the tax measured by their gross proceeds of the sale of the printed cards or envelopes to their customers. Such cards and envelopes constitute tangible personal property and if they are not resold by such customers, the sales by the printers are at retail. Such printers are entitled to deduct the amount of the postage from the selling price.

No tax arises from the service of imprinting or from the service of typesetting performed by the printer for another printer, where title to the metal does not pass to the customer.

Gross receipts accruing from the sales of printed matter of all kinds are subject to the tax, except as otherwise specifically provided.

Sales of materials to printers are at wholesale, tax-free, when such materials become a component of the printed matter produced for sale. Where the printer qualifies as a manufacturer or processor he is entitled to purchase free of the tax the machines used in printing. Supplies, materials, and equipment not becoming a component of

FINAL REGULATIONS 255

the product to be sold or not constituting a machine used in manufacturing are subject to the sales or use tax, whichever may apply.

117-309.4 Artists

Artists engaged in the business of designing, sketching, engraving, drawing or painting upon paper, canvas, wood or other materials and selling such designs, sketches, engravings, drawings or paintings to purchasers for use or consumption and not for resale, are in the business of selling tangible personal property at retail and are required to pay the tax upon the total amount of the receipts from such sales.

The tax is payable on the total selling price of the finished product and no division of the selling price may be made so that the tax would be payable only on the materials consumed. A completed painting is tangible personal property as is, for example, a valuable vase. In the same category is a completed design sketch, engraving or drawing made or designed by artists.

117-309.5 Sellers of Custom-made Items

Where persons contract to manufacture, compound, process, or fabricate their materials into articles of tangible personal property according to the special order of their customers, the total receipts from the sales of such articles are subject to the sales or use tax, whichever may apply. The seller may not deduct any of his costs, nor can he deduct any of his charges for labor or services, which are an item of the production or fabrication cost of the articles, to arrive at the taxable amount. Articles commonly made to order are portieres, curtains, draperies, tents, awnings, clothing, convertible tops, seat covers, and slip covers.

Persons making sales of made-to-order and custom-made articles purchase the materials which become a component or ingredient of their products at wholesale, tax-free. The equipment, tools, and supplies used or consumed in the production of such articles, and not becoming a part thereof, are subject to the tax.

117-309.6 Machine Shops

Property manufactured or fabricated by machine shops and custom foundries is subject to the sales tax, except when sold for resale purposes or when exempted by one of the exemptions found in the sales and use tax law.

In doing repair work, the machine shop operator consumes the materials which lose their identity in the repairing process, such as paint, solder, babbitt and lumber. He is also considered to be the consumer of such items as cotter keys, nails, washers, stove bolts and nuts, bits of metal, and sheets of metal used in patching or reinforcing. The receipts from the use of these materials are not subject to the sales and use tax. The sales or use tax is due by the machinist at the time of purchase from his suppliers.

Where the machinist in making repairs, fabricates or manufactures a recognizable part or attachment for the article being repaired (as contrasted to patching, mending, or reinforcing weakened parts) no deduction is permissible for labor or any other expenses which are a part of fabricating or manufacturing the part or attachment. He may, however, if making separate agreements to sell the manufactured or fabricated part and to install same, remit tax only on the sales price of the fabricated part or attachment, provided his books and invoices show clearly a separation between the sales price of the fabricated part or attachment and the labor and service of installation.

117-309.7 Ship Chandlers

Ship chandlers sell marine supplies to operators of all kinds of watercraft and to others. The sale or sales by ship chandlers of fuel, lubricants and supplies for use aboard ships plying on the high seas engaged in trade or commerce between South Carolina ports and ports of other states and foreign countries are not subject to the tax. All other sales made by ship chandlers, not for resale, are taxable with the exception of tangible personal

South Carolina State Register Vol. 36, Issue 6
June 23, 2002

256 FINAL REGULATIONS

property delivered to a ship from a bonded warehouse in the custody and under supervision of the United States customs officials, who deliver such properties aboard ships to a locked compartment on which a custom seal is placed, which seal by federal rule cannot be broken until the vessel has passed the 12 mile limit.

117-309.8 Undertakers

Caskets, grave vaults, shrouds, and other tangible personal property furnished by undertakers and funeral directors in rendering burial services are sold by them at retail. These sales are subject to the sales tax.

Where there is a separation of services from the sale of tangible personal property in invoices rendered, and where receipts from sales and receipts from services are properly identified on the books and records of the undertaker, the sales tax will not apply to receipts accruing from the rendering of such services as embalming, hearse service, transportation of family, etc.

In complying with the provision for the separation of charges, a detailed itemization is not required. A separation, listing items such as caskets, vaults, embalming, hearses, and other expenses, without indicating the amount of each item, but indicating the total amount of the charge, and then indicating the amount of the sales tax would be in compliance with the department's determination, if the invoice also contains a statement evidencing the separation of the charges. As an example, if the sale of the tangible personal property amounts to 50 percent of the total charge, then a statement may be shown on the invoice such as: "For purposes of calculating the South Carolina sales tax, 50 percent of the above charge is determined to be subject to the sales tax as being the sale of tangible personal property."

The department is not saying that 50 percent, or any other percentage, is to be used as a basis of separating the sale of tangible personal property from the sale of service.

Several methods have been approved by the division when percentages are used. There are predicated on (1) The funeral director must establish a fair and reasonable percentage to assure the state of at least the correct amount of the tax, (2) Auditable records must be maintained to enable verification of the accuracy of the percentage used, and (3) The invoice to the customer must have imprinted thereon (by stamp or some other designation) the method used in computing the tax.

South Carolina undertakers and funeral directors incur sales and/or use tax liability by reason of sales and service rendered in South Carolina, regardless of the situs of interment. Out-of-state undertakers and funeral directors incur no sales and/or use tax liability to South Carolina when the only business the out-of-state funeral director or undertaker has within this state is the rendering of burial service.

Where undertakers and funeral directors service burial insurance policies, the measure of the sales tax is the total of receipts from all sources accruing to the undertaker as a result of his furnishing tangible personal property. In some instances the undertaker furnishes caskets or other property, the sales price of which is in excess of the amount covered by the insurance policy, which excess is paid by the family of the deceased. In these instances the total sales price of the substituted property is to be used as the measure of the tax.

Where the undertaker is also the insurer, his use of property in servicing his insurance policies is not a sale of such property. In these instances the undertaker is the purchaser at retail of the property used on which he owes either sales or use tax at the time he purchases the property.

Undertakers purchase property, which they sell at retail as stated above, at wholesale, tax-free.

Undertakers purchase at retail consumable supplies, equipment, and property furnished in servicing their own insurance contracts, which consumable supplies and equipment are taxable to them at the time of purchase, including hearses, ambulances, instruments, tools, fixtures, furniture, all other equipment, embalming fluids, chemicals of all kinds, and all other supplies.

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

117-309.9 Sign Companies

A person engaged in the business of erecting, on properties owned or controlled by him, signs for the display of products of a second party for a consideration is deemed to be engaged in the business of selling a service. A tax is due measured by the purchase price of all tangible personal property used or consumed by such person as additions or improvements to realty.

A person engaged in the business of designing, fabricating and erecting signs on properties of another, for the display of that person's products, is deemed to be a retailer. The gross proceeds of the sale of such signs are subject to the tax. If the signs are leased or rented, the lease or rental proceeds are subject to the tax.

A person engaged in both of the above businesses shall pay the tax in accordance with the applicable provisions as set forth hereinabove.

A person who designs and constructs a sign as defined in the second paragraph above may, if all statutory requirements are met, be considered a manufacturer.

117-309.10 Interior Decorators

Interior decorators are generally engaged in the business of selling home or office furnishings of which many, such as portieres, curtains, draperies and seat and slip covers, are made to customers' specifications. The total charge for such made-to-order merchandise is subject to the tax without any deduction for fabrication labor whether such labor is performed by the decorator or by others for the decorator's account.

It is frequently necessary to repair, renovate or reupholster furniture. Sublet repairs are taxable on the total charge to the customer when the repair materials are sold or furnished by the decorator.

It may also be necessary to remodel interiors such as by painting or papering walls, hanging mirrors, pictures and lighting fixtures or other accessories, or replacing floor coverings. Labor for these purposes is not subject to the tax provided it is separately shown from the sales price of tangible personal property on the invoice to the customer. Other exempt charges when separately invoiced to the customer are consultation fees and reimbursement for travel expenses.

117-309.11 Sellers of Ice

Sales of ice by manufacturers and wholesalers to licensed retail dealers engaged in the retail business of selling ice to users or consumers are sales for resale and are not subject to the tax. Ice sold to such licensed retailers which is withdrawn for use or consumption bears the sales and/or use tax and the same must be reported and remitted to the department. Ice sold to restaurants, cafes, cafeterias, drug stores, etc., which enters into and becomes an ingredient or component part of the food and drink which such businesses compound for sale are sales at wholesale, free of the sales and use tax.

Sales of ice made for any other purposes than above specified are sales at retail and subject to the tax.

117-309.12 Sellers of Oxygen, Propane or Butane

Gases such as oxygen, etc., sold to hospitals, medical doctors, dentists, and others for professional use are subject to the sales or use tax, whichever may apply.

Sales of propane or butane gases or any similar gas, unless an otherwise exempt sale to a manufacturer or compounder, are subject to sales or use tax, whichever may apply.

258 FINAL REGULATIONS

Gas pressure regulators purchased by a seller of propane gas for use by such seller on storage tanks furnished to customers come within the exemption found at Section 12-36-2120(17). The proceeds derived from the sale or lease of such regulators to customers are subject to the tax.

117-309.13 Sellers of Automobile Seat Cover and Top Linings

Seat covers and prefabricated top linings are recognized units of tangible personal property which, when sold, are subject to the tax on the total sales price without any deduction for cost of materials, labor costs, or any other cost which is a part of the fabrication, distribution or selling.

117-309.14 Sellers of Ice Cream Freezers

Sales of ice cream freezers of the type used on trucks or in retail outlets for the making of ice cream are subject to the tax.

117-309.15 Rentals and Leases

The gross receipts or gross proceeds proceeding or accruing from the leasing or renting of tangible personal property are subject to the sales or use tax.

When on long-term continuing lease agreements where the lessor is required to furnish, for a consideration, maintenance services and/or operating supplies, the tax may be paid measured by (1) the total amount received, or (2) the total amount, taking as a deduction on the return charges for such services and/or supplies.

By using the first method, the lessor may purchase tax-free, as for resale, all items of tangible personal property passed on to the lessee. By using the second method, tax must be paid on all items of tangible personal property used in servicing the leased property.

If the owner of tangible personal property furnishes an operator or crew to operate such property, such owner is not deemed to be renting or leasing the property but is rendering a service and the receipts therefrom are not subject to the sales or use tax. Persons purchasing tangible personal property for use in rendering such service are liable for payment of sales or use tax at the applicable rate on the purchase price.

Where a person customarily rents tangible personal property and customarily withdraws the same for his own use, storage or consumption, a tax is due by such person on each withdrawal for use, the tax to be measured by the amount he would customarily receive as rental had the property been leased or rented for a like period of time. In the alternative the tax may be paid on the full purchase price of the property and no further liability incurred on withdrawals for use. Having once elected either method of reporting on withdrawals for use, the taxpayer must so continue unless and until permission has been received from the department in writing to make a change. Regardless of the method selected for accounting for the tax on withdrawals for use, the tax is due on all amounts proceeding or accruing from the rental, lease or sale of the property.

117-309.16 Materials Used to Recondition Automotive Vehicles for Resale

The purchases of materials and parts by automobile dealers for purposes of reconditioning automotive vehicles for resale are construed to be purchases of tangible personal property at wholesale and are, therefore, not subject to the sales or use tax.

The practical result of the foregoing is to enable the automobile dealer to purchase free of the tax for resale only those items of tangible personal property which are to be passed on to the ultimate consumer, and does not extend to such things as machinery, equipment, tools, paint remover, upholstery cleaner, tire cleaner and other properties which do not become a part of the vehicle being reconditioned for sale.

117-309.17 Withdrawals From Stock, Merchants.

To be included in gross proceeds of sales is the money value of property purchased at wholesale for resale purposes and subsequently withdrawn from stock for use or consumption by the purchaser.

The value to be placed upon such goods is the price at which these goods are offered for sale by the person withdrawing them. All cash or other customary discounts which he would allow to his customers may be deducted; however, in no event can the amount used as gross proceeds of sales be less than the amount paid for the goods by the person making the withdrawal.

117-310 Freight and Delivery Charges

Whether or not freight, delivery, or transportation charges may be deducted by the seller from the selling price of tangible personal property sold for use or consumption, in computing his liability for tax under the sales and use tax law, does not depend upon the separate billing thereof, but depends upon whether or not the services rendered by the railway company or other transporting agency are rendered to such seller or to the purchaser.

If the seller contracts to deliver tangible personal property to some designated place, or is obligated under the contract to pay transportation charges to some designated place, the transportation services are rendered to the seller or user and the selling price of the tangible personal property so transported must include the amount of the transportation charges. In this event such charges are not deductible by the seller in computing his tax liability under the law.

On the other hand, if the seller contracts to sell tangible personal property FOB origin, the title to the property passing at such point to the buyer and the buyer pays the transportation charges, then the transportation services are rendered to the buyer and are not a part of the selling price of the vendor. Therefore, such transportation charges should not be included by the vendor in computing his tax liability under the law. These principles will apply (irrespective of whether such charges are separately billed by the seller from the tangible personal property sold.

For example:

(a) If the sale is made F.O.B. point of destination or place of business of the buyer, for a lump sum price or a price or a price per unit, in such manner as to indicate that the cost of transportation is a cost to be borne by the seller, the total amount received by the seller constitutes "gross proceeds of sale," within the meaning of the law. In such case, the seller is not permitted to separate the cost of the goods from the cost of the transportation nor may the seller deduct any estimated or actual cost of transportation from such gross proceeds in making returns under the law.

(b) If the goods are F.O.B. destination under terms by which the purchaser is to pay the freight and deduct such amount from the invoice, the transaction should be treated in the same manner as in paragraph (a) hereinabove, namely the gross proceeds of sale should include the total amount of the agreed sales price, without deduction for freight whether paid by the seller in the first instance or paid by the buyer for the seller and deducted from the invoice.

(c) If the sale is made F.O.B. point of origin, the delivery of the goods to the carrier is generally construed as equivalent to the delivery of the goods to the buyer, and the gross proceeds of sale in such case would not include the freight, whether the freight is by agreement of the parties advanced or prepaid by the seller for the buyer or whether such freight is paid at destination by the buyer. In such cases, the "gross proceeds of sale" only include the agreed sales price of the goods. Any freight so advanced, billed as a special item, is not included as proceeds of the sale, but upon payment is properly treated as a reimbursable expense paid by the seller at the instance and request of the buyer.

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

260 FINAL REGULATIONS

(d) No practice of invoicing or billing will entitle the seller to deduct from gross proceeds of sale any cost or expense, actual or estimated, in cases where the seller, by use of his own means of transportation, effects such delivery.

(e) No tax is due on delivery charges by a lessor who, by means of his own transportation facilities, delivers tangible personal property which is the subject of a written lease expressly providing that the lessee assumes all risk of loss or damage to the property from the effective date of the lease. Conversely, when the lessor agrees to assume responsibility for loss or damage to the property during transit, charges by the lessor for such transportation must be included in the tax base. These same principles apply to sale when delivery is by means of the sellers own transportation facilities for a consideration separate and apart from the sales price of the property.

117-310.1 Transportation Costs, Sellers.

In no event may a seller deduct costs of bringing property to his place of business or costs of delivering property from factory to his customer when such factory-to-customer transportation is paid by the seller either to a transportation company, the manufacturer, or by way of credit to his customer for transportation costs paid by the customer and deducted from seller's invoice.

117-311 Railroads

The following addresses the application of the sales and use tax to the transactions of railroads. The list of transactions discussed is not all inclusive.

117-311.1 Railroad Companies, Sales to.

Some railroads maintain storehouses, in South Carolina for the temporary storage of materials and supplies. Some of these materials and supplies are for use in South Carolina and some are for use in other states. Frequently, when materials are shipped to such storehouses, the railroad does not know what materials are for use in South Carolina, and what are for use in other states. Because of the impracticability of determining what proportion of such materials and supplies is subject to the tax at the time of their purchase, and because of the inequity of imposing the tax on the total purchase of such materials and supplies, the railroad may apply for a certificate under the provisions of Section 12-36-2510, which allows such railroad to purchase materials and supplies at whole-sale, and to remit the use tax on the materials and supplies withdrawn for use or consumption within this state.

117-311.2 Railroad Companies - Crossties and Timbers.

Crossties and timbers sold to or used by railroad companies are subject to the sales or use tax, whichever may apply, on the following basis:

(a) Where a railroad buys in this state untreated ties or timber paying the South Carolina sales tax due thereon, and thereafter has such ties or timber creosoted or otherwise treated either within or without South Carolina, it becomes liable upon use of such property in South Carolina for the tax based upon the sales price of the creosote or other material used in the treatment thereof.

(b) Where a railroad buys in South Carolina untreated ties and timber for shipment in interstate commerce, without paying the South Carolina sales tax thereon, and such ties and timber are shipped and creosoted without the state, and subsequently shipped into and used within the state, such railroad will be required to pay a use tax thereon measured by the full price of the finished product brought into the state.

FINAL REGULATIONS 261

(c) Where a railroad buys without the state untreated ties and timber, and thereafter brings said ties and timber inside the state and has them creosoted within the state and uses them within the state, such railroad would owe a use tax based upon the cost of untreated ties and timber, plus the sales price of the creosote or other material used in the treatment thereof.

(d) Where a railroad buys without the state untreated ties and timber, and has the same creosoted outside the state, and subsequently brings and uses the same within the state, such railroad would be required to pay a use tax thereon based upon the cost of untreated ties and timber, plus the cost of processing.

117-311.3 Railroad Companies - Sales to of Crossties and Timbers by Producer.

The gross proceeds of the sale of timber when sold in the original state of production or preparation for sale and when sold by the producer thereof or by members of his immediate family are exempted from payment of sales or use tax, whichever would otherwise be considered to apply. Nothing contained herein, however, shall be construed to exclude from the measure of the tax the gross proceeds of the sale or sales of timber or timber products treated with wood preservatives.

117-311.4 Railroad Companies - Machines

Machines and machinery when sold to or used by railroad companies in maintaining, repairing, or reconditioning their equipment are subject to the sales or use tax, whichever may apply. The machine exemption is not construed as applying to machines or machinery purchased for use by railroad companies in maintenance operations.

117-311.5 Railroad Rails.

Railroad rails, crossties, frogs, spikes, etc., do not in themselves constitute machines or machinery when used in the construction of a railway or railroad either on or above ground or in a mine or quarry. This material is rather in the nature of building material and should be considered as such for taxing purposes.

117-311.6 Railroads, Lumber Used for Repairing Railroad Cars.

Lumber especially fabricated for use in repairing railroad cars is entitled to be purchased free of the tax under Section 12-36-2120(20), which exempts, among other things, from payment of sales or use taxes, railroad cars or locomotives and the parts thereof.

117-311.7 Railroads, Motor Oil Used in Diesel Engines.

Motor oil of the type used in the operation of a diesel engine for lubricating purposes does not qualify for fuel exemption even though it may be entirely consumed in such operation.

117-311.8 Ties and Timbers.

Ties and timbers, treated or untreated, are subject to sales or use tax when delivered by the seller to railroads in South Carolina. The seller must report and remit tax on these sales.

117-311.9 Ties and Timbers in Interstate Commerce.

Ties and timbers sold FOB South Carolina shipping point on a purchase order requiring the seller to ship to out-of-state destination in interstate commerce are not subject to sales tax regardless of whether or not shipment is made by the use of the purchaser's transportation facilities when the purchaser is a common carrier.

117-311.10 Ties and Timbers. Constructive Delivery of.

*South Carolina State Register Vol. 76, Issue 6
June 18, 2002*

262 FINAL REGULATIONS

Ties and timbers are taxable when sold under bulk contract, with the purchaser inspecting and approving the material at the plant or yard of the seller and the seller segregating and allotting the approved material to the purchaser for future shipment according to subsequently issued shipping instructions. This material is to be reported by the seller as subject to the tax in the month in which it is shown as sold on his books.

117-311.11 Meals Served by Railroads, Airlines, Etc.

Sales of meals, drinks, etc., by railroads within this state are subject to the sales tax.

Meals, etc., served by railroads as a part of the transportation service, for which no separate charge is made, are not required to be reported as retail sales by the companies. In such instances the companies are considered to be the consumers of the foods, etc., served and will be required to pay tax thereon to the suppliers.

117-312 Containers and other Packaging Material

The statute provides an exemption (Section 12-36-2120) and an exclusion (Section 12-36-120) for containers and other packaging material. The following explains the application of the exemption and exclusion in certain situations.

117-312.1 Containers and Packaging Materials, Sales of to Licensed Retailers.

Licensed retailers purchase free of sales or use taxes wrapping paper, wrapping twine, paper bags and containers for use incident to the delivery of tangible personal property sold by them. They also purchase tax-free materials used in packaging personal property sold by them.

The list below, while illustrative of items falling within the exemption or exclusion, is not exhaustive:

Souffle cups, butter chips, paper cups, paper plates, boxes and crates and glazed tissue used to package articles of food.

It will be seen that items such as straws, napkins, wooden or paper spoons and forks do not meet the requirements outlined above and, hence, must bear the tax. Such items are rather in the nature of supplies used or consumed by the retailer in the operation of his or its business.

117-312.2 Containers, Beverage Boxes and Crates.

Especially designed crates and boxes of the type used by distributors of soft drinks or milk products retained by the purchaser of such products for reuse by the distributor thereof may be purchased free of sales or use taxes.

The exemption extends to materials used in repairing such crates and boxes.

117-312.3 Packaging Materials.

Section 12-36-120 excludes from the measure of the sales or use taxes the gross proceeds of the sale of "...materials, containers, cores, labels, sacks or bags used incident to the sale and delivery of tangible personal property, or used by manufacturers, processors, and compounders in shipping tangible personal property."

The term "materials" is deemed to include, among other things, wrapping paper, twine, strapping, nails, staples, wire, lumber, cardboard, adhesives, tape, waxed paper, plastic materials, aluminum foils, and pallets used in packaging tangible personal property for shipment or sale; also excelsior, cellulose wadding, paper stuffing, sawdust and other packing materials used to protect products in transit. Materials such as dry ice and rust

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

FINAL REGULATIONS 263

preventives used to preserve property during shipment do not come within the exemption. Also excluded from the exemption are materials such as strapping and dunnage (e.g. lumber used to block up equipment for shipment) to temporarily brace or block tangible personal property within trucks and railroad cars as a protection during shipment.

"Containers" include, but are not limited to, such items as, paper, plastic or cloth sacks, bags, boxes, bottles, cans, cartons, drums, barrels, kegs, carboys, cylinders, and crates.

The term "cores" is defined to include spools, spindles, cylindrical tubes and the like on which tangible personal property is wound.

Labels affixed to manufactured articles to identify such products are exempted from the tax only when such labels are passed on to the ultimate consumer of such products.

117-312.4 Advertising Materials.

Printed advertising materials and/or price lists placed into cartons or packages with tangible personal property being packaged for shipment or sale are subject to the sales or use tax.

117-312.5 Multiform Invoices.

Multiform invoices used to invoice the customer and also to serve as a packing slip and address label are subject to the sales or use tax.

117-312.6 Grease, Protective.

Grease used as a protective coating for manufactured products while in storage is purchased at retail for such use and subject to the tax. This material is a supply item which is used or consumed by the manufacturer. Grease used as a protective coating for manufactured products while in transit is purchased at wholesale, free of the tax, as a material used incident to the sale and delivery of tangible personal property.

117-312.7 Rust Preventives.

Petroleum products and other materials used as rust preventives or for surface protection of metal products while in storage are subject to sales or use tax. Petroleum products and other materials used as rust preventives or for surface protection of metal products while in transit are not subject to sales or use tax.

117-312.8 Icing of Perishables.

The charge for ice when sold to common carriers for the icing of perishables during shipment or transshipment, will include the cost of transportation where the ice is transported to the truck loading platform, or to a storage warehouse in the ice manufacturer's transportation equipment, and/or under terms where the transportation is for the account of the ice manufacturer, and the charge will also include any charges for placing said ice in a storage warehouse by the ice manufacturer prior to the actual car icing regardless of whether said charges for transportation and/or storage are contracted for or invoiced separately by and between the ice manufacturer and the carrier.

The sales price of the ice will not include the charge for the actual icing of the railroad car or truck in which the perishable property is to be shipped, provided the charge for said icing service is separately billed to the common carrier.

117-313 Labor

*South Carolina State Register Vol. 26, Issue 6
June 18, 2002*

264 FINAL REGULATIONS

The following addresses the application of the sales and use tax to fabrication labor, subcontracted labor, installation labor, and alteration labor. There are many sales and use tax transactions involving labor and the following is not all-inclusive.

117-313.1 Labor, Fabrication.

No method of billing will serve to exempt from the measure of the tax the cost of materials used, labor or service cost, interest charges, losses or any other expenses whatsoever that are a part of the manufacturing, compounding, processing or fabrication of tangible personal property for sale or resale.

117-313.2 Subcontracted Labor, Repairs.

In no event may payments for the repair, renovating or rebuilding of tangible personal property for resale be deducted from gross proceeds of sales when any repair materials are furnished by the person purchasing such services for sale or resale.

117-313.3 Installation Charges.

Not subject to the sales or use tax are charges for installation incident to the sale of tangible personal property when such charges are separately stated from the sales price of the property on billing to customers and provided the seller's books and records of account show the reasonableness of such labor in relation to the sales price of the property.

117-313.4 Alteration Charges.

Expenses borne by the seller of clothing for alteration charges, whether such services are performed by the seller or subcontracted, are not deductible from gross proceeds of sales.

Conversely, a charge for alteration services made in addition to the sales price of tangible personal property is not subject to tax when such charge is separately stated from the sales price of tangible personal property on the invoice to the customer.

117-314 Construction

Sales of building materials to contractors, builders, or landowners for resale or use in the form of real estate are retail sales in whatever quantity sold.

117-314.1 Sales of Building Materials.

Sales of building materials for use in adding to, repairing or altering real property, are subject to the sales or use tax at the time of purchase even though the property erected therefrom may be subsequently leased or rented to the person who owns or controls the land on which the property is situate. Examples include, but are not limited to, building materials used in constructing grain storage tanks, silos, pre-engineered buildings and other structures.

Conversely, subject to the tax are proceeds from the sale or lease of a manufactured unit delivered and/or set in place on lands owned or controlled by a person other than the seller or lessor. Examples include, but are not limited to, mobile homes, manufactured classrooms and motel units.

117-314.2 Building Materials.

*South Carolina State Register Vol. 26, Issue 6
June 18, 2001*

FINAL REGULATIONS 265

Building materials when purchased by builders, contractors, or landowners for use in adding to, repairing or altering real property are subject to either the sales or use tax at the time of purchase by such builder, contractor, or landowner. "Building materials" as used in the Sales and Use Tax Law includes any material used in making repairs, alterations or additions to real property. "Builders," "contractors," and "landowners" mean and include any person, firm, association or corporation making repairs, or additions to real property. The term "building materials" includes such tangible personal property as lumber, timber, nails, screws, bolts, structural steel, elevators, reinforcing steel, cement, lime, sand, gravel, slag, stone, telephone poles, fencing, wire, electric cable, brick, tile, glass, plumbing supplies, plumbing fixtures, pipe, pipe fittings, prefabricated buildings, electrical fixtures, built-in cabinets and furniture, sheet metal, paint, roofing materials, road building materials, sprinkler systems, air conditioning systems, built-in fans, heating systems, floorings, floor furnaces, crane ways, crossties, railroad rails, railroad track accessories, tanks, builders hardware, doors, door frames, window frames, water meters, gas meters, well pumps, and any and all other tangible personal property which becomes a part of real property.

117-314.3 Transferred Property, Use Tax Liability.

Building materials transferred from out-of-state into South Carolina for use, storage, or consumption are assumed to have been purchased for such use, storage, or consumption in South Carolina and are subject to the South Carolina use tax.

The department will allow credit to use tax liability for new and unused building materials transferred out of South Carolina which were purchased out-of-state and on which South Carolina use tax has been paid.

No allowance will be made for outgoing transfers of any tangible personal property, either new or used, the sales of which were subjected to the South Carolina sales tax.

In determining the basis of the tax on transferred property, aside from building materials, the assumption will be that the property was purchased for use, storage, or consumption in South Carolina and that the tax has not been paid thereon. The assumption that the property was purchased for use, storage, or consumption in South Carolina is overcome when it is shown that there has been a real and substantial use of the property outside of this state prior to its transfer into this state in which event the basis for the tax is determined by the proportion of the original purchase price of such property as the duration of time of use in this state bears to the total useful life thereof.

117-314.4 Awnings

Generally, an awning attached to a building as a permanent fixture is a part of the building and comes within the provisions covering the sale of building materials.

Metal or other permanent type awnings attached to buildings with screws or bolts or otherwise securely attached become a part of the building. The materials from which these awnings are made come within the building material class. When the materials are purchased prefabricated, sales tax is due by the person making the installation to the supplier, if purchased in South Carolina, or use tax is due the state of South Carolina if purchased from an out-of-state seller not registered under the use tax.

Where the person making the installation purchases materials such as sheets of aluminum from which he manufactures the components of awnings the tax is due to the state by such person based upon the fair market value of the components laid down at the job site.

It is the rule of the department that lightly attached cloth awnings do not fall into the building material category and are to be taxed at the sale thereof from the awning dealer to the property owner.

117-314.5 Elevators.

*South Carolina State Register Vol. 28, Issue 6
June 28, 2002*

266 FINAL REGULATIONS

The component parts of an elevator constitute building materials within the meaning of the act. The sale of elevator components to contractors, builders or landowners for use in the form of real estate is, therefore, a retail sale notwithstanding that the purchaser constructs therefrom an elevator which ultimately becomes the property of others.

Where the manufacturer of elevator components uses the products of his manufacture in the performance of a construction contract, he is defined under the statute as the user of such equipment and liable for the tax based upon the reasonable and fair market price thereof at the time and place where such property is used by him.

117-314.6 Pumps.

Well pumps when installed become realty along with well casing, pump house, well connections, etc. The person who installs the pump is the purchaser at retail who must pay sales tax or use tax, as the case may be.

117-314.7 Pump Installed by Contractor.

A contractor who installs a pump for a city or county is required to pay tax on his purchase of the pump. The pump is in the same category as any other building materials which become affixed to realty. When title to a pump installed under contract passes from the contractor to the landowner it has ceased to be personal property and has become real property.

117-314.8 Crossties, Timbers, Etc.

Crossties, switch ties, pilings, bridge timber, telephone and telegraph poles, and crossarms are building materials, also, materials used in the construction of highways, bridges, railroads, telegraph and telephone lines, fences and dams fall within the "building materials" class.

117-314.9 Contractors Equipment, Useful Life of.

The department has determined that Bulletin F of the Internal Revenue Service as revised in 1942, be used to reflect the useful life of motor vehicles, machines, machinery, tools, and other equipment and tangible personal property brought, imported, or caused to be brought into South Carolina for use in constructing, building, or repairing any building, highway, street, sidewalk, bridge, culvert, sewer, or water system, drainage or dredging system, railway system, reservoir or dam, power plant, pipe line, transmission line, tower, dock, wharf, excavation, grading or other improvement or structure, or any part thereof.

117-314.10 Machines, Pipe Threading.

Pipe threading machines used for construction purposes by a contractor or other builder do not come within the machine exemption.

117-315 Newspapers and Newsprint Paper

The following addresses the exemptions applicable to newspapers, newsprint paper, and newspaper publishers.

117-315.1 Newspapers

Section 12-36-2120(8) exempts from the measure of the tax the gross proceeds of the sale of newspapers.

In order to qualify as a newspaper the publication must meet at least the following requirements:

*South Carolina State Register Vol. 26, Issue 6
June 22, 2002*

FINAL REGULATIONS 267

1. It must be commonly and ordinarily considered and accepted as a newspaper by the public it is intended to serve.
2. It must be published at stated short intervals - daily or weekly.
3. It must contain news of general interest and intelligence of current events.
4. It must be printed on newsprint paper.
5. It must not, when its successive issues are put together, constitute a book. Even though the publication may be devoted primarily to matters of specialized interest, such as mercantile, political, religious or sporting, if in addition it qualifies under all of the foregoing it is entitled to be classed as a newspaper.
6. Newspapers do not include magazines, periodicals, bulletins, and other publications.

117-315.2 Newsprint Paper

Section 12-36-2120(8) also exempts from the measure of the tax the gross proceeds of the sale of newsprint paper. "Newsprint paper" is construed to include only that paper on which news is printed by a newspaper. This property is specifically exempted when so used.

117-315.3 Newspaper Publishers

Newspapers are concerned with three distinct and separate activities in the production and publication of the finished product - a newspaper. While these operations may be interwoven in the overall production, for sales and use tax purposes, a separation must be made. These operations or phrases may be designated as follows:

1. News gathering
2. Composition and printing
3. Circulation

News is gathered by reporters, submitted by the public, and furnished from other news gathering sources through use of TWX and tape monitors. Pictures, mats, and engravings are secured by employees of the publisher, submitted by the public, purchased by the printing concern, or forwarded by wire from news gathering agencies.

Newspaper publishers customarily utilize machines and equipment with which to produce etchings from photographs. The etchings are forwarded to the composing room for assembly into page forms, (along with other type and engravings) in order to produce the newspaper mat.

Both the news and the advertising copy must go through what is known as the composing and stereotyping departments, where type is set by machines using what is known as type metal, then put together in page forms, and from there going to the stereotype department, where machines are used to imprint on what is known as newspaper mats, the type as set in the printing or composing department. From this page mat a plate is cast by machine, using composition metal, which after being cast is attached to the printing machine or press cylinders and the matter thereon transferred to newsprint running through the machines. The metal used in producing the type and also in producing the plates is remelted and used over and over again, with the necessity of certain parts of it being from time to time refined. The mats used in making the plates necessary to complete the finished product are of no value after casting the original plate. Advertising mats may be retained for reuse in preparing subsequent issues.

Certain large size type is manufactured in the plant and all or most of the ordinary size type is manufactured in the plant.

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

DOR RESP LOWE'S 2191

26H FINAL REGULATIONS

In the preparation of type, etchings, plates, etc., a great deal of expensive and complicated machinery is used. In addition to linotype machines and other special machines for casting larger sized type, machines are used to fabricate "spacer" strips, saws and planners are used to prepare metal plates for the page forms, photographic machinery and equipment is used to prepare etchings, a complete foundry is maintained for melting, remelting and purifying the composition metal, together with other machinery.

Circulation may be effected by use of the mails, by newsboys, or other media.

It has been determined that the actual manufacturing process begins with machinery used in producing etchings (or plates) and ends with the machine used to bundle the finished newspaper for circulation. Excepted from the tax under these circumstances would be such machines as linotype and other machines used in preparing special type, machines used in transferring images from mats to flat metal plates, machines used in transferring images from these flat metal plates to newspaper mats, machines used in producing half round plates to be used on the printing presses, planners, saws, furnaces, mechanical conveyors and the actual printing press itself, together with the integrated conveyor thereon. Included also in this category would be the foundry machinery for melting and salvaging composition metal, machines used in making metal etchings, machinery used for preheating molds (mats) for casting and other like machinery.

Also exempted from the tax are such items as flexo sheets, seal tonic and toning alloys.

Newsprint paper, aside from being specifically exempted under the statute, is likewise an ingredient of the tangible personal property being manufactured for sale and is exempted from the tax. The same is true of ink which becomes an ingredient or component part of the property being manufactured for sale. Ink for any other purposes is subject to the tax.

Items subject to the tax under the above construction would consist of photographs, chemicals (except as otherwise noted) used in preparing etchings, news gathering equipment (such as tape monitors, TWX, and photo-transmission equipment); typewriters used in producing news copy by reporters, and of course, office supplies, equipment and machinery, together with any machines used in distribution of the finished product.

Engravings are exempted as parts or attachments to machines used in manufacturing, compounding or processing tangible personal property.

Newspaper mats have been exempted as constituting parts or attachments to machinery used in manufacturing tangible personal property. Note, however, that on purchases of advertising mats the department has held "...that such mats were exempt under the provisions of Section 12-36-2120 as being parts or attachments to machines used in manufacturing or processing tangible personal property for sale."

"However, the [department] held that catalogs or indices supplied in connection with such mat services would constitute the sale of tangible personal property and would therefore be subject to the tax."

A new process may make obsolete the linotype, or "hot process." Tape perforating machines, a computer and photo composing machinery are used to produce positive prints. These prints are affixed to page layouts, the layouts photographed and the resulting negatives used to make etchings. The etchings may then be used directly on the printing press in lieu of plates now produced by use of mats and type metal.

Tape perforating machines, computers and photo composing machines may be purchased tax-free when used as outlined above.

No tax is due on purchase of film and plates used in making etchings and engravings and chemicals which become a part of a finished etching or engraving. The exemption does not extend to film and chemicals used by reporters and other news gatherers.

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

FINAL REGULATIONS 269

Chemicals used directly in developing film and etching engravings for use by the publisher in manufacturing a newspaper may be purchased tax-free provided the machine in which the chemicals are used is exempted by Section 12-36-2120(17).

117-316 Books

Code Section 12-36-2120(3) provides exemption for the sale of textbooks, books, magazines, periodicals, newspapers, and access to on-line information systems used in a course of study in primary and secondary schools and institutions of higher learning or for students' use in the school library of these schools and institutions and books, magazines, periodicals, newspapers, and access to on-line information systems sold to publicly supported state, county, or regional libraries.

117-316.1 Textbooks

The term "textbook" is construed to include only books purchased for and used in elementary schools, high schools and institutions of higher learning. Included within the definition of textbooks are school library books, encyclopedias and dictionaries. Also deemed textbooks when part of a prescribed course of study are workbooks, band and sheet music, plays, filmstrips, transparencies, motion picture films, audio tapes and records, recorded music and periodicals.

Examples of sales subject to the tax are test sheets, answer sheets, evaluation criteria, games, albums, pupil cumulative records, guide pamphlets, yearbooks, award certificates, diplomas, writing materials, art supplies, drafting supplies, easels, projectors, projector lamps and bulbs, projection screens and equipment carts or tables, magboards, flannel boards, laboratory supplies and equipment, biological supplies incidental to classroom instruction, athletic equipment, shop supplies and equipment, record players, recorders, computer instructional equipment, manipulated devices, charts, maps (including globes), map stands, raw film, blank tapes, and any and all other items of tangible personal property used in the classroom or office which do not qualify as "textbooks" as hereinabove defined.

117-316.2 Sale of Books to Libraries

With respect to the exemption for books sold to legally established, public supported State, County and/or Regional libraries, the term "books" is construed to include filmstrips of a type in general use by elementary schools, high schools, and institutions of higher learning. Subject to the tax when purchased by libraries are all other properties such as furniture, fixtures, typewriters, projectors, turntables, globes, stationery, index cards, files, shelving, and visual aids.

117-317 Sales of Repossessed Property

The following addresses the application of the sales and use tax to repossessed property.

117-317.1 Finance Companies and Other Lending Institutions.

Finance companies and other lending institutions are deemed to be retailers when making sales of tangible personal property physically or constructively repossessed in claim and delivery proceedings, by peaceful surrender, or by any other means whatsoever.

The measure of the tax is the total amount proceeding or accruing from such sales whether the sale is for cash or is secured by a new conditional sales contract. On assumption agreements the amount to be included in gross proceeds of sales is the balance in default by the borrower and any down-payment made by the person assuming

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

270 FINAL REGULATIONS

the borrower's obligation in exchange for the repossessed property. This is irrespective of the mechanics used by lenders in transferring title to repossessed property to new owners.

117-317.2 Retailers.

Sales of tangible personal property physically or constructively repossessed by a retailer through the mechanics of claim and delivery proceedings, by peaceful surrender or otherwise are subject to the sales tax when resold either for cash or on new conditional sales contracts.

On assumption agreements the amount to be included in gross proceeds of sales is the balance in default on conditional sales contracts held by retailers and any down-payment made by the person assuming the former purchaser's obligation in exchange for the repossessed property. This is irrespective of the mechanics used by such retailers in transferring title to repossessed property to new owners.

Conversely, no tax is due by a retailer when under the terms of recourse contracts with finance companies and other lending agencies it becomes necessary for the retailer to find a buyer to assume the balance owed a lender because of default on the part of the borrower.

117-318 Gross Proceeds of Sales and Sales Price

"Gross proceeds of sales" is the basis for calculating the sales tax and "sales price" is the basis for calculating the use tax. There are many issues that arise from determining what is or is not included in the basis for the tax. The following will address some of these issues.

117-318.1 Warranties

On all sales of tangible personal property which include a charge for warranty which is a part of the sales price of the property, such warranty charges are to be included in the measure of the tax, even though said warranty charges may be billed separately from the price of the merchandise. Note, however, that Code Section 12-36-120(53) exempts "motor vehicle extended service contracts and motor vehicle extended warranty contracts."

Warranty contracts entered into subsequent to the sale of tangible personal property and which are separate and distinct from the sale, and for which a separate and distinct charge is made are not to be included in the measure of the tax.

In either event, the person servicing warranties incurs a tax based on the fair market value of the tangible personal property withdrawn, used or consumed in servicing all warranties.

Note however, Section 12-36-90 excludes from the measure of the tax property withdrawn from such business or stock for use or consumption by such business in replacing parts under written warranty contracts given without charge to the purchaser at the time of original purchase, provided the tax was paid on the sale of the part found to be defective or on the sale of the property of which the defective part was a component; and provided further no charge for labor or materials is made to the warrantee.

117-318.2 Carrying and Finance Charges

When the seller has an established price for the goods he sells, that price is the amount to be included in gross proceeds of sales even though the established price may include an amount to cover a carrying charge. Where the seller has an established cash price and when selling on an extended payment basis, adds a separate charge for financing, the additional charge is not to be included in gross proceeds of sales.

FINAL REGULATIONS 271

In no event may finance or carrying charges be deducted from gross proceeds of sales when not shown as a separate item in the seller's billing to his customer.

117-318.3 Lay-away Sales

Amounts received in payment of the sales price of property held by the seller until the total amount of the sales price is paid to him are taxable in the month during which such amounts are received by the seller. In the event of the failure of the buyer to complete his payments, no refund of taxes paid on the amounts received by the seller will be made except where the seller refunds all amounts paid to him by the purchaser.

117-318.4 Withdrawals for Use - Renter

Where a person customarily rents tangible personal property and customarily withdraws the same for his own use, storage or consumption, a tax is due by such person on each withdrawal for use, the tax to be measured by the amount he would customarily receive as rental had the property been leased or rented for a like period of time. In the alternative the tax may be paid on the full purchase price of the property and no further liability incurred on withdrawals for use. Having once elected either method of reporting on withdrawals for use, the taxpayer must so continue unless and until permission has been received from the department in writing to make a change. Regardless of the method selected for accounting for the tax on withdrawals for use, the tax is due on all amounts proceeding or accruing from the rental, lease or sale of the property.

117-318.5 Gift Wrapping Charges

The gross proceeds proceeding or accruing from charges for gift wrapping of tangible personal property sold at retail are subject to the sales and/or use tax.

117-318.6 Gratuities

An amount or percentage, regardless of its designation, added to the price of meals pursuant to a requirement of the retailer furnishing such meals is a part of the sales price of such meals and must be included in the measure of the tax even though all or a part thereof may be paid by the retailer to his employees. Conversely, when a customer voluntarily provides a tip for an employee of a retailer, such a tip is not subject to the sales tax whether given directly to the employee in cash or added by the customer to his bill and charged by the retailer to the customer's account; provided, however, that in the latter instance the full amount of such tip is turned over to the employee by the retailer.

117-318.7 Bottle Deposits

Deposits required by retailers to insure return of reusable containers (bottles) are not subject to the sales tax.

117-319 Warehousemen,

Sales To: All property purchased for use in operating places of storage are subject to sales or use tax, whichever may apply, including all tickets, labels, receipt forms, heating or cooling equipment, fire protection equipment, pest control supplies and equipment, compressors, containers, and crating materials and any and all other supplies, materials, or equipment purchased for a use incidental to the storing or warehousing of property of any kind of character.

Note, however, that warehousemen may also be engaged in the business of selling, processing, or manufacturing for sale, in which event the supplies and equipment used in such activities will be taxable or not in accordance with the rules applying to the use of property for such purposes.

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

272 FINAL REGULATIONS

Sales Made By: Receipts of warehousemen from their services in storing, handling, packing, crating, delousing, etc., property for others are not subject to the sales tax. Any materials used incidental to the rendering of such services are taxable on the sale to the warehousemen.

When, however, warehousemen buy and sell property as a regular course of business such sales, if not otherwise exempted, are subject to the sales tax, including sales of goods held on consignment and including transactions in which the warehouseman acts as a broker selling goods not actually owned by him or in his possession at the time he accepts the order.

Warehousemen are subject to tax with respect to sales of secondhand property forfeited to them in the operation of their warehousing business where such sales are numerous and a substantial amount and where the selling of such secondhand property is a regular and continuous practice. Where such sales of secondhand property are in such number that they might be considered casual, isolated or accommodation sales, they are not required to be reported in sales tax returns filed with this department.

117-120 Use Tax

The use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in South Carolina.

117-320.1 Property Purchased and Used Without the State...Later Used in South Carolina.

Where property purchased in another state and used outside the state of South Carolina, is later brought into the state for use, storage or consumption in South Carolina, the use tax will apply unless the following conditions are conclusively established: (1) That the property when purchased was intended for a bona fide use outside the state of South Carolina; (2) That the first actual use of the property was outside the state of South Carolina; and (3) That the first actual use of the property was substantial and constituted the primary use for which the property was purchased.

The responsibility for proof rests upon the purchaser and until the above facts are established to the satisfaction of the department, it will be presumed that the use of such property in South Carolina is subject to a use tax.

(See, however, Section 12-36-1320 for a special imposition of the tax on transient construction equipment.)

117-320.2 Vehicles Replaced under Insurance Contracts

The use tax is due by the insured, measured by the purchase price of vehicles acquired out of state, whether acquired by the insured or the insurer under the terms of an insurance policy to replace destroyed or stolen vehicles.

117-321 Ships and Sales of Fuel, Lubricants and Mechanical Supplies to Ship.

Code Section 12-36-2120 exempts from the tax "vessels and barges of more than fifty tons burden" and "fuel, lubricants, and supplies for use or consumption aboard ships in intercoastal trade or foreign commerce." This exemption for supplies does not exempt or exclude from the tax the sale of materials and supplies used in fulfilling a contract for the painting, repair, or reconditioning of ships and other watercraft.

117-321.1 Sales of Fuel, Lubricants and Mechanical Supplies

Code Section 12-36-2120 exempts from payment of sales or use taxes the sale or use of fuels, lubricants and supplies for use or consumption aboard ships in intercoastal trade between ports of the state of South Carolina

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

FINAL REGULATIONS 273

and ports in other states of the United States or its possessions, or in foreign commerce between ports in the state of South Carolina, and ports in foreign countries; provided, however, that nothing herein shall be construed to exempt or exclude from the tax herein levied, that gross proceeds of the sale or sales of materials and supplies to any person for use in fulfilling a contract for the painting, repair or reconditioning of vessels, barges, ships and other watercraft.

It will be noted that the exemption does not apply to sales to fishing craft, tugs, vessels, or other watercraft not used in trade or commerce between South Carolina ports and ports of other states or foreign countries.

This exemption has been held to include any waters on the seacoast which are without the boundaries of the low water mark and would include waters of sea in small harbors and roadsteads enclosed by narrow headlands and promontories. This ruling has been interpreted not to include the inland waterway.

You will note that the proviso contained in the section outlined above renders subject to the tax the sale or use of materials and supplies to any person for use in fulfilling a contract for the painting, repairing, or reconditioning of vessels, etc. Any person under contract for the purposes as outlined above must pay to his supplier sales or use tax, whichever is applicable, on the purchases of tangible personal property for use in fulfilling such a contract unless such person is engaged in a dual type business in which case the tax applies on the withdrawal for use.

117-321.1 Dry Dock.

A dry dock is subject to the sales or use tax, whichever applies. A dry dock is not a "vessel" nor is it a "barge" exempted from the sales or use tax.

117-322 Casual and Isolated Sales

Casual or isolated sales by persons not engaged in the business of selling tangible personal property at retail are not subject to the sales or use tax.

For purposes of administering this regulation, the term "casual" means occurring, encountered, acting or performed without regularity or at random. The term "occasional" and the term "isolated" mean occurring alone or once, an incident not likely to recur, sporadic.

117-323 Exemption of the Gross Proceeds of the Sale of Combustible Heating Material or Substances Used for Residential Purposes

Section 12-36-2120(33) exempts the gross proceeds of the sale of electricity, natural gas, fuel oil, coal or any other such combustible heating material or substance used for residential purposes.

For the purposes of the exemption, the term "residential purposes" as used in Section 12-36-2120(33), is construed to mean any space or area occupied by one or more individuals with the intent that such space or area serves as a residence, house, dwelling or abode. Included in the exemption are single family houses, duplexes, condominium units, apartments and mobile homes of a permanent type used by a person or persons as a place of residence, house, dwelling or abode. All sales to such locations would be exempt.

Electricity, natural gas, fuel oil, coal or any other type of combustible heating materials centrally metered or delivered to a central storage tank (or area) to duplexes, condominium units, apartments or mobile homes of a permanent type, and billed as such, would be considered as used for residential purposes and exempt.

274 FINAL REGULATIONS

Excluded from the exemption are hotels, motels, dormitories, nursing homes, summer camps, resort lodges and other dwellings of a temporary or transient nature. All sales to such locations would be taxable.

117-324 Dual Business

Operators of businesses who are both making retail sales and withdrawing for use from the same stock of goods are to purchase at wholesale all of the goods so sold or used and report both retail sales and withdrawals for use under the sales tax law.

This ruling applies only to those who actually carry on a retail business having a substantial number of retail sales and does not apply to contractors, plumbers, repairmen, and others who make isolated or accommodation sales and who have not set themselves up as being engaged in selling. Where only isolated sales are made, tax should be paid on all of the taxable property purchased with no sales tax return being required of the seller making such isolated or "accommodation" sales.

117-325 Bulk Sales

The Bulk Sales Statute makes it unlawful for any merchant, co-partnership or corporation engaged in the business of buying and selling merchandise, while indebted to any person or corporation, to sell any property used in connection with the business in bulk, or to sell the major portion thereof except in the ordinary course of trade, or in the regular prosecution of the seller's business with the intention of ceasing to conduct the business in the same manner and at the same place as therefore conducted without:

- (1) first making a full and complete inventory of the property proposed to be sold; and
- (2) making under oath a true and correct schedule of all creditors;
- (3) or if the seller asserts that he is not indebted, he must make an affidavit to this effect and deliver it with the inventory to the purchaser.

Ten days before sale is consummated and before purchaser takes possession, the purchaser is required to join in giving notice to each creditor shown on the schedule.

The Statute further provides that if the seller fails to make the required inventory, or if the inventory fails to show the true value of goods, or if the seller fails to make a true schedule of creditors and purchaser shall have knowledge of that fact, or if the seller asserts that there are no debts against him, if the plaintiff shall fail to require the affidavit outlined above, or if the seller and purchaser fail to give notice to each creditor named in the schedule, or if such notice shall not correctly state the amount of property proposed to be sold and the consideration to be paid for it and the time and manner of making the same, the sale shall prima facie be presumed to be fraudulent and void as against the creditors of the seller and any property used in connection with the business, or any part thereof found in the hands of the purchaser shall be liable to creditors. In the event any property shall be withdrawn by the purchaser, then the purchaser shall himself become personally liable to the creditors of the seller to the extent of the value of such property.

The Statute provides that the bulk purchaser and seller must keep in their possession exact copies of the inventory and schedule for a period of six (6) months and requires that the same shall be open to inspection of the creditors of the seller.

117-326 Savings and Loan Associations

*South Carolina State Register Vol. 26, Issue 6
June 29, 2002*

FINAL REGULATIONS 275

Federal and State savings and loan associations and State building and loan associations are liable for the South Carolina use tax on purchases of tangible personal property for use, storage or consumption in this State. Conversely, licensed retailers are liable for the sales tax on all sales to such establishments.

117-327 Leased Departments

Where a store has leased departments operated by other persons, each such person operating a leased department shall make a separate return, if he keeps his own books and makes his own collections on accounts.

Where the store leasing such department keeps the books and makes collections for the leased department the store may, as agent for the lessee, make returns for such leased department and pay the taxes due. Note, however, the lessee shall not be relieved of his liability until the amount due has been paid. This method of accounting for the tax is authorized only by special permission of the Department of Revenue.

Where the store makes returns as agent for leased departments, it shall make separate returns for each department leased or shall make a consolidated return for both its business and the leased departments using "Schedule of Locations" to show a breakdown of gross proceeds of sales and other required information relating to its business and relating to each leased department. In any case, the lessor must obtain the permission of the Department of Revenue to make returns for his lessee.

117-328 Radio and TV Stations

Code Section 12-36-2120(26) exempts from the tax the sale of "all supplies, technical equipment, machinery and electricity sold to radio and television stations, and cable television systems, for use in producing, broadcasting or distributing programs. For the purpose of this exemption, radio, and television stations, and cable television systems are deemed to be manufacturers."

In light of the last sentence hereinabove, another statutory exemption (Code Section 12-36-2120(17)) is available. It reads that there is exempted from the measure of the tax levied, assessed or payable, "The gross proceeds of the sale of ...machines used in ...compounding, processing and manufacturing of tangible personal property; provided that the term 'machines,' as used in this article, shall include the parts of such machines, attachments and replacements therefor which are used, or manufactured for use, on or in the operation of such machines and which are necessary to the operation of such machines and are customarily so used; but this exemption shall not include automobiles or trucks..."

An AM radio station is defined as a broadcasting station licensed by the Federal Communications Commission for the transmission of radiotelephone emissions primarily intended to be received by the general public and operated on a channel in the band 535-1605 kc/s. An FM radio station, including non-commercial educational radio stations, would come within the same definition except that it is operated on a channel in the band 88.1-107.9 mc/s. A television broadcasting station would also come within the same definition except that it is licensed to transmit both visual and aural radiotelephone emissions and is to be operated in the 54-890 mc/s frequency.

Sales of electricity to radio and television stations for use directly in producing programs and in broadcasting, and to provide necessary lighting therefor, are exempted from the sales and/or use tax. Also, electricity to operate air conditioning machinery necessary to the operation of exempt technical equipment and machinery and for live telecast.

Sales of electricity for any other purpose are subject to the tax, such as, but not limited to, electricity used in administrative offices, supervisory offices, parking lots, storage warehouses, maintenance shops, safety control,

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

276 FINAL REGULATIONS

comfort air conditioning, elevators, housekeeping equipment and machinery, cafeterias, canteens, first aid rooms, supply rooms, water coolers, drink boxes and unit heaters.

The exemption applies to all purchases or rentals of supplies for use directly in the preparation of programs and in broadcasting, to include flash bulbs, paper supplies, stage properties when customarily re-used, such as stock articles of furniture and equipment, props (including materials from which props are fabricated), film, recording tape, artists supplies, chemicals for use in developing films, syndicated and feature films, phonograph records, transcriptions, script services, sheet music, syndicated tape and transcribed programs.

The term "technical equipment and machinery" is defined as specialized equipment and machinery peculiar to the industry when purchased for use directly in preparing programs or broadcasting. The term shall likewise include replacement parts and attachments therefor, and power wiring or cable connecting exempt technical equipment and machinery when such wiring is not built into and a part of a building or structure.

Examples of exempt technical equipment and machinery used in programming are tuners, splicers, viewers, sound readers, projectors, screens, editing tables and lighting boards, darkroom equipment and machinery used for developing film for use in preparing programs, and cameras, recorders and mobile equipment and machinery (not including automobiles and trucks) used by station employees in newsgathering and in transmission.

Examples of studio technical equipment and machinery are: For radio stations, turntables, microphones, audio consoles, tape recorders, headphones and speech input equipment.

For television stations, all of the foregoing, and in addition, video switching equipment, cameras, film chains, slide projectors, film projectors, studio lighting and studio dimmer or light control boards.

Transmission equipment consists of AM, FM, and TV transmitters complete, to include coaxial cables or transmission lines connecting antennas to transmitters.

Antenna equipment consists of the antenna proper, not including towers and lights. (Note, however, when the tower is the antenna, as in AM radio, it is deemed to be exempt technical equipment.)

Purchases of broadcast testing machinery used primarily for the purpose of maintaining audio or visual transmission quality are not subject to the tax.

Machines, including typewriters, purchased for use primarily in producing program logs are exempted from the tax.

Machinery purchased for use in fabricating backdrops or props is not subject to the tax.

Subject to the tax are purchases of standard or stock articles of office equipment, such as desks, chairs, typewriters, billing machines, filing cabinets, film storage cabinets and general office supplies used in billing customers and for general office use; machinery, equipment and supplies (not including, however, tubes and replacement parts) for use in repairing technical equipment or machinery; and all purchases of building materials for use in constructing a building or structure, to include soundproofing materials for studios, radio or television towers (except as indicated hereinabove), plumbing fixtures, pipe, wiring, structural foundations (even though for exempt equipment or machinery) and air conditioning ductwork. (Note, however, that air conditioning machinery necessary to the production of live telecast and for the proper functioning of exempt technical equipment and machinery is not subject to the tax.)

A tax is due, measured by the purchase price of all items of tangible personal property used in furnishing wired music, including, but not limited to, songs, speeches, and recordings of music. Also, properties used for closed circuit television. Proceeds derived from the furnishing of such services are not subject to the tax.

*South Carolina State Register Vol. 26, Issue 6
June 13, 2002*

117-329 Communications

The gross proceeds accruing or proceeding from the business of providing or furnishing the ways or means for transmission of the voice or messages is construed to mean all charges for local service, including charges for equipment furnished by the seller or supplier of such service and all receipts for local calls made from coin operated telephones.

Not subject to the tax are: amortization charges for installing facilities beyond prescribed limits, restoration of service charges, attachment privileges to poles, charges for colored telephones and retractable cords (a one-time charge), charges on a cost basis for dial service between exchanges, toll charges between telephone exchanges (long distance), charges for all telegrams (local or otherwise), and charges representing Federal Communications taxes (excise taxes).

117-330 Automatic Data Processing

Automatic Data Processing Equipment--Hardware

Receipts from the sale or lease of automatic data processing equipment are subject to the sales or use tax. Also includible in the tax base are charges for the sale or lease of assembler, compiler, utility and other prewritten programs furnished with such equipment.

Automatic Data Processing Programs--Software

A computer program is the complete sequence of automatic data processing instructions necessary to enable automatic data processing equipment to function in resolving a particular problem. These instructions, commonly referred to as software, may be recorded on or in paper or magnetic tape, cards, disc or drum or may consist of written procedures such as program instructions listed on coding sheets. Programs are, in essence, the parts, attachments or instructions necessary to enable personnel to produce the results desired from the automatic data processing system.

Such programs may be prewritten (canned) or custom designed for a particular installation.

Prewritten Programs

The tax applies to total charges for coding, punching or otherwise reproducing prewritten programs including charges for the tapes or other properties when furnished by the seller or reproducer.

The temporary transfer of possession of a program for a consideration for the purpose of direct use by the customer or to be reproduced by the customer on or into tapes or other properties is a lease of tangible personal property subject to the tax on the total amount paid even though the consideration may be labeled a license fee or royalty payment; and even though royalty payments or payments for a license to use may be paid long after the original programs are returned to the seller.

Custom Programs

Custom programs are programs prepared to the special order of a customer, the gross proceeds therefrom being subject to the tax. Also considered to be custom programs are sales of programs developed through modification of existing prewritten programs to meet a customer's specific needs. Charges to modify and adapt these programs to a customer's equipment (including testing) or translating a program to a language compatible with a

278 FINAL REGULATIONS

customer's equipment are services that are a part of the sale price of tangible personal property and likewise subject to the tax.

117-331 Airport Fixed Based Operators

Airport fixed base operators do business in a number of ways. In addition to making sales of new and used aircraft, charter service is available, in some instances aircraft are available for lease or rental or flight instruction, and gasoline, lubricating oils and greases and repair services are generally sold.

Only aircraft purchased for resale or rental may be purchased tax free as for resale.

When an aircraft is withdrawn for use primarily in flight instruction or charter service a tax is due measured by the reasonable and fair market value (purchase price) of the aircraft and a tax is also due when the aircraft is subsequently sold.

Conversely, when an aircraft purchased for resale is regularly demonstrated for that purpose and also used for charter, instruction, or for the private use of the owner, the tax may be paid on the value of the aircraft (purchase price), or the tax base may be arrived at by multiplying the actual number of flight hours by fifty percent (50%) of the posted hourly solo rental rate. By electing to pay a tax on the value of the aircraft withdrawn for demonstration purposes a person may reduce his tax liability on a replacement demonstrator up to the amount realized on the sale of the used demonstrator.

In general, the following would be for application:

1. Sales. All sales of new and used aircraft are subject to the tax when delivered to customers in South Carolina. When aircraft are purchased for use outside this State the tax likewise applies unless the seller, as a condition of the sale, delivers the aircraft to customers at points outside this State. The most acceptable proof of transportation outside the state would be a trip ticket signed by the seller's delivery agent and showing also the signature and address of the person outside this State who received the delivered aircraft.

2. Rental of aircraft. Proceeds derived from lease or rental of aircraft are subject to the tax.

3. Flight instruction. Receipts from courses of instruction given by base operators to students seeking private, commercial, instrument and/or instructor's licenses are not subject to the sales tax. Included in such exempt services are receipts from dual and solo flights which are a part of a course of instruction.

4. Charter service. No tax is due on charges made for charter service. Additionally, no tax would be due on withdrawals of aircraft for use in charter flights originating and terminating in states other than South Carolina.

5. Sales of gasoline for use in aircraft are subject to the tax.

6. Sales of lubricating oils and greases are subject to the tax. Charges made for lubricating services are not taxable, the tax being paid on the value of the lubricant or grease used in furnishing this service.

7. Repair service.

a. No tax is due on the purchase or withdrawal of parts used to repair or recondition aircraft for sale. Likewise, no tax is due on repairs by a person electing to report use on the basis of flight hours.

b. No tax is due on parts withdrawn for use in replacing parts under written warranty contracts given without charge to the purchaser at the time of original purchase, provided the tax was paid on the sale of the part found

South Carolina State Register Vol. 36, Issue 6
JUNE 25, 1992

FINAL REGULATIONS 279

to be defective or on the sale of the property of which the defective part was a component, and provided no charge for labor or materials is made to the warrantee.

c. All other proceeds derived from the sale of repair parts and service are subject to the tax; provided, however, that where a separation is made between the sale of the parts and the sale of the service, the tax is due only on the sale of the repair parts. The invoice to the customer must show this separation.

8. Rental of hanger or tie space. No tax.

117-332 Medicines, Prosthetic Devices and Hearing Aids

Code Section 12-36-2120(28) exempts from the sales and use taxes:

(a) medicines and prosthetic devices sold by prescription, prescription medicines and therapeutic radiopharmaceuticals used in the treatment of cancer, lymphoma, leukemia, or related diseases, including prescription medicines used to relieve the effects of any such treatment, and free samples of prescription medicine distributed by its manufacturer and any use of these free samples;

(b) hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar diabetic supplies sold to diabetics under the authorization and direction of a physician;

(c) medicine donated by its manufacturer to a public institution of higher education for research or for the treatment of indigent patients; and

(d) dental prosthetic devices.

To assist in the administration of this exemption, the Department has adopted definitions for the terms "medicine" and "prosthetic devices" as follows:

"Medicine" - a substance or preparation used in treating disease.

"Prosthetic Device" - an artificial device to replace a missing part of the body.

The sale of prescription lenses that replace a missing part of the eye are exempted from the tax, as for example eyeglasses prescribed for a person whose natural lenses have been surgically removed.

Eyeglasses, contact lens, hearing aids and orthopedic appliances, such as braces, wheelchairs and orthopedic custom-made shoes, do not come within the exemption at Code Section 12-36-2120(28). However, sales of hearing aids are exempt pursuant to Code Section 12-36-2120(38).

Hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar diabetic supplies sold to diabetics are only exempt if sold pursuant to the written authorization and direction of a physician.

117-333 Donors and Goods Given Away for Advertising Purposes

Donors of tangible personal property are regarded as consumers thereof, and the tax applies to the gross proceeds from the sale of the property to them. Gross proceeds from the sale of goods which are to be given away for advertising purposes are taxable.

South Carolina State Register Vol. 26, Issue 6
June 28, 2002

200 FINAL REGULATIONS

Purchasers of property to be awarded as prizes, the winning of which depends upon chance or skill, are regarded as the consumers thereof, and the tax applies to the gross proceeds from the sale of such property to them. The operator of a game of skill, or a game of chance, is regarded as the consumer of the property used in connection with such operations, and the tax applies to the gross proceeds from sales of tangible personal property to the operator.

117-334 Interstate Commerce

(1) Goods coming into this State. When tangible personal property is purchased for use or consumption in this State and (1) the seller is engaged in the business of selling such tangible personal property in this State for use or consumption and (2) delivery is made in this State, such sale is subject to the sales tax. Such sale is taxable regardless of the fact that the purchaser's order may specify that the goods are to be manufactured or procured by the seller at a specified point outside this State and shipped directly to the purchaser from the point of origin.

If the conditions above are met it is immaterial (1) that the contract of sale is closed by acceptance outside the State or (2) that the contract is made before the property is brought into the State. Delivery is held to have taken place in this State (1) when physical possession of the tangible personal property is actually transferred to the buyer within this State or (2) when the tangible personal property is placed in the mails at a point outside this State directed to the buyer in this State or placed on board a carrier at a point outside this State (FOB or otherwise) and directed to the buyer in this State.

Engaging in business in this State shall include any of the following methods of transacting business: maintaining directly, indirectly, or through a subsidiary, an office, distribution house, sales house, warehouse or other place of business or by having an agent, salesman or solicitor operating within the State under the authority of the seller or its subsidiary.

(2) Goods shipped from this State. When tangible personal property is sold within the State and the seller is obligated to deliver it to the buyer or to an agent of the buyer at a point outside of the State or to deliver it to a carrier or to the mails for transportation to the buyer or to an agent of the buyer at a point outside this State, the retail sales tax does not apply provided the property is not returned to a point within the State. The most acceptable proof of transportation outside the State will be:

- (a) A way-bill or bill of lading made out to the seller's order and calling for delivery; or
- (b) An insurance receipt or registry issued by the United States Postal Department, or a Post Office Department receipt Form 3817; or
- (c) A trip sheet signed by the seller's delivery agent and showing the signature and address of the person outside this State who received the goods delivered.

However, where tangible personal property pursuant to a sale is delivered in this State to the buyer or to an agent of his other than a common carrier the retail sales tax applies notwithstanding that the buyer may subsequently transport the property out of the State.

117-335 Manufactured Homes and Modular Homes

Section 12-36-211(B) concerns the method of taxation and the maximum tax for manufactured homes. The term "manufactured home" as used in this section is defined in Code Section 40-29-20 as "a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width, or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation

*South Carolina State Register Vol. 26, Issue 6
June 28, 2002*

FINAL REGULATIONS 281

when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained in it."

Section 12-36-2120(34) exempts 35% of the gross proceeds of the sale of modular homes as defined in Section 31-17-20. The term "modular home" as used in Section 12-36-2120(34) means "a manufactured single family dwelling or an integral part over thirty-five feet in length, or over eight feet in width, so constructed that it may be transported from one site to another, temporarily or permanently affixed to real estate, made up of one or more components, and constructed with the same or similar electrical, plumbing, heating and sanitary facilities as on-site constructed housing."

The sales of portable classrooms and storage type manufactured buildings, recreational vehicles (RVs), travel trailers, campers, manufactured condominium and motel units, and like tangible personal property are not considered the sales of manufactured homes or modular homes.

117-335.1 Homes Built on a Permanent Chassis

Based on the above definitions of a "manufactured home" and a "modular home:"

(A) A factory-fabricated home built on a permanent chassis is a modular home for purposes of the sales and use tax if the structure is:

1. designed to be used as a single family dwelling; and
2. more than eight feet in width or thirty-five feet or more in length.

(B) A factory-fabricated home built on a permanent chassis is a manufactured home for purposes of the sales and use tax if the structure is:

1. designed to be used as a dwelling; and
2. eight or more feet in width or forty feet or more in length or three hundred and twenty or more square feet.

(C) A factory-fabricated home built on a permanent chassis meeting both the requirements in (A) and (B) above is a manufactured home for purposes of the sales and use tax.

(D) A factory-fabricated home built on a permanent chassis that does not meet either of the requirements in (A) or (B) above is neither a modular home nor a manufactured home for purposes of the sales and use tax.

This regulation deals solely with sales and use taxation. It intends no implication for licensing, building code requirements, zoning or other regulation of factory-fabricated homes.

282 FINAL REGULATIONS

117-336 Definition of the Term "Facility"

A "facility" is generally a single physical location, where a taxpayer's business is conducted or where its services or industrial operations are performed. Where two or more distinct and separate economic activities are performed at a single physical location, each separate economic activity will be treated as a separate facility when: (1) each activity has its own separate and dedicated personnel; (2) separate reports can be prepared on the numbers of employees, their wages and salaries, sales, or receipts and expenses; (3) and employment and output are significant as to the activity. For purposes of item (2) above, it is irrelevant if separate reports are actually prepared, so long as separate reports can be prepared, this criteria is met.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation.