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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III, Chief Administrative Law Judge

Case No. 19-ALJ-17-0153-CC

2020-001542

Duke Energy Corporation..... Appellant,

v.

South Carolina Department of Revenue..... Respondent.

RECORD ON APPEAL

VOLUME III [Pages 496-740]

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For expansion of the capacity of an existing facility, it means annual production in excess of 12 times the 3-month average amount of the highest 3 months of ethanol or biodiesel production at an ethanol or biodiesel facility during the 24-month period immediately preceding certification by the design engineer.

Credit is not allowed for an expansion of capacity at the existing facility until production is in excess of 12 times the 3-month average during a 12 month consecutive period beginning January 1, 2017 or thereafter.

c. Credit Application and Allocation

Each taxpayer must submit a request for credit to the State Energy Office by January 31st for all gallons of qualifying fuel produced in the previous calendar year. The State Energy Office will notify the taxpayer of the amount of credit it may claim by March 1st.

These credits are claimed on Form TC-40, "Ethanol or Biodiesel Production Credit."

46. BIOMASS RESOURCES CREDIT

South Carolina Code §12-6-3620 allows a corporation a credit against income taxes imposed by South Carolina Code §12-6-530 or corporate license fees imposed by South Carolina Code §12-20-50, or both, for 25% of the costs incurred for the purchase and installation of equipment used to create power, heat, steam, electricity, or another form of energy for commercial use from a fuel consisting of 90% or more biomass resource.

The statute defines the following terms:

1. "Biomass resource" - non-commercial wood, by-products of wood processing, demolition debris containing wood, agricultural or animal waste, sewage, landfill gas, and other organic materials, not including fossil fuels.
2. "Commercial use" - a use intended for the purposes of generating a profit.

The credit is claimed in the year the equipment is placed in service for all expenses incurred for the purchase and installation of the equipment. All costs must be certified by the State Energy Office. The taxpayer may use up to \$650,000 of credit in a single tax year. Any unused credit may be carried forward 15 years. The credit is claimed on Form TC-50, "Biomass Resource Credit."

Each taxpayer must submit a request for credit to the Department of Revenue by January 31st for qualifying equipment placed in service in the previous calendar year. The Department will notify the taxpayer of the amount of credit it may claim by March 1st. The request can be sent to the Department of Revenue, Attn: Tax Credits, P.O. Box 11189, Columbia, SC 29211-1189 or may be scanned and PDF emailed to TaxTech@dor.sc.gov.

If the equipment ceases using biomass resources as its primary fuel source before the entire credit is used, any unused credit cannot be used until it resumes using biomass resources as at least 90% of its fuel source. The carryforward period is not extended if the credit is suspended.

See, SC Private Letter Ruling #11-6 for additional information about the biomass resources credit and the pass through of the credit and application of the \$650,000 cap.

NOTE: This credit expires for taxable years ending after December 31, 2019.

47. CREDIT FOR RENEWABLE FUELS – ETHANOL AND BIODIESEL

South Carolina Code §12-6-3610 allows a taxpayer tax credits for: (a) placing in service property that is used for distributing or dispensing renewable fuels or (b) constructing a commercial facility that produces renewable fuels.

1. Credit for Property Placed in Service at a Distribution or Dispensing Facility. South Carolina Code §12-6-3610(A) allows an income tax credit to a taxpayer that purchases or constructs and installs property that is placed in service at a new or existing commercial fuel distribution or dispensing facility in South Carolina that is used for distributing or dispensing renewable fuel. The credit is equal to 25% of the cost of purchasing, constructing and installing the property. The credit must be taken in 3 equal annual installments beginning with the tax year the property is placed in service. If in one of the years the credit installment accrues the property used for distributing, dispensing, or storing renewable fuel is disposed of or taken out of service and is not replaced, the credit expires and the taxpayer may not take any remaining installment of the credit.

Eligible property includes pumps, storage tanks, and related equipment, that is used directly and exclusively for distribution, dispensing, or storing renewable fuel. The equipment must be labeled for this purpose and clearly identified as associated with renewable fuel.

For purposes of this credit, “renewable fuel” is E70 or greater ethanol fuel dispensed at the retail level for use in motor vehicles and pure ethanol or biodiesel fuel dispensed by a distributor or facility that blends these non-petroleum liquids with gasoline fuel or diesel fuel for use in motor vehicles.

2. Credit for a Production Facility. South Carolina Code §12-6-3610(B) allows an income tax credit to a taxpayer that constructs and places in service in South Carolina a commercial facility for the production of renewable fuels. The credit is equal to 25% of the cost of constructing or renovating the building and equipping the facility. The credit is taken in 7 equal annual installments beginning with the tax year the facility is placed in service.

A taxpayer that claims any other credit in Article 25 of Chapter 6, Title 12 with respect to the costs of constructing and installing a facility may not take this credit with respect to the same costs. Further, if the processing facility is disposed of or taken out of service in one of the years the credit installment accrues, the credit expires and the taxpayer may not take any remaining installment of the credit.

For purposes of this credit, “renewable fuel” is liquid nonpetroleum based fuels that can be placed in motor vehicle fuel tanks and used as a fuel in highway vehicles, and includes all forms of fuel known as biodiesel and ethanol. Production of renewable fuel includes intermediate steps such as milling, crushing, and handling of feedstock and the distillation and manufacture of the final product.

General Provisions. General provisions relating to the above credits are summarized below.

1. Any unused portion of the unexpired credit may be carried forward for 10 tax years.
2. These credits are claimed on Form TC-41, “Renewable Fuels Tax Credits.”
3. Each taxpayer must submit a request for credit to the State Energy Office by January 31st for all qualifying property or qualifying facility, as appropriate, placed in service in the previous year. The State Energy Office will notify the taxpayer of the amount of credit it may claim by March 1st.

NOTE: South Carolina Code §12-6-3610 is repealed effective for facilities placed in service after December 31, 2019.

48. CREDIT FOR DISTRIBUTION, DISPENSING, AND STORING EQUIPMENT FOR ALTERNATIVE FUELS

For tax years beginning after 2015, South Carolina Code §12-6-3695 allows a taxpayer a tax credit for purchasing, constructing, installing and placing in service in this State eligible property that is used for distribution, dispensing, or storing alternative fuel at a new or existing commercial fuel distribution or dispensing facility in South Carolina. The credit is equal to 25% of the cost of purchasing, constructing and installing the eligible property. The credit must be taken in 3 equal annual installments beginning with the tax year the property is placed in service. If in one of the years the credit installment accrues the property used for distributing, dispensing, or storing renewable fuel is disposed of or taken out of service and is not replaced, the credit expires and the taxpayer may not take any remaining installment of the credit.

“Taxpayer” means any sole proprietor, partnership, corporation of any classification, limited liability company, or association taxable as a business entity. Also, the word ‘taxpayer’ includes the State or any agency or instrumentality, authority, or political subdivision, including municipalities.”

“Eligible property” includes pumps, compressors, storage tanks, and related equipment that is directly and exclusively used for distribution, dispensing, or storing alternative fuel. The equipment must be labeled for this purpose and clearly identified as associated with alternative fuel.

“Alternative fuel” means compressed natural gas, liquified natural gas, or liquefied petroleum gas, dispensed for use in motor vehicles and compressed natural gas, liquified natural gas, or liquefied petroleum gas, dispensed by a distributor or facility.

General Provisions. General provisions relating to the above credits are summarized below.

1. Any unused portion of the unexpired credit may be carried forward for 10 tax years.
2. These credits are claimed on Form TC-59, “Alternative Fuel Property Credit.”
3. A taxpayer who claims any other credit for the cost of purchasing, constructing and installing property at the facility, may not claim the credit under South Carolina Code §12-6-3695 for the same costs.

4. The State or any agency or instrumentality, authority or political subdivision, including municipalities, may transfer the credit, but if the entity transfers the credit, it must notify the Department of the transfer.

NOTE: This credit is only available for property or facilities placed in service before January 1, 2026.

49. CREDIT FOR MANUFACTURERS OF RENEWABLE ENERGY SYSTEMS AND COMPONENTS

South Carolina Code §12-6-3588 provides a nonrefundable income tax credit equal to 10% of qualifying expenditures to qualifying companies in the clean energy field who are expanding or locating in South Carolina. To qualify, the company must: 1) manufacture clean energy systems and components in this State for solar, wind, geothermal, or other clean energy uses; 2) invest at least (a) \$50 million in a Tier IV county, (b) \$100 million in a Tier III county, (c) \$150 million in a Tier II county, or (d) \$200 million in a Tier I county in new qualifying plant and equipment in the year the tax credit is claimed; and 3) meet certain job and wage requirements.¹

A taxpayer's total credit for all expenditures cannot exceed \$500,000 for any taxable year and \$5 million total for all taxable years. Unused credits can be carried forward for 15 years. The credit is in lieu of all other credits or abatements allowed by state law, but the taxpayer may select the credit or abatement desired in the manner prescribed by the Department. The credit is claimed on Form TC-54, "Clean Energy Credit."

The credit is allowed for up to 60 months beginning with the first year for which the business is eligible to receive the credit, provided it becomes eligible no later than the tax year ending December 31, 2020.

Expenditures qualifying for the credit must be certified by the Department of Revenue. A qualifying taxpayer must submit a request for the credit to the Department by January 31st for expenditures incurred in the previous calendar year. The request can be sent to the Department of Revenue, Attn: Tax Credits, P.O. Box 11189, Columbia, SC 29211-1189 or may be scanned and PDF emailed to TaxTech@dor.sc.gov. By March 1st, the taxpayer will be notified of qualifying expenditures and the allocated credit amount.

¹ The county ranking is determined by Code Section 12-6-3360(B), the job tax credit statute.

50. CREDIT FOR ENERGY CONSERVATION AND RENEWABLE ENERGY

South Carolina Code §12-6-3340 allows a taxpayer a credit equal to 25% of all expenditures incurred during the taxable year for the purchase and installation of the following energy conservation and renewable energy production measures:

- ◆ Conservation tillage equipment
- ◆ Drip/trickle irrigation systems including all necessary measures and equipment
- ◆ Dual purpose combination truck and crane equipment.

A taxpayer may claim the credit only one time for each of the three measures in a lifetime. The maximum credit that may be claimed for each measure is \$2,500. In the case of pass-through entities, the credit is determined at the entity level and is limited to \$2,500. Any unused credit can be carried forward for 5 years. The credit is claimed on Form TC-1, "Drip/Trickle Irrigation Systems Credit."

PART H: INVESTMENTS/CONTRIBUTIONS TO OTHER ENTITIES INCENTIVES

51. COMMUNITY DEVELOPMENT CREDIT

South Carolina Code §12-6-3530 provides a tax credit against South Carolina income tax, bank tax, or insurance premium tax for a taxpayer investing in a community development corporation or community development financial institution. The amount of the credit is 33% of any equity investment in any community development corporation or community development financial institution and 50% of any cash donation made to a community development corporation or community development financial institution. If the amount of credit exceeds the taxpayer’s tax liability for the applicable tax year, the taxpayer may carryover the excess to the next 3 years. The credit is claimed on Form TC-14, “Community Development Tax Credit.”

The total credit that may be claimed by all taxpayers is \$1 million in one calendar year and \$6 million for all calendar years.¹ A taxpayer must apply to the Department of Commerce and the Department of Commerce authorizes the credits on a first-come, first-serve basis. Twenty-five percent of the annual tax credits must be held in a reserve account during the first 3 quarters of each taxable year and made available exclusively to small, rural-based community development corporations. During the first 3 quarters of each tax year an individual community development corporation or community development financial institution may not be allocated more than 15% of the statewide total annual credits. During the 4th quarter of each tax year, all remaining tax credits are available to any community development corporation or community development financial institution. However, no single community development corporation or community development financial institution may be allocated more that 25% of the total tax credits authorized in any one calendar year. No credits can be authorized after the annual credit limit has been reached.

The South Carolina Community Economic Development Act, contained in South Carolina Code Chapter 43, Title 34, defines “community development corporation” and “community development financial institution.” “Community development corporation” is defined, in part, as a nonprofit corporation which is chartered pursuant to South Carolina Code Chapter 31, Title 33, is tax exempt under Internal Revenue Code §501(c)(3), and has a primary mission of developing and improving low-income communities and neighborhoods through economic and related development.

¹ Five million dollars of the specified funds have already been allocated and awarded in previous years, leaving \$1 million of allocable funds available for 2019 and thereafter.

“Community development financial institution” is defined, in part, as an organization that has a primary mission of promoting community development by providing credit, capital, or development services to small businesses or home mortgage assistance to individuals, and is not an agent or instrumentality of the United States, or of a state or political subdivision of a state, and does not maintain an affiliate relationship with any of them.

The following requirements apply to the credit:

1. The community development corporation or community development financial institution must be certified by the South Carolina Department of Commerce at the time the investment is made.
2. A taxpayer must obtain a certificate from the South Carolina Department of Commerce certifying the amount and qualification of the investment and certifying that the credit taken or available to the taxpayer will not exceed the aggregate dollar limitation.
3. Banks and financial institutions may invest up to 10% of their total capital and surplus in a community development corporation or community development financial institution.
4. The taxpayer must file with the Department of Revenue the form issued by the Department of Commerce certifying the stock or other equity interest.

Exceptions to the amount of credit eligible to be claimed include:

1. The credit is not allowed if the taxpayer claims a charitable contribution deduction under Internal Revenue Code §170 for the investment in a community development financial institution.
2. If stock or another equity interest that is the basis for the tax credit is redeemed within 5 years of the date acquired, the credit must be repaid with the tax return for the period in which the redemption occurred.
3. Returns on investments in certified community development corporations or community development financial institutions, including the value of any tax credits authorized under Code §12-6-3530, may not exceed the total amount of initial investment in the community development corporations or community development financial institutions.

NOTE: This credit is repealed on June 30, 2023.

52. VENTURE CAPITAL INVESTMENT

“The Venture Capital Investment Act of South Carolina” contained in Title 11, Chapter 45, is designed to increase the availability of funding to emerging, expanding, relocating, and restructuring enterprises within South Carolina. The South Carolina Venture Capital Authority (“Authority”) will choose “designated investor groups” that will have the power and authority to borrow funds from lenders and invest those funds in South Carolina businesses.

At the time a loan is made to a designated investor group, the Authority will issue a tax credit certificate to each “Lender.” South Carolina Code §11-45-30(10) defines a Lender as “a banking institution subject to the income tax on banks under Chapter 11 of Title 12, an insurance company subject to a state premium tax liability under Chapter 7 of Title 38, a captive insurance company regulated under Chapter 90 of Title 38, a utility regulated under Title 58, or a financial institution with proven experience in state based venture capital transactions, pursuant to guidelines established by the Authority.”

The Authority is authorized to establish guidelines governing the procedures for the issuance, transfer and redemption of the tax credit certificates and related tax credits. The certificates shall state the amounts, year, and conditions for redemption and describe the procedures for redemption and transfer of the tax credit certificates. Once the loan is made by the Lender, the certificate is binding on the Authority and the State and may not be modified, terminated or rescinded. However, redemption of the tax credit represented by a certificate is subject to compliance with conditions and procedures set forth on the certificate.

Once redeemable, the tax credit may be used to offset the following taxes: (1) income taxes under Chapter 6, Title 12, (2) bank taxes under Chapter 11, Title 12, (3) savings and loan net income tax liability under Chapter 13, Title 12, (4) license fees and taxes under Chapters 20 or 23, Title 12; (5) insurance premium taxes under Chapter 7, Title 38, or (6) other tax liability under Title 38. There are special provisions for passthrough entities that hold a tax credit certificate. The amount of the tax credit issued to a Lender is limited to the Lender’s principal loan amount together with required interest. The use of tax credits by an insurance company does not affect the application of retaliatory taxes or other fees pursuant to Chapter 7, Title 38 or any payments due under that Chapter.

The credits carry forward indefinitely. The tax credits may be transferred to others who are able to use the credit to offset one of the above listed taxes by following the procedures described on the tax credit certificate. No more than \$20 million in tax credit certificates are redeemable for any one year; however, any certificates issued in one year, but carried forward and redeemed in a subsequent year, do not count against the total.

For returns filed with the Department of Revenue, the credit is claimed on Form TC-26, "Venture Capital Investment Credit."

NOTE: Questions should be addressed to the Authority at 803-737-0627.

53. PALMETTO SEED CAPITAL CREDIT

South Carolina Code §12-6-3430 provides a credit against income or bank taxes imposed under Title 12, or insurance premium taxes imposed under Chapter 7 of Title 38 for qualified investments in the Palmetto Seed Capital Corporation or the Palmetto Seed Capital Fund Limited Partnership, as defined in South Carolina Code §41-44-10. The credit is equal to the lesser of: (a) all qualified investments during the tax year multiplied by 30%, plus any credit carryover or (b) 50% of all qualified investments during all tax years multiplied by 30%.

NOTE: Chapter 44, Title 41, containing the Palmetto Seed Capital Fund Limited Partnership, is repealed once the President of the Palmetto Seed Capital Corporation certifies to the Secretary of State that remaining investments of the private sector limited partners of the Palmetto Seed Capital Fund Limited Partnership have been liquidated. Taxpayers should check with the Palmetto Seed Fund Capital Corporation and its representatives to see if qualifying investments are still being accepted.

54. INDUSTRY PARTNERSHIP FUND TAX CREDIT

South Carolina Code §12-6-3585 provides a taxpayer a credit against income taxes under Chapter 6 of Title 12, bank taxes under Chapter 11 of Title 12, license fees under Chapter 20 of Title 12, or insurance premium taxes under Chapter 7 of Title 38, or any combination of them, for qualified contributions to the Industry Partnership Fund at the South Carolina Research Authority, or designated affiliates, or both, pursuant to South Carolina Code §13-17-88(E). Any unused credit may be carried forward for 10 years from the end of the tax year in which the qualifying contribution is made. The credit is claimed on Form TC-36, "Industry Partnership Fund Credit."

The credit is equal to 100% of the taxpayer's qualified contributions to the Industry Partnership Fund, subject to the following limitations:

1. The use of the credit is limited to the taxpayer's applicable income, bank, license, or premium tax for the tax year after the application of all other credits.

2. The maximum credit is \$250,000 for a single taxpayer and \$8 million for all taxpayers for 2020.²
3. For purposes of determining a taxpayer's entitlement to the credit in years the maximum amount for all taxpayers is exceeded, those taxpayers that made contributions intended to be qualified contributions earlier in the applicable tax year than other taxpayers must be given priority entitlement to the credit. A taxpayer who has been certified by the South Carolina Research Authority as having priority entitlement to the credit must make a commitment satisfactory to the Authority, at such time as the Authority deems appropriate, but not later than April 1st of such year, to making the contribution during the year.

Other credit provisions include:

1. A taxpayer who claims the Industry Partnership Fund tax credit may not take a deduction for the qualified contribution which gives rise to the credit. A contribution is not a qualified contribution if it is subject to conditions or limitations regarding the use of the contribution.
2. A taxpayer is an individual, corporation, partnership, trust, bank, insurance company, or other entity having a state income or insurance premium tax or license fee liability who have made a qualified contribution.
3. The South Carolina Research Authority will furnish a form to the taxpayer identifying its qualified contributions.
4. The merger, consolidation, or reorganization of a corporation where tax attributes survive does not create new eligibility in a succeeding corporation, but unused credits may be transferred and continued by the succeeding corporation.
5. A corporation or partnership may assign its rights to its unused credit to another corporation or partnership if it transfers all, or substantially all, of the assets of the corporation or partnership, or the assets of a trade or business or operating division of the corporation or partnership to another corporation or partnership.

² This \$8 million dollar cap will increase to \$9 million in 2021. The cap was \$7 million for 2019.

55. ANGEL INVESTOR CREDIT

a. Basics of the Credit

The High Growth Small Business Job Creation Act of 2013, Title 11, Chapter 44, provides an income tax credit to encourage certain investors (“angel investors”) to invest in early stage, high growth, and job creating businesses. The credit is 35% of the investor’s qualified investment in a qualified business, subject to certain limitations.

An “angel investor” is an accredited investor as defined by the United States Securities and Exchange Commission (see, www.sec.gov/answers/accred.htm) who is:

1. An individual subject to South Carolina income taxes imposed by Chapter 6, Title 12; or
2. A pass-through entity (*i.e.*, a partnership, S corporation, or a limited liability company taxed as a partnership) formed for investment purposes which (a) has no business operations, (b) does not have committed capital under management over \$5 million, and (c) is not capitalized with funds raised or pooled through private placement memoranda directed to institutional investors. A venture capital fund or commodity fund with institutional investors or a hedge fund does not qualify as an angel investor. South Carolina Code §11-44-30(1) and (4).

To qualify for the credit, the investment must be made in a “qualified business.” A “qualified business” is a business that:

1. Is primarily engaged in manufacturing, processing, warehousing, wholesaling, software development, information technology services, research and development, or is a business providing services listed in South Carolina Code §12-6-3360(M)(13)(*i.e.*, definition of a “qualified service-related facility” for purposes of the jobs tax credit).
2. Is not substantially engaged in: (a) retail sales, (b) real estate or construction, (c) professional services, (d) financial brokerage, investment activities, or insurance, (e) natural resource extraction, (f) gambling, or (g) entertainment, amusement, recreation, or athletic or fitness activity for which an admission fee is charged. The Act provides rules for establishing when a business is substantially engaged in one of these activities.
3. Is a corporation, limited liability company, or partnership that has its headquarters located in South Carolina at the time the investment was made and for the entire time the qualified business benefits from the angel investor tax credit. Headquarters is defined in South Carolina Code §11-44-30(2).

4. Has had in any completed fiscal year before registration, gross income as determined in accordance with the Internal Revenue Code of \$2 million or less on a consolidated basis.
5. Was organized not more than 5 years before the qualified investment was made.
6. Is registered with, and certified by, the Secretary of State as a qualified business at the time application is made to the Secretary. Once the Secretary approves the registration, the business is certified for 12 months.
7. Employs 25 or fewer people in South Carolina at the time it is registered as a qualified business.

See, South Carolina Code §11-44-30(5).

b. Approval Process for the Credit

An accredited investor seeking to claim the credit must submit an application to the Department for tentative approval of the credit. The deadline for submitting applications to the Department is December 31 of the year the investment is made.³ By January 31 of the year after the application is submitted, the Department will notify each investor of the credits tentatively approved and allocated to each investor. The total credit allowed is \$5 million for all investors in any calendar year. If the credit amounts on timely filed applications exceed \$5 million, then the credit is allocated to the investors on a pro rata basis. South Carolina Code §§11-44-70 and 11-44-50(1).

The Application can be found at the Department's website www.dor.sc.org under Forms, Tax Credits, SC SCH TC-56A, "Angel Investor Credit Application".

c. Credit Use and Limitations

The credit is 35% of the qualified investment in the qualified business. The investor may use 50% of the credit in the year the qualified investment is made and 50% in the tax year after the qualified investment is made. The aggregate amount of credit for an individual for all qualified investments in a tax year is \$100,000, not including credits carried forward. Any unused credit can be carried forward for 10 years from the end of the year in which the qualified investment is made. South Carolina Code §§11-44-40, 11-44-50(2) and 11-44-30(3). The credit is claimed on SC SCH TC-56, "Angel Investor Credit".

³ For additional information see South Carolina Information Letter #15-22.

d. Other Rules Pertaining to the Credit

1. *Allocation of Credit Allowed a Pass-through Entity.* For any pass-through entity making a qualified investment directly in a qualified business, each individual who is a shareholder, partner, or member of the pass-through entity must be allocated the credit in the same manner as the proportionate shares of income or loss of the pass-through entity. Allocation rules are provided in South Carolina Code §11-44-40(C).
2. *Transfer and Sale of the Credit.* The credit may be sold, exchanged or transferred one time to any taxpayer. The credit may be transferred by the angel investor to: (1) to his heir and legatees upon death of the angel investor; (2) to a spouse, or (3) incident to a divorce. A taxpayer to whom the credit has been transferred can use the credit for the tax year the transfer occurred and carry forward unused amounts. The transferred credit cannot be used more than 10 tax years after it was originally issued. South Carolina Code §11-44-50(4), (5), and (6).
3. *Gain or Loss on Sale of Qualified Investments.* If the angel investor has a net capital gain on the sale or exchange of the capital assets that were eligible for the credit, then the amount of net capital gain eligible for South Carolina's 44% net capital gain deduction in South Carolina Code §12-6-1150 must be reduced as provided in South Carolina Code §11-44-65(B). If an angel investor taxpayer recognizes a net capital loss on the sale or exchange of capital assets that were eligible for the credit, then the angel investor must increase his South Carolina income as provided in South Carolina Code §11-44-65.
4. The Department has issued SC Revenue Ruling #14-6 which provides an overview of the credit and also provides, in a question and answer format, answers to many of the issues have arisen in connection with the qualification for, and claiming of, the credit.

e. Expiration of the Credit

The High Growth Small Business Job Creation Act of 2013 which contains the Angel Investor Credit is repealed on December 31, 2019. Any carryforward of credit will continue to be allowed until the 10-year period is completed.

PART I: APPENDICES

56. APPENDIX I

- ◆ Corporate Income Tax - Nexus Creating Activities

57. APPENDIX II

- ◆ Job Development Credit – Hourly Gross Wage Figures

Appendix I

Corporate Income Tax Nexus Creating Activities

Below is a summary of South Carolina Revenue Ruling #16-11 and the Department's guidance concerning corporate income tax nexus creating activities. (A complete copy of South Carolina Revenue Ruling #16-11 is available on the Department's website at www.dor.sc.gov.) Initially, this project began as an informal response to a Bureau of National Affairs, Inc., survey covering types of business activities or relationships that, by themselves, may or may not create corporate income tax nexus. The survey contained the following categories of questions:

- A. General Activities
- B. Registration with State Agencies/Departments
- C. Ownership/Leasing of In-State Property
- D. Ownership Interest of In-State Pass-Through Entities
- E. Licensing Intangibles
- F. Employee Activities – Sales Related
- G. Employee Activities – Non-Sales Related
- H. Activities of Unrelated Parties
- I. Distribution and Delivery
- J. Financial Activities/Transactions
- K. Transactions with South Carolina Printers
- L. Cloud Computing or Software as a Service (SaaS) Transactions
- M. Internet-Based Activities

Each response is based upon the specific facts described in the survey and necessary assumptions were made to answer each question. For example, the Department assumed that each specific survey question by itself was the only possible nexus creating activity or relationship a business has in South Carolina. Also, the Department assumed that the activities described are not “de minimis” unless the question or answer specifically states otherwise.

Each response refers only to income tax nexus. Activities that create nexus for income tax purposes differ somewhat from those that create nexus for other tax purposes. Further, the Department did not address the imposition of any license fee, filing requirements, withholding responsibilities, or the consequences of unity and foreign commerce.

A “yes” or “no” response to the survey question indicates whether each of the following activities or relationships will, by themselves, create corporate income tax nexus. In some instances, if the survey question was ambiguous or there were insufficient facts to accurately answer the question, the Department either provided a qualified response or did not provide a response to the question. Such questions have a “note” appended to them. Since developments in this area are constantly taking place, any response is subject to change due to a future statute, court decision, or advisory opinion.

CAUTION: Since a thorough review of the facts and circumstances of each taxpayer’s situation is required in order to make a nexus determination, additional facts not considered in answering the questions below may change the result.

A. General Activities

	YES	NO
1. The out-of-state corporation is doing business in South Carolina.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. The out-of-state corporation makes sales to customers in South Carolina by means of an 800 telephone order number and advertises in South Carolina.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. The out-of-state corporation is listed in the local telephone books of cities in South Carolina. The phone is not answered in South Carolina.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. The out-of-state corporation uses local phone numbers in South Carolina, which are forwarded to the corporation’s headquarters located in another state.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. The out-of-state corporation maintains a bank account at a bank located in South Carolina.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. The out-of-state corporation provides consulting services in South Carolina during the year. The services are not <i>de minimis</i> .	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. The out-of-state corporation, through a third party, provides warranty services on goods sold in South Carolina.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Note: If not *de minimis* and if the services are conducted on behalf of the out-of-state corporation Generally, services will be considered to be conducted on behalf of the out-of-state company if that company contracts for or controls the services.

- | | YES | NO |
|---|-------------------------------------|-------------------------------------|
| 8. The out-of-state corporation sends catalogs to residents in South Carolina. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 9. Does South Carolina have a <i>de minimis</i> standard?
Note: South Carolina has a <i>de minimis</i> standard and follows the principles defined by case law. See <i>Wisconsin Department of Revenue v. William Wrigley, Jr., Co.</i> , 505 U.S. 214 (1992), SC Revenue Ruling #97-15, SC Private Letter Ruling #94-8, and SC Code Section 12-6-4920. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 10. Does South Carolina conform to the Multistate Tax Commission’s Nexus Bulletin 95-1 “Computer Company’s Provision of In-State Repair Services Creates Nexus?”
Note: South Carolina has not adopted MTC’s Nexus Bulletin, but South Carolina generally considers services conducted by a third party to be on behalf of the out-of-state company if that company contracts for or controls the services. | <input type="checkbox"/> | <input type="checkbox"/> |

B. Registration with State Agencies/Departments

- | | YES | NO |
|--|--------------------------|-------------------------------------|
| 1. The out-of-state corporation is registered, authorized, certified or qualified by the Secretary of State, or other similar agency, to transact business in South Carolina as a foreign corporation. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. The out-of-state corporation holds a general business license issued by South Carolina. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. The out-of-state corporation holds a specialty license issued by South Carolina. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 4. The out-of-state corporation is registered with South Carolina as a government vendor or contractor. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

C. Ownership/Leasing of Property in South Carolina

- | | YES | NO |
|---|-------------------------------------|--------------------------|
| 1. The out-of-state corporation owns raw land. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. The out-of-state corporation stores inventory or other goods in a public warehouse for fewer than 30 days per year.
Note: Except for independent contractors under Public Law 86-272 and persons storing material in connection with a printing contract under SC Code §12-6-555. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

- | | YES | NO |
|---|-------------------------------------|-------------------------------------|
| 3. The out-of-state corporation ships in-process inventory to an unrelated party in South Carolina solely for processing.
Note: Except for processing in connection with a printing contract under SC Code §12-6-555. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. The out-of-state corporation consigns goods to vendors, independent contractors, or other parties.
Note: Except for independent contractors under Public Law 86-272. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 5. The out-of-state corporation owns display racks.
Note: Furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration is a protected activity under SC Revenue Ruling #97-15. The answer assumes that the corporation does not sell or lease the racks and the racks do not operate to prepare the product for use or as vending machines. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 6. The out-of-state corporation owns tooling, molds, dies, etc., located at a manufacturing facility in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 7. The out-of-state corporation leases (as lessor) real estate in South Carolina to an unrelated third party. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 8. The out-of-state corporation leases (as lessor) rented mobile property such as rail cars, planes, and trailers, which the lessee may use in South Carolina. The use is not <i>de minimis</i> .
Note: See SC Private Letter Ruling #94-8 where it was concluded that the leasing of airplanes landing in SC three times per year was <i>de minimis</i> . | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 9. The out-of-state corporation owns or leases automobiles provided to salespersons. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 10. The out-of-state corporation owns or leases trucks or automobiles used by non-salespersons. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 11. The out-of-state corporation owns or leases other machinery or equipment. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 12. The out-of-state corporation holds title to property located in South Carolina until the contract price has been paid.
Note: Assuming ownership has not passed and that holding title does not serve merely as a security interest. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 13. The out-of-state corporation files a security interest on inventory sold until the contract price has been paid. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 14. The out-of-state corporation owns or leases a place for company employees, directors, and officers.
Note: Assuming ownership or long term rental of real property in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

D. Ownership Interest of In-State Pass-Through Entities

	YES	NO
1. The out-of-state corporation owns an interest in an investment partnership or LLC taxed as a partnership that has operations in South Carolina. Note: Although the income may not be taxed in SC. See SC Commission Decision #92-58 and SC Private Letter Ruling #95-2.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. The out-of-state corporation owns a general interest in a partnership that is doing business in South Carolina.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. The out-of-state corporation owns a limited interest in a partnership that is doing business in South Carolina.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. The out-of-state corporation owns an interest in an LLC that is doing business in South Carolina and is involved in managing the LLC. Note: Assuming the LLC is taxed as a partnership or S Corporation.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. The out-of-state corporation owns an interest in an LLC that is doing business in South Carolina, but is not the managing member or otherwise involved in managing the LLC. Note: Assuming the LLC is taxed as a partnership or S Corporation.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. The out-of-state corporation owns an interest in an entity located in South Carolina that is disregarded for federal income tax purposes. Note: Assuming the entity is doing business or owns property in South Carolina.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. The out-of-state corporation has an ownership interest or a beneficial interest in a flow-through entity, directly or indirectly through one or more other flow-through entities, that has substantial nexus in South Carolina.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

E. Licensing Intangibles¹

	YES	NO
1. The out-of-state corporation licenses trademarks or trade names to related entities with locations in South Carolina.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. The out-of-state corporation licenses trademarks or trade names to unrelated entities with locations in South Carolina.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. The out-of-state corporation sells/licenses franchises (such as fast-food franchises) to residents of South Carolina. Note: Assuming this does not mean the sale of an entire business, e.g., not an outright sale of a restaurant and not a sale of all of franchisor’s interest in the franchise.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

¹ See *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993).
 January 2020

- | | YES | NO |
|---|-------------------------------------|--------------------------|
| 4. The out-of-state corporation licenses canned software to consumers in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 5. The out-of-state corporation sells/licenses the right to use a patent or copyright to related entities with locations in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 6. The out-of-state corporation sells/licenses the right to use a patent or copyright to unrelated entities with locations in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

F. Employee Activities – Sales Related

- | | YES | NO |
|---|-------------------------------------|-------------------------------------|
| 1. Employees, while in South Carolina, accept and approve customer orders. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Employees, while in South Carolina, negotiate prices, subject to approval outside South Carolina. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. Employees, while in South Carolina, investigate credit-worthiness of customers. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. Employees, while in South Carolina, secure or accept deposits on sales. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 5. Employees, while in South Carolina, handle credit disputes. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 6. Employees, while in South Carolina, attend trade shows or maintain sample/display rooms for one to 14 days per year. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 7. Employees, while in South Carolina, maintain a two-month supply of free samples. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 8. Employees, while in South Carolina, check customers’ inventories for reorder. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 9. An employee, while in South Carolina, makes a single sale on his own initiative and without the company’s prior knowledge. The sale is not <i>de minimis</i> . | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 10. Employees, while in South Carolina, solicit sales of services in South Carolina. The solicitation activity is not <i>de minimis</i> . | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 11. Employees, while in South Carolina, perform a sales-related function associated with services and are reimbursed for the costs of maintaining a home office. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 12. Employees, while in South Carolina, operate mobile stores. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

G. Employee Activities – Non-Sales Related

- | | YES | NO |
|---|-------------------------------------|--------------------------|
| 1. Employees, while in South Carolina, collect delinquent accounts. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

	YES	NO
2. Employees, while in South Carolina, repossess property.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Employees, while in South Carolina, regularly perform installation, repair, maintenance, or warranty services.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Employees, while in South Carolina, perform installation, repair, or warranty services one to four times per year. Note: Unless <i>de minimis</i> .	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Employees, while in South Carolina, set up promotional display of products (e.g., end caps) and inspect inventory. Note: The setting up of promotional displays of products will not create nexus. The inspection of inventory for purposes other than reorder, such as quality control, will create nexus.	<input type="checkbox"/>	<input type="checkbox"/>
6. Employees, while in South Carolina, supervise or inspect installation.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Employees, while in South Carolina, conduct training courses, seminars, or lectures two times per year. Note: Unless sales training.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Employees, while in South Carolina, provide engineering or design functions related to customized products.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Employees, while in South Carolina, handle customer complaints. Note: Facilitating communications between the company and the customer when the purpose of such mediation is to ingratiate the sales personnel with the customer is a protected activity. See SC Revenue Ruling #97-15.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Employees, while in South Carolina, pick up defective merchandise.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Employees, while in South Carolina, pick up or replace damaged or returned property.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12. Employees, while in South Carolina, provide shipping information and coordinate deliveries.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
13. Employees, while in South Carolina, telecommute from their homes located in South Carolina and perform non-solicitation activities.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. One employee telecommutes from his home located in South Carolina and performs back-office administrative business functions, such as payroll, as opposed to direct customer service or other activities directly related to the employer's commercial business activities.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
15. One employee telecommutes from his home located in South Carolina and performs product development functions such as computer coding.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

- | | YES | NO |
|---|-------------------------------------|-------------------------------------|
| 16. Employees, while in South Carolina, assist the out-of-state corporation in defending a lawsuit (e.g., legal staff and witnesses) while in South Carolina for one to 30 days.
Note: See SC Revenue Ruling #08-1 where the Department concluded that the use of the South Carolina court system by an out-of-state company sending various employees to South Carolina to assist its independent legal counsel in defending a lawsuit does not give the out-of-state company nexus with South Carolina. The law firm providing counsel is taxable in South Carolina. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 17. Employees fly into South Carolina on a commercial airline for business purposes. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 18. Employees, while in South Carolina, purchase raw material and inventory while in South Carolina for 20 or fewer days. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 19. Employees, while in South Carolina, attend seminars. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 20. Employees, while in South Carolina, attend an annual training seminar, convention, trade show, retreat, or board of directors meeting for up to 14 consecutive days each year. During their stay, employees maintain contact with the out-of-state office, and conduct business over the telephone, computer, etc. in South Carolina. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 21. Employees fly into South Carolina on a company plane to attend a seminar. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 22. Employees fly into South Carolina on a company plane to attend sports events as spectators. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 23. Employees, while in South Carolina, attend seminars or social functions while staying on a company yacht docked in waters in South Carolina for up to 14 days. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 24. Employees, while in South Carolina, hold job fairs, hiring events, or other recruiting activities for the out-of-state office.
Note: Unless in the recruiting business. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 25. Employees, while in South Carolina, hire, supervise, or train other employees.
Note: Unless sales training. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

H. Activities of Unrelated Parties

- | | YES | NO |
|--|-------------------------------------|--------------------------|
| 1. Unrelated third parties located in South Carolina provide fulfillment services (<i>i.e.</i> , fill product orders from inventory owned by the out-of-state corporation). | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Unrelated third parties located in South Carolina collect regular or delinquent accounts.
Note: If the unrelated third party is performing the activity for more than one company, the answer will depend on additional facts. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

- | | YES | NO |
|---|-------------------------------------|--------------------------|
| 3. Unrelated third parties located in South Carolina investigate credit-worthiness of new customers.
Note: If the unrelated third party is performing the activity for more than one company, the answer will depend on additional facts. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. Unrelated third parties located in South Carolina repossess property. The parties Activities are not <i>de minimis</i> . | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 5. Unrelated third parties located in South Carolina repair or provide maintenance, including warranty services that are not <i>de minimis</i> and are conducted on behalf of the out-of-state company.
Note: Generally, services will be considered to be conducted on behalf of the out-of-state company if that company contracts for or controls the services. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 6. Unrelated third parties located in South Carolina assist with the “set-up” or installation of the company’s products that are not <i>de minimis</i> and are conducted on behalf of the out-of-state company.
Note: Generally, services will be considered to be conducted on behalf of the out-of-state company if that company contracts for or controls the services. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 7. Unrelated third parties located in South Carolina perform repairs under standard or extended warranty that are not <i>de minimis</i> and are conducted on behalf of the out-of-state company.
Note: Generally, services will be considered to be conducted on behalf of the out-of-state company if that company contracts for or controls the services. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 8. Unrelated third parties located in South Carolina close mortgage loans for an out-of-state financial organization.
Note: If the unrelated third party is performing the activity for more than one company, the answer will depend on additional facts. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 9. Unrelated third parties located in South Carolina service mortgage and/or consumer loans for an out-of-state financial organization.
Note: If the unrelated third party is performing the activity for more than one company, the answer will depend on additional facts. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

I. Distribution and Delivery

- | | YES | NO |
|--|-------------------------------------|-------------------------------------|
| 1. The out-of-state corporation ships products into South Carolina in returnable containers.
Note: Assuming the corporation asks for their return. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. The out-of-state corporation delivers goods into South Carolina (from a point outside South Carolina) to customers in the corporation’s owned or leased vehicles. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

- | | YES | NO |
|--|-------------------------------------|-------------------------------------|
| 3. The out-of-state corporation picks up defective products or scrap materials in South Carolina in taxpayer-owned vehicles. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. The out-of-state corporation picks up raw materials in South Carolina in taxpayer-owned vehicles.
Note: Assuming the pickup is not a back haul (<i>i.e.</i> , the out-of-state corporation picks up shipments at the destination or nearby location in South Carolina for delivery to another point). | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5. The out-of-state corporation travels through South Carolina in taxpayer-owned trucks, but does not pick up or deliver goods in South Carolina.
Note: SC Code§12-6-4920 for the filing requirements for interstate motor carriers. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 6. The out-of-state corporation “back hauls” shipments in corporate-owned trucks. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 7. The out-of-state corporation holds title to electricity flowing through a transmission wire within South Carolina (the transmission neither originates nor terminates in South Carolina).
Note: Assuming the corporation does not own or lease the transmission wire. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 8. The out-of-state corporation holds title to natural gas flowing through a pipeline within South Carolina (the natural gas neither originates nor terminates in South Carolina).
Note: Assuming the corporation does not own or lease the pipeline. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

J. Financial Activities/Transactions

- | | YES | NO |
|--|--------------------------|-------------------------------------|
| 1. The out-of-state corporation negotiates and obtains bank loans from a bank located in South Carolina. Officers of the corporation visit the bank at least twice a year to discuss business. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. The out-of-state corporation makes loans secured by real estate located in South Carolina.
Note: No response, depends on facts that are not provided. | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. The out-of-state corporation makes loans secured by tangible personal property in South Carolina.
Note: No response, depends on facts that are not provided. SC Revenue Ruling #08-1 provides an example where a NC finance company does business in NC and TN. The company makes a personal loan to a NC resident who moves to SC the following year. The finance company does not have nexus with SC. The result would not change if the NC resident who moved to SC had his personal car secured by the NC loan. Further, the finance company does not have nexus with SC if the SC borrower contacts the NC finance company to renew the loan. | <input type="checkbox"/> | <input type="checkbox"/> |

	YES	NO
4. The out-of-state corporation issues credit cards to residents of South Carolina.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. The out-of-state corporation purchases, via the secondary market, mortgage loans, secured by real estate located in South Carolina. Note: No response, depends on facts that are not provided. SC Revenue Ruling #08-1 provides an example where a NY finance company is in the business of packaging and selling credit card and mortgage loans to passive investors throughout the US. A few of the debtors and some of the property securing the loans are located in SC. The passive investors do not have nexus with SC. Note, however, if the purchaser “services” the loans in SC, there may be nexus depending on the facts and circumstances.	<input type="checkbox"/>	<input type="checkbox"/>
6. The out-of-state corporation is a passive investor who purchases, via the secondary market, credit account balances of residents of South Carolina. Note: No response, depends on facts that are not provided. SC Revenue Ruling #08-1 provides an example where a NY finance company is in the business of packaging and selling credit card and mortgage loans to passive investors throughout the US. A few of the debtors and some of the property securing the loans are located in SC. The passive investors do not have nexus with SC. Note, however, if the purchaser “services” the loans in SC, there may be nexus depending on the facts and circumstances.	<input type="checkbox"/>	<input type="checkbox"/>
7. The out-of-state corporation makes personal loans to residents of South Carolina who traveled across the state-border to obtain the loans. Note: No response, depends on facts that are not provided.	<input type="checkbox"/>	<input type="checkbox"/>
8. The out-of-state corporation makes personal loans to out-of-state residents who over a number of years subsequently move to South Carolina. Note: See SC Revenue Ruling #08-1 debt examples.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. The out-of-state corporation makes automobile loans to out-of-state residents who over a number of years subsequently move to South Carolina. Note: See SC Revenue Ruling #08-1 debt examples.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. The out-of-state corporation is in the business of packaging and selling credit card and mortgage loans to passive investors throughout the United States. A few of the debtors and some of the property securing the loans are located in South Carolina. Note: See SC Revenue Ruling #08-1 debt examples.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. The out-of-state corporation forecloses on one parcel of real estate located in South Carolina. Note: No response, depends on facts that are not provided.	<input type="checkbox"/>	<input type="checkbox"/>
12. The out-of-state corporation forecloses on several parcels of real estate located in South Carolina.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

K. Transactions with South Carolina Printers²

	YES	NO
1. The out-of-state corporation leases tangible personal property located at a printer in South Carolina for use in connection with a printing contract. Once the work is complete, the printer ships the printed material out of South Carolina for addressing and mailing.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. The out-of-state corporation owns raw materials at a South Carolina printer.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. The out-of-state corporation visits South Carolina printers for quality control purposes one to six times per year.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

L. Computer and Internet Based Transactions

	YES	NO
1. The out-of-state corporation provides access to its software to South Carolina customers and pays independent contractors to perform configuration/set-up services in South Carolina.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. The out-of-state corporation provides access to its software to South Carolina customers and has employees solicit business in South Carolina.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. The out-of-state corporation provides access to its software to South Carolina customers and lacks a physical presence in South Carolina, but has a substantial number of customers with billing addresses in South Carolina.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. The out-of-state corporation provides access to its software to South Carolina customers and lacks a physical presence in South Carolina, but earns a substantial amount of revenue from customers in South Carolina.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. The out-of-state corporation owns an internet server located in South Carolina.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

²See SC Code §12-6-555.

Appendix II

Job Development Credit Hourly Gross Wage Figures For Years 1995 – 2019

Percent to Claim	Gross Wage Per Hour of New Employee – 1995	Percent to Claim	Gross Wage Per Hour of New Employee – 2000
2%	\$6.00 to \$7.99	2%	\$6.74 to \$8.98
3%	\$8.00 to \$9.99	3%	\$8.99 to \$11.23
4%	\$10.00 to \$14.99	4%	\$11.24 to \$16.85
5%	\$15.00 and over	5%	\$16.86 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 1996	Percent to Claim	Gross Wage Per Hour of New Employee – 2001
2%	\$6.16 to \$8.21	2%	\$6.95 to \$9.26
3%	\$8.22 to \$10.26	3%	\$9.27 to \$11.57
4%	\$10.27 to \$15.40	4%	\$11.58 to \$17.37
5%	\$15.41 and over	5%	\$17.38 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 1997	Percent to Claim	Gross Wage Per Hour of New Employee – 2002
2%	\$6.34 to \$8.44	2%	\$7.18 to \$9.57
3%	\$8.45 to \$10.55	3%	\$9.58 to \$11.96
4%	\$10.56 to \$15.84	4%	\$11.97 to \$17.95
5%	\$15.85 and over	5%	\$17.96 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 1998	Percent to Claim	Gross Wage Per Hour of New Employee - 2003
2%	\$6.51 to \$8.68	2%	\$7.30 to \$9.72
3%	\$8.69 to \$10.85	3%	\$9.73 to \$12.15
4%	\$10.86 to \$16.28	4%	\$12.16 to \$18.23
5%	\$16.29 and over	5%	\$18.24 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 1999	Percent to Claim	Gross Wage Per Hour of New Employee – 2004
2%	\$6.62 to \$8.82	2%	\$7.46 to \$9.94
3%	\$8.83 to \$11.03	3%	\$9.95 to \$12.43
4%	\$11.04 to \$16.55	4%	\$12.44 to \$18.65
5%	\$16.56 and over	5%	\$18.66 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2005	Percent to Claim	Gross Wage Per Hour of New Employee – 2010
2%	\$7.64 to \$10.17	2%	\$8.74 to \$11.64
3%	\$10.18 to \$12.72	3%	\$11.65 to \$14.55
4%	\$12.73 to \$19.08	4%	\$14.56 to \$21.84
5%	\$19.09 and over	5%	\$21.85 and over
Percent to Claim	Gross Wage Per Hour of New Employee – 2006	Percent to Claim	Gross Wage Per Hour of New Employee – 2011
2%	\$7.87 to \$10.49	2%	\$8.87 to \$11.81
3%	\$10.50 to \$13.11	3%	\$11.82 to \$14.77
4%	\$13.12 to \$19.68	4%	\$14.78 to \$22.16
5%	\$19.69 and over	5%	\$22.17 and over
Percent To Claim	Gross Wage Per Hour of New Employee – 2007	Percent To Claim	Gross Wage Per Hour of New Employee – 2012
2%	\$8.18 to \$10.89	2%	\$9.08 to \$12.10
3%	\$10.90 to \$13.63	3%	\$12.11 to \$15.12
4%	\$13.64 to \$20.44	4%	\$15.13 to \$22.69
5%	\$20.45 and over	5%	\$22.70 and over
Percent to Claim	Gross Wage Per Hour of New Employee – 2008	Percent to Claim	Gross Wage Per Hour of New Employee – 2013
2%	\$8.37 to \$11.14	2%	\$9.32 to \$12.41
3%	\$11.15 to \$13.94	3%	\$12.42 to \$15.51
4%	\$13.95 to \$20.91	4%	\$15.52 to \$23.28
5%	\$20.92 and over	5%	\$23.29 and over
Percent to Claim	Gross Wage Per Hour of New Employee – 2009	Percent to Claim	Gross Wage Per Hour of New Employee – 2014
2%	\$8.72 to \$11.62	2%	\$9.48 to \$12.62
3%	\$11.63 to \$14.53	3%	\$12.63 to \$15.78
4%	\$14.54 to \$21.80	4%	\$15.79 to \$23.67
5%	\$21.81 and over	5%	\$23.68 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2015	Percent to Claim	Gross Wage Per Hour of New Employee – 2020
2%	\$9.63 to \$12.82	2%	\$10.37 to \$13.82
3%	\$12.83 to \$16.03	3%	\$13.83 to \$17.28
4%	\$16.04 to \$24.06	4%	\$17.29 to \$25.93
5%	\$24.07 and over	5%	\$25.94 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2016
2%	\$9.67 to \$12.87
3%	\$12.88 to \$16.10
4%	\$16.11 to \$24.16
5%	\$24.17 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2017
2%	\$9.75 to \$12.99
3%	\$13.00 to \$16.24
4%	\$16.25 to \$24.36
5%	\$24.36 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2018
2%	\$9.94 to \$13.24
3%	\$13.25 to \$16.55
4%	\$16.56 to \$24.84
5%	\$24.85 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2019
2%	\$10.18 to \$13.56
3%	\$13.57 to \$16.95
4%	\$16.96 to \$25.44
5%	\$25.45 and over

3. INDIVIDUAL INCOME TAXES

1. FEDERAL TAX CONFORMITY

South Carolina income tax laws substantially conform to the federal income tax laws. As of December 31, 2019, South Carolina Code §12-6-40 provides that South Carolina's income tax laws conform to the Internal Revenue Code of 1986 as amended through December 31, 2018. The effective date provisions contained in the Internal Revenue Code are also adopted. South Carolina Code §12-6-50 provides a list of Internal Revenue Code sections specifically not adopted by South Carolina.

This conformity simplifies the filing of returns by adopting federal taxable income as a starting point for South Carolina income tax purposes. With some exceptions, South Carolina income tax liability is determined in accordance with the same set of statutes and rules used in determining federal income tax liability. Subject to certain modifications, the South Carolina gross income and taxable income of an individual is the individual's gross income and taxable income as determined under the Internal Revenue Code.

2. INDIVIDUAL INCOME TAX RATES

South Carolina Code §12-6-510 imposes an income tax upon the South Carolina taxable income of individuals, estates, and trusts at rates ranging from 3% to a maximum rate of 7%. There are six income brackets adjusted annually for inflation.

South Carolina Code §12-6-545 allows for a reduced income tax rate on active trade or business income of a pass-through business (*i.e.*, sole proprietor, partnership, S corporation, or limited liability company taxed as a sole proprietorship, partnership, or S corporation) in lieu of the income tax rate imposed under South Carolina Code §12-6-510. The tax rate applicable to active trade or business income is 3%. The statute contains a definition of "active trade or business income or loss." See South Carolina Revenue Ruling #08-2 for more information on the reduced tax rate on active trade or business income from a pass-through business.

3. ADDITIONAL DEDUCTION FOR CHILDREN UNDER 6

South Carolina Code §12-6-1160 provides that an individual taxpayer is allowed an additional deduction for each child eligible for the South Carolina dependent exemption pursuant to South

Carolina Code §12-6-1140 who has not reached age 6 by December 31st of the tax year if claimed as a dependent on the taxpayer's federal return. The deduction is equal to the South Carolina dependent exemption allowed pursuant to South Carolina Code §12-6-1140.

4. CAPITAL GAINS DEDUCTION

South Carolina Code §12-6-1150 provides a deduction from the South Carolina taxable income of individuals, estates, and trusts equal to 44% of net capital gain recognized. South Carolina defines "net capital gain" in the same manner as Internal Revenue Code §1222 and related sections.

5. RETIREMENT INCOME DEDUCTION

South Carolina Code §12-6-1170(A) provides an annual deduction from South Carolina taxable income for retirement income to the original owner of a qualified retirement account. The qualifying taxpayer receiving retirement income may deduct up to \$3,000 of such retirement income annually until reaching age 65, and deduct up to \$10,000 of such retirement income annually at age 65 and thereafter. For this purpose, "retirement income" means the total of all otherwise taxable income not subject to a penalty for premature distribution from qualified retirement plans, and public employee retirement plans of federal, state, and local governments, including military retirement.

In addition, a surviving spouse is allowed a deduction for income received from his or her retirement plan, if any, and a second, separate deduction for retirement income that is attributable to the deceased spouse, if any. See South Carolina Revenue Ruling #94-9 for further details on the retirement income deduction of a surviving spouse.

South Carolina Code §12-6-1171 provides special rules for taxpayers who have military income or military retirement income.

6. DEDUCTION FOR TAXPAYERS 65 AND OLDER

South Carolina Code §12-6-1170(B) provides an income tax deduction of up to \$15,000 against any South Carolina taxable income of a resident individual who is 65 or older by the end of the tax year. The following requirements apply to this deduction:

- ◆ Amounts deducted as retirement income under South Carolina Code §12-6-1170(A) reduce this \$15,000 deduction.

- ◆ Amounts deducted as a surviving spouse under South Carolina Code §12-6-1170(A) do not reduce this \$15,000 deduction.
- ◆ Taxpayers' filing a joint return are allowed a deduction of up to \$15,000 when only one spouse is 65 or older, and up to \$30,000 when both spouses are 65 or older, by the end of the tax year.

7. **DISABILITY RETIREMENT INCOME DEDUCTION**

South Carolina Code §12-6-1140(4) provides that amounts included in South Carolina gross income received for disability retirement due to permanent and total disability by a person who could qualify for the homestead exemption under South Carolina Code §12-37-250 by reason of being classified as totally and permanently disabled is deductible from South Carolina income. (See Chapter 5, Individual Property Tax, Section 2, for information concerning the homestead exemption.)

8. **COLLEGE INVESTMENT CONTRIBUTION DEDUCTION**

South Carolina Code §12-6-1140(11) provides a deduction in computing South Carolina taxable income for contributions to the South Carolina College Investment Program in South Carolina Code §59-2-80. This 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 §529. The program is under the direction of the Office of the State Treasurer.

South Carolina Code §59-2-80 provides for the income tax treatment of fund contributions and earnings as follows:

- ◆ 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 §529 and to the extent that the transferred funds were not permitted a state income tax deduction previously under South Carolina law.
- ◆ State income tax deductions as provided for in South Carolina Code §§59-2-80 and 12-6-1140(11) 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.

- ◆ 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.
- ◆ Earnings withdrawn that are not qualified withdrawals are included in South Carolina income of the resident recipient in the year of withdrawal.

9. SOCIAL SECURITY BENEFITS EXCLUDED

South Carolina Code §12-6-1120(4) provides that social security benefits are not included in South Carolina gross income.

10. CREDIT FOR INCOME TAXES PAID TO ANOTHER STATE

South Carolina Code §12-6-3400 provides an income tax credit to residents for taxes paid to another state on income which also is subject to tax in South Carolina. The credit is allowed only for taxes paid to the other state on income derived from sources within the state, which is taxed under the laws of that state irrespective of the residence of the taxpayer. If a taxpayer is considered to be a resident of South Carolina and is also considered to be a resident of another state, the Department may, at its discretion, allow a credit against the taxes imposed by South Carolina for those taxes imposed by, and paid to, the other state on income taxed in South Carolina.

11. TWO WAGE EARNER CREDIT

South Carolina Code §12-6-3330 provides married individuals filing a joint return a credit against South Carolina income tax equal to seven-tenths of 1% (.007) of the lesser of the following: (1) \$40,000¹ or (2) the South Carolina qualified earned income of the spouse with the lower qualified earned income for the taxable year.

¹ This amount will increase \$3,333 annually until it reaches \$50,000 in 2023, which results in a credit of \$350.

12. SOUTH CAROLINA EARNED INCOME CREDIT

Code §12-6-3632 has been added to provide a full-year resident individual a nonrefundable South Carolina earned income tax credit. When fully phased in, the credit will be equal to 125% of the federal earned income tax credit allowed the taxpayer under Internal Revenue Code §32.²

13. COLLEGE TUITION CREDIT

South Carolina Code §12-6-3385 provides for a refundable individual income tax credit for tuition paid during the tax year to an institution of higher learning. The credit for each taxable year is equal to 50% of the tuition paid, not to exceed \$1,500 for a student attending a 4-year or 2-year institution.

The credit may be claimed by the student paying the tuition or by an individual paying the tuition who is eligible to claim the student on his federal income tax return. It may be claimed for no more than 4 consecutive years after the student enrolls in an eligible institution with limits and exceptions.

South Carolina Code §12-6-3385 contains a list of requirements that a student must meet in order to qualify for the credit. Requirements the student must meet include:

- ◆ Having completed at least 30 credit hours at the end of the tax year for which the credit is claimed.
- ◆ Within 12 months before enrolling in the institution of higher learning graduated from a South Carolina high school.
- ◆ Graduating from high school during or after May 1997.

See South Carolina Revenue Ruling #09-3 for a detailed question and answer document on the college tuition tax credit.

14. CHILD AND DEPENDENT CARE EXPENSES CREDIT

South Carolina Code §12-6-3380 provides an individual an income tax credit for qualified child and dependent care expenses. Qualified expenses include amounts paid for household services

² The credit allowed by this section is phased-in in 6 annual installments of 20.83% each beginning in the 2018 tax year until fully phased-in in 2023. For 2020, the amount is 62.5% of the federal earned income credit.

and care of a child under age 13 claimed as a dependent, a disabled spouse incapable of self-care, or a disabled person incapable of self-care claimed as a dependent, if such expenses are incurred while the taxpayer works or looks for work during the tax year. The credit is computed as provided in Internal Revenue Code §21, except that the credit amount is 7%, and only expenses that are directly attributable to items of South Carolina gross income qualify.

Also, see Business Income Tax, Chapter 2, Section 23 for information on a credit that an employer may claim for costs incurred in establishing a child care program for its employees' children or for child care payments made directly to independent child care facilities.

15. DISASTER/INSURANCE RELATED DEDUCTION AND CREDITS

South Carolina Code Title 12, Chapter 6 contains a variety of disaster or insurance related tax deductions or credits for individuals. Each is briefly explained below.

a. Catastrophe Savings Account

South Carolina Code §12-6-1620 allows a taxpayer to establish a "Catastrophe Savings Account" to cover the insurance deductible or self-insured losses on the taxpayer's South Carolina legal residence for hurricane, rising floodwaters, or other catastrophic windstorm event damage. The total amount that may be contributed to this regular savings or money market account varies from: (1) \$2,000 for an individual whose qualified deductible is \$1,000 or less; (2) the lesser of \$15,000 or twice the taxpayer's qualified deductible for an individual whose qualified deductible is over \$1,000; or (3) the lesser of \$250,000 or the value of the taxpayer's legal residence for a self-insured individual.

In general, the income tax treatment of fund contributions, earnings and distribution are:

- ◆ Contributions are a deduction from South Carolina income subject to tax.
- ◆ Interest earned is not included in South Carolina income.
- ◆ Distributions for qualified catastrophe expenses are not included in South Carolina income.
- ◆ Distributions exceeding qualified catastrophe expenses are included in South Carolina income. Subject to limited exceptions, the tax rate for excess distributions is increased by 2.5% over the regular income tax rate.

- ◆ Distributions to a taxpayer age 70 or older closing an account set up to pay a deductible are not included in South Carolina income.

b. Legal Residence Retrofit Credits

Credit for Retrofitting Fortification Costs. South Carolina Code §12-6-3660 provides an income tax credit of up to \$1,000 for 25% of the costs to retrofit a taxpayer’s legal residence to make it more resistant to loss due to hurricane, rising floodwater, or other catastrophic windstorm event. Ordinary repair or replacement of an existing item does not qualify.

Credit for Sales or Use Tax Paid on Purchases to Retrofit. South Carolina Code §12-6-3665 provides an income tax credit for state sales or use taxes paid on purchases of tangible personal property used to retrofit an individual’s legal residence. The credit is 6% of the purchase price of tangible personal property eligible for retrofitting fortification costs discussed above. The credit cannot exceed \$1,500. The credit is claimed on SC SCH TC-43.

South Carolina Department of Insurance Regulation 69-75 sets forth the fortification measures that qualify for the credits in South Carolina Code §§12-6-3660 and 12-6-3365. The standards which must be met by an individual taxpayer for costs to qualify for the credit are the same as those required under the South Carolina Safe Home Program and are contained in the *South Carolina Safe Home Resource Document for Mitigation Techniques* (Manual). A copy of the Manual is available at www.scsafehome.com or the SC Safe Home website will direct taxpayers to the location of the Manual on the Department of Insurance website.

c. Property and Casualty Insurance Premium Credit

South Carolina Code §12-6-3670 provides an income tax credit for an individual’s property and casualty insurance premium for the taxpayer’s legal residence paid during the tax year in excess of 5% of the taxpayer’s adjusted gross income. The credit allowed for any tax year cannot exceed \$1,250. Any unused credit may be carried forward for 5 tax years. The credit is claimed on Form TC-44, “Excess Insurance Premium Credit.”

16. NURSING FACILITY/IN-HOME/COMMUNITY CARE CREDIT

South Carolina Code §12-6-3390 provides an individual taxpayer an income tax credit equal to 20% of the expenses paid by the taxpayer for his own support or the support of another to an institution providing nursing facility level of care or paid to a provider for in-home or community care for persons determined to meet nursing facility level of care criteria as certified by a licensed physician. The credit is limited to \$300 each taxable year. No credit is allowed for expenses paid from public source funds.

17. CREDIT FOR NONRESIDENT RETIREMENT CONTRIBUTIONS

South Carolina Code §12-6-3500 provides a credit over the taxpayer’s lifetime for taxes paid on qualified retirement income contributions while residing in a state other than South Carolina. The Department will prescribe the amount of the annual credit based on the taxpayer’s life expectancy at the time the taxpayer is allowed the South Carolina retirement income deduction discussed above in Section 5. The total credit allowed may not exceed an amount determined by multiplying the contributions taxed in each year by the marginal South Carolina individual income tax rate for that year. The credit is claimed on Form TC-29, “Qualified Retirement Plan Contribution.”

18. CREDIT FOR REHABILITATION OF A CERTIFIED HISTORIC RESIDENTIAL STRUCTURE

South Carolina Code §12-6-3535 has two similar income tax credits available to taxpayers making historic rehabilitation expenditures in South Carolina. The first credit, rehabilitation of a certified historic structure credit, is available to taxpayers that qualify for the federal rehabilitation credit. The second credit, rehabilitation of a certified historic residential structure credit, is available to individual taxpayers that do not qualify for the federal rehabilitation credit.

A general overview of the credit for rehabilitation of a certified historic residential structure is provided below. See Chapter 2, Business Income Tax, Section 37 for a general overview of the credit for rehabilitation of a certified historic structure.

NOTE: As a result of the amendments to South Carolina Code §12-6-3535 in 2015, there are differences between the credit provisions for certified historic residential structures placed in service before and after June 9, 2015. These differences are noted below.

South Carolina Code §12-6-3535(B) allows a taxpayer an income tax 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 qualify for the credit. To claim this credit, the taxpayer must receive certification 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 3-year period³ beginning with the year that the certified rehabilitation is placed in service (*i.e.*, completed and allows for the intended use). Any

³ For certified historic residential structures placed in service before June 9, 2015, the credit is claimed in equal amounts over a 5-year period beginning with the year that the property is placed in service.

unused credit may be carried forward for the 5 succeeding years at the individual, partnership, or limited liability company level. A taxpayer cannot take more than one credit on the same certified historic residential structure within 10 years. The credit is claimed on Form TC-22, “Credit for a Certified Historic Residential Structure Placed in Service After June 9, 2015.”⁴

Taxpayers who are either a general partnership, limited partnership, limited liability company, or another pass-through entity (as defined in South Carolina Code §12-6-545), may allocate the credit among the partners, including, without limitation, an allocation of the entire credit or unused carryforward to any partner who was a member or partner at any time in the year in which the credit or unused carryforward is allocated, in a manner agreed to by the partners or members. An S corporation must first use the credit against its own income tax liability, if any, before passing the credit through to its shareholders based on their percentage of stock ownership. South Carolina Code §12-6-3310(B)(2). Additionally, a taxpayer who makes a pass-through election under Internal Revenue Code §50(d) may elect to pass the credit claimed to the tenant of the eligible structure or to retain the credit.

The terms “certified historic residential structure,” “certified rehabilitation,” “rehabilitation expenses,” and “owner-occupied residence” are defined in South Carolina Code §12-6-3535(B).

“Certified historic residential structure” is defined as an owner-occupied residence that is:

- ◆ listed individually in the National Register of Historic Places;
- ◆ considered by the State Historic Preservation Officer to contribute to the historic significance of a National Register Historic District;
- ◆ considered by the State Historic Preservation Officer to meet the criteria for individual listing in the National Register of Historic Places; or
- ◆ an outbuilding of an otherwise eligible property considered by the State Historic Preservation Officer to contribute to the historic significance of the property.

“Certified rehabilitation” is 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.

⁴ For certified historic residential structures placed in service before June 9, 2015, the credit is claimed on Form TC-22, “Credit for a Certified Historic Residential Structure Placed in Service Before June 8, 2015.”

“Rehabilitation expenses” are expenses incurred by the taxpayer in the certified rehabilitation of a certified historic residential structure that are paid before the credit is claimed including preservation and rehabilitation work done to the exterior of a certified historic residential 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 systems exclusive of new electrical appliances and 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 certified historic residential structure, the value of an owner’s personal labor, or the cost of personal property.

“Owner-occupied residence” is a building or portion of a building in which the taxpayer has an ownership interest, in whole or in part, in fee, by life estate, or as the income beneficiary of a property trust, that is, after being placed in service, the residence of the taxpayer and is not (a) actively used in a trade or business, (b) held for the production of income, or (c) held for sales or disposition in the ordinary course of the taxpayer’s trade or business.

Additional credit provisions include:

1. 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 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 any carryforward, is forfeited.
2. The South Carolina Department of Archives and History has developed an application and certification process. A copy of the application and certification information can be obtained from the South Carolina Department of Archives and History at 803-896-6174. A taxpayer may appeal a decision of the State Historic Preservation Officer to a committee of the State Review Board.

19. ENERGY EFFICIENT MANUFACTURED HOME INCENTIVE CREDIT

South Carolina Code §48-52-870 provides a \$750 income tax credit to any person who purchases a manufactured home from a retail dealership licensed by the South Carolina Manufactured Housing Board for use in South Carolina which has been designated by the

United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency's energy saving efficiency requirements or requirements under each agency's ENERGY STAR program.

The South Carolina Energy Office must adopt rules to develop credit applications and administer the issuance of the credit. The forms are available at the State Energy Office's website at <http://www.energy.sc.gov>.

This credit may be claimed on SC SCH TC-53.

Note: The credit is not available for any manufactured home purchased after June 30, 2020.

20. MOTOR FUEL USER FEE CREDIT

South Carolina Code §12-6-3780 allows a resident taxpayer a refundable income tax credit for preventative maintenance costs associated with a private passenger motor vehicle or motorcycle registered in South Carolina during the year, subject to certain limitations. For more information concerning this credit, see SC Revenue Ruling #17-6.

21. SERVICE AS PRECEPTOR FOR CLINICAL ROTATIONS CREDIT AND DEDUCTION

Code §12-6-3800 has been added to provide an income tax credit for eligible physicians, advanced practice registered nurses, and physician assistants who serve as a preceptor for qualifying clinical rotations required by a medical school, physician assistant program, or advanced practice nursing program. Code §12-6-1140(14) provides a deduction for additional rotations after the taxpayer has met the credit maximum.

The amount of credit that may be claimed per rotation varies depending on whether the taxpayer is a physician, advanced practice registered nurse, or physician assistant and how much of the taxpayer's practice consists of Medicaid insured, Medicare insured, and self-pay patients.

A taxpayer can earn credit for up to 4 rotations a year. Credits are considered earned in the tax year in which the rotation is served. Taxpayers may claim 50% of the credit in the tax year the credit is earned and 50% in the following tax year. The total credit claimed in a single year cannot exceed 50% of the taxpayer's remaining tax liability after all other credits have been applied. Any unused credit may be carried forward to the following year, except that a carryforward may not be used for a tax year that begins more than 10 years from the year the credit is earned.

If a taxpayer earns the maximum annual credit amount (4 rotations) and the taxpayer serves as a preceptor for additional rotations that would otherwise qualify for the credit, the taxpayer may claim a deduction in an amount equal to the amount that the credit would have been. The deduction may be earned up to 6 times a year but is also subject to a phase-in.

Definitions are provided for “preceptor,” “independent institution of higher learning,” “medical-school-required clinical rotation,” “physician assistant program-required clinical rotation,” and “advanced practice nursing program-required clinical rotation.”

The credit that can be claimed for all rotations in a single tax year is phased in over a 6-year period.

Note: The tax credit and the deduction are repealed as of January 1, 2026.

22. COMPOSITE RETURNS FOR NONRESIDENT PARTNERS AND SHAREHOLDERS

See Chapter 2, Business Income Tax, Section 8, for information on composite returns.

4. BUSINESS PROPERTY TAX AND EXEMPTIONS

1. TAXATION OF REAL AND PERSONAL PROPERTY

Real property is subject to property taxes. Personal property used in business and certain personal property used for personal purposes, such as motor vehicles, boats, and airplanes, are also subject to property taxes. Property taxes are generally assessed and collected by local governments. The Department assesses and collects some property taxes and assists in the administration of property taxes by overseeing all property tax assessments to ensure equitable and uniform assessment throughout South Carolina.

In general, the person who owns real property on the lien date (December 31st of the year preceding the current tax year) in fee simple, for life, or as trustee, as recorded in the public records for deeds, who has the care of the property as a guardian, executor, trustee, or committee on the lien date is liable for payment of the taxes on the real property. South Carolina Code §§12-37-610 and 12-49-20. A leasehold will be subject to ad valorem tax if real property that is subject to a property tax exemption is leased for a definite term and the lessee does not qualify for an exemption. South Carolina Code §12-37-950; see *Clarendon County ex. rel. Clarendon County Assessor v. Tykat, Inc.*, 394 S.C. 21, 714 S.E. 2d 305 (2011)

Property taxes are generally due and payable between September 30th and January 15th after their yearly assessment. South Carolina Code §12-45-70(A); see South Carolina Code §12-39-150. There are special rules fixing liability and due dates for taxpayers that make returns to the Department on a fiscal year basis. See South Carolina Code §12-37-970 and SC Revenue Ruling #16-12.

The amount of property tax due is based upon three elements: (1) the property value, (2) the assessment ratio applicable to the property used to determine assessed value, and (3) the millage rate imposed by the taxing jurisdictions. Each of these elements is briefly discussed below.

1. **Valuation:** Real property (other than agricultural use property and most property that is subject to a Fee in Lieu of Property Taxes) is appraised to determine fair market value. Real property is reappraised on a countywide basis every 5 years. South Carolina Code §12-43-217. For purposes of this reassessment, any increase in fair market value of any parcel of real property is limited to 15% unless an “assessable transfer of interest” (“ATI”) occurs. An ATI will result in reassessment of the property and a valuation not limited by the 15% cap. A non-exclusive list of events that constitute an ATI is provided in South Carolina Code §12-37-3150. Certain properties that undergo an ATI after 2010 may be eligible for a partial exemption. The fair market value of improvements and

additions will be added to the fair market value of a parcel after completion. The 15% cap does not apply to improvements or additions in the year they are first subject to property tax. See South Carolina Code §§12-43-217 and 12-37-3120 through 12-37-3170.

Personal property of manufacturers is valued at cost from which a fixed statutory depreciation percentage is deducted each year until a residual value is reached. Personal property of merchants is valued at cost from which income tax depreciation is deducted each year until a residual value is reached. In general, motor vehicles, boats, and airplanes are valued in accordance with nationally recognized publications of value (except that the value may not exceed 95% of the prior year's value). Discounts may be allowed for motor vehicles with high mileage.

The property of utilities, airlines, railroads, private car lines, motor carriers, and golf courses is valued using special methods of valuation.

2. **Assessment Ratio:** Assessment ratios are established in the State Constitution to ensure stability and differ according to property classification. In general, all manufacturing property (whether real or personal) and most commercial personal property is assessed at 10.5%. Commercial real property is assessed at 6%. Personal use motor vehicles are assessed at 6%; motor vehicles that do not qualify as personal use motor vehicles (*i.e.*, those that are used for business, are assessed at 10.5 %.) South Carolina Code §12-43-330 provides that property exempt from taxation is also exempt from assessment.

The valuation is multiplied by the applicable assessment ratio to produce the “assessed value” of a particular piece of property. Taxes are levied based upon this assessed value.

New and expanding businesses that invest \$2.5 million or more (\$1 million or more in certain instances) can enter into a Fee in Lieu of Property Taxes arrangement, which can reduce a 10.5% assessment ratio to 6% for up to 40 years for qualifying property. Very large investments can qualify for a Fee in Lieu of Property Taxes with a 4% assessment ratio for up to 50 years for qualifying property. (See Chapter 6 for more details on Fee in Lieu of Property Taxes.)

3. **Millage:** On an annual basis, each taxing jurisdiction determines the number of mills required so that when that number is multiplied by the total assessed value of property subject to taxation within its jurisdiction, it will raise the money necessary for it to operate for the next year. The 2019 average millage rate is 342.04 mills. A mill is a unit of monetary value equal to one one-thousandth of a dollar or \$0.001.

Example: If a manufacturer owns a piece of property with a value of \$10,000 and an assessment ratio of 10.5% (the ratio for manufacturing property in the absence of a Fee in Lieu of Property Taxes agreement), the assessed value of that property is \$1,050 (\$10,000 x 10.5%). If the taxing jurisdiction decides in a particular year to levy a tax of 297 mills, then the property tax liability of the owner is \$312 (\$1,050 x .297).

2. PROPERTY CLASSIFICATION

a. General Information

Classification based on ownership and use of a property is used to determine the property's assessment ratio. Classification also determines whether the property will be valued by a county assessor (for real property), by a county auditor (for personal property), or by the Department (for specified real and personal property as provided in South Carolina Code §12-4-540).

South Carolina Regulation 117-1760.1 provides that in classifying businesses for purposes of property tax assessments, if the company is involved in more than one operation, the major operation of the company determines the classification.

b. Business Classification

For purposes of assessing property of manufacturers, the Department follows the classifications set out in Sectors 21, 31, 32, and 33 of the most recent North American Industry Classification System (NAICS) Manual. However, establishments that publish newspapers, books, and periodicals that do not have facilities for printing or that do not actually print their publications are not classified as manufacturers. See South Carolina Code §12-43-335(B).

For purposes of assessing property of railroads, private carlines, airlines, water, power, telephone, cable television, sewer, and pipeline companies, the Department follows the classifications set out in Sectors 22, 51, 424, 481, 482, 483, 485, and 486 (with exceptions within certain sectors) of the most recent NAICS Manual. See South Carolina Code §12-43-335(C).

For purposes of assessing the property of merchants and related businesses, the Department follows the classifications set forth in the most recent NAICS Manual, Sectors 22, 23, 42, 44, 45, 48, 51, 56, 71, 81, 453, 481, 483, and 484 (with exceptions within certain sectors). See South Carolina Code §12-43-335(A).

For purposes of appraising and assessing personal property of businesses and other entities under the jurisdiction of the county auditor, the county auditor follows the following classifications as contained in the most recent NAICS Manual: Sector 11 – Subsectors 111 through 115, unless exempt; Sector 51 - Subsector 512; Sector 52 – Subsectors 522 through 525; Sector 53 – Subsectors 531 and 533; Sector 54 – Subsector 541; Sector 55, Subsector 551, unless exempt; Sector 61, Subsector 611; Sector 62 – Subsectors 621 through 624; Sector 71 – Subsector 712; Sector 72 – Subsector 721; and Sector 81 – Subsectors 813 through- 814, unless exempt. See South Carolina Code §12-39-70.

3. ASSESSMENT RATIOS AND VALUATION

a. Manufacturers’ and Utilities’ Real Property

South Carolina Code §12-43-220(a) provides that real property owned by, or leased to, manufacturers and utilities and used by the manufacturer or utility in the conduct of its business is taxed on an assessment of 10.5% of the fair market value of the property, unless otherwise provided. South Carolina Regulation 117-1700.3 defines “utilities” to include water companies, power companies, electric cooperatives, and telephone companies. The Department also considers sewer companies and cable television companies to be utilities.

Assessment Ratio. Depending on use, the real property owned by a manufacturer may qualify for a 6% assessment ratio rather than a 10.5% assessment ratio. The qualifying uses are discussed below.

- ◆ Real property owned by, or leased to, a manufacturer and used primarily for research and development is not considered used by a manufacturer in the conduct of its manufacturing business for purposes of classification of property. The phrase “research and development” means basic and applied research in the sciences and engineering and the design and development of prototypes and processes.
- ◆ Real property owned by, or leased to, a manufacturer and used primarily as an office building is not considered used by a manufacturer in the conduct of the business of the manufacturer for purposes of classification of property if the office building is not located on the premises of, or contiguous to, the plant site of the manufacturer.
- ◆ A public road and railway tracks which a manufacturer holds in fee simple does not defeat contiguity. When a manufacturer’s manufacturing facility and its office building is separated by the road and tracks, the office building does not qualify for the special 6% assessment ratio. *Sonoco Products Co. v. South Carolina Department of Revenue*, 378 S.C. 385, 662 S.E.2d 599 (2008).

- ◆ Real property owned by, or leased to, a manufacturer and used **primarily** for warehousing and wholesale distribution is not considered used by a manufacturer in its manufacturing business for purposes of classification of property. Real property subject to this special provision must not be physically attached to the manufacturing plant unless the warehousing and wholesale area is separated from the manufacturing area by a permanent wall.

Valuation. The fair market value of a manufacturer’s real property, other than agricultural use real property and potentially property that is subject to a Fee in Lieu of Property Taxes, is determined by appraisal as discussed at the beginning of this chapter.

All real and personal property of a utility is valued using a unit valuation method to value the utility operations as a whole. See South Carolina Code §§12-37-930 and 12-4-540(B).

b. Manufacturers’ Machinery and Equipment

Assessment Ratio. South Carolina Code §12-43-220(a) provides that personal property owned by, or leased to, a manufacturer is taxed on an assessment of 10.5%.

Valuation. South Carolina Code §12-37-930 provides that the fair market value of manufacturers’ machinery and equipment used in the conduct of the manufacturing business is determined by reducing the original cost by an annual depreciation allowance. The depreciation allowances range from 6% to 30% per year. South Carolina Code §12-37-935 provides that the maximum depreciation allowed for manufacturer’s machinery and equipment is 90% of original cost. Special depreciation rates are applicable to Class 100 or better clean rooms and to machinery and equipment used directly in the manufacturing process by a “life sciences facility” or a “renewable energy manufacturing facility” as defined in South Carolina Code §12-37-930.

Special Reporting Rule for Idle Property Not Under a Fee Agreement. Personal property of a manufacturer located at the manufacturer’s facility does not have to be returned for property tax purposes if the facility has not been operational for one fiscal year and the personal property has not been used in the operations for one fiscal year and is not subject to a Fee in Lieu of Property Taxes. A return is not required for the property until it becomes operational in a manufacturing process or until it has not been returned for 4 years, whichever occurs first. The manufacturer must continue to list the personal property annually with a designation that the personal property is not subject to tax. South Carolina Code §12-37-900.

c. Merchants’ Business Personal Property

Assessment Ratio. In general, South Carolina Code §12-43-220(f) provides that the personal property of a merchant is assessed at 10.5%.

Valuation. South Carolina Regulation 117-1840.1 provides that the fair market value of merchants' personal property is equal to its depreciated basis for income tax purposes (but not less than 10% of its original cost).

d. Motor Vehicles and Watercraft

Assessment Ratio. In general, South Carolina Code §12-43-220(f) provides that the assessment ratio of tangible personal property is 10.5%. Exceptions are: (1) the assessment ratio for personal use motor vehicles is 6%, (2) the assessment ratio for commercial fishing boats, commercial tugboats, and pilot boats is 5%, and (3) motor homes, travel trailers, or boats assessed as living quarters are assessed at either 4% or 6%, depending on whether they are primary or secondary residences. See §§12-37-224 and 12-43-220(c)(2).

Valuation. South Carolina Code §12-37-930 requires motor vehicles and watercraft to be valued based on nationally recognized publications (but the value cannot exceed more than 95% of the prior year's value).

Watercraft and motors that have an assessed value of \$50 or less are exempt from property taxes under South Carolina Code §12-37-220(B)(38). Watercraft trailers are exempt from property taxes under South Carolina Code §12-37-220(B)(40). The governing body of a county, by ordinance, may exempt from property tax 42.75% of the fair market value of a watercraft and its motor. The motor need not be attached to the watercraft to qualify. South Carolina Code §12-37-220(B)(38).

Boats and boat motors that are not currently taxed in South Carolina and that are not used exclusively in interstate commerce become taxable if they are present in South Carolina for 60 consecutive days or 90 days in the aggregate in a property tax year. In lieu of the above rule, the local governing body may, by ordinance, replace the 60/90 day provision with one of the following:

1. The boat or boat motor will be considered taxable if the boat or motor is in South Carolina for an aggregate of 180 days in a property tax year. The number of consecutive days that the boat or motor is in South Carolina is disregarded if the county chooses this option; or,
2. The boat or boat motor will be considered taxable if the boat or boat motor is present in South Carolina for an aggregate of 90 days in a property tax year. The number of consecutive days that the boat or motor is in South Carolina is disregarded if the county chooses this option.

For boats used in interstate commerce and that have a tax situs in South Carolina and in at least one other state, the value is computed by multiplying the fair market value by a fraction (*i.e.*, the number of days the boat was present in South Carolina divided by 365.) The boat must be physically present for an aggregate of 30 days in South Carolina to be subject to property taxes in this State. South Carolina Code §12-37-714.

e. General Aviation Aircraft

Assessment Ratio. Pursuant to South Carolina Code §12-43-220(f), aircraft are assessed at 10.5%. South Carolina Code §12-43-360 allows the governing body of a county, by ordinance, to reduce the assessment ratio of general aviation aircraft subject to property tax in the county to not less than 4% of the fair market value. The ordinance must be applied uniformly to all general aviation aircraft subject to property tax in the county. (See the SC Aeronautics Commission site for a diagram of the tax ratios in the State. <http://www.scaeronautics.com/propertytaxrate.html>.)

Valuation. South Carolina Code §12-37-930 requires aircraft to be valued based on nationally recognized publications (but the value cannot exceed more than 95% of the prior year's value).

f. Golf Courses

Assessment Ratio. Pursuant to South Carolina Code §12-43-220(e) golf courses are assessed at 6%.

Valuation. Golf courses are appraised to determine fair market value. South Carolina Code §12-43-365 provides that the valuation of golf course real property does not include the value of tangible and intangible personal property, or any income or expense derived from such property, whether directly or indirectly. Additional rules are provided if the capitalized income approach is used to determine fair market value. Real property is generally subject to the 15% cap as discussed at the beginning of this chapter.

g. All Other Property

Assessment Ratio. South Carolina Code §12-43-220(e) provides that all other real property not otherwise provided for is assessed at 6% of its fair market value. South Carolina Code §12-43-220(f) provides that all other tangible personal property is assessed at 10.5% of its fair market value.

Valuation. The fair market value of real property is generally determined by appraisal as discussed at the beginning of this chapter. South Carolina Regulation 117-1840.2 provides that all personal property that is under county jurisdiction and is not covered by assessment guides furnished by the Department for the assessment of vehicles shall be appraised by the county auditor in the same manner as business personal property under the jurisdiction of the Department as provided for in South Carolina Regulation 117-1840.1.

h. Motor Carriers – Road Use Fee

Previously, South Carolina Code §§12-37-2810 through 12-37-2880 provided that the Department annually assess, equalize, and apportion for property tax purposes the valuation of all motor vehicles of motor carriers, excluding large commercial motor vehicles and buses (as defined in South Carolina Code §12-37-2810), who are South Carolina based International Registration Plan registrants or who own or lease real property within South Carolina used directly in the transportation of freight. Motor carriers meeting the definition of “motor carrier” in South Carolina Code §12-37-2810(A) will be exempt from all other property taxes on their motor vehicles.

Beginning January 1, 2019, however, the South Carolina Department of Motor Vehicles annually assesses, in lieu of property tax, a road use fee on large commercial motor vehicles and buses based on the value determined in South Carolina Code §12-37-2820 and an average millage for all purposes statewide for the preceding calendar year and shall publish the average millage for the preceding year by July first of each year. Furthermore, 100% of the fair market value of semitrailers and trailers (as defined in South Carolina Code §12-37-2810), and commonly used in combination with a large commercial motor vehicle, is exempt from property tax.

Valuation. The fair market value of motor carriers’ vehicles taxable in South Carolina is determined by depreciating the gross capitalized cost of each motor vehicle by the percentage set forth in the statute. The vehicle may not be depreciated below 10% of its gross capitalized cost. The resulting value is multiplied by the ratio of a carrier’s total mileage operated within this state during the preceding calendar year to the carrier’s total mileage within and without this state during the same preceding calendar year times the fair market value of all motor vehicles of the carrier. Special rules for determining “gross capitalized cost” are provided for motor carriers’ vehicles that use alternative fuel as defined in South Carolina Code §12-28-110(1) if the vehicle was acquired after 2015 but before 2026.

Assessment Ratio. This amount (fair market value of vehicles taxable in South Carolina) is then multiplied by a 9.5% assessment ratio to arrive at the assessed value of motor vehicles taxable in South Carolina.

Millage. Once the assessed value has been determined, it is multiplied by the average millage for all purposes statewide for the preceding year. The result is the amount due.

Exceptions. Trailers and semitrailers used by motor carriers are subject to a one-time \$87 fee in lieu of all property taxes and registration requirements after the initial registration. Trailers and semitrailers do not include pole trailers.

Note: Small commercial motor vehicles are not subject to the road use fee and must be licensed and registered, and are subject to ad valorem taxes as otherwise provided by law. See Code §12-37-2815 for more information.

4. MANUFACTURING EXEMPTIONS

a. Five-Year Exemption from County Ad Valorem Property Taxes

Article X, §3 of the South Carolina Constitution and South Carolina Code §12-37-220(A)(7) provide for a 5-year exemption from county property taxes (the exemption does not apply to school or municipal taxes) for all new manufacturing establishments and all additions costing \$50,000 or more to existing manufacturing facilities located in South Carolina. The exemption applies to land, buildings, and additional machinery and equipment installed in the manufacturing facility. Further, Article X, §3 of the South Carolina Constitution provides that a municipality may, by ordinance, also exempt this property from municipal property taxes for not more than 5 years. The timely filing of Form PT-300, "Property Return," and appropriate schedules with the Department is deemed to be the application for this exemption.

Additionally, South Carolina Code §12-37-220(C) provides that the exemption may be extended to an unrelated purchaser for the time remaining in the seller's exemption period. To qualify, the purchaser must (1) acquire the facility in an arms-length transaction, (2) preserve the existing facility and existing number of jobs, and (3) obtain the approval of the governing body of the county. If the qualifying unrelated purchaser meets the above three requirements and makes additions to the new or existing facility costing \$50,000 or more, then the purchaser may qualify for a 5-year exemption from county property taxes. See South Carolina Revenue Ruling #04-14. Since this exemption requires approval from the local county governing body, the purchaser must timely submit an application for this exemption to the Department on Form PT-444, "Five Year Exemption Extended to Unrelated Purchaser."

Opinions concerning the exemption in South Carolina Code §12-37-220(A)(7) include the following:

1. South Carolina Attorney General Opinion #3712 (1974) determined that for purposes of the \$50,000 addition requirement the cost of the addition must be \$50,000 to one manufacturing plant rather than an aggregate expenditure for all manufacturing plants of a single taxpayer located in one county.
2. South Carolina Private Letter Ruling #87-11 reviewed whether a new business purchasing an existing facility from a company that had ceased operations at the facility met the requirement to be a new manufacturing establishment or was a continuation of the previous business. The following elements were considered relevant: (1) change in ownership, (2) change in product, (3) substantial investment of new capital, (4) cessation of former business, and (5) change in product market. Based on the facts in the advisory opinion, the plant met these elements to a degree sufficient to allow the exemption as a new manufacturing establishment.
3. South Carolina Revenue Ruling #89-3 concluded that the exemption for additions to real property improvements of existing manufacturers is allowed to the extent that the real property improvements increase the total real property improvements appraisal.

b. New Partial Value Exemption

A new exemption has been added to exempt 14.2857% of the property tax value of real and personal manufacturing property assessed for property tax purposes pursuant to Code §12-43-220(a)(1). The full amount of the exemption is phased in over 6 years. For 2020, the exemption amount is 7.14285%. The revenue loss resulting from the exemption must be reimbursed and allocated to the political subdivisions of South Carolina in the same manner as the Trust Fund for Tax Relief, but cannot exceed \$85,000,000 per year as phased in. For any year in which the exemption is expected to exceed that cap, the exemption amount will be proportionally reduced so as not to exceed the cap.

Information about the new manufacturing exemption may be found in SC Revenue Ruling #18-13.

5. RESEARCH AND DEVELOPMENT EXEMPTIONS

South Carolina Code §12-37-220(B)(34) provides a 5-year exemption from county property taxes (the exemption does not apply to school or municipal taxes) for the facilities of all new

enterprises (and all additions valued at \$50,000 or more to existing facilities of enterprises) engaged in research and development activities. Further, South Carolina Code §12-37-220(B)(39) provides that the governing body of a municipality may, by ordinance, exempt from municipal property taxes for not more than 5 years property that is located in the municipality and that receives the exemption from county property taxes allowed under South Carolina Code §12-37-220(B)(34). The timely filing of Form PT-300, “Property Return,” and appropriate schedules with the Department is deemed to be the application for this exemption. (See Sales and Use Tax Specific Provisions, Chapter 8, Section 7, which addresses a sales or use tax exemption for machines used in research and development pursuant to South Carolina Code §12-36-2120(56).)

Facilities of enterprises engaged in research and development activities are defined in South Carolina Code §12-37-220(B)(34) as facilities devoted directly and primarily to research and development in the experimental or laboratory sense for new products, new uses for existing products, or for improving existing products. The exemption does not include facilities used in connection with efficiency surveys, management studies, consumer surveys, economic surveys, advertising, promotion, or research in connection with literary, historical, or similar projects. Additions include machinery and equipment installed in an existing manufacturing or research and development facility. The facility or its addition must be devoted primarily to research and development.

Additionally, South Carolina Code §12-37-220(C) provides that the exemption may be extended to an unrelated purchaser for the time remaining in the seller’s exemption period. To qualify, South Carolina Revenue Ruling #04-14 provides that the purchaser must (1) acquire the facility in an arms-length transaction, (2) preserve the existing facility and existing number of jobs, and (3) obtain the approval of the governing body of the county. If the qualifying unrelated purchaser meets the above three requirements and makes additions to the new or existing facility costing \$50,000 or more, then the purchaser may qualify for a 5-year exemption from county property taxes. Since this exemption requires approval from the local county governing body, the purchaser must timely submit an application for this exemption to the Department on Form PT-444, “Five Year Exemption Extended to Unrelated Purchaser.”

6. CORPORATE HEADQUARTERS, CORPORATE OFFICE FACILITY, AND DISTRIBUTION FACILITY EXEMPTIONS

South Carolina Code §12-37-220(B)(32) provides a 5-year exemption from county property taxes (the exemption does not apply to school and municipal property taxes) for new corporate headquarters, corporate office facilities, distribution facilities, and all additions to existing corporate headquarters, corporate office facilities, or distribution facilities if:

1. The cost of the new construction or addition is \$50,000 or more, and
2. 75 or more new full-time jobs, or 150 or more substantially equivalent jobs, are created in South Carolina.

Further, South Carolina Code §12-37-220(B)(39) provides that the governing body of a municipality may, by ordinance, exempt from municipal property taxes for not more than 5 years property that is located in the municipality and that receives the exemption from county property taxes allowed under South Carolina Code §12-37-220(B)(32). The timely filing of Form PT-300, “Property Return,” and appropriate schedules with the Department is deemed to be the application for this exemption. (See Chapter 2, Business Income Tax, Section 16, for a discussion of the income tax credit for corporate headquarters.)

Additionally, South Carolina Code §12-37-220(C) provides that the exemption may be extended to an unrelated purchaser for the time remaining in the seller’s exemption period. To qualify, South Carolina Revenue Ruling #04-14 provides that the purchaser must (1) acquire the facility in an arms-length transaction, (2) preserve the existing facility and existing number of jobs, and (3) obtain the approval of the governing body of the county. If the qualifying unrelated purchaser meets the above three requirements and (1) makes additions to the new or existing facility costing \$50,000 or more and (2) creates an additional 75 new full-time jobs or 150 substantially equivalent jobs at the corporate headquarters, corporate office facility or distribution facility, then the purchaser may qualify for a 5-year exemption from county property taxes. Since this exemption requires approval from the local county governing body, the purchaser must timely submit an application for this exemption with the Department on Form PT-444, “Five Year Exemption Extended to Unrelated Purchaser.”

A number of terms are defined in South Carolina Code §12-37-220(B)(32) for purposes of this exemption. Listed below are some of the defined terms:

- ◆ “Corporate headquarters” means the location where corporate staff members or employees are domiciled and employed and where the majority of the company’s financial, personnel, legal, planning, or other business functions are handled either on a regional or national basis; it must be the sole such corporate headquarters within the region or nation.
- ◆ “Region” or “regional” means a geographic area comprised of either (a) at least 5 states, including South Carolina, or (b) 2 or more states, including South Carolina, if the entire business operations of the corporation are performed within fewer than 5 states.

- ◆ “New job” means any job created by an employer in South Carolina at the time a new facility or an expansion is initially staffed, but does not include a job created when an employee is shifted from an existing South Carolina location to work in a new or expanded facility.
- ❖ “Full-time” means a job requiring a minimum of 35 hours of an employee’s time a week for the entire normal year of company operations or a job requiring a minimum of 35 hours of an employee’s time for a week for a year in which the employee was initially hired for or transferred to the South Carolina corporate headquarters, corporate office facility, or distribution facility and worked at a rented facility pending construction of a corporate headquarters, corporate office facility, or distribution facility.
- ❖ “Substantially equivalent” means a job requiring a minimum of 20 hours of an employee’s time a week for the entire normal year of company operations or a job requiring a minimum of 20 hours of an employee’s time for a week for a year in which the employee was initially hired for or transferred to the South Carolina corporate headquarters, corporate office facility, or distribution facility and worked at a rented facility pending construction of a corporate headquarters, corporate office facility, or distribution facility.
- ◆ “Corporate Office Facility” means the location where corporate managerial, professional, technical, and administrative personnel are domiciled and employed, and where corporate financial, personnel, legal, technical, support services, and other business functions are handled. Support services include, but are not limited to, claims processing, data entry, word processing, sales order processing, and telemarketing.
- ◆ “Distribution facility” means an establishment where shipments of tangible personal property are processed for delivery to customers. The term does not include an establishment where retail sales of tangible personal property are made to retail customers on more than 12 days a year except for a facility which processes customer sales orders by mail, telephone, or electronic means, if the facility also processes shipments of tangible personal property to customers and if at least 75% of the dollar amount of goods sold through the facility are sold to customers outside of South Carolina. Retail sales made inside the facility to employees working at the facility are not considered for purposes of the 12 day and 75% limitation.

South Carolina Private Letter Ruling #89-19 dealt with several questions concerning the property tax exemption and the income tax credit for a corporate headquarters for a taxpayer under a unique set of facts. One question concerned what was an “addition to an existing

corporate headquarters.” In this instance, the taxpayer constructed two buildings at their South Carolina location. For purposes of the employment requirement, it was necessary to determine whether the additions should be viewed as one expansion or two. The Department concluded that since the phrase “addition to an existing corporate headquarters” may mean the building of one building or many buildings, a reasonable interpretation is to look to the plan of expansion. Since the plan of expansion in question included the current construction of both buildings, then the buildings should be construed as one addition; therefore, requiring the taxpayer to fulfill the employment provisions once.

Another question addressed in South Carolina Private Letter Ruling #89-19 was whether the positions created had to be placed in the new buildings. The Department concluded that the positions need not be placed in the new buildings; however, they must be employed in the South Carolina headquarters complex. Early staffing for the purpose of training was acceptable if the employee would be placed in the corporate headquarters during the construction of the expansion or immediately after its completion.

7. TEXTILE REVITALIZATION CREDITS

a. General Provisions

The South Carolina Textile Communities Revitalization Act, contained in Title 12, Chapter 65, provides a credit for the renovation, rehabilitation, and redevelopment of abandoned textile mill sites in South Carolina.

An overview of the credit is provided below; however, for additional guidance and examples see South Carolina Revenue Ruling #15-8.

South Carolina Code §12-65-30 allows a taxpayer who rehabilitates an abandoned textile mill site to choose one of the following tax credits:

1. A credit against real property taxes (“property tax credit”) equal to 25% of the eligible rehabilitation expenses made to the site multiplied by the local taxing entity ratio for each local taxing entity consenting to the credit; or,
2. A credit against income tax, license tax, or both or a credit against bank or insurance premium taxes (“income/bank/license/insurance premium tax credit”) equal to 25% of eligible rehabilitation expenses.

A “Notice of Intent to Rehabilitate” must be filed by the taxpayer before incurring its first rehabilitation expenses at the textile mill site. The Notice must be filed with the municipality (or county if the site is located in an unincorporated area) for a taxpayer choosing the property tax credit. Rehabilitation expenses incurred before the Notice is provided generally will not qualify for the credit.

The Notice is a letter submitted by the taxpayer indicating:

- ◆ the taxpayer intends to rehabilitate the site
- ◆ the location of the site
- ◆ the amount of acreage involved with the site
- ◆ the estimated expenses to be incurred
- ◆ which buildings on the site are to be renovate or demolished and
- ◆ whether new construction is to be involved at the site.

b. Property Tax Credit

For the property tax credit, the municipality or county must, by resolution, determine the eligibility of the textile mill site and the proposed rehabilitation expenses. A positive majority vote of the local governing body must approve the rehabilitation and the expenses. Final approval must be by public hearing and ordinance.

At least 45 days before holding the public hearing, the governing body of the municipality or county must give notice to all affected local taxing entities where the textile mill site is located of its intention to grant the property tax credit and the amount of estimated credit based on the amount of estimated rehabilitation expenses. If the local taxing entity does not file an objection, it is deemed to have consented to the credit. A taxpayer is not allowed the property tax credit if it owned the textile mill site immediately prior to its abandonment and the site was operational at that time. Further, a taxpayer is not eligible to claim a credit if the facility previously received textile mill credits.

This credit amount is based upon actual or estimated expenses as follows:

1. The credit is 25% of the actual rehabilitation expenses if the actual expenses incurred in rehabilitating the site are 80% - 125% of the estimated rehabilitation expenses listed in the Notice.

2. The credit is 25% of 125% of the estimated rehabilitation expenses if the actual rehabilitation expenses exceed 125% of the estimated expenses listed in the Notice.
3. No credit is allowed if the actual rehabilitation expenses are below 80% of the estimated expenses.

The amount of allowable expenses is multiplied by the local taxing entity ratio of each local taxing entity that has consented to the credit to determine the amount that may offset property taxes. The ordinance shall allow the credit to be taken against up to 75% of the real property taxes due on the textile mill site each year for up to 8 years. The credit may be claimed for each applicable phase or portion of the site beginning for the property tax year the applicable phase or portion is first placed in service. An unused credit may be carried forward for 8 years.

c. Income or License Tax Credit

See Chapter 2, “Business Income Tax”, Part E, for a summary of the textile revitalization income/bank/license/insurance premium tax credit.

d. Definitions

South Carolina Code §12-65-20 contains a list of definitions of terms used in the Act. Some of the defined terms are:

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

Notwithstanding the above, with respect to (i) any site acquired by a taxpayer before January 1, 2008, (ii) a site located on the Catawba River near Interstate 77, or (iii) a site which, on the date the notice of intent to rehabilitate is filed, is located in a distressed area of a county in this State, as designated by the applicable council of government, “textile mill site” means the textile mill structure, together with all land and improvements which were used directly for textile manufacturing operations or

ancillary uses, or were located on the same parcel or a contiguous parcel within one thousand feet of any textile mill structure or ancillary uses. For purposes of this item, "contiguous parcel" means any separate tax parcel sharing a common boundary with an adjacent parcel or separated only by a private or public road.

3. "Ancillary uses" - uses related to the textile manufacturing, dying, or finishing operations on a textile mill site consisting of sales, distribution, storage, water runoff, wastewater treatment and detention, pollution control, landfill, personnel offices, security offices, employee parking, dining and recreation areas, and internal roadways or driveways directly associated with such uses.
4. "Abandoned" - at least 80% of the textile mill has been continuously closed to business or otherwise nonoperational as a textile mill for at least one year immediately preceding the date the taxpayer files a "Notice of Intent to Rehabilitate". A textile mill that qualifies as abandoned may be subdivided into separate parcels, and those parcels may be owned by the same taxpayer or different taxpayers, and each parcel is deemed to be a textile mill site for purposes of determining whether each subdivided parcel has been abandoned.
5. "Rehabilitation expenses" - expenses or capital expenditures incurred in the rehabilitation, renovation, or redevelopment of the textile mill site, including demolition of existing buildings, environmental remediation, site improvements and the construction of new buildings and other improvements on the site, but excluding the cost of acquiring the site or the cost of personal property located at the site. For expenses to qualify for the credit, the textile mill and buildings on the site must be either renovated or demolished.

Notwithstanding the above, for purposes of calculating the credit with regard to new or rehabilitated buildings on "contiguous parcels" as described above, "rehabilitation expenses" do not include expenses that increase the amount of square footage of the buildings that existed on that contiguous parcel immediately preceding the time at which the textile mill became abandoned by more than 200%.

6. "Placed in service" - the date the textile mill site is completed and ready for its intended use. If the site is completed and ready for use in phases or portions, each phase or portion is considered placed in service when it is completed and ready for its intended use.

7. “Local taxing entities” - a county, municipality, school district, special purpose district, and any other entity or district with the power to levy ad valorem property taxes against the site.
8. “Local taxing entity ratio” - that percentage computed by dividing the millage rate of each local taxing entity by the total millage rate for the site.

CAUTION: Other rules not discussed in this general summary may apply to a site acquired by a taxpayer before January 1, 2008, a site located on the Catawba River near Interstate 77, or a site which, on the date the notice of intent to rehabilitate is filed, is located in a distressed area of a county in this State, as designated by the applicable council of government. Also, transitional rules may apply to certain sites.

e. Certification Procedures

South Carolina Code §12-65-60 provides a procedure which allows a taxpayer to apply to the governing body of the municipality or county in which the textile mill site is located for certification of the site. The certification can be done by either ordinance or binding resolution. The certification must include certain findings. A taxpayer who receives this certification is allowed to conclusively rely on the certification in determining the credit allowed; however, the taxpayer must include a copy of the certification on his first return where the credit is claimed.

8. RETAIL FACILITIES REVITALIZATION CREDITS

NOTE: The South Carolina Retail Facilities Revitalization Act was repealed on July 1, 2016. However, for those sites which provide written notification of their election of mode of credit prior to July 1, 2016 and for which a building permit was issued prior to July 1, 2016, the repeal is suspended for fiscal year 2019-2020.

a. General Provisions

The South Carolina Retail Facilities Revitalization Act, contained in Title 6, Chapter 34, provides a property tax credit or an income tax credit for the renovation, improvement, and redevelopment of abandoned retail facility sites in South Carolina.

An overview of the credit is provided below; however, for additional guidance and examples see South Carolina Revenue Ruling #15-9.

South Carolina Code §6-34-40 allows a taxpayer who improves, renovates, or redevelops an eligible site to elect one of the following credits:

1. A “property tax credit” equal to 25% of the rehabilitation expenses made to the eligible site times the local taxing entity ratio for each local taxing entity consenting to the credit, up to 75% of the real property taxes due on the eligible site each year or
2. An “income tax credit” equal to 10% of the rehabilitation expenses.

Subject to county approvals, the taxpayer elects whether to claim the property tax credit or the income tax credit. To elect the property tax credit, the taxpayer must provide written notification to the Department prior to the date the eligible site is placed in service. If the taxpayer does not affirmatively make the property tax credit election timely in writing before the date the site is placed in service or does not obtain the required county approvals in South Carolina Code §6-34-40(B), then the taxpayer is deemed to have elected the income tax credit. There is no notification process for the income tax credit. There is no formal procedure to elect the income tax credit; it is simply claimed on the income tax return.

b. Property Tax Credit

If a taxpayer elects the property tax credit provided in South Carolina Code §6-34-40(B), the municipality (or county if the site is located in an unincorporated area) must determine the eligibility of the site and the proposed project. A majority vote of the local governing body must approve the project by resolution, and the determinations and the final approval must be made by public hearing and ordinance.

No later than 45 days before holding the public hearing, the governing body of the municipality or county must give notice to all local taxing entities where the eligible site is located of its intention to grant the property tax credit. If the local taxing entity does not file an objection, it is deemed to have consented to the credit if the actual tax credit does not exceed the credit stated in the public hearing notice.

The ordinance shall allow the credit to be taken against up to 75% of the real property taxes due on the eligible site each year for up to 8 years. The property tax credit vests in the taxpayer in the year in which the eligible site is placed in service. Any unused credit may be carried forward up to 8 years.

c. Income Tax Credit

See Chapter 2, “Business Income Tax,” Part E, for a summary of the retail facility revitalization income tax credit.

d. Definitions

South Carolina Code §6-34-30 contains the definitions for the following terms used in the Act:

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

e. Transfer of Credit

The owner of the eligible site may transfer, devise, or distribute any unused credit to the tenant of the eligible site, provided the Department receives written notification of, and approves the transfer, devise, or distribution.

9. ABANDONED BUILDINGS REVITALIZATION CREDIT

a. General Provisions

The South Carolina Abandoned Buildings Revitalization Act, contained in Title 12, Chapter 67, provides a credit for the rehabilitation, renovation, and redevelopment of abandoned buildings.

An overview of the credit is provided below; however, for additional guidance and examples see South Carolina Revenue Ruling #15-7.

A qualifying taxpayer may elect one of the following tax credits:

1. A credit against income tax, license tax, bank tax, insurance premium tax (including retaliatory taxes),¹ or a combination thereof equal to 25% of the eligible rehabilitation expenses made to the site or
2. A credit against real property taxes equal to 25% of the eligible rehabilitation expenses made to the site multiplied by the local taxing entity ratio of each local taxing entity consenting to the credit, which can offset up to 75% of the real property taxes due on the eligible site each year.

In order for expenses associated with the site to qualify for the credit, the abandoned buildings on the building site must be either renovated or redeveloped and the taxpayer could not have owned the site immediately prior to its abandonment if the site was operational at that time.

For sites which have had no portion thereof placed into service before July 1, 2018, and upon which is located a redeveloped multi-floor structure that is listed on the National Register of Historic Places, the taxpayer may subdivide the structure into separate units, with the limitation that up to 7 separate floors may be considered 7 separate subdivided units if a floor is redeveloped for the exclusive use as a residential apartment or apartments.²

For the property tax credit, a taxpayer must file a “Notice of Intent to Rehabilitate” (Notice) with the municipality, or if a building is located in an unincorporated area, the county, before

¹ For a credit earned before June 9, 2015, the credit may not be used against insurance premium taxes, including retaliatory taxes, imposed by Chapter 7, Title 38.

² If a taxpayer intends to redevelop a multi-floor structure listed on the National Register of Historic Places referenced in the immediately preceding sentence, the taxpayer must, in lieu of filing a Notice of Intent to Rehabilitate but before claiming this tax credit, notify the Department in writing of the taxpayer’s intent to claim the Abandoned Buildings Credit, and must provide any information required by the Department, including, but not limited to, the location of the building site, the actual expenses incurred in connection with the rehabilitation, the number of units for which a credit is being claimed, and the date the building site will be placed in service.

incurring any rehabilitation expenses. Failure to provide the Notice results in only those rehabilitation expenses incurred after the Notice is provided qualifying for the credit.

The Notice is a letter submitted by the taxpayer indicating:

- the taxpayer intends to rehabilitate the building;
- the location of the building site;
- the amount of acreage involved with the site;
- the amount of square footage of existing buildings;
- the estimated expenses to be incurred;
- which buildings will be rehabilitated; and
- whether new construction is to be involved at the site.

b. Property Tax Credit

In order for a taxpayer to obtain the credit, the municipality or county must, by resolution, determine the eligibility of the abandoned building site and the proposed rehabilitation expenses. Both must be approved by a positive majority vote of the local governing body. Final approval must be made by public hearing and ordinance.

At least 45 days before holding the public hearing, the governing body of the municipality or the county must give notice to all affected local taxing entities of its intent to grant the property tax credit and the amount of the estimated credit based on the amount of estimated rehabilitation expenses. If a local taxing entity does not file an objection, it is deemed to have consented to the credit. The local taxing entity ratio is set at the time the Notice is filed and remains set for the entire period that the credit is claimed by the taxpayer.

Finally, the ordinance must provide for the credit to be taken as a credit against up to 75% of the real property taxes due on the building site each year for up to 8 years. The property tax credit for each phase or portion of the building site may be claimed beginning with the property tax year in which the applicable portion or phase of the building site is placed in service.

The credit is based upon actual or estimated expenses as follows:

1. The credit is 25% of the actual rehabilitation expenses if the actual expenses incurred in rehabilitating the site are between 80% and 125% of the estimated rehabilitation expenses listed in the Notice.
2. The credit is 25% of 125% of the estimated rehabilitation expenses if the actual rehabilitation expenses exceed 125% of the estimated expenses listed in the Notice.
3. No credit is allowed if the actual rehabilitation expenses are below 80% of the estimated expenses.

c. Investment Requirements

The abandoned buildings credit only applies to abandoned building sites, or phases or portions thereof, put into operation where the taxpayer incurs:

- More than \$250,000 of rehabilitation expenses for buildings located in the unincorporated areas of a county or in a municipality in the county with a population of more than 25,000 people.
- More than \$150,000 of rehabilitation expenses for buildings located in the unincorporated areas of a county or in a municipality in the county with a population between 1,000 and 25,000 people.
- More than \$75,000 of rehabilitation expenses for buildings located in a municipality with a population of less than 1,000 people.

d. Income/License/Bank/Insurance Premium Tax Credit

See Chapter 2, "Business Income Tax," Part E, "Property Rehabilitation Credits" for a summary of the abandoned buildings income/license/bank/insurance tax credit.

e. Certification of Abandoned Building Site

For buildings placed in service on or after June 9, 2015, the taxpayer may apply to the county or municipality in which the building is located for certification that the building is an abandoned building or state-owned abandoned building, as defined in South Carolina Code §12-67-120. The taxpayer may conclusively rely on this certification.

f. Definitions

South Carolina Code §12-67-120 contains a list of definitions of terms used in the Act. Some of the defined terms are:

1. “Abandoned building” - a building or structure, other than a single family residence, which clearly may be delineated from other buildings or structures, at least 66% of the space which has been closed continuously to business or otherwise nonoperational for income producing purposes for a period of at least 5 years immediately preceding the date on which the taxpayer files the Notice of Intent to Rehabilitate. A building that otherwise qualifies may be divided into unit or parcels, which may be owned by the same taxpayer or different taxpayers. Each unit or parcel is deemed to be an abandoned building site for purposes of determining whether each subdivided parcel is considered to be abandoned. Special rules apply if the building is listed on the National Register for Historic Places.

2. “Building site” - the abandoned building together with the parcel of land upon which it is located and other improvements located on the parcel. However, the area of the building site is limited to the land upon which the abandoned building is located and the land immediately surrounding such building used for parking and other similar purposes directly related to the building’s income producing use.

- 3 “Rehabilitation expenses” - expenses or capital expenditures incurred in the rehabilitation, demolition, renovation, or redevelopment of the building site, including without limitation, the renovation or redevelopment of existing buildings, environmental remediation, site improvements and the construction of new buildings and other improvements on the site, but excluding the cost of acquiring the site or the cost of personal property located at the site, and demolition expenses if the building is on the National Register of Historic Places.

Rehabilitation expenses associated with a building site that increase the amount of square footage on the building site in excess of 200% of the amount of the square footage of the buildings that existed on the buildings site as of the filing of the Notice shall not be considered a rehabilitation expense for calculating the amount of the credit.

4. “Placed in service” - the date upon which the building site is completed and ready for its intended use. If the site is completed and ready for use in phases or portions, each phase or portion is considered placed in service when it is completed and ready for its intended use.

5. “Local taxing entities” - a county, municipality, school district, special purpose district, and any other entity or district with the power to levy ad valorem property taxes against the site.
6. “Local taxing entity ratio” - that percentage computed by dividing the millage rate of each local taxing entity by the total millage rate for the site.
7. “State-owned abandoned building” means an abandoned building and its ancillary service buildings or a project consisting of one or more abandoned buildings, the aggregate size of which is greater than fifty thousand square feet, that has been abandoned for more than five years, and, prior to the taxpayer’s acquisition of such building, was most recently owned by the State, or an agency, instrumentality, or political subdivision of the State. For purposes of this definition, the taxpayer shall include any entity under common control or common ownership with the taxpayer.

g. Extension of Placed in Service Date

If a taxpayer files a notice of intent to rehabilitate and has been rehabilitating an abandoned building continuously for the preceding year and the building is more than 60% complete, the taxpayer must be allowed to extend the placed in service date until 90 days after construction is completed, provided the construction continues diligently until the end of the 90 days. Code §12-67-170. This provision is not to be construed to allow a taxpayer to earn a credit before the applicable phase or portion of the building site is placed in service

h. Repeal of the Act

The South Carolina Abandoned Buildings Revitalization Act is repealed on December 31, 2021. Any credit under South Carolina Code §12-67-140(C) will continue to be allowed until the 8-year time period is completed.

10. FIRE SPRINKLER SYSTEM CREDIT

South Carolina Code §12-6-3622 provides that a local taxing entity may allow a property tax credit to a taxpayer who installs a new or existing fire sprinkler system in a new or existing commercial or residential structure if the system is not required by law, regulation, or code. The property tax credit is equal to 25% of the direct expenses incurred in connection with the system, but does not include any fee charged by a utility. The credit is claimed against real property taxes levied by a local taxing entity. The taxpayer may also claim an income tax credit equal to the amount of the property tax credit allowed by the local taxing entity. The term “fire sprinkler system” has the same meaning as provided in South Carolina Code §40-10-20.

The owner of the structure may transfer, devise, or distribute any unused credit to the tenant of the eligible site. To be effectual, the local taxing entity must receive written notification. The property tax credit is claimed on Form TC-52C, “Sprinkler System Credit Claim and Certification Form,” submitted with the payment of real property taxes to the local taxing entity.

See below for a discussion of the fire sprinkler system equipment exemption and see Chapter 2, “Business Income Tax,” for a discussion of the income tax credit allowed for the installation of a fire sprinkler system.

11. REHABILITATED HISTORIC PROPERTY OR LOW AND MODERATE INCOME RENTAL PROPERTY - PREFERENTIAL VALUATION

South Carolina Code §§4-9-195 and 5-21-140 provide that the governing body of a county or municipality may grant by ordinance special property tax assessments to real property qualifying as “rehabilitated historic property” or as “low and moderate income rental property” as described below. It is completely up to the discretion of the applicable governing body of the county or municipality as to whether this incentive is available for property within that county or municipality. The procedures outlined below apply only for those counties and municipalities whose respective governing body has implemented these provisions by ordinance.

a. Rehabilitated Historic Property

Preliminary Certification

Upon preliminary certification by the governing body, the rehabilitated historic property is assessed for 2 years based on a special valuation equal to the fair market value of the property at the time of preliminary certification. If the project is not completed within 2 years, the property continues receiving the special valuation until completion if the “minimum expenditures for rehabilitation” have been incurred.

Rehabilitated historic property is eligible for preliminary certification³ if:

1. the owner of the property applies for and is granted historic designation⁴ by the governing body; and

³ A governing body may require that an owner applies for preliminary certification before any project work begins.

⁴ In order to be granted a historic designation, the property must meet certain conditions related to its age and/or location. See South Carolina Code §4-9-195(B)(1).

2. the proposed rehabilitation receives approval of rehabilitation work from the reviewing authority.

The reviewing authority is either:

- the county board of architectural review for political subdivisions having such a board operating pursuant to South Carolina Code §6-29-870;
- another qualified entity with historic preservation expertise designated by the applicable political subdivision that does not have a board of architectural review; or
- the South Carolina Department of Archives and History for political subdivisions not having a board of architectural review, or another designated entity.

Final Certification

Upon completion of the project, the property must receive final certification from the governing body to continue receiving its special valuation. To receive final certification, the property must meet the following conditions:

1. the owner of the property applies for and is granted a “historic designation” by the governing body;
2. the completed rehabilitation receives approval of rehabilitation work from the reviewing authority; and
3. the “minimum expenditures for rehabilitation” have been incurred and paid.

Once property receives final certification, it must be assessed for the remainder of the special assessment period on the fair market value at the time of preliminary certification or final certification, whichever occurs first. The special assessment period is set by ordinance of the governing body, and cannot exceed 20 years. However, the special assessment period may be cut short by the occurrence of a disqualifying event as set forth in South Carolina Code §4-9-195(E).

b. Low and Moderate Income Rental Property

Upon preliminary certification by the governing body, low and moderate income rental property is assessed for 2 years based on a special valuation equal to the fair market value of the property at the time of certification. The requirements for qualifying as low and moderate income rental property are set forth in the South Carolina Code §4-9-195(C).

Once the property receives final certification, it must be assessed for the remainder of the special assessment period on the fair market value at the time of preliminary certification or final certification, whichever occurs first. The special assessment period is set by ordinance of the governing body, and cannot exceed 20 years. However, the special assessment period may be cut short by the occurrence of a disqualifying event as set forth in South Carolina Code §4-9-195(E).

c. General Information

If an application for preliminary or final certification is filed by May 1st or approved by August 1st, the special assessment is effective for that year. Otherwise, it is effective beginning the following year. Once the governing body has granted this special property tax assessment, the owner of the property must apply to the county auditor for the special assessment.

12. EXEMPTIONS FOR INVENTORY AND INTANGIBLES

South Carolina Code §§12-37-220(A)(6) and (B)(30) exempt all inventories from property taxes. Further, there is no local tax on inventories. South Carolina Code §12-4-720(A)(3) provides that no application is required to exempt inventories.

South Carolina Revenue Ruling #91-7 addressed the definition of “inventory” and concluded (1) merchandise purchased for resale is inventory for purposes of South Carolina Code §12-37-450 (the reimbursement to counties and municipalities for revenues lost as a result of the inventory exemption), (2) the purpose for which merchandise was bought and held governs in determining whether it is inventory, not the fact that it may subsequently be resold, and (3) equipment which is rented out by rental businesses and materials and supplies used in a business are examples of property which are not inventory and; therefore, are not exempt from property taxation under South Carolina Code §12-37-220(B)(30). Generally, items are classified as inventory if they are inventory for South Carolina income tax purposes, which is based upon federal income taxes.

South Carolina Code §12-37-220(A)(10) exempts “intangible personal property” from property taxes. Further, there is no local tax on intangible personal property. South Carolina Code §12-4-720(A)(3) provides that no application is required to exempt intangible personal property.

13. EXEMPTION FOR PERSONAL PROPERTY IN TRANSIT

South Carolina Code §12-37-220(B)(17) exempts from property taxation personal property in transit with “no situs” status as defined in South Carolina Code §12-37-1110. Personal property in transit is personal property, goods, wares, and merchandise that: (1) is moving in interstate

commerce, or (2) was consigned to a warehouse (public or private) within this State from without this state for storage in transit to a final destination outside of this State, whether specified when transportation began or afterward. This property is subject to certain record keeping requirements. No application for this exemption is necessary.

14. POLLUTION CONTROL EXEMPTION

South Carolina Code §12-37-220(A)(8) exempts from property taxation all facilities or equipment of industrial plants used in the conduct of their business which are designed for the elimination, mitigation, prevention, treatment, abatement, or control of internal or external water, air, or noise pollution required by the state or federal government.

For equipment that serves a dual purpose of production and pollution control, the value eligible for the property exemption is the difference in cost between this equipment and equipment of similar production capacity or capability without the ability to control pollution.

For purposes of this exemption, 20% of the cost of any piece of machinery and equipment placed in service in a greige mill qualifies as internal air and noise pollution control property and is exempt from property taxes. "Greige mill" means all textile processes from opening through fabric formation before dyeing and finishing.

At the request of the Department, the Department of Health and Environmental Control ("DHEC") investigates the property of any manufacturer or company eligible for the exemption to determine the portion of the property that qualifies as pollution control property. Upon investigation of the property, DHEC furnishes the Department with a detailed listing of the property that qualifies as pollution control property.

South Carolina Code §12-4-720(A)(2) provides that application for this exemption must be filed with the Department before the first penalty date for the payment of property taxes.

15. ENVIRONMENTAL CLEANUP EXEMPTION

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

16. FIRE SPRINKLER SYSTEM EXEMPTION

South Carolina Code §12-37-220(B) provides an exemption for all fire sprinkler system equipment that is installed on a commercial or residential structure when the installation is not required by law, regulation, or code. The value of such equipment is exempt until there is an “assessable transfer of interest.”

See Section 1 above for a brief discussion of assessable transfer of interest. Also, see above for a discussion of the fire sprinkler system credit and Chapter 2, “Business Income Tax,” for a discussion of the income tax credit allowed for the installation of a fire sprinkler system.

17. OTHER PARTICULAR BUSINESS EXEMPTIONS

Some or all of the property of the following businesses is exempt from property taxes:

- ◆ South Carolina Code §12-37-220(B)(23) provides that the personal property of banks and savings and loan associations, including motor vehicles, is exempt from property taxes. No application for this exemption is necessary. See South Carolina Code §12-4-720(A)(3).
- ◆ South Carolina Code §12-37-220(B)(23) provides that beer and wine are exempt from property taxes. No application for this exemption is necessary.⁵ See South Carolina Code § 12-4-720(A)(3).
- ◆ South Carolina Code §12-37-220(B)(10) provides that the property of telephone companies and rural telephone cooperatives used in providing rural telephone service that was exempt from property taxation as of December 31, 1973, is exempt from property taxes, provided that the amount of property subject to property taxes in any tax district is not less than the net amount to which the tax millage was applied for the year ending December 31, 1973. Property in any tax district added after December 31, 1973, is also exempt in the same proportion that the exempt property of the company or cooperative as of December 31, 1973, in that tax district bears to the total property of the company or cooperative as of December 31, 1973, in the tax district. Application for this exemption must be filed with the Department within the period provided in South Carolina Code §12-54-85(F) for claims for refund. See South Carolina Code §12-4-720(A)(1).

⁵ SC Code §12-37-220(B)(23) references SC Code §12-21-1080. That code section has been changed to SC Code §12-21-1085.

- ◆ South Carolina Code §12-37-220(A)(11) exempts from property taxes all property of public benefit corporations established by a county or municipality and used exclusively for economic development which serves a governmental purpose as defined in Internal Revenue Code §115.
- ◆ South Carolina Code §12-37-220(B)(33) provides that all personal property, including aircraft of an air carrier which operates an air carrier hub terminal facility in South Carolina for 10 consecutive years from the date of qualification, are exempt from property taxes. An air carrier hub terminal facility is defined in South Carolina Code §55-11-500. Further, all aircraft and associated personal property owned by a company owning aircraft meeting the requirements of South Carolina Code §55-11-500(a)(3)(i) (i.e., two or more specially equipped planes that are used for the transportation of specialized cargo, irrespective of the number of flights) is exempt from property taxes. South Carolina Code §§12-4-720(A)(1) provides that application for this exemption must be filed with the Department within the period provided in South Carolina Code §12-54-85(F) for claims for refund.
- ◆ South Carolina Code §12-37-220(B)(51) exempts 100% of the value of a newly constructed detached single family home offered by a residential builder or developer through the earlier of (a) the property tax year in which the home is sold or otherwise occupied, or (b) the property tax year ending the sixth December 31 after the home is completed and any required certificate of occupancy is issued, provided required notice is given for each year of eligibility and the county approves.

To obtain this exemption, the owner of the property must notify the county assessor and auditor by written affidavit that the property is eligible for the exemption and is unoccupied. In the first year of eligibility, this notification must be made no later than 30 days after the certificate of occupancy is issued. In subsequent years of eligibility, notification must be made by January 31st of the applicable tax year.

18. AD VALOREM TAXATION OF LEASEHOLD INTERESTS IN CERTAIN PROPERTY

If real property subject to an exemption from ad valorem property taxes is leased for a definite term to a lessee who does not qualify for an exemption, the leasehold interest of such person is subject to tax and the liability for property taxes shifts to the lessee. See, South Carolina Code §12-37-950 and *Clarendon County ex rel Clarendon County Assessor v. TYKAT, Inc.*, 394 S.C. 21, 714 S.E.2d 305 (2011).

19. MULTICOUNTY PARKS

South Carolina Code §4-1-170 provides that a joint industrial or business park (referred to as a multicounty park) can be established by two or more counties pursuant to a written agreement between those counties, as provided in Section 13 of Article VIII of the South Carolina Constitution.

Property in the multicounty park is exempt from property tax. The owners of any property in the multicounty park will pay a fee in the amount equal to the property taxes that would have been due and payable if the property was not in a multicounty park, unless the parties agree to a negotiated fee in lieu of property tax. The fee is treated like a property tax for purposes of collection and enforcement and the owners must file returns as if the fee were a property tax. See Negotiated Fees in Lieu of Property Taxes, Chapter 6, for a detailed discussion of negotiated fees in lieu of property taxes.

A county may issue special source revenue bonds to help fund the project or to allow an entity paying a multicounty park fee in lieu of taxes a credit against the fee. However, the special source revenue bonds or the credit amount must be used solely for the purpose of paying the cost of acquiring, constructing, or improving (1) infrastructure serving the county, municipality or project, (2) improved or unimproved real estate and personal property including machinery and equipment used in the operation of a manufacturing or commercial enterprise or (3) aircraft which qualifies as a project under the Simplified Fee (South Carolina Code §12-44-30(16)) which enhances the economic development of the county or municipality.

If the bonds or monies from a credit against the fee are used to pay for the costs of personal property and the personal property is later removed from the project and is not replaced with qualifying property, the amount of any fee due on the property must be paid for the year the property is removed from the project and for the 2 years following its removal from the project. If any bond funds or credit funds are used to pay for both real property and personal property or infrastructure and personal property, all the funds will be presumed to be used first to pay for the personal property. See South Carolina Code §4-1-175. See Negotiated Fees in Lieu of Property Taxes, Chapter 6, for a detailed discussion of special source revenue bonds.

Additionally, a taxpayer located in a multicounty park creating qualifying new, full-time jobs is eligible for an additional \$1,000 job tax credit. See Business Income Tax, Chapter 2, Section 9, for a discussion of the job tax credit benefits.

20. ATI FAIR MARKET VALUE EXEMPTION

South Carolina Code §12-37-3135 allows real property that undergoes an assessable transfer of interest (ATI) after 2010 to be subject to a partial exemption if eligibility requirements are met. To obtain the partial exemption, the following requirements must be met:

- ◆ the property must be subject to property tax before the ATI;
- ◆ the property must be subject to the 6% assessment ratio before the ATI and remain so thereafter; and
- ◆ the owner must notify the assessor that the property will be subject to the 6% assessment ratio before January 31st of the property tax year for which the owner first claims eligibility for the partial exemption/alternate valuation.

The partial exemption will generally be applied to the fair market value of the property as follows:

If the “ATI fair market value” exceeds the “current fair market value” (see meaning of terms below), the partial exemption is allowed reducing the ATI fair market value by an amount equal to 25% of the ATI fair market value. The resulting amount, referred to as the “exemption value,” becomes the taxable value for the property. However, the exemption value cannot be less than the currently fair market value of the property. If the exemption value exceeds the current fair market value of the property, then the current fair market value becomes the taxable value for the property.

If the ATI fair market value is less than the current fair market value of the property, the partial exemption is not allowed and the ATI fair market value becomes the taxable value for the property.

In determining if the partial exemption is allowed, the following terms are relevant.

“Fair market value” is the fair market value of the real property as determined by the assessor by an initial appraisal, or as reappraised either after an ATI or periodically under South Carolina Code §12-43-217 (“Full value without cap”).

“Current fair market value” is the fair market value as reflected on the assessor’s records for the current year.

“Property Tax Value” is fair market value as limited by the 15% cap per SC Code §12-37-3140 (“Capped Value”).

“ATI fair market value” is the fair market value of the property determined by appraisal after the latest ATI.

“Exemption value” is the ATI fair market value reduced by the 25% exemption.

South Carolina Code §12-37-3135.

5. INDIVIDUAL PROPERTY TAX

1. TAXATION OF REAL AND PERSONAL PROPERTY

a. General Information

South Carolina Code §12-37-210 provides that all real and personal property in South Carolina, and personal property of residents which may be kept or used temporarily out of state, with the intention of being brought into the state, or which has been sent outside of the state for sale and not yet sold, is subject to property taxes.

South Carolina Code §12-37-10 defines the terms “real property” and “personal property.” Real property means not only land, but also all structures and other things therein contained or annexed or attached to the land which pass by conveyance of the land. It includes fixed wharves and docks on rivers, lakes, or tidewaters. Personal property is all things, other than real estate, which have any pecuniary value.

South Carolina Regulation 117-1700.1 provides a list of miscellaneous items classified as real property or personal property for officials to use when assessing property. The regulation provides, in part, that aircraft, automobiles, boats, inboard and outboard boat motors, and recreational vehicles are personal property and docks, greenhouses, mobile homes, and sprinkler systems are real property.

b. Exemptions

South Carolina Code §12-37-220 contains numerous property tax exemptions for individuals. The following is a partial list of property exempt from South Carolina property taxes:

- ◆ Intangible personal property
- ◆ Household goods and furniture used in the owner’s home, including built-in equipment such as ranges, dishwashers, and disposals, but this exemption does not apply to household goods used in hotels, rooming houses, apartments, or other places of business
- ◆ Wearing apparel
- ◆ Watercraft and motors assessed at less than \$50

◆ Watercraft trailers

No application for these exemptions is necessary. See South Carolina Code §12-4-720(A)(3). Other exemptions are determined by the Department upon application.

c. Administration of Property Taxes

Property taxes are generally assessed and collected by local governments. A county levies property taxes on property located in the county. Municipalities, school districts and special purpose districts may also levy property taxes on property located within their boundaries. The Department assists in the administration of property taxes by overseeing all property tax assessments to ensure equitable and uniform assessment throughout South Carolina.

The amount of property tax due is based upon three elements: (1) the property value, (2) the assessment ratio applicable to the property, and (3) the millage rate imposed by the taxing jurisdiction. Each of these elements is briefly discussed below.

1. **Valuation.** Real property, other than agricultural use real property or property subject to a fee in lieu of taxes, is appraised at fair market value for property tax purposes. Real property is reappraised countywide on a 5 year cycle and is usually subject to reassessment (*i.e.*, assessment based on the reappraised value) in the next year. An increase in fair market value of any parcel of real property as a result of a countywide reassessment program is limited to 15% within a 5 year period. Reappraisals are triggered by 2 other events: (1) completion of most types of “improvements” or “additions,” including new construction and remodeling (see South Carolina Code §12-37-3130(1) for a complete definition) and (2) an “assessable transfer of interest,” which encompasses a broad range of changes as to ownership or use or the passage of time as set forth in South Carolina Code §12-37-3150.

After completion, the fair market value of improvements and additions will be added to the fair market value of a parcel. After an assessable transfer of interest occurs, the fair market value of the parcel will be adjusted by appraisal. The 15% cap does not apply to the property in the year the assessable transfer is first subject to property tax or to the fair market value of the improvements or additions in the year they are first subject to property tax. See South Carolina Code §§12-43-217 and 12-37-3120 through 12-37-3170. However, after an assessable transfer of interest, real property subject to a 6% assessment ratio may be subject to a partial exemption of the appraised value if certain eligibility requirements are met. South Carolina Code §12-37-3135. See, Chapter 4, Section 20, for a further discussion of the partial exemption.

Motor vehicles, boats, and airplanes are valued in accordance with nationally recognized publications of value (except that the value may not exceed 95% of the prior year’s value). Discounts are allowed for motor vehicles with high mileage.

2. **Assessment Ratio.** The assessment ratios are established in the State Constitution to ensure stability and range from 4% to 10.5%. A person’s primary residence is assessed at 4%; a second residence or other real property used or held for an individual’s personal use, or vacant land is assessed at 6%. Personal motor vehicles are assessed at 6%; generally, motor homes and boats that are not a primary or secondary residence are assessed at 10.5%. The value is multiplied by the applicable ratio to produce the “assessed value” of the property.

3. **Millage.** Annually, every taxing entity, including each county and municipality, determines the number of mills required so that when that number is applied to the total assessed value of property subject to tax within its jurisdiction it will raise the money necessary to operate the following tax year. A mill is a unit of monetary value equal to one-thousandth of a dollar or .001.

The property tax imposed on, and some of the exemptions available to, individuals who own, rent, or lease homes, cars, boats, planes, and other types of property in South Carolina are described below in more detail.

2. RESIDENTIAL PROPERTY

A person’s primary residence and not more than 5 contiguous acres, when owned totally, or in part, in fee or by life estate and occupied by the owner, is taxed on an assessment equal to 4% of the fair market value. A person’s second home or vacation home is taxed at an assessment ratio equal to 6%. A purchaser who purchases residential property with the intent that it will become his primary residence, but the property is subject to vacation rentals as provided in South Carolina Code Title 27, Chapter 50, Article 2, for no more than 90 days, may apply for the 4% assessment ratio once the purchaser occupies the property. If the owner actually occupies the property within 90 days of acquiring ownership and otherwise qualifies, the 4% ratio will apply retroactively to the date of ownership. Otherwise, a residence rented for more than 72 days during the tax years is disqualified. South Carolina Code §12-43-220(c)(2)(iv) and (6) and; see also, *Ford v. Beaufort County Assessor*, 398 S.C. 508, 730 S.E.2d 335 (Ct. App. 2012). However, also see *Mead v. Beaufort County Assessor*, 419 S.C. 125 (Ct. App. 2016) which held that a taxpayer who qualifies for the homestead exemption under Code Section 12-37-250 for taxpayers 65 or over, blind or permanently and totally disabled, may qualify for the 4%

assessment ratio pursuant to Code §12-37-252, despite his property being rented in excess of 72 days. The property, will not, however, qualify for the exemption from school operating millage in Code §12-37-220(D)(47) since that statute specifically references Code §12-43-220(c).

A motor home or trailer used for camping and recreational travel that is pulled by a motor vehicle may qualify as a primary or secondary residence for property tax purposes if the interest portion of indebtedness is deductible under the Internal Revenue Code as an interest expense on a qualified primary or secondary residence. A boat or watercraft that meets certain statutory requirements (including having a toilet with exterior evacuation, sleeping quarters, and a cooking area with an onboard power source) may qualify as a primary or secondary residence. A motor home, boat, or trailer that is a primary residence qualifies for the 4% assessment ratio, and one that is a secondary residence qualifies for the 6% assessment ratio. Property that qualifies for this treatment is valued in the same manner as motor vehicles are valued. South Carolina Code §12-37-224.

Generally, the residential classification is not available unless the owner of the property applies to the county assessor before the first penalty date for taxes due (January 16). The application period may be extended by the local taxing authority for reasonable cause. No further applications are necessary from the current owner while the property for which the initial application was made continues to meet the eligibility requirements. See South Carolina Code §12-43-220(c).

A residence that is qualified as a legal residence for any part of a year is entitled to the 4% assessment ratio for the entire year.

As part of the application, the owner-occupant must certify:

1. the residence which is the subject of the application is the owner's legal residence and where he is domiciled at the time of the application;
2. neither he nor any other member of his household claims to be a legal resident of a jurisdiction other than South Carolina for any purpose; and
3. neither he nor any member of his household claims the 4% assessment ratio on another residence.

For this purpose, a member of his household consists of the owner occupant's spouse, unless legally separated, and children under the age of 18 eligible to be claimed as a dependent on the owner-occupant's federal income tax return.

In the case of certain shared interests in real property other than between spouses, application of the 4% assessment ratio will be limited to the percentage of value equal to the percentage of the occupant’s ownership interest. South Carolina Code §12-43-220(C)(8). These rules may not apply in the case of certain family limited partnerships, trusts and limited liability companies.

Real property owned by a single member LLC may qualify for the 4% assessment ratio under the following circumstances. The single member LLC must not be taxed as a corporation. Further, the real property owned by such single member LLC must serve as the residence of its single member and otherwise satisfy the requirements for the 4% assessment ratio under South Carolina Code §12-43-220(c). See, *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011).

South Carolina Code §§12-37-220(B)(47) and 12-37-250 provide for 2 exemptions that reduce the property tax levied on an individual’s primary residence. These exemptions are not available on a person’s second home or vacation home. These exemptions are:

- ◆ An exemption providing, to the extent not exempt under the homestead exemption below, 100% of the fair market value of owner-occupied residential property is exempt from all property taxes imposed for school operating purposes, but excluding millage imposed for the repayment of debt.
- ◆ A homestead exemption applicable to the first \$50,000 of the fair market value of an elderly, disabled, or blind individual’s dwelling place. A taxpayer eligible for the homestead exemption also qualifies for a 4% assessment ratio on his or her dwelling place – *i.e.*, permanent home and legal residence – regardless of whether that taxpayer qualifies for the 4% ratio under section 12-43-220(c). See *Mead v. Beaufort County Assessor*, 419 S.C. 125 (Ct. App. 2016).

Each of these exemptions is discussed below in more detail.

a. Exemption for School Operating Costs

To the extent not exempt under the homestead exemption discussed below for the elderly, blind or disabled, 100% of the fair market value of owner-occupied residential property is exempt from all property taxes imposed for school operating purposes. The exemption does not apply to millage imposed for the repayment of general obligation debt or to county or municipal taxes. See South Carolina Code §12-37-220(B)(47).

To come within the exemption for school operating costs under Code §12-37-220(B)(47), a residence must be qualified as a legal residence for any part of the year under Code §12-43-220(c). See South Carolina Code §12-43-220(c)(2)(i). A residence that has qualified as a legal residence for any part of a year, and is not otherwise disqualified, is entitled to the 4% assessment ratio and to this exemption for the entire year. Additionally, if only a portion of the residential property is eligible for the 4% assessment ratio, only that portion will be subject to the exemption for school operating costs. No application for the exemption for school operating costs is necessary, but the 4% assessment ratio for legal residence must be applied for.

b. Homestead Exemption for Elderly, Blind, or Disabled

Article X, §3, of the South Carolina Constitution and South Carolina Code §12-37-250 provide a homestead exemption from property taxes of \$50,000 of the fair market value of the dwelling place of certain individuals. The term “dwelling place” means the permanent home and legal residence of the applicant. The exemption is from county, municipal, school, and special assessment real estate property taxes. It exempts the dwelling place when jointly owned by husband and wife, if either spouse meets the criteria for the exemption.

To be eligible for the exemption a person must meet the following criteria:

- ◆ Be (a) age 65, (b) totally and permanently disabled, or (c) legally blind and such must occur on or before December 31, preceding the tax year for which the exemption is claimed.
- ◆ Be a legal resident of South Carolina for at least one year on or before December 31; preceding the tax year for which the exemption is claimed.
- ◆ Hold fee simple title or a life estate in the legal residence by himself or jointly with his spouse on December 31 of the tax year. A partial fee or life estate will result in a partial exemption.

The application for this exemption must be made to the auditor of the county and if applicable, to the governing body of the municipality in which the home is located on forms provided by the county and municipality. South Carolina Code §12-37-250. The taxpayer must provide proof of eligibility when applying for the homestead exemption. If applying because of age, the taxpayer should provide a birth certificate, Medicaid card, or South Carolina driver’s license to prove age. If applying because of disability or blindness, the taxpayer should provide a certification from the state or federal agency with authority to make that declaration for disability, and a licensed ophthalmologist in the case of application due to blindness.

Failure to apply constitutes a waiver of the exemption for that year. A person who applies for the homestead exemption and could have qualified in the prior tax year, in addition to the current year, may be allowed the homestead exemption for the immediate preceding tax year.

The personal representative of a deceased taxpayer's estate may apply, within certain limits, for the homestead exemption under South Carolina Code §12-37-250 and the 4% assessment ratio for legal residences provided by South Carolina Code §12-43-220(c). See South Carolina Code §12-37-252(C).

South Carolina Code §12-37-255 provides that when the homestead exemption is granted, it continues to be effective for successive years in which the ownership of the homestead or the other qualifications for the exemption remain unchanged. Notification of any change affecting eligibility must be given immediately to the county auditor. South Carolina Code §12-37-266 provides that the homestead exemption includes situations where a trustee holds legal title to a dwelling that is the legal residence of a beneficiary otherwise meeting the qualifications. A copy of the trust agreement must be provided to certify this exemption. The trustee may apply for the exemption in person or by mail to the county auditor. No further application is necessary while the property continues to meet the eligibility requirements. The trustee must notify the county auditor of any change in classification within 6 months.

c. Local Option Sales Tax Credit

Pursuant to South Carolina Code §4-10-20, counties have the option of increasing the sales, use, and accommodations tax rate by 1% to provide additional revenue for local governments and a credit against a taxpayer's real and personal property taxes owed (typically referred to as the "local option sales tax"). The increase must be approved by voter referendum. Persons who pay property tax in a local option county may be allowed a credit against property taxes based upon the amount of the local option sales tax collected in the county. In the above example, if a taxpayer lived in a local option county, the property tax due would be reduced by a local option property tax credit.

See Sales and Use Tax General Provisions, Chapter 7, Section 2, and applicable South Carolina Information Letter for a list of counties that impose the local option sales tax.

3. MOTOR VEHICLES, AIRPLANES, AND BOATS

Personal motor vehicles, including pick-up trucks and motorcycles, are assessed at 6%. Generally, boats and airplanes are assessed at 10.5%. By ordinance, the governing body of a county may reduce the assessment ratio of general aviation aircraft subject to property tax in

the county to not less than 4% of the fair market value. The ordinance must be applied uniformly to all general aviation aircraft subject to property tax in the county. South Carolina Code §12-43-360.

Watercraft and motors that have an assessed value of not more than \$50 are exempt from property taxes under South Carolina Code §12-37-220(B)(38). Watercraft trailers are exempt from property taxes under South Carolina Code §12-37-220(B)(40). The governing body of a county, by ordinance, may exempt from property tax 42.75% of the fair market value of a watercraft and it’s motor. South Carolina Code §12-37-220(B)(38).

Boats and boat motors that are not currently taxed in South Carolina and that are not used exclusively in interstate commerce become taxable if they are present in South Carolina for 60 consecutive days or 90 days in the aggregate in a property tax year. In lieu of the above rule, the local governing body may, by ordinance, replace the 60/90 day provision with one of the following:

1. The boat or boat motor will be considered taxable if the boat or motor is in South Carolina for an aggregate of 180 days in a property tax year. The number of consecutive days that the boat or motor is in South Carolina is disregarded if the county chooses this option; or
2. The boat or boat motor will be considered taxable if the boat or boat motor is present in South Carolina for an aggregate of 90 days in the property tax year. The number of consecutive days that the boat or motor is in South Carolina is disregarded if the county chooses this option.

For boats used in interstate commerce and that have a tax situs in South Carolina and in at least one other state, the value is computed by multiplying the fair market value by a fraction (*i.e.*, the number of days the boat was present in South Carolina divided by 365.) The boat must be physically present for an aggregate of 30 days in South Carolina to be subject to property taxes. South Carolina Code §12-37-714.

Personal property tax is collected annually. The following example shows a simplified calculation of the property tax due on a person’s personal motor vehicle.

Market Value.....	\$20,000
x Assessment Ratio	6%
Total Assessment	\$1,200
x County Millage Rate	0.289
Tax.....	\$346.80

New residents must register their vehicles and secure license plates within 45 days of establishing residence. Property taxes must be paid prior to car registration and license plates being issued.

4. AGRICULTURAL USE REAL PROPERTY

“Agricultural real property” is defined in South Carolina Code §12-43-230(a) as any tract of real property which is used to raise, harvest, or store crops, feed, breed, or manage livestock, or to produce plants, trees, fowl, or animals useful to man, including the preparation of the products raised thereon for man’s use and disposed of by marketing or other means. Special property tax rules applicable to agricultural use real property are discussed below.

Assessment Ratio. Qualifying agricultural use real property is taxed on an assessment equal to:

- ◆ 4% of its value for agricultural use purposes for owners or lessees who are individuals or partnerships, and for corporations which do not have one or more of the following: (1) more than 10 shareholders, (2) a shareholder (other than an estate) who is not an individual, (3) a nonresident alien as a shareholder, and (4) more than one class of stock.
- ◆ 6% of its value for agricultural use purposes for corporate owners or lessees, except for certain closely held corporations specified above which are allowed the 4% ratio. South Carolina Code §12-43-220(d)(1) and South Carolina Regulation 117-1780.2.

Valuation. Unlike other real property, land qualifying as agricultural use real property is not appraised to determine fair market value. A special method for determining the value of land actually used for agricultural purposes is provided in South Carolina Code §12-43-220(d).

NOTE: Current use (not intended or future use) is determinative. See South Carolina Commission Decision #92-77. The value for agricultural use purposes is determined in South Carolina Regulation 117-1840.2 for the 1991 tax year and years thereafter.

In *Montgomery v. Spartanburg County Assessor*, 419 S.C. 77, 795 S.E.2d 866 (2017), the South Carolina Court of Appeals held that valuation of the land using the soil capability method does not apply to structures on the property and the structure must be valued using the valuation method applicable to structures located on all real property.

Application. South Carolina Code §12-43-220(d)(3) provides that each new owner must make application for the 4% or 6% assessment ratio and the special valuation method to the county assessor on or before the first date taxes are due without penalty for the first tax year in which the special assessment is claimed.

Special Rule for Change of Use. When the use of the property is changed to a use other than agricultural, the property is subject to rollback taxes equal to the difference between the taxes based on agricultural use and the taxes that would have been payable if the property had been taxed as other real property (except the value of standing timber is excluded), for the year of change in use and the preceding 5 tax years. South Carolina Code §12-43-220(d) and South Carolina Regulation 117-1780.3. The owner must notify the assessor of change in use within 6 months.

5. HOMEOWNERS ASSOCIATIONS

South Carolina Code §12-43-227 provides a special method for valuing homeowners association property pursuant to a capitalized earnings formula. Homeowners associations that make timely application may have their property valued at the greater of \$500 an acre, or an amount determined by dividing the association's nonqualified gross receipts by 20%. Generally, this valuation method will produce favorable property tax valuations for a homeowners association since only nonmember revenue is capitalized.

South Carolina Code §12-43-230 defines homeowners association property as real and personal property owned by the association that meets the following tests: (1) the property is held for the use, benefit, and enjoyment of members of the homeowners association, (2) the members have an irrevocable right to use and enjoy the property on an equal basis, and (3) each irrevocable right to use such property is appurtenant to taxable property owned by a member of the homeowners association.

6. NEGOTIATED FEES IN LIEU OF PROPERTY TAXES AND COMPARISON CHART

1. INTRODUCTION

General Information. Under Article X of the South Carolina Constitution, manufacturers' real or personal property is assessed at 10.5% of its fair market value. Commercial personal property is assessed at 10.5%, while commercial real property is assessed at 6%. To promote the growth of manufacturing within this state, the Legislature enacted three Fee in Lieu of Property Tax statutes (referred to as "Fee in Lieu" or "Fee").

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

Property subject to the Fee usually consists of land, improvements to land, and/or machinery and equipment (excluding some mobile property) located at a project. See South Carolina Revenue Rulings #93-7 and #97-21. The Fee statutes permit a company to negotiate to pay a fee instead of paying property taxes. The 10.5% assessment ratio can be, and often is, negotiated to 6% (4% for very large investments under the Super Fee or Enhanced Investment Fee). In addition, the company and the county can agree to freeze the millage rate applicable to the property at a set millage rate, or adjust the millage rate every five years, for the period the Fee is in effect. During the period of the Fee, the value of personal property is deemed to decrease each year by the depreciation allowable for property tax purposes subject to a floor on the value. Unless otherwise agreed to by the county and the company, the value of real property remains constant, and is not subject to appraisal. The Fee can be applicable to a single piece of property for up to 50 years (including the Super and Enhanced Investment Fee), with an overall limit for the project of 60 years (or 63 years for the Super and Enhanced Investment Fee), with exceptions.

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

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

	NORMAL CALCULATION	FEE IN LIEU CALCULATION
Total Investment in Equipment	\$100,000,000	\$100,000,000
Total Investment less Depreciation	\$ 89,000,000	\$ 89,000,000
Assessment Ratio	x 10.5%	x 6%
Assessment Value	\$ 9,345,000	\$ 5,340,000
Millage	x .250	x .250
Tax Due	\$ 2,336,250	\$ 1,335,000
Savings		\$ 1,001,250

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

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

2. LITTLE FEE

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

1. Project identification – The county must identify the project or proposed project. This may be accomplished by the adoption of an inducement resolution or similar resolution by county council.
2. Inducement agreement – The company and the county must enter into an inducement agreement. This agreement establishes that a company will receive the Fee as an inducement for locating in the county. The company entering into the Fee is known as the “sponsor.”
3. Millage rate agreement – The sponsor and the county may enter into a millage rate agreement which fixes the millage rate for the entire Fee period or fixes it for the first 5 years and provides that it will be revised every 5 years. If the sponsor and the county do not execute a millage rate agreement, the millage rate is usually agreed to in the inducement agreement or the lease agreement.
4. Transfer of the property to the county – Title to the property must be transferred to the county.
5. Lease or lease purchase agreement – The sponsor and the county may enter into one or more lease agreements. This agreement leases the property from the county back to the sponsor and usually provides for the sale of the property to the sponsor at the end of the Fee period for a nominal sum. If there is a series of these agreements, the first is called the initial lease agreement. A definition of “lease agreement” is provided in South Carolina Code §4-12-10(5).
6. Financing agreement – There may be one or more financing agreements, which may include special source revenue bonds issued pursuant to South Carolina Code §4-29-68 or special source credits. (See the discussion of special source revenue bonds in Section 6 below.)

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

Definition and Location of Project. A “project” consists of land, buildings and other improvements on the land, including water, sewage treatment and disposal facilities, air pollution control facilities, and any other machinery, apparatus, equipment, office facilities and furnishings that are considered necessary, suitable or useful to the project. A project may also consist of, or include, an aircraft hangered or used at an airport in South Carolina. South Carolina Code §4-12-10(2).

The project must be located in a single county, in a multicounty park, or if certain agreements are made with the counties, the property may straddle contiguous counties. South Carolina Code §4-12-30(B).

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

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

The county may seek the assistance and advice of the Revenue and Fiscal Affairs Office or the Department in making its findings. South Carolina Code §4-12-30(B)(5).

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

Required Investment and Timing of Investment. Generally, the required investment must be made by a sponsor. In many instances, a sponsor affiliate may also qualify for the Fee.

A “sponsor” is defined as “one or more entities which sign the inducement agreement with the county and also includes a sponsor affiliate unless the context clearly indicates otherwise.” South Carolina Code §4-12-10(3).

A “sponsor affiliate” is defined as “an entity that joins with or is an affiliate of a sponsor and that participates in the investment in, or financing of, a project.” South Carolina Code §4-12-10(4).

There is a minimum investment amount required to qualify for a Fee in Lieu. For the Little Fee, the minimum investment amount is \$2.5 million. This amount is reduced to \$1 million for a sponsor investing in a county with an average annual unemployment rate of at least twice the state average during the last 24 months based on data available on November first. The minimum investment amount is deemed met if a sponsor is a nonresponsible party in a voluntary cleanup on the property pursuant to Article 7, Chapter 56 of Title 44, the Brownfields Voluntary Cleanup Program, where the cleanup costs are at least \$1 million and the South Carolina Department of Health and Environmental Control has issued a certificate of completion of the cleanup. South Carolina Code §4-12-30(B)(3).

Each sponsor and sponsor affiliate seeking to qualify for the Fee must invest the minimum investment amount. South Carolina Code §4-12-30(B)(4)(a). However, in the case of a manufacturing, research and development, corporate office, or distribution facility, as defined in South Carolina Code §12-6-3360(M), each sponsor or sponsor affiliate does not have to invest the \$2.5 million if the total investment at the project exceeds \$5 million. South Carolina Code §4-12-30(B)(4)(b).

A sponsor must complete its required minimum investment in the project within 5 years of the end of the property tax year in which the sponsor and the county execute the initial lease agreement. If the sponsor does not expect to complete the project within this 5-year period, it may apply to the county before the end of the 5-year period for an extension of up to 5 years to complete the project. If the period is extended less than the full 5 years allowed, a second extension may be approved, provided that the second extension is requested before the end of the first extension period and the aggregate extension period does not exceed 5 years. Unless approved as part of the original lease documentation, any extension may be approved by resolution of the county council with a copy of the resolution provided to the Department within 30 days. South Carolina Code §4-12-30(C).

Even if an extension to complete the project is granted, the required minimum investment must be made before the end of the initial 5-year period. If the sponsor does not make the required investment within the required time period, all property covered by the Fee will be retroactively subject to a Fee equal to the general property tax. Any applicable time limitations for assessment are suspended during the 5-year period a sponsor has to make the required minimum investment. South Carolina Code §4-12-30(C).

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

If the property is otherwise eligible for the Little Fee, investment expenditures incurred during the investment period by an entity whose investments are not being counted towards the minimum investment can qualify for the Fee if:

1. The expenditures are part of the original cost of the property;
2. The property is transferred to one or more entities which are sponsors or sponsor affiliates whose investments are being considered for minimum investment purposes; and
3. The property would have qualified for the Fee if it had been acquired by the sponsor or sponsor affiliate receiving the property.

The income tax basis of the property immediately after the transfer must equal the income tax basis immediately before the transfer, except that if after the transfer, the income tax basis of the property unintentionally exceeds the income tax basis before the transfer, the excess will be subject to a Fee equal to the property tax which would be due without the Fee. South Carolina Code §4-12-30(J).

Period in Which Property May be Subject to Fee. Generally, each piece of Fee property may be subject to the Fee for up to 30 years. Before the end of that period, an extension of up to 10 years may be approved by resolution of the county council upon a finding of substantial public benefit, with a copy of the resolution provided to the Department within 30 days. For projects that are completed and placed in service over more than 1 year, each year's investment may be subject to the Fee for up to 30 years, or if extended up to 40 years, for an aggregate fee period of up to 50 years for the project as a whole. South Carolina Code §4-12-30(C)(4).

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

1. Land, excluding improvements on the land, on which the new project is to be located;
2. Property which has never been placed in service in South Carolina;

3. Aircraft; or,
4. Property which has been placed in service pursuant to an inducement agreement or other preliminary county approval, if the property is placed in service before the execution of a lease agreement.

South Carolina Code §§4-12-30(J)(1) and 4-12-10(2).

Repairs, alterations, or modifications to real or personal property which are not subject to the Fee are not eligible for the Fee, even if they are capitalized expenditures. An exception is made for modifications to existing real property improvements which constitute an expansion of the improvements. South Carolina Code §4-12-30(J)(2).

Disposal of Property and Replacement Property. The inducement agreement may provide that when property is scrapped, sold or removed from the project, the Fee will be reduced by the amount of the Fee applicable to that property. If property is removed from the project, but remains within South Carolina, the property becomes subject to property taxes.

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

1. Title to the property must be held by the county.
2. The replacement property does not have to serve the same function as the property it is replacing.
3. The replacement property qualifies for the Fee only up to the original income tax basis of the Fee property which is being disposed of in the same property tax year. To the extent that the income tax basis of the replacement property exceeds the original income tax basis of the property which it is replacing, the excess is subject to Fee payments equal to regular property taxes.
4. More than one piece of replacement property can replace a single piece of original Fee property.
5. Replacement property is deemed to replace the oldest property subject to the Fee, whether real or personal, which is disposed of in the same property tax year that the replacement property is placed in service.

6. Replacement property is entitled to the Fee payment for the period of time remaining on the Fee for the property which it is replacing.

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

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

Timing of Investment Expenditures and Purchases. Investment expenditures incurred by a sponsor qualify as expenditures subject to the Fee if the inducement agreement is executed within the time period described below and the property is qualifying property. Unless the sponsor's agreement covers replacement property, to qualify for the Fee all expenditures must be incurred either: (a) prior to the end of the applicable investment period; or, (b) if an extension is granted, before the expiration of the additional time allowed to complete the project (usually 5 additional years after the investment period has ended). South Carolina Code §4-12-30(I).

Note: the minimum investment must be completed within 5 years.

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

Inducement Agreement – Substance. The inducement agreement is the major document of the transaction. It details the responsibility of each party and contains the negotiated assessment ratio and the millage rate, unless a separate millage rate agreement is executed. The sponsor and county may negotiate to use different yearly assessment ratios or different assessment ratios for different levels of investment. Thus, a sponsor may be subject to a 7% assessment ratio in its first year, but may be subject to a 6% assessment ratio in later years. However, the parties may not reduce the assessment ratio below the lowest assessment ratio for which the sponsor qualifies under South Carolina Code §4-12-30(D)(5).

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

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

Valuation for Fee Purposes. Generally, for real property, value is the original income tax basis for South Carolina income tax purposes without regard to depreciation; however, in certain instances, the fair market value of such real property will be determined by appraisal.

Additionally, a county and a sponsor and sponsor affiliate may agree (either initially or by amendment to an existing agreement) that the value of real property subject to a Fee will be determined by appraisal, in which case the property will be subject to reappraisal by the Department no more than once every 5 years. South Carolina Code §4-12-30(D)(2)(a)(i).

For personal property, the original tax basis for South Carolina income tax purposes less depreciation allowable for property tax purposes is used for valuation without regard to any extraordinary obsolescence of that property. South Carolina Code §4-12-30(D)(2)(a)(ii).

Utility property subject to a Fee is valued similarly to the method that the Public Service Commission uses to value utility property. See South Carolina Revenue Procedure #04-5.

Financing Agreements. A sponsor, sponsor affiliate, or a county may enter into any lending, leasing, or financing arrangement with any financing entity concerning all or part of the project (including any lease) regardless of the identity of the income tax owner of the property which is subject to the Fee. South Carolina Code §4-12-30(M). See also, South Carolina Code §4-12-45 (content of agreements).

Amendment of Agreements. The inducement agreement, the millage rate agreement, or both may be amended or terminated and replaced with regard to all matters, including, but not limited to, the addition or removal of sponsors or sponsor affiliates. However, the millage rate and assessment ratio cannot be changed once a millage rate agreement, an inducement agreement that sets the millage rate, or a lease agreement has been executed. Nor can the length of an agreement be increased except as provided in South Carolina Code §4-12-30(C). South Carolina Code §4-12-30(H).

Transfers of Fee Agreements or Property Subject to the Fee. A sponsor may transfer an inducement agreement, millage rate agreement, lease agreement, or the assets subject to the lease agreement, if it obtains the approval of the county before the transfer or the subsequent ratification of the transfer by the county. Prior approval or subsequent ratification can occur by a letter or other writing executed by an authorized county representative as provided in an appropriate agreement, a resolution passed by the county council, or by county council following three readings and a public hearing. The county has the sole discretion as to which method to use. However, county approval is not required in connection with a transfer to a sponsor affiliate since the sponsor affiliate would have already received county approval to join in the Fee transaction. County approval is also not required for financing transactions. To the extent an agreement is transferred, the transferee assumes the current basis that the transferor sponsor had in the real and personal property subject to the Fee for purposes of calculating the Fee. South Carolina Code §4-12-30(M)(1) and (4).

Payment Procedures and Recordkeeping Requirements. Any sponsor that engages in a Fee transaction must file all returns, contracts, or other information the Department may require. Also, a copy of the inducement agreement and the lease agreement must be filed with the Department and appropriate county auditors and assessors within 30 days of execution. A bill for each installment of the Fee is prepared by the county auditor. Fee payments and returns are due at the same time as property tax payments and returns would be due if the property was subject to property tax. The Department may, for good cause, allow up to a 60-day extension of time for filing Fee returns. The written request for an extension must be filed on or before the due date of the return. Penalties and interest may apply if a sponsor is late in making a Fee payment or in filing a required return. A county official, upon approval of the county's governing body, may request books and records of the company that support the calculation of the fee and any special source revenue credits granted. South Carolina Code §4-12-30(O). To the extent that any Fee form or return is filed with the Department, a copy must also be filed with the county auditor, assessor, and treasurer for the county where the project is located. All agreements entered into under the Fee in lieu provisions must include a written recapitulation of the terms of the Fee to assist in administration of the Fee. However, the parties can agree to waive any or all of the items that must be set forth in the recapitulation. South Carolina Code §§4-12-30(O) and 4-12-45.

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

Expiration of Fee Period and Maintaining the Minimum Investment. After the Fee period has expired, the real property that was originally subject to the Fee will be subject to property tax based on the fair market value of the property as of the latest reassessment date for similar taxable property. Personal property will be subject to property taxes based on the then depreciated value applicable to the property under the Fee, and thereafter continuing with the appropriate property tax depreciation schedule. South Carolina Code §4-12-30(D)(3). If the sponsor's investment in the property ever falls below the minimum investment (based on income tax basis without regard to depreciation) the Fee is no longer available and the sponsor must pay a Fee equivalent to property tax on the property. South Carolina Code §4-12-30(B)(4)(f).

Credit Against the Fee. A county, municipality, or special purpose district that receives proceeds from a Fee may allow a sponsor a credit against the Fee or a payment derived from the Fee. However, any credit or payment must be used for eligible infrastructure that qualifies under South Carolina Code §4-29-68, (*i.e.*, infrastructure and improved and unimproved real estate, and in some instances, personal property.) South Carolina Code §4-12-30(K)(3).

3. BIG FEE

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

1. Project identification – The county must identify the project or proposed project. This may be accomplished by the adoption of an inducement resolution or similar resolution by county council.
2. Inducement agreement – The company and the county must enter into an inducement agreement. In the Big Fee, the company or companies that enter into the inducement agreement are referred to as the “sponsor.” This agreement establishes that a sponsor will receive the Fee as an inducement for locating in the county.

3. Millage rate agreement – The sponsor and the county may enter into a millage rate agreement which fixes the millage rate for the entire Fee period or fixes it for the first 5 years and provides that it will be revised every 5 years. If the sponsor and the county do not execute a millage rate agreement, the millage rate is usually agreed to in the inducement agreement or the lease agreement.
4. Transfer of the property to the county – Title to the property must be transferred to the county.
5. Lease or lease purchase agreement – The sponsor and the county may enter into one or more lease agreements. This agreement leases the property from the county back to the sponsor and usually provides for the sale of the property to the sponsor at the end of the Fee period for a nominal sum. A definition of “lease agreement” is in South Carolina Code §4-29-67(A)(1)(b).
6. Financing agreement – There may be one or more financing agreements, which may include the issuance of industrial revenue bonds pursuant to South Carolina Code §4-29-68 (which are often purchased by the sponsor leasing the project) or the allowance of a credit against the Fee. (See the discussion of special source revenue bonds in Section 6 below.)

Some of these steps are often combined and there may be a number of transfers and lease agreements for 1 project.

Definition and Location of Project. A “project” is any land, building, and other improvements on the land, including water, sewage, and pollution control improvements and all other machinery, apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, and useful by a sponsor. A project may also consist of, or include, an aircraft hangared or used at an airport in South Carolina. South Carolina Code §4-29-67(A)(1)(c). The project must be located in a single county, in a multicounty park, or if certain agreements are made with the counties, the project may straddle contiguous counties. South Carolina Code §4-29-67(B).

Required Investment and Timing of Investment. Generally, the required investment must be made by a “sponsor.” A “sponsor affiliate” may also qualify for the Fee. A “sponsor” is defined as “one or more entities which sign the inducement agreement with the county and also includes a sponsor affiliate unless the context clearly indicates otherwise.” South Carolina Code §4-29-67(A)(1)(e). A “sponsor affiliate” means “an entity that joins with, or is an affiliate of, a sponsor and that participates in the investment in, or financing of, a project.” South Carolina Code §4-29-67(A)(1)(f).

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

1. The minimum investment amount is reduced to \$1 million for a sponsor investing in a county with an average unemployment rate of at least twice the state average during the last 24 months based on data available on November 1st. (See §8, of this chapter, “Fee in Lieu-Reduced Investment Counties” for a list of qualifying counties.)

2. The minimum investment amount is deemed met if a sponsor is a nonresponsible party in a voluntary cleanup on the property pursuant to Article 7, Chapter 56 of Title 44, the Brownfields Voluntary Cleanup Program, where the cleanup costs are at least \$1 million and the South Carolina Department of Health and Environmental Control has issued a certificate of completion of the cleanup. South Carolina Code §4-29-67(B)(3). In the case of a manufacturing, research and development, corporate office, or distribution facility as defined in South Carolina Code §12-6-3360(M), or a qualified nuclear plant facility, as defined in §4-29-67(A)(1)(d), the \$45 million minimum investment is not required of each sponsor and sponsor affiliate if the total investment at the project exceeds \$45 million. South Carolina Code §4-29-67(B)(4).

From the end of the property tax year in which the initial lease agreement is executed, a sponsor has 5 years to complete its investment and the project. Any applicable statute of limitations is suspended during the 5-year period to make the minimum investment. If the sponsor does not expect to complete the project within this 5-year period, it may apply to the county before the end of the 5-year period for an extension of up to 5 years to complete the project. A second extension may be approved, provided the second extension is requested before the end of the first extension period and the aggregate extension period does not exceed 5 years. Unless approved as part of the original lease documentation, any extension must be approved by resolution of the county council with a copy provided to the Department within 30 days. If the minimum investment is not made within the required 5 years, all property covered by the Fee will be retroactively subject to a Fee equal to the property tax. The sponsor must provide to the county the total amount invested in the project for each year during the 5-year investment period. South Carolina Code §4-29-67(C).

A sponsor affiliate that does not originally join in the Fee may later qualify for the Fee if: (1) the county approves the sponsor affiliate; and (2) the sponsor affiliate agrees to be bound by the agreements, or the relevant portions of the agreements, that affect the county. The county may agree that the sponsor affiliates will not be bound by any agreement, or portion thereof, even if the county is affected by the agreement. South Carolina Code §4-29-67(B)(4). An agreement may provide for a process of approval of sponsor affiliates; however, all investments must be at

the sponsor’s project. The Department must be notified in writing of all sponsors and sponsor affiliates that have investments subject to the Fee within 30 days of execution of a lease agreement. The time period may be extended upon written request. Failure to comply with this requirement will not adversely affect the Fee, but may result in a penalty being imposed. South Carolina Code §4-29-67(B)(4).

Period Property May be Subject to Fee. Generally, each piece of Fee property may be subject to the Fee for up to 30 years. Upon application by a sponsor, the county council by resolution can extend the fee period for up to an additional 10 years if they find a substantial public benefit. This allows for a total fee period of up to 40 years for a single piece of property. The maximum time period that all property at the project may be subject to the Fee is 50 years for a project that has been granted an extension. South Carolina Code §4-29-67(C)(3).

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

1. Land, excluding improvements on the land, on which the new project is to be located;
2. Property which has never been placed in service in South Carolina;
3. Aircraft; or,
4. Property which has been placed in service pursuant to an inducement agreement or other preliminary county approval, if the property is placed in service before the execution of a lease agreement.
5. Property that is purchased in a transaction other than a transaction between related taxpayers as determined under Internal Revenue Code §267 if the sponsor invests at least an additional \$45 million in the project. South Carolina Code §4-29-67(K).

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

Disposal of Property and Replacement Property. Under the Big Fee, replacement property can replace original property subject to the Fee, provided the inducement agreement includes a provision allowing for replacement property. The inducement agreement may provide that when property is scrapped, sold, or removed from the project, the Fee will be reduced by the amount of the Fee applicable to the property. If there is no provision in the inducement

agreement dealing with the disposal of property, the Fee remains fixed. If property is removed from the project but remains in South Carolina it becomes subject to property taxes. South Carolina Code §4-29-67(F)(1).

The following rules apply to replacement property:

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

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

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

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

Timing of Investment Expenditures and Purchases. Investment expenditures incurred by a sponsor qualify as expenditures subject to the Fee if the inducement agreement is executed within 2 years of the date the county adopts an inducement resolution; otherwise, only expenditures made after the inducement agreement is executed qualify. Unless the sponsor's agreement covers replacement property, all expenditures must be incurred either: (a) prior to the end of the applicable investment period; or, (b) if an extension is granted, before the expiration of the additional time allowed to complete the project (usually 5 additional years after the investment period has ended).

Note: The minimum investment must be completed within 5 years. South Carolina Code §4-29-67(l).

Also, if the property is otherwise eligible for the Big Fee, investment expenditures incurred during the investment period by an entity whose investments are not being counted towards the minimum investment can qualify for the Fee if:

1. The expenditures are part of the original cost of the property;
2. The property is transferred to one or more sponsors or sponsor affiliates whose investments are being counted towards the minimum investment; and,
3. The property would have qualified for the Fee if it had been acquired by the transferee entity (a sponsor or sponsor affiliate) receiving the property.
4. The county approves of the transfer.

The income tax basis of the property immediately after the transfer must equal the income tax basis immediately before the transfer, except that if after the transfer, the income tax basis of the property unintentionally exceeds the income tax basis before the transfer, the excess will be subject to a Fee equal to the property tax that would be due without the Fee. South Carolina Code §4-29-67(j).

Inducement Agreement. The inducement agreement is the major document of the transaction. It details the responsibility of each party and contains the negotiated assessment ratio and the millage rate, unless a separate millage rate agreement is executed. The sponsor and county may negotiate to use different yearly assessment ratios or different assessment ratios for

different levels of investment. Thus, a sponsor may be subject to a 7% assessment ratio in its first year, but may be subject to a 6% assessment ratio in later years. However, the lowest assessment ratio allowed is the lowest assessment ratio for which the investor may qualify under the statute. South Carolina Code §4-29-67(D)(5).

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

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

Valuation for Fee Purposes. Generally, for real property, value is the original income tax basis for South Carolina income tax purposes without regard to depreciation; however, in certain instances, the fair market value of such real property will be determined by appraisal. South Carolina Code §4-29-67(D)(2).

Additionally, a county and a sponsor and sponsor affiliate may agree (either initially or by amendment to an existing agreement) that the value of real property subject to a Fee will be determined by appraisal. If the county and sponsor and if applicable, the sponsor affiliate, agree to appraisal, the property will be subject to reappraisal by the Department no more than once every 5 years. South Carolina Code §4-29-67(D)(2).

For personal property, the original tax basis for South Carolina income tax purposes, less depreciation allowable for property tax purposes, is used for valuation without regard to any extraordinary obsolescence of that property. South Carolina Code §4-29-67(D)(2).

Utility property subject to a Fee is valued similarly to the method that the Public Service Commission uses to value utility property. See South Carolina Revenue Procedure #04-5.

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

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

Amendment of Agreements. The inducement agreement, the millage rate agreement, or both may be amended or terminated and replaced with regard to all matters, including, but not limited to, the addition or removal of sponsors or sponsor affiliates. However, the millage rate, assessment ratio, or discount rate cannot be changed once a millage rate agreement, an inducement agreement that sets the millage rate, or a lease agreement has been executed. Nor can the length of an agreement be increased except as provided in South Carolina Code §4-29-67(C). South Carolina Code §4-29-67(H).

Transfers of Fee Agreements or Property Subject to the Fee. A sponsor may transfer an inducement agreement, millage rate agreement, lease agreement, or the assets subject to the lease agreement if it obtains the approval of the county before the transfer or the subsequent ratification of the transfer by the county. Prior approval or subsequent ratification can occur by a letter or other writing executed by an authorized county representative as provided in an appropriate agreement, a resolution passed by the county council, or by county council following three readings and a public hearing. The county has the sole discretion as to which method to use. County approval is not required in connection with financing related transactions or for transfers to sponsor affiliates. If a Fee agreement is transferred, the transferee assumes the basis that the transferor sponsor had in the real and personal property subject to the Fee for purposes of calculating the Fee. South Carolina Code §4-29-67(O).

Payment and Recordkeeping Requirements. Any sponsor or sponsor affiliate in a Fee transaction must file all returns, contracts, or other information the Department may require. Also, a copy of the inducement agreement and the lease agreement must be filed with the Department and appropriate county auditors and assessors within 30 days of execution. A bill for each installment of the Fee is prepared by the county auditor. Fee payments and returns are due at the same time as property tax payments and returns would be due if the property were subject to property tax. The Department may, for good cause, allow up to a 60-day extension of time for filing Fee returns. The written request for an extension must be filed on or before the due date of the return. Penalties and interest may apply if a sponsor or sponsor affiliate is late in making a Fee payment or in filing a required return. To the extent that any Fee form or return is filed with the Department, a copy must also be filed with the auditor, assessor, and treasurer for the county where the project is located. A county official, upon approval of the county's governing body, may request books and records of the company that support the calculation of the Fee and any special source revenue credits granted. South Carolina Code §4-29-67(S). All agreements entered into under the Fee in lieu provisions must include a written recapitulation of the terms of the Fee to assist in administration of the Fee. However, the parties can agree to waive any or all of the items that must be set forth in the recapitulation. South Carolina Code §4-29-67(S).

Termination of the Fee and Lease Agreement. If a sponsor fails to make the minimum investment or any other investment or job requirements set forth in the agreements, within the applicable time period, the fee will terminate. Once terminated, all property that was subject to the fee will be retroactively subject to the Fee and will be retroactively subject to property taxes. The sponsor and the county may agree in the agreement that if the sponsor fails to make the required minimum investment, the sponsor may elect to use the provisions of the Little Fee, including the reduced investment requirement. South Carolina Code §4-29-67(Q).

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

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

If a sponsor’s investment at the project ever falls below the required minimum investment, or such greater amount as specified in the inducement agreement or lease agreement, the Fee is no longer available and the sponsor must pay a fee equivalent to the property taxes on the property. If the agreement is terminated by agreement or law and the sponsor is using the net present value, the sponsor must pay the county at the time of termination the difference between the fee that would have been paid on the property if the fee had been calculated using the standard fee method and the amount that was actually paid to the county under the net present value method. South Carolina Code §4-29-67(B)(4)(b)(iii).

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

Special Rules for Qualified Recycling Facilities. “Qualified recycling facilities,” as defined in South Carolina Code §12-6-3460(A)(3) (previously South Carolina Code §12-7-1275(A)), may qualify for a Fee equivalent to a 3% assessment ratio. The Fee is available for each item of property for 30 years (for projects placed in service in more than one year, the Fee is available for a maximum of 40 years). If the qualified recycling facility elects to use the net present value calculation, it must use the discount rate equivalent to the yield in effect for new or existing Treasury bonds of similar maturity as published on any day selected by the qualified recycling facility during the year in which the assets are placed in service or in which the inducement agreement is executed. South Carolina Code §4-29-67(V).

4. SIMPLIFIED FEE

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

1. Project identification – The county must identify the project or proposed project. This may be accomplished by the adoption of an inducement or similar resolution by county council.
2. Inducement resolution – The county council passes an inducement resolution if it was not done when the project was identified. This resolution sets forth the commitment of the county to enter into a Fee agreement concerning the project.

3. Fee agreement – The County and the company must enter into a Fee agreement setting forth the terms of the Fee. The company that enters into the Simplified Fee agreement is the “sponsor.”
4. Financing agreement – There may be one or more financing agreements executed in connection with the transaction or a credit against the Fee may be allowed.

Definition and Location of the Project. A “project” consists of land, buildings, and other improvements on the land, including water, sewage treatment and disposal services, air pollution control facilities, and all other machinery, apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, or useful by a sponsor. A project may also consist of, or include, an aircraft hangared or used at an airport in South Carolina. South Carolina Code §12-44-30(16).

The project must be located in a single county, in a multicounty park, or if certain agreements are made with the counties, the property may straddle contiguous counties. South Carolina Code §12-44-40(H).

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

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

These findings may be determined with the assistance and advice from the Revenue and Fiscal Affairs Office or the Department, and the findings must be set forth in an ordinance. South Carolina Code §12-44-40(I).

Required Investment and Timing of the Investment. Generally, the required investment must be made by a sponsor. A sponsor affiliate may also qualify for the fee. A “sponsor” means one or more entities which sign the Fee agreement with the county and makes the minimum investment. The term includes a sponsor affiliate unless the context clearly indicates otherwise. A “sponsor affiliate” is defined as an entity that joins with, or is an affiliate of, a sponsor, and that participates in the investment in, or financing of, a project. South Carolina Code §12-44-30(19) and (20).

A minimum investment amount of \$2.5 million is required for each sponsor or sponsor affiliate to qualify for the Fee. South Carolina Code §12-44-130(A); see also South Carolina Code §12-44-30(19). However, the following exceptions are provided:

1. The minimum investment amount is reduced to \$1 million for a sponsor investing in a county with an average annual unemployment rate of at least twice the state average during the last 24 months based on the data available on November 1st. South Carolina Code §12-44-30(14). (See Section 8, of this Chapter, “Fee in Lieu-Reduced Investment Counties” for a list of qualifying counties.)
2. The minimum investment amount is deemed met if a sponsor is a nonresponsible party in a voluntary cleanup on the property pursuant to Article 7, Chapter 56 of Title 44, and the Brownfields Voluntary Cleanup Program, where the cleanup costs are at least \$1 million and the South Carolina Department of Health and Environmental Control has issued a certificate of completion of the cleanup. South Carolina Code §12-44-30(14).

In the case of a manufacturing, research and development, corporate office, or distribution facility, as defined in South Carolina Code §12-6-3360(M), or a qualified nuclear facility, as defined in South Carolina Code §12-44-30(17), the \$2.5 minimum investment amount does not apply if the total investment at the project exceeds \$5 million. South Carolina Code §12-44-30(19).

For the Simplified Fee, the required minimum investment must be made by the end of the investment period. The investment period begins with the first day that economic development property is purchased or acquired and ends 5 years after the last day of the property tax year in which the first property covered by the Fee is placed in service. There are special provisions in the case of a qualified nuclear facility. South Carolina Code §12-44-30(2) and (13).

The minimum investment must be completed within the investment period. Any relevant statute of limitations is suspended during the time period for making the minimum investment. If the sponsor does not expect to complete the project within this period, it may apply to the county before the end of the period for an extension of up to 5 years to complete the project. If a project received an extension of less than 5 years originally, the sponsor can apply to the county before the end of the existing extension period for additional time to complete the project provided that the aggregate extension cannot exceed 5 years. The county council can approve the extension by resolution and a copy of the resolution must be delivered to the Department within 30 days of the resolution being adopted. Even if an extension to complete the project is granted, the required minimum investment must be made before the end of the initial 5-year period. The first piece of Fee property must be placed in service no later than the

last day of the property tax year that is 3 years from the year in which the county and the sponsor enter into the Fee agreement. Any relevant statute of limitations is suspended during the time period for making the required minimum investment. South Carolina Code §§12-44-30, 12-44-40, and 12-44-140.

For the Simplified Fee, the required minimum investment must be made before the end of the investment period. The investment period begins with the first day that economic development property is purchased or acquired and ends five years after the last day of the property tax year in which the first property covered by the fee is placed in service. There are special provisions in the case of a qualified nuclear facility. South Carolina Code §12-44-30(2) and (13).

Even if an extension to complete the project is granted, the required minimum investment must be made before the end of the investment period, the first piece of fee property must be placed in service no later than the last day of the property tax year that is 3 years from the year in which the county and the sponsor enter into the fee agreement. Any time limitation period for assessment under South Carolina Code §12-54-85 is suspended during the time period for making the required minimum investment. South Carolina Code §§12-44-30, 12-44-40, and 12-44-140.

A sponsor affiliate that does not originally join in the Fee may later qualify for the Fee if: (1) the county approves the addition of the sponsor affiliate for the Fee, (2) the sponsor affiliate invests the minimum investment amount, and (3) the sponsor affiliate agrees to be bound by those parts of the Fee agreement that affect the county. An agreement may provide for a process for approval of sponsor affiliates. South Carolina Code §12-44-130.

All investments by the sponsor affiliate must be made at the sponsor's project. The Department must be notified in writing of all sponsors and sponsor affiliates that have investments subject to the Fee within 90 days after the end of the calendar year during which the project, or pertinent phase of the project, was placed in service. The time period may be extended upon written request. Failure to comply with this requirement will not adversely affect the Fee, but may result in a penalty being imposed. South Carolina Code §12-44-130.

Period Property May be Subject to Fee. To be subject to the Fee, all property must be placed in service during the 10-year period in which a sponsor must complete the project. Any single piece of property may be subject to the Fee for up to 30 years. Before the end of that period, the county council by resolution can extend the Fee period for up to an additional 10 years if they find a substantial public benefit. This allows for a total Fee period for a single piece of property of up to 40 years and a total Fee period for the project of up to 50 years. A copy of the resolution extending the Fee period must be provided to the Department within 30 days of adoption. South Carolina Code §12-44-30(2), (8), (13), and (21).

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

1. Land, excluding improvements on the land, on which the new project is to be located;
2. Property which has never been placed in service in South Carolina;
3. Aircraft;
4. Property which has been placed in service pursuant to an inducement agreement or other preliminary county approval, if the property is placed in service before the execution of a Fee agreement; or
5. Property that is purchased in a transaction other than a transaction between related taxpayers as determined under Section 267(b) of the Internal Revenue Code if the sponsor invests at least an additional \$45 million in the project. See South Carolina Code §§12-44-110 and 12-44-30(16).

In the case of property that is not subject to the Fee, repairs, alterations, or modifications to real or personal property are not eligible for the Fee, even if they are capitalized expenditures. An exception is made for modifications to existing real property improvements that constitute an expansion of the improvements. South Carolina Code §12-44-110.

Disposal of Property and Replacement Property. The Fee must be reduced by the amount of the Fee applicable to property scrapped, sold, or removed from the project. If property is removed from the project but remains within South Carolina, the property becomes subject to property taxes. South Carolina Code §12-44-50.

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

1. The replacement property does not have to serve the same function as the property it is replacing.
2. The replacement property qualifies for the Fee only up to the original income tax basis of the Fee property being disposed of in the same property tax year. To the extent that the income tax basis of the replacement property exceeds the original income tax basis of the property that it is replacing, the excess is subject to payments as if the Fee was not allowed.

3. More than one piece of replacement property can replace a single piece of original Fee property.
4. Replacement property is deemed to replace the oldest property subject to the Fee, whether real or personal, which is disposed of in the same tax year that the replacement property is placed in service.
5. Replacement property is entitled to the Fee payment for the period of time remaining on the Fee for the property that it is replacing.

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

If the sponsor disposes of property and the sponsor is using the net present value method as described in South Carolina Code §12-44-50(3) for determining its Fee, the Fee on the property that is disposed of must be recomputed using the standard Fee method contained in South Carolina Code §12-44-50(A)(1). To the extent that the amount that would have been paid by the sponsor with respect to the disposed property exceeds the amount it paid under the net present value method, the sponsor must pay the county the difference with its next Fee payment. South Carolina Code §§12-44-50(B) and 12-44-60.

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

Timing of Investment Expenditures and Purchases. If a county adopts an inducement resolution within 2 years of the date the county takes action reflecting or identifying the project, then all expenses for property for the Fee may be subject to the Fee. If the inducement resolution is adopted after the 2-year period, then only those expenses incurred after the date of adoption of the inducement resolution qualify for the Fee. South Carolina Code §12-44-40.

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

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

The Fee Agreement. The Fee agreement is the major document of the Simplified Fee transaction. It details the responsibilities of each party and contains the negotiated assessment ratio and the millage rate. It must be approved by the county through an ordinance.

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

The Fee agreement may either fix the millage rate for the entire term of the Fee or increase or decrease the millage rate every 5 years in step with the average actual millage rate applicable in the taxing district where the project is located based on the previous 5-year period. The initial millage rate must be no lower than the cumulative property tax millage legally levied by, or on behalf of, all millage levying entities within which the project is to be located that is applicable either on: (a) June 30th of the year preceding the year in which the Fee agreement is executed; or, (b) June 30th of the year in which the Fee agreement is executed. South Carolina Code §12-44-50.

Valuation for Fee Purposes. Generally, for real property, value is the original income tax basis for South Carolina income tax purposes without regard to depreciation; however, the parties may agree that the value will be determined by appraisal by the Department, in which case the real property will be subject to reappraisal no more than once every 5 years.

For personal property, the original tax basis for South Carolina income tax purposes less depreciation allowable for property tax purposes is used for valuation without regard to any extraordinary obsolescence of that property. South Carolina Code §12-44-50(A)(1). Utility property subject to a Fee is valued similarly to the method that the Public Service Commission uses to value utility property. See South Carolina Revenue Procedure #04-5.

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

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

Amendment of Agreements. A Fee agreement may be amended or terminated and replaced with regard to all matters, including, but not limited to, the addition or removal of sponsors and sponsor affiliates. However, the millage rate, discount rate, and assessment ratio cannot be changed once the Fee agreement is executed. South Carolina Code §12-44-40.

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

Payment Procedure and Recordkeeping Requirements. Any sponsor or sponsor affiliate that engages in a Fee transaction must file all returns, contracts, and other information the Department may require. Also, a copy of the Fee agreement must be filed with the Department and all appropriate county auditors and assessors within 30 days of execution. A bill for each installment of the fee is prepared by the county auditor. Fee payments and returns are due at the same time as property tax payments and returns would be due if the property was subject to property tax. Penalties and interest may apply if a sponsor is late in making a fee payment or in filing a required return. The Department may, for good cause, allow up to a 60-day extension for filing Fee returns. The written request must be filed on or before the due date of the return. To the extent that any form or return is filed with the Department, a copy must be filed with the county auditor, assessor, and treasurer for the county in which the project is located. A county official, upon approval of the county's governing body, may request books and records of the sponsor that support the calculation of the Fee and any special source revenue credits granted. For collection purposes, the Fee is considered a property tax. South Carolina Code § 12-44-90.

Termination of the Fee and Fee Agreement. The county and the sponsor may agree to terminate the Fee agreement at any time. If a sponsor fails to make the minimum investment or any other investment or job requirements set forth in the Fee agreement within the applicable time period, the Fee agreement will terminate. Once terminated, all property that was subject to the Fee will be retroactively subject to property tax, as of the commencement date. The sponsor must pay the county a fee equal to the difference between the fees actually paid and the taxed that would have been paid if the property had been subject to property tax.

The statute allows a “safety net” to a sponsor that commits to an investment above the minimum investment. Even if the sponsor fails to make or maintain the level of investment agreed to in the Fee agreement, the Fee agreement may allow property at the project to continue under the Fee provided that the minimum investment requirement is met. However, the assessment ratio and exemption period for property must be consistent with those available to a sponsor making the minimum investment. The Fee agreement may also allow for different yearly assessment ratios or different ratios for different levels of investment with limitations on the lowest assessment ratio allowable. South Carolina Code § 12-44-90.

If the Fee agreement is terminated by mutual consent or by law and the sponsor was using the net present value method to compute the Fee, the sponsor must pay to the county the difference between the Fee that would have been paid on the property if the Fee had been calculated using the standard Fee method and the amount of Fees that were actually paid to the county under the net present value method. South Carolina Code §12-44-10.

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

If the sponsor’s investment ever falls below the minimum investment required by the Fee agreement (based on income tax basis without regard to depreciation), the Fee is no longer available and the sponsor must pay a fee equivalent to property taxes on the property. South Carolina Code §12-44-140(C).

Infrastructure Fee Credit. A county, municipality, or special purpose district that receives proceeds from a Fee may provide to a sponsor a payment derived from the Fee or a credit against the Fee. However, any credit or payment must be used for the purposes outlined in South Carolina Code §4-29-68, including eligible infrastructure, improved and unimproved real estate, and in certain instances personal property. South Carolina Code §§12-44-30(12) and 12-44-70. Special rules apply in the event affected personal property is removed from the project.

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

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

5. SUPER AND ENHANCED INVESTMENT FEES

The Little and Big Fee schemes both contain a provision that allows certain entities to apply for a Super Fee. The Simplified Fee contains an equivalent provision, but calls it an Enhanced Investment Fee. The Super or Enhanced Investment Fee may be equal to what the property tax would have been if the property was assessed at 4%. In addition, if a company qualifies for the Super Fee, the company has 8 years from the end of the property tax year in which the lease agreement is executed to make the required investment and may obtain up to an additional 5 years to complete the project. For the Big Fee Super Fee, if the project qualifies as a “qualified nuclear plant facility” as that term is defined in South Carolina Code §4-29-67(A)(1)(d), the sponsor and any sponsor affiliate are given additional time to make the required investment and complete the project.

Under the Enhanced Investment Fee, a sponsor must make the required level of investment within a period beginning on the date it purchases economic development property for the project and ending 8 years from the last day of the property tax year in which the first piece of Fee property is placed in service. The first piece of property must be placed in service no later than 3 years from the end of the property tax year in which the sponsor and the county enter into a Fee agreement. The sponsor may obtain an extension of up to 5 additional years to complete the project. For the Enhanced Fee, if the project qualifies as a “qualified nuclear plant facility” the sponsor and any sponsor affiliate are given additional time to make the required investment and complete the project.

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

Sponsors that qualify for the Super Fee or the Enhanced Fee with more than \$500 million in capital investment that employs more than 1,000 people in South Carolina have 10 years to meet the minimum investment requirements of the Super Fee or the Enhanced Fee and 15 years to complete their project.

If the property is subject to the Super or Enhanced Investment Fee, qualifying property may be subject to the Fee for up to 50 years. For those projects placed in service in more than one year, the Fee is generally available for the project for a maximum of 63 years. South Carolina Code §§4-12-30(C)(4); 4-29-67(C)(2), (3), and (D)(4); and 12-44-30(8), (13), and (21).

If a business qualifying under the Super Fee has more than \$500 million invested in capital in South Carolina and employs more than 1,000 employees in this state, that business will be eligible to have its property at a project subject to the Fee for a total of 65 years.

The following may qualify for the Little Fee Super Fee:

1. A single sponsor investing at least \$150 million and creating at least 125 new full-time jobs in South Carolina. South Carolina Code §4-12-30(D)(4)(a)(i).
2. A single sponsor investing at least \$400 million at a project. South Carolina Code §4-12-30(D)(4)(a)(ii).
3. A project that satisfies the requirements of South Carolina Code §11-41-30(2)(a) and for which the Secretary of Commerce has delivered a certification pursuant to South Carolina Code §11-41-70(2)(a). South Carolina Code §4-12-30(D)(4)(a)(iii).

The new full-time job requirements described above do not apply to any sponsor that, for more than 25 years ending on the date of the agreement, paid more than 50% of all property taxes actually collected in the county where it is seeking the Fee. South Carolina Code §4-12-30(D)(4)(b).

The following may qualify for the Big Fee Super Fee:

1. A single sponsor investing at least \$150 million and creating at least 125 new full-time jobs at the project. South Carolina Code §4-29-67(D)(4)(a)(i).
2. A single sponsor investing at least \$400 million in this State. South Carolina Code §4-29-67(D)(4)(a)(ii).
3. A project that satisfies the requirements of South Carolina Code §11-41-30(2)(a) and for which the Secretary of Commerce has delivered a certification pursuant to South Carolina Code §11-41-70(2)(a). South Carolina Code §4-29-67(D)(4)(a)(iii).

The new full-time job requirements described above do not apply to any business that, for more than 25 years ending on the date of the lease agreement, paid more than 50% of all property taxes actually collected in the county. South Carolina Code §4-29-67(D)(4)(b).

The following may qualify for the Enhanced Investment Fee:

1. A single sponsor investing at least \$150 million and creating at least 125 new full-time jobs at the project. South Carolina Code §12-44-30(7)(a). The new full-time job requirement does not apply to any taxpayer that, for more than 25 years ending on the date of the Fee agreement, paid more than 50% of all property taxes actually collected in the county where it is seeking the Fee. South Carolina Code §12-44-30(7).
2. A single sponsor investing at least \$400 million. South Carolina Code §12-44-30(7)(b).
3. A project that satisfies the requirements of SC Code §11-41-30(2)(a) and for which the Secretary of Commerce has delivered a certification pursuant to South Carolina Code §11-41-70(2)(a). South Carolina Code §12-44-30(7)(c).

For both the Super Fee and the Enhanced Investment Fee, if a single sponsor enters into a financing arrangement, the investment or financing by a developer, lessor, financing entity, or another third person in accordance with this arrangement is considered an investment by the sponsor for purposes of meeting the investment requirements.

Also, investments by a related person are considered to be investments by the sponsor. A “related person” includes any entity or person that bears a relationship to a significant business (those businesses that meet the requirements of the Enhanced Investment Fee) as provided in Internal Revenue Code §267, and includes, but is not limited to, a limited liability company where more than 50% of the capital interest or profits is owned directly by the significant business or by a person or entity, or group of persons or entities, which owns, more than 50% of the capital or profits in the significant business. South Carolina Code §§12-44-30(7), 4-29-67(D)(4)(a), 4-12-30(D)(4)(a), and 12-10-80(D)(2).

6. SPECIAL SOURCE REVENUE BONDS

In connection with a Little or Big Fee, a county (or municipality or special purpose district) where the project will be located may issue special source revenue bonds. These special source revenue bonds allow the political subdivision to finance infrastructure projects usually at or surrounding the project that enhance its economic development. The political subdivision repays the bonds with money received from the Fee payments from the project. The rules regarding special source revenue bonds are contained in South Carolina Code §4-29-68. Special source revenue bonds cannot be used with the Simplified Fee, but the Simplified Fee does provide for an infrastructure credit. Infrastructure credit amounts must be used for the same purposes as special source revenue bonds. See South Carolina Code §12-44-70.

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

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

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

A county, municipality, or special purpose district that receives and retains revenues from a Fee can also use a portion of the revenue received from the Fee for the purposes of providing infrastructure, unimproved or improved real estate, or to pay for eligible personal property associated with the project, without the requirement of issuing special source revenue bonds by allowing a credit against the Fee.

If bond money or money from a credit against the Fee is used to pay for personal property associated with a project, and the personal property is removed from the project during the time the Fee is in effect and the removed property is not replaced with qualifying replacement property, the amount of the Fee due on such property must be paid for the year it is removed and for 2 years following the year of removal. If bond or credit money is used to pay for both real and personal property, or infrastructure and personal property, all of the funds will be presumed to have first been used to pay for personal property.

7. COMPARISON CHART OF FEES

The following chart compares the basic provisions of the following negotiated Fees:

- ◆ Little Fee
- ◆ Big Fee
- ◆ Simplified Fee
- ◆ Super and Enhanced Investment Fee

COMPARISON OF NEGOTIATED FEES IN LIEU OF PROPERTY TAXES

	LITTLE FEE	BIG FEE	SIMPLIFIED FEE	SUPER AND ENHANCED INVESTMENT FEE
Minimum Required Investment	\$2.5 million or \$1 million in certain qualifying counties and sites.	\$45 million or \$1 million in certain qualifying counties and sites.	\$2.5 million or \$1 million in certain qualifying counties and sites.	Generally \$150 million with 125 jobs or \$400 million with certain other requirements
Assessment Ratio	No lower than 6%	No lower than 6%	No lower than 6%	No lower than 4%
Millage Rate	The millage rate used must be no lower than the cumulative property tax millage rate legally levied by, or on behalf of, all taxing entities within which the subject property is to be located that is applicable either on: (a) June 30 th of the calendar year preceding the year the millage rate agreement is executed or (b) June 30 th of the calendar year in which the millage rate agreement is executed	The millage rate used must be no lower than the cumulative property tax millage rate legally levied by, or on behalf of, all taxing entities within which the subject property is to be located that is applicable either on: (a) June 30 th of the year preceding the year the millage rate agreement is executed or (b) June 30 th of the year in which the millage rate agreement is executed	The millage rate used must be no lower than the cumulative property tax millage rate legally levied by, or on behalf of, all taxing entities within which the subject property is to be located that is applicable either on: (a) June 30 th of the calendar year preceding the year the fee agreement is executed or (b) June 30 th of the calendar year in which the fee agreement is executed	Follows rules of whichever statute is applicable
Project and Investment Completion	5 years to complete required investment 10 years to complete project if approved	5 years to complete required investment 10 years to complete project if approved Special rules for a “qualified nuclear plant facility”	5 years to complete required investment 10 years to complete project if approved Special rules for a “qualified nuclear plant facility”	8 years to complete required investment 13 years to complete project if approved For certain special projects, 10 years to complete the required investment and 15 years to complete the project
Length of Agreement	Up to 30 years for a single piece of property or no more than 40 years total for the project. Up to 10 year additional extension allowed for total of 40 years for a single piece of property or 50 years total for the project.	Up to 30 years for a single piece of property or no more than 40 years total for the project. Up to 10 year additional extension allowed for total of 40 years for a single piece of property or 50 years total for the project.	Available until the last day of the property tax year which is up to 29 years following the property tax year in which the economic development property is placed in service for a single piece of property Up to 10 year additional extension allowed for a total of 40 years for a single piece of property to be subject to the fee or 50 years total for project.	Up to 40 years for a single piece of property or no more than 53 years total for the project or for certain special projects, 55 years. Up to 10 year additional extension allowed for total of 50 years for a single piece of property or 63 years total for the project, or for certain projects, 65 years.
Property Title	Must be held by county	Must be held by county	Title usually held by the sponsor.	Follows rules of whatever statute is applicable
Structure of Payment	Net present value method not available	May use net present value to structure payments	May use net present value if investment of \$45 million or more	Net present value method may or may not be available depending on which Fee statute is used
Replacement Property	If agreement provides, allowed up to the amount of property disposed of in the same tax year as replacement property is placed in service	If agreement provides, allowed up to the amount of property disposed of in the same tax year as replacement property is placed in service	If agreement provides, allowed up to the amount of property disposed of in the same tax year as replacement property is placed in service	Follows rules of whichever statute is applicable
Valuation of Real Property	Generally original SC income tax basis without regard to depreciation. By agreement of county, real property may be appraised every 5 years.	Generally original SC income tax basis without regard to depreciation. By agreement of county, real property may be appraised every 5 years.	Generally original SC income tax basis without regard to depreciation. By agreement of county, real property may be appraised every 5 years.	Generally original SC income tax basis without regard to depreciation. By agreement of county, real property may be appraised every 5 years.
Valuation of Personal Property	Original SC income tax basis less depreciation allowable for property tax purposes.	Original SC income tax basis less depreciation allowable for property tax purposes.	Original SC income tax basis less depreciation allowable for property tax purposes.	Original SC income tax basis less depreciation allowable for property tax purposes.
Inducement Agreement	Must be executed within 2 years of inducement resolution or other action identifying project	Must be executed within 2 years of inducement resolution or other action identifying the project	No inducement agreement required.	Follows rules of whichever statute is applicable
Lease Agreement	Must be executed within 5 years of execution of inducement agreement	Must be executed within 5 years of execution of inducement agreement	No lease agreement. Fee agreement must be executed within five years of when county identifies the project	Follows rules of whichever statute is applicable

8. FEE IN LIEU – REDUCED INVESTMENT COUNTIES

The minimum required investment necessary to qualify for the fee in lieu of property taxes is \$2.5 million for the “Little Fee” and “Simplified Fee,” and \$45 million for the “Big Fee.” See South Carolina Code §§4-12-30(B)(3), 12-44-30(14), and 4-29-67, respectively. This investment amount; however, is reduced to \$1 million for a company investing in a county with an average annual unemployment rate of at least twice the State average during each of the last 24 months, based on data available on November 1.

For 2020, there are no counties that qualify for the reduced investment fee in lieu.

7. SALES AND USE TAX GENERAL PROVISIONS

1. STATE SALES AND USE TAXES

South Carolina Code §§12-36-910(A) and 12-36-1110 impose a 6% sales tax on the gross proceeds of sales of every person engaged in the business of selling tangible personal property at retail. The retailer is liable for the tax. The sales tax is also imposed on the fair market value of items originally purchased at wholesale that are withdrawn for use by the business or by any person withdrawing the property. See South Carolina Code §12-36-110(1)(c)(i) and South Carolina Revenue Ruling #08-11.

South Carolina Code §§12-36-1310(A) and 12-36-1110 impose a 6% use tax on the sales price of tangible personal property purchased at retail for storage, use, or other consumption in South Carolina, regardless of whether the retailer is engaged in business in South Carolina. The use tax is the liability of the purchaser under South Carolina Code §12-36-1330. If the purchaser; however, has a receipt from a seller required or authorized to collect the state use tax showing the seller has collected the tax from the purchaser, the purchaser is relieved of the liability for the tax. South Carolina allows a credit against the use tax due in South Carolina for the state and local sales or use tax due and paid in another state on purchases of tangible personal property. See South Carolina Revenue Ruling #18-9.

In addition to applying to tangible personal property (*e.g.*, furniture, clothing, computers, etc.), the sales and use taxes also apply to specific services and intangibles, such as laundry and dry cleaning services, electricity, and certain communication services. It also applies to the fair market value of tangible personal property manufactured within South Carolina or brought into South Carolina by its manufacturer for storage, use, or consumption in South Carolina by the manufacturer.

South Carolina Code §12-36-920(A) imposes a 7% sales tax on charges for any rooms, lodgings, or sleeping accommodations for less than 90 days to the same person. South Carolina Code §§12-36-920(B) and 12-36-1110 impose a 6% sales tax on “additional guest charges” added to the guest’s room charge for (1) room service, (2) laundering and dry cleaning services, (3) in-room movies, (4) telephone service, and (5) rentals of meeting rooms. For more information, see South Carolina Revenue Ruling #15-11, South Carolina Revenue Ruling #14-5, South Carolina Revenue Ruling #14-7, South Carolina Revenue Ruling #15-4, South Carolina Revenue Ruling #16-10, and South Carolina Revenue Ruling #18-10.

2. LOCAL SALES AND USE TAXES

Local governments have limited authority to levy local taxes and fees. A local governing body may not impose a new tax unless specifically authorized by the General Assembly. As explained below, local sales and use taxes may be imposed for various purposes. The majority of these taxes are administered and collected by the Department in the same manner as the state sales and use taxes.¹ Below is a brief description of the local taxes.

a. Local Taxes Administered by the Department

- ◆ General Property Tax Relief. Counties have the option of increasing the sales, use, and accommodations tax rate by 1% to provide additional revenue for local governments and a property tax rollback.² The tax must be approved by voter referendum and is typically referred to as the “local option sales tax.”
- ◆ Local Sales and Use Tax for Transportation Facilities. A governing body of a county may raise revenue for a transportation project by either imposing a sales and use tax up to 1% or by authorizing a transportation authority created by the county governing body to impose tolls.³ The increase is imposed by enacting an ordinance, subject to approval by voter referendum, and must be for a specific period of time to collect a limited amount of money. At no time may any portion of the county area be subject to both the local sales and use tax for transportation facilities and the capital project sales tax (discussed below).
- ◆ Capital Project Sales Tax. A governing body of a county may impose a 1% sales and use tax to defray the debt service on bonds issued to pay for authorized capital projects.⁴ The increase is imposed by enacting an ordinance, subject to approval by voter referendum. At no time may any portion of the county area be subject to both the capital project sales tax and the local sales and use tax for transportation facilities (discussed above). It may not be imposed for more than 8 years for newly imposed taxes or 7 years for re-imposed taxes.

¹ Note: Sales of unprepared food are only exempt from a local sales and use tax if the local sales and use tax law specifically exempts such sales. For information on the exemption for sales of unprepared food from local sales and use taxes, see the discussion below entitled “Exemption for Certain Food Sales” and the most recent South Carolina information letter on the “Local Sales and Use Tax Charts, Catawba Tribal Sales and Use Tax Chart and Exemption Information.”

² South Carolina Code §4-10-20.

³ South Carolina Code §4-37-30.

⁴ South Carolina Code §4-10-300.

- ◆ Personal Property Tax Relief. The county council may impose, by referendum, a local sales and use tax in lieu of the personal property tax imposed on private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors.⁵ The tax may not exceed the lesser of 2% or the amount necessary to replace the property tax on these items in the most recently completed fiscal year. Currently, this tax is not being imposed.

- ◆ School District Taxes. The General Assembly has authorized certain school districts to impose a sales and use tax within the county. These taxes are generally imposed to pay debt service on general obligation bonds and/or the cost of capital improvements for school districts. Most of these taxes are imposed at a rate of 1%.

- ◆ Catawba Tribal Sales and Use Tax. The Catawba Indian Reservation is located in Lancaster and York counties. South Carolina Code §27-16-130(H) contains the specific sales and use tax provisions relating to the Catawba Tribal Sales and Use Tax. The tribal sales tax is administered and collected by the Department and the tribal use tax is administered and collected by the tribe.⁶ For more information concerning the Catawba Tribal Sales and Use Tax, see Chapter 18 of the Sales and Use Tax Manual.

- ◆ Local Option Sales and Use Tax for Local Property Tax Credit. The governing body of the county, by a county council ordinance or by an initiated ordinance submitted to the governing body of the county by a petition signed by at least 7% of the qualified electors of the county, may impose a sales and use tax in increments of one-tenth of 1%, not to exceed 1%, subject to referendum approval.⁷ The tax provides a credit against property tax imposed by a political subdivision. Currently, this tax is not being imposed.

- ◆ Education Capital Improvements Sales and Use Tax. The General Assembly has authorized a school district or school districts within a county to impose a 1% sales and use tax within the county for specific education capital improvements for the school district for not more than 15 years.⁸ The tax must be approved by a referendum open to all qualified electors residing in the county. Pursuant to a memorandum of agreement, a portion of the revenue may be shared with the area commission (governing body of a technical college) or higher education board of trustees (governing body of a public institution of higher learning) or both, for specific education capital improvements on the campus of the recipient located in the county listed in the referendum. The General

⁵ South Carolina Code §4-10-540.

⁶ See South Carolina Revenue Ruling #98-18 and the most recent South Carolina information letter on the “Local Sales and Use Tax Charts, Catawba Tribal Sales and Use Tax Chart and Exemption Information.”

⁷ South Carolina Code §§4-10-720 through 4-10-810.

⁸ South Carolina Code §§4-10-410 through 4-10-470 (Act No. 316 of 2008).

Assembly has established several criteria that, if met, will allow a county or school district to impose this tax. The county or school district must meet only one of these criteria in order in to impose the tax.⁹ This tax may not be imposed in a county that is imposing or is scheduled to impose a local sales and use tax for public school capital improvements.

- ◆ **Tourism Development Tax**: The governing body of a municipality, by an ordinance adopted by a two-thirds majority of the municipal council or by approval by a majority of qualified electors voting in a referendum authorized by a majority of the municipal council, may impose a general sales and use tax within the municipality.¹⁰ The tax is imposed specifically for tourism advertisement and promotion directed at non-South Carolina residents; however, in the second and subsequent years of this tax a portion of the tax may be used for certain property tax rollbacks and other purposes. It may only be imposed by a municipality located in a county where revenue from the state accommodations tax is at least fourteen million dollars in a fiscal year. Currently, only the City of Myrtle Beach imposes this tax.

For a complete list of local taxes administered by the Department, see the most recent South Carolina information letter on “Local Sales and Use Tax Charts, Catawba Tribal Sales and Use Tax Chart and Exemption Information.” This information is available on the Department’s website at www.dor.sc.gov.

b. Local Taxes Administered by Local Governments

- ◆ **Local Accommodations Tax**. The governing body of a county or municipality may impose, by ordinance, a local accommodations tax, on the gross proceeds derived from the rental or charges for accommodations furnished to transients as provided in South Carolina Code §12-36-920(A), not to exceed 3%.¹¹ The revenue generated by this additional tax must be used exclusively for certain tourism purposes.
- ◆ **Local Hospitality Tax**. The governing body of a county or municipality may impose, by ordinance, a tax on the sales of prepared meals and beverages sold in establishments, or sales of prepared meals and beverages sold in establishments licensed for on-premises consumption of alcoholic beverages, beer, or wine.¹² The tax may not exceed 2% of the charges for food and beverages.

⁹ South Carolina Code §4-10-470.

¹⁰ South Carolina Code §§4-10-910 through 4-10-970.

¹¹ South Carolina Code §6-1-500.

¹² South Carolina Code §6-1-700.

3. NEXUS

Nexus is a sufficient connection between a person and a state, and a sufficient connection between an activity, property, or transaction and a state, that allows the state to subject the person and the activity, property, or transaction to its taxing jurisdiction. The Due Process and Commerce Clauses of the United States Constitution and other federal statutes provide limitations on a state’s powers to tax out-of-state businesses. Retailers that have nexus with South Carolina must remit the sales tax or use tax with respect to all sales at retail (not otherwise exempt) of tangible personal property in South Carolina.

Over the years, the courts have provided limitations and guidelines in determining whether certain activities create nexus in a taxing state. For example, see *South Dakota v. Wayfair, Inc.*, 585 U.S. ____, 138 S. Ct. 2080, 201 L. Ed. 2d 403 (2018); *Quill v. North Dakota*, 504 U.S. 298, 112 S. Ct. 1904, 119 L. Ed. 2d 91 (1992); *National Bellas Hess v. Illinois*, 386 U.S. 753, 87 S. Ct. 1389, 18 L. Ed. 505 (1967); *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S. Ct. 1076, 51 L. Ed. 326 (1977); *Miller Brothers v. Maryland*, 347 U.S. 340, 347, 74 S. Ct. 535, 98 L. Ed. 744 (1954); *Scripto, Inc. v. Carson*, 362 U.S. 207, 80 S. Ct. 52, 4 L. Ed. 2d 54 (1960); *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 104 S. Ct. 1868 (1984); and *National Geographic Society v. California Bd. of Equal*, 430 U.S. 551, 97 S. Ct. 1386, 51 L. Ed. 2d 631 (1977). Until recently, sales and use tax nexus has been limited to those businesses with a physical presence in the taxing state. However, as discussed below, the *Wayfair* decision now allows a state to impose its sales and use tax laws on businesses without a physical presence in that state.

On June 21, 2018, the United States Supreme Court in *South Dakota v. Wayfair, Inc.*, 585 U.S. ____, 138 S. Ct. 2080, 201 L. Ed. 2d 403 (2018), ruled that retailers (including online retailers) without physical presence in a state may be subject to sales and use tax in that state. This decision overturned the Court’s longstanding position in *Quill Corp. v. North Dakota*, 504 U.S. 298, 112 S. Ct. 1904, 119 L. Ed. 2d 91 (1992), and *National Bellas Hess, Inc. v. Department of Revenue of Illinois*, 386 U.S. 753, 87 S. Ct. 1389, 18 L. Ed. 505 (1967), which allowed states to collect sales and use tax only from retailers with a physical presence in that state.

Following *Wayfair*, a retailer may have a requirement to obtain a retail license and to collect and remit sales and use tax in South Carolina if it has either an economic presence or a physical presence in South Carolina.

Note: A “marketplace facilitator” is a retailer or seller for purposes of South Carolina’s sales and use tax. Code §12-36-71 defines “marketplace facilitator.” For further information about “marketplace facilitators,” see South Carolina Information Letter #19-14 and South Carolina Revenue Ruling #19-6.

South Carolina Revenue Rulings #18-14 and #14-4 provide guidance concerning sales and use tax nexus standards in South Carolina.

These advisory opinions reflect the Department’s official position at the time of this publication. Since developments in this area are taking place, any guidance is subject to change due to a future statute, regulation, court decision, or advisory opinion.

4. EXCLUSIONS

For additional information, see the most recent South Carolina Sales and Use Tax Manual. If a transaction is excluded from the tax, it is not subject to sales and use tax in South Carolina. The exclusions are found in several sections of the sales and use tax statute and apply to a variety of transactions. The following briefly describes South Carolina’s sales and use tax exclusions.

Caution: The exclusions below are briefly described. See the statute cited for the specific exclusion details. If a transaction does not squarely fall within the requirements of an exclusions statute and applicable regulations, the exclusion does not apply.

Code Section	Description
12-36-60	Transmission of computer database information by a cooperative service when assembled by and for the exclusive use of the members of the cooperative service
12-36-90(1)(c)(iii)	The withdrawal from inventory of tangible personal property for use in replacing a defective part under a warranty contract if the warranty contract is given without charge at the time of original purchase of the defective property; the tax was paid on the sale of the defective part or on the sale of the property of which the defective part was a component; and the warrantee is not charged for any labor or materials
12-36-90(2)(h)	Sales of property that are actually charged off as bad debts or uncollectible accounts for state income tax purposes
12-36-90(2)(i)	Interest, fees, or charges imposed on a customer for late payment of a bill for electricity or natural gas
12-36-110(2)	Sales of tangible personal property to a manufacturer or construction contractor when the property is partially or completely fabricated or manufactured in South Carolina by the manufacturer or construction

Code Section	Description
	contractor and transported out of state and assembled, installed or erected at the out-of-state job site
12-36-120(1)	Sales of property to a licensed retailer or another wholesaler for resale. This does not include sales to users or consumers not for resale.
12-36-120(2)	Sales of property to a manufacturer or compounder as an ingredient or component part of the tangible personal property or product manufactured or compounded for sale
12-36-120(3)	Sales of property “used directly” in manufacturing, compounding, or processing tangible personal property into products for sale. SC Regulation 117-302.1 provides property is “used directly” if it comes into direct contact with the product being manufactured and contributes to bring about a chemical or physical change in the product.
12-36-120(4)	Sales 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
12-36-120(5)	Sales of food or drink products to licensed retail merchants for use as ingredients in preparing ready to eat food or drink sold at retail
12-36-140(C)(1)	Purchases of tangible personal property from outside the state and transported to South Carolina for storage and for the exclusive purpose of subsequently transporting it outside of South Carolina for first use outside of South Carolina. (Applies to use tax)
12-36-140(C)(2)	Purchases of tangible personal property from outside the state and transported to South Carolina for the purpose of first being manufactured, processed, or compounded into other tangible personal property that will be transported and used solely outside of South Carolina. (Applies to use tax)
12-36-140(C)(3)	Purchases of tangible personal property for the purpose of being distributed as (1) cooperative direct mail promotional advertising materials, or (2) promotional maps, brochures, pamphlets, or discount coupons by nonprofit chambers of commerce or convention and visitor

Code Section	Description
	bureaus who are exempt from income taxation pursuant to Internal Revenue Code §501(c) by means of interstate carrier, a mailing house, or a United State Post Office to residents of this State from locations both inside and outside the state. (Applies to use tax)
12-36-910(C)	Charges for or use of certain data processing

5. PARTIAL EXEMPTIONS

There are two types of exemptions provided under South Carolina’s sales and use tax law: (1) partial exemptions, and (2) full exemptions.

Partial exemptions limit or “cap” the amount of tax.¹³ The local sales and use taxes collected by the Department do not apply to sales that are subject to a cap.

A maximum sales or use tax of \$500 is imposed on sales of the following:¹⁴

- Aircraft – including unassembled aircraft assembled by the purchaser
- Motor vehicles – including equipment supplied or installed on a firefighting vehicle at the time of purchase¹⁵
- Motorcycles
- Boats, including personal watercrafts such as jet skis
- Trailers and semi-trailers that can be pulled only by a truck tractor. This does not include house trailers and campers as defined in South Carolina Code §56-3-710.¹⁶
- Horse trailers. This does not include house trailers and campers as defined in South Carolina Code §56-3-710.

¹³ South Carolina Code §12-36-2110.

¹⁴ South Carolina Code §12-36-2110(A). Note: As of July 1, 2017, an infrastructure maintenance fee (IMF) applies to sales of items which are required to be registered with SCDMV under Chapter 3 of Title 56. (*e.g.*, motor vehicles and motorcycles). Items which are subject to the IMF are exempt from sales and use tax under S.C. Code §12-36-2120(83). See South Carolina Information Letter #17-10 for more information.

¹⁵ South Carolina Code §12-36-2110(E).

¹⁶ Sales of utility trailers that are capable of being pulled by an automobile, minivan, or pick-up truck, and that are not recreational vehicles, fire safety education trailers or horse trailers, are not eligible for the \$500 maximum tax. See SC Revenue Ruling #14-2.

- Recreational vehicles, including tent campers, travel trailers, park models, park trailers, motor homes and fifth wheels
- Self-propelled light construction equipment with compatible attachments. The equipment’s net engine horse power must not exceed 160.
- Fire safety education trailers

The sale of a manufactured home is subject to a maximum tax of \$300 if the home meets or exceeds certain energy efficiency requirements specifically outlined in the law.¹⁷ If the home does not meet these energy efficiency requirements, the sale of the home is subject to a maximum tax of \$300 plus 2% of the taxable basis or measure that exceeds \$6,000.¹⁸ Finally, the sale of manufactured homes from July 1, 2009 through June 30, 2020, will be exempt from the entire tax if the manufactured home has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency’s energy saving efficiency requirements or has been designated as meeting or exceeding such requirements under each agency’s ENERGY STAR program.¹⁹

6. FULL EXEMPTIONS

Although it may be determined that a transaction is subject to sales and use tax, a particular exemption in the statute may exempt it from sales and use tax in South Carolina. South Carolina Code §§12-36-2120 and 12-36-2130 as well as certain other code provisions contain numerous full exemptions, including several designed specifically for certain industries or facilities. The local sales and use taxes collected by the Department do not apply to sales which are exempt from the state sales and use tax.²⁰

The following briefly describes South Carolina’s sales and use tax exemptions. For purposes of this discussion, South Carolina’s full exemptions are divided into the following categories:

¹⁷ South Carolina Code §§12-36-2110(B) and 12-36-2120(34).

¹⁸ South Carolina Code §§12-36-2110(B) and 12-36-2120(34).

¹⁹ South Carolina Code §§12-36-2110(B) and 12-36-2120(34). See Act No. 354 of 2008.

²⁰ All sales and purchases exempt from the state sales and use tax under South Carolina Code §§12-36-2120 and 12-36-2130 are exempt from local sales and use tax administered and collected by the Department on behalf of local jurisdictions, except for sales of unprepared food under South Carolina Code §12-36-2120(75). South Carolina Code §12-36-2120(75) specifically states that the exemption for unprepared food only applies to the state sales and use tax. Therefore, such sales are subject to local sales and use taxes unless the local sales and use tax specifically exempt’s sales of unprepared food. See SC Regulation 117-337 and the most recent South Carolina information letter on the “Local Sales and Use Tax Charts, Catawba Tribal Sales and Use Tax Chart and Exemption Information.”

- Government Related Exemptions
- Business Related Exemptions
- Agricultural Exemptions
- Educational Exemptions
- General Public Good Exemptions
- Alternative Energy Exemptions

Caution: The exemptions below are briefly described. See the statute cited for the specific exemption details. If a transaction does not squarely fall within the requirements of an exemption statute and applicable regulations, the exemption does not apply.

Government Related Exemptions

Code Section	Description
12-36-2120(1)	Transactions that are prohibited from being taxed by United States or state constitutional provisions or federal or state law
12-36-2120(2)	Sales to the federal government
12-36-2120(22)	Material necessary to assemble missiles
12-36-2120(25)	Sales of cars and motorcycles to nonresident military personnel
12-36-2120(29)	Federal government contracts – property that passes to the government
12-36-2120(30)	Supplies purchased by the State General Services Division resold to state agencies if tax was paid on original purchase
12-36-2120(46)	War memorials and monuments
12-36-2120(48)	Solid waste disposal collection bags required under a solid waste disposal
12-36-2120(60)	Lottery tickets sold pursuant to Chapter 150 of Title 59 (South Carolina Education Lottery Act)

Code Section	Description
12-36-2120(61)	Copies of, or access to, legislation or other informational documents provided to the general public or any other person by a legislative agency when a charge for these copies is made reflecting the agency's cost of the copies
12-36-2120(68)	Any property sold to the public through a sheriff's sale as provided by law

Business Related Exemptions

Code Section	Description
12-36-2120(9)	Coal, coke, or other fuel for manufacturers, transportation companies, electric power companies, and processors Fuel used by an aircraft manufacturer for test flights or for transportation of an aircraft prior to completion from one facility to another facility if the aircraft manufacturer invests at least \$750 million and creates at least 3,800 full-time jobs over a seven-year period. This exemption became effective November 1, 2009 and required that a notice be filed with the Department prior to October 31, 2015 in order for the taxpayer to qualify for the exemption. This exemption continues to be available to eligible taxpayers who notified the Department prior to October 31, 2015.
12-36-2120(11)	Toll charges between telephone exchanges, certain access charges, charges for telegraph messages and automatic teller machine transactions
12-36-2120(13)	Fuel and other supplies for consumption on ships on the high seas
12-36-2120(14)	Wrapping paper, containers, etc., used incident to the sale and delivery of tangible personal property
12-36-2120(15)	Motor fuel taxed under the motor fuel user fee law; natural gas to be compressed or cooled for use as a motor fuel; and liquefied petroleum gas for use as a motor fuel. The exemption for natural gas and liquefied petroleum gas became effective April 21, 2016.

Code Section	Description
12-36-2120(17)	Machines used in manufacturing, processing, agricultural packaging, recycling, compounding, mining or quarrying tangible personal property for sale. This includes certain machines used to prevent or abate air, water or noise pollution caused by machines used in manufacturing, processing, agricultural packaging, recycling, compounding, mining or quarrying tangible personal property for sale.
12-36-2120(19)	Electricity used to manufacture, process, mine, or quarry tangible personal property for sale or used by cotton gins to manufacture tangible personal property for sale
12-36-2120(20)	Railcars and locomotives
12-36-2120(21)	Certain vessels and barges (more than 50 tons burden)
12-36-2120(24)	Laundry supplies and machinery. This exemption does not apply to coin operated laundromats.
12-36-2120(31)	Vacation time sharing plans and exchange of accommodations in which the accommodation to be exchanged is the primary consideration
12-36-2120(34)	50% of the gross proceeds of a modular home regulated under Chapter 43 of Title 23
12-36-2120(35)	Movies sold or rented to movie theatres
12-36-2120(36)	Tangible personal property delivered out of state by South Carolina retailers
12-36-2120(37)	Petroleum asphalt products transported and used outside South Carolina
12-36-2120(40)	Shipping containers used by international shipping lines under contract with the State Ports Authority
12-36-2120(42)	Depreciable assets sold as part of the sale of an entire business
12-36-2120(43)	Supplies, equipment, machinery and electricity for use in filming/producing motion pictures

Code Section	Description
12-36-2120(49)	Postage purchased by a person engaged in the business of selling advertising services for clients consisting of mailing advertising material through the United States mail
12-36-2120(50)	The following items when used by a qualified recycling facility: recycling property, electricity, natural gas, fuels, gasses, fluids and lubricants, ingredients or component parts of manufactured products, property used for the handling or transfer of postconsumer waste or manufactured products or in or for the manufacturing process, and machinery and equipment foundations ²¹
12-36-2120(51)	<p>Material handling systems and material handling equipment used in the operation of a distribution facility or a manufacturing facility of a taxpayer that invests at least \$35 million in South Carolina</p> <p>Code §12-36-2140 provides that for purposes of the exemptions in Article 21, Chapter 36, the term “distribution facility” includes, but is not limited to, a “port facility” as defined in Code §12-6-3375²²</p> <p>Note: Under Temporary Provisos 117.1127 and 50.20, respectively, the State Ports Authority and the Navy Base Intermodal Facility are considered distribution facilities for the purpose of this exemption for State Fiscal Year 2019-2020.</p>
12-36-2120(52)	Parts and supplies used by persons engaged in the business of repairing or reconditioning aircraft. This exemption does not extend to tools and other equipment not attached to or that do not become a part of the aircraft.
12-36-2120(53)	Motor vehicle extended service and warranty contracts
12-36-2120(54)	Clothing and other attire required for working in a class 100 or better clean room environment (as defined in Federal Standard 209E)

²¹ See South Carolina Code §12-6-3460 for the definitions of “qualified recycling facility,” “recycling property,” and “post-consumer waste material.”

²² A “port facility” is defined as any publicly or privately owned facility located within South Carolina through which cargo is transported by way of waterborne ship or vehicle to or from destinations outside South Carolina and which handles cargo owned by third parties in addition to cargo owned by the port facility’s owner.

Code Section	Description
12-36-2120(55)	Audiovisual masters made or used by a production company
12-36-2120(56)	Machines used in research and development
12-36-2120(58)	Cooperative direct mail promotional advertising materials and promotional maps, brochures, pamphlets, or discount coupons for use by nonprofit chambers of commerce or nonprofit convention and visitor bureaus
12-36-2120(59)	Facilities transmitting electricity that are transferred, sold or exchanged by an electrical utility, municipality, electric cooperative, or political subdivision to a limited liability company subject to regulation under the Federal Power Act and formed to operate or to take functional control of electric transmission assets
12-36-2120(62)	70% of the gross proceeds of the rental or lease of portable toilets
12-36-2120(64)	Sweetgrass baskets made by artists of South Carolina using locally grown sweetgrass
12-36-2120(65) and 12-36-2120(66)	<p>Computer equipment used in connection with, and electricity and certain fuel used by, a technology intensive facility²³ that invests \$300 million over 5 years, creates at least 100 new jobs during the 5 years with an average cash compensation of 150% of the per capita income of the State, and spends at least 60% of the \$300 million investment on computer equipment</p> <p>Computer equipment used in connection with a manufacturing facility that invests at least \$750 million and creates at least 3,800 full-time new jobs at the facility over a 7-year period. This exemption became effective November 1, 2009 and required that a notice be filed with the Department prior to October 31, 2015 in order for the taxpayer to qualify for the exemption. This exemption continues to be available to eligible taxpayers who notified the Department prior to October 31, 2015.</p>

²³ South Carolina Code §12-6-3360(M)(14)(b) defines a “technology intensive facility” for purposes of this exemption as “a facility primarily used for one or more activities listed under the 2002 version of the NAICS Codes 51811 (Internet Service Providers, and Web Search Portals).”

Code Section	Description
12-36-2120(67)	<p>Construction material used in the construction of a single manufacturing or distribution facility, or one that is both, that invests at least \$100 million at a single site in South Carolina over an 18-month period.</p> <p>Code §12-36-2140 provides that for purposes of the exemptions in Article 21, Chapter 36, the term “distribution facility” includes, but is not limited to, a port facility as defined in Code §12-6-3375.²⁴</p> <p>Construction material used in the construction of a new or expanded single manufacturing facility that invests at least \$750 million and creates at least 3,800 full-time new jobs at the facility over a 7-year period. This exemption became effective November 1, 2009 and required that a notice be filed with the Department prior to October 31, 2015 in order for the taxpayer to qualify for the exemption. This exemption continues to be available to eligible taxpayers who notified the Department prior to October 31, 2015.</p> <p>Note: Under Temporary Provisos 117.127 and 50.20, respectively, the State Ports Authority and the Navy Base Intermodal Facility are considered distribution facilities for the purpose of this exemption for State Fiscal Year 2019-2020.</p>
12-36-2120(70)	Gold, silver or platinum bullion or any combination; coins that are or have been legal tender; and currency
12-36-2120(73)	Amusement park rides; parts, machinery and equipment used to assemble, operate and make up amusement park rides; and performance venue facilities and any related or required machinery, equipment and fixtures. A \$250 million investment and creation of 250 full-time jobs and 500 part-time or seasonal jobs over a 5-year period is required.
12-36-2120(78)	Machinery and equipment, building and other raw materials, and electricity used in the operation of a facility owned by an organization which qualifies as a tax exempt organization pursuant to the Internal Revenue Code Section 501(c)(3) when the facility is principally used for

²⁴ A “port facility” is defined as any publicly or privately owned facility located within South Carolina through which cargo is transported by way of waterborne ship or vehicle to or from destinations outside South Carolina and which handles cargo owned by third parties in addition to cargo owned by the port facility’s owner.

Code Section	Description
	researching and testing the impact of such natural hazards as wind, fire, water, earthquake, and hail on building materials used in residential, commercial, and agricultural buildings. A \$20 million in real or personal property at a single site in this State over a 3-year period is required.
12-36-2120(79)	<p>Computers, computer equipment, and computer software used within a datacenter, and electricity used by a datacenter or used by eligible business property located and used at a datacenter where the taxpayer: (1) invests at least \$50 million in real or personal property or both over a 5-year period; or, if more than one taxpayer, invests a minimum aggregate capital investment of at least \$75 million in real or personal property or both over a 5-year period; (2) creates and maintains at least 25 full-time jobs at the facility with an average cash compensation level of 150% of the per capita income of South Carolina or of the county in which the facility is located; and (3) maintains the jobs requirement for 3 consecutive years after certification by the Department of Commerce.</p> <p>This exemption only applies to a datacenter that is certified by the Department of Commerce prior to January 1, 2032 as meeting the investment and job requirements. However, for datacenters certified by December 31, 2031, this exemption will remain in effect for an additional ten-year period.</p>
12-62-30	Tangible personal property purchased by a certified motion picture production company for use in connection with the filming or production of motion pictures in South Carolina for a company planning to spend at least \$250,000 in connection with the filming or production of one or more motion pictures in South Carolina within a consecutive 12-month period. This provision does not apply to: (a) local sales tax levied and collected directly by a local governmental subdivision or (b) the production of television coverage of news and athletic events.
12-69-30	Building materials, supplies, fixtures, and equipment for the construction, repair, or improvement of or that become a part of a motorsports entertainment complex. To be eligible for this sales and use tax exemption, a company must submit an application to be approved by the Department, receive written certification from the Department, and meet the requirements of Chapter 69, Title 12.

Code Section	Description
Temporary Proviso 109.13, (Act 91 of 2019)	<p>Certain clothing required by Current Good Manufacturing Practices as set forth in 21 C.F.R. § 111.10, as it may be amended, used at perishable prepared food manufacturing facilities as defined by the North American Industry Classification System 311991 to prevent health hazards.</p> <p>Clothing eligible for this exemption includes outer garments, gloves of an impermeable material, hairnets, headbands, beard covers, caps, hair covers or other effective hair restraints, and other attire required pursuant to 21 C.F.R. §110.10 for persons working in direct contact with food, food contact surfaces, and food packaging materials to protect against contamination of food in perishable prepared food manufacturing facilities.</p> <p>This temporary proviso is effective for State Fiscal Year July 1, 2019 through June 30, 2020 and will expire unless reenacted by the General Assembly.</p>

Agricultural Exemptions

Code Section	Description
12-36-2120(4)	Livestock
12-36-2120(5)	Feed used to produce and maintain livestock
12-36-2120(6)	Insecticides, chemicals, fertilizers, soil conditioners, seeds, seedlings or nursery stock used in the production of farm products
12-36-2120(7)	Containers and labels used in preparing agriculture products for sale or preparing turpentine gum, gum resin and gum spirits of turpentine for sale
12-36-2120(15)	Fuels used in farm machinery and farm tractors; and fuel used in commercial fishing vessels
12-36-2120(16)	Farm machinery
12-36-2120(18)	Fuel used to cure agriculture products

Code Section	Description
12-36-2120(23)	Farm products sold in their original state of production when sold by the producer
12-36-2120(32)	Electricity and gas used in the production of livestock and milk
12-36-2120(44)	Electricity used to irrigate crops
12-36-2120(45)	Building materials, supplies, fixtures and equipment used to construct commercial housing for poultry or livestock

Educational Exemptions

Code Section	Description
12-36-2120(3)	Textbooks, books, magazines, periodicals, newspapers and access to online information used in a course of study or for use in a school or public library. These items may be in printed form or in alternative forms such as microfilm or CD ROM. Certain communication services and equipment subject to tax under South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3) are not exempt.
12-36-2120(8)	Newspapers, newsprint paper and South Carolina Department of Agriculture Market Bulletin ²⁵
12-36-2120(10)(a)	Meals or food used in furnishing meals to K-12 students in schools (not for profit)
12-36-2120(26)	Television, radio and cable TV supplies, equipment, machinery, and electricity
12-36-2120(27)	Zoo plants and animals

²⁵ This exemption also states that sales of religious publications (e.g., The Bible, hymnals) are exempt; however, the South Carolina Supreme Court held in *Thayer v. South Carolina Tax Commission*, 307 S.C. 6, 413 S.E.2d 810 (1992), that the exemption for religious publications was unconstitutional. Therefore, sales of religious publications are subject to the sales and use tax, unless otherwise exempt under the law. For more information, see South Carolina Information Letter #92-8.

Code Section	Description
12-36-2130(2)	Exhibition rentals for museums (charitable, eleemosynary or governmental museums) (use tax only) ²⁶
Temporary Proviso 117.36, (Act 91 of 2019)	Purchases of tangible personal property during the state fiscal year 2019-2020 for use in private primary and secondary schools, including kindergarten and early childhood education programs, are exempt from the <u>use tax</u> if the school is exempt from income taxes under Internal Revenue Code §501(c)(3) ²⁷

General Public Good Exemptions

Code Section	Description
12-36-2120(10)(b)	Meals provided to elderly or disabled persons at home by nonprofit organizations
12-36-2120(10)(c)	Food sold to nonprofit organizations or food sold or donated by the nonprofit organization to another nonprofit organization
12-36-2120(10)(d)	Meals or foodstuffs prepared or packaged that are sold to public or nonprofit organizations for congregate or in-home service to the homeless or needy or disabled adults over 18 or individuals over 60. This exemption only applies to meals and foodstuffs eligible for purchase under the USDA food stamp program.
12-36-2120(12)	Water sold by public utilities and certain non-profit corporations
12-36-2120(28)	Medicine and prosthetic devices sold by prescription; certain diabetic supplies sold to diabetics under the written authorization and direction of a physician; certain free samples of medicine and certain medicine donated to hospitals; prescription medicine and radiopharmaceuticals used in treating cancer or rheumatoid arthritis, including prescription medicines to relieve the effects of treatment; prescription medicines used to prevent respiratory syncytial virus; disposable medical supplies,

²⁶ This exemption only applies to the use tax. If the transaction in question is a sales tax transaction, this exemption does not apply. See SC Regulation 117-334 for information on when a transaction is a sales tax transaction and when it is a use tax transaction.

²⁷ This exemption only applies to the use tax. If the transaction in question is a sales tax transaction, this exemption does not apply. See SC Regulation 117-334 for information on when a transaction is a sales tax transaction and when it is a use tax transaction.

Code Section	Description
	such as bags, tubing, needles, and syringes, dispensed by a pharmacist by prescription of a licensed health care provider for the intravenous administration of a prescription drug (only for treatment outside of a hospital, skilled nursing facility, or ambulatory surgical treatment center); and prescription medicine dispensed to Medicare Part A patients in a nursing home.
12-36-2120(33)	Residential electricity and fuel. See South Carolina Revenue Ruling #19-5 for a discussion of this exemption as it applies to primary residences, vacation homes, and second homes.
12-36-2120(38)	Hearing aids
12-36-2120(39)	Concession sales by nonprofit organizations at festivals
12-36-2120(41)	Sales by certain nonprofit organizations
12-36-2120(47)	Goods sold to nonprofit hospitals that primarily treat children at no cost to the patient
12-36-2120(57)	Annual sales tax holiday on the first Friday, Saturday, and Sunday in August for personal use clothing, clothing accessories, footwear, computers, printers, printer supplies, computer software, bath wash cloths, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs, pillows, pillow cases, and school supplies For a question and answer document on the annual sales tax holiday, see South Carolina Revenue Ruling #19-4.
12-36-2120(63)	Medicine and medical supplies, including diabetic supplies and diabetic diagnostic and testing equipment, sold to a health care clinic providing free medical and dental care to all patients
12-36-2120(74)	Durable medical equipment and related supplies as defined under federal and state Medicare and Medicaid laws if (a) paid directly by funds of South Carolina or the United States under the Medicare and Medicaid programs, (b) state and federal law prohibits the payment of the sales and use tax, and (c) the sale is by a provider with a South Carolina retail license whose principal place of business is in South Carolina.

Code Section	Description
12-36-2120(75)	Unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons. This exemption does not apply to local taxes unless the local tax specifically exempts the sale of such food.
12-36-2120(76)	This exemption for a sales tax holiday for handguns, rifles, and shotguns was ruled unconstitutional by the Supreme Court of South Carolina ²⁸
12-36-2120(77)	This exemption for certain energy efficient products was ruled unconstitutional by the Supreme Court of South Carolina ²⁹
12-36-2120(80)	Injectable medications and injectable biologics, so long as the medication or biologic is administered by or pursuant to the supervision of a physician in an office which is under the supervision of a physician, or in a Center for Medicare or Medicaid Services certified Kidney dialysis facility.
12-36-2120(81)	Construction material used by an entity organized under IRS §501(c)(3) as a nonprofit corporation to build, rehabilitate, or repair a home for the benefit of an individual or family in need. An “individual or family in need” means an individual or family, as applicable, whose income is less than or equal to 80% of the county median income
12-36-2120(82)	Children’s clothing sold to a private charitable organization exempt from federal and state income tax, except for private schools, for the purpose of distribution by that organization to needy children. “Clothing” means those items exempt from sales and use tax pursuant to Code Section 12-36-2120(57)(a)(i)and (ii). “Needy children” means children eligible for free meals under the National School Lunch Program of the US Department of Agriculture.

²⁸ On May 4, 2009, the Supreme Court of South Carolina ruled that South Carolina Code §12-36-2120((76), which established an annual sales tax holiday on the Friday and Saturday after Thanksgiving for handguns (as defined in South Carolina Code §16-23-10(1)), rifles and shotguns, was unconstitutional. *The American Petroleum Institute and BP Products North America Inc. v. South Carolina Department of Revenue, et al.* S.C., 677 S.E.2d 16 (2009). However, the General Assembly enacted a temporary proviso that established a sales tax holiday on November 26th and 27th of 2010 for handguns (as defined in South Carolina Code §16-23-10(1)), rifles and shotguns.

²⁹ On May 4, 2009, the Supreme Court of South Carolina ruled that South Carolina Code §12-36-2120(77), which established an annual sales tax holiday during the month of October (beginning in 2009 and ending 2018) for certain energy efficient products (provided certain revenue growth forecasts were met), was unconstitutional. *The American Petroleum Institute and BP Products North America Inc. v. South Carolina Department of Revenue, et al.* S.C., 677 S.E.2d 16 (2009).

Code Section	Description
12-36-2120(83)	Any item which is subject to the infrastructure maintenance fee set forth in South Carolina Code §56-3-627
Temporary Proviso 117.60 (Act No. 91 of 2019)	Viscosupplementation therapies (for State Fiscal Year 2019–2020)

Alternative Energy Exemptions

Code Section	Description
12-36-2120(71)	Any device, equipment or machinery that is (a) operated by hydrogen or fuel cells, (b) used to generate, produce or distribute hydrogen and designated specifically for hydrogen applications or for fuel cell applications and (c) used predominantly for the manufacturing of, or research and development involving hydrogen or fuel cell technologies.
12-36-2120(72)	Building material used to construct a new or renovated building in a research district and machinery or equipment located in a research district. The sales tax that would have been assessed must be invested by the taxpayer in hydrogen or fuel cell machinery or equipment located in the same research district within 24 months of the exempt purchase.

8. SALES AND USE TAX SPECIFIC PROVISIONS

INTRODUCTION

This chapter discusses in more detail some of the most common sales and use tax exemptions available to manufacturers, processors, contractors, retailers, motion picture production companies, and other businesses considering locating, doing business, or expanding in South Carolina. In addition, this chapter also discusses other important sales and use tax issues for businesses considering doing business in South Carolina, such as the use of an exemption certificate to make purchases tax free, sales for resale, construction contracts, computer services and software, and our annual sales tax holiday weekend.

1. MANUFACTURERS, PROCESSORS, AND COMPOUNDERS

a. General Information

Manufacturers, processors, and compounders enjoy numerous exclusions and exemptions from sales and use tax under South Carolina Code §§12-36-2120 and 12-36-120. This section provides a more detailed discussion of the most common exemptions available to manufacturers, processors, and compounders, such as the sales tax exemption for machinery used in manufacturing, processing, recycling, compounding, mining, or quarrying tangible personal property for sale; ingredient parts; electricity; fuel; packaging; and sales for resale.

NOTE: Other exemptions discussed in this chapter and those listed in Chapter 7 above may also apply to your business. See also South Carolina Regulation 117-302, “Manufacturers, Processors, Compounders, Miners, and Quarries” for more information on available exclusions and exemptions.

b. Machines, Parts, and Attachments

General Information. Whether a machine is exempt from sales and use tax depends on the circumstances and use of the machine. For example, is a machine exempt from sales and use tax if it is a fixture to realty (but not a building), is owned by someone other than a manufacturer, has more than one use, or is used to abate pollution caused by a machine used in manufacturing? These questions are addressed below and examples are provided to assist in understanding South Carolina’s machine exemption.

South Carolina Code §12-36-2120(17), commonly referred to as the machine exemption, exempts from sales and use tax purchases of machines used in manufacturing, processing, agricultural packaging, recycling, compounding, mining, or quarrying tangible personal property for sale. The term “machines” includes the parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of the machines and which are necessary to the operation of the machines and are customarily so used or are necessary to comply with the order of an agency of the United States or of South Carolina for the prevention or abatement of pollution of air, water, or noise that is caused or threatened by a machine used in manufacturing, processing, agricultural packaging, recycling, compounding, mining, or quarrying tangible personal property for sale. This exemption does not include automobiles or trucks.

For South Carolina purposes, the applicability of this machine exemption depends on whether the machine or combination of mechanical powers, parts, attachments, and devices are integral and necessary to the manufacturing process. (**NOTE:** References to “manufacturing” include “processing,” “compounding,” “mining,” and “quarrying.”) In other words, a machine is exempt from the sales and use tax if it is an essential and indispensable component part of the manufacturing process and is used on an ongoing and continuous basis during the manufacturing process. The court in *Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission*, 313 S.E. 2d 300 (1984) set forth a test for making this determination; two South Carolina court decisions in 2003 have followed and clarified this test. Each is briefly discussed below.

- ◆ The *Hercules* case involved whether a facility that treated waste that was produced in connection with the manufacturing of textile products for sale was a machine. The Court held that the wastewater treatment facility was a machine and that its various parts and attachments (such as vats, basins, tanks, pumps, other mechanical devices, troughs, and pipes) are integral and necessary to the operation of the system as a whole.

The following test was used by the Court in determining what is an exempt “machine.” Are improvements, either fastened or loose:

1. Used directly in manufacturing the products that the establishment intended to produce;
2. A necessary and integral part of the manufacturing process;
3. Used for the purpose of manufacturing the product it was intended to produce; and
4. Not benefiting the land generally, and will not serve various users of the land.

The Court further defined the term “machine” to include “the concept of combination” (*i.e.*, combination of mechanical powers, parts, attachments and devices to perform some function and produce a certain effect or result integral and necessary to the manufacturing process) and held that the statute “does not require a machine to have moving parts if it is an integral part of the manufacturing process” and that the statute makes no distinction “as to whether a machine is a fixture or personal property.”

- ◆ *Springs Industries, Inc., v. South Carolina Department of Revenue*, South Carolina Court of Appeals, No. 2003-UP-029, January 8, 2003 (unpublished), cert. denied, October 8, 2003. *Springs* involved the applicability of the machine exemption to “machines used in manufacturing” at a textile plant, and to chemicals used at the plant’s wastewater treatment facilities to purify manufacturing waste. The court held that machinery is exempt if it is integral and necessary to the manufacturing process and used on an ongoing and continuous basis during the manufacturing process.
- ◆ *Anonymous Corporation v. South Carolina Department of Revenue* (02-ALJ-17-0350-CC). This case involved whether buildings or parts of buildings could be exempt under the machine exemption. The Administrative Law Court held that building materials, such as: (a) paint and sealants, (b) foundations, (c) structural steel, (d) steel decking and checkers plates for buildings, (e) hangers and supports for process piping, and (f) architectural roofing and siding, were not exempt as a machine.

Based on the above, the machine exemption does not apply to everything that can be useful to a manufacturer. The applicability of the machine exemption depends on whether the machine is integral and necessary to the manufacturing process. To aid in determining the application of the machine exemption in accordance with the above court decisions, the Department issued South Carolina Revenue Ruling #04-7 and the General Assembly approved an amendment of South Carolina Regulation 117-302.5. The following issues were addressed in the ruling and the regulation:

1. Chemicals, Greases, Oils, Lubricants and Coolants
2. Classification of Machines Used in Manufacturing, Maintenance, or Storage
3. Conveyances
4. Manufacturing Buildings
5. Administrative Machines, Furniture, Equipment and Supplies
6. Protective Clothing

Below is a brief summary of the machine exemption principles in South Carolina Code §12-36-2120(17), South Carolina Regulations 117-302.5 and 117-302.6, and South Carolina Revenue Ruling #04-7.

Machine Exemption – General Rule. A machine qualifies for the machine exemption under South Carolina Code §12-36-2120(17) if the machine meets the following three requirements:

1. The machine is used at a manufacturing facility whose purpose is manufacturing a product “for sale.” It does not apply to machines used at a facility whose purpose may be retailing, wholesaling, or distributing. For example, machines used by an industrial baker manufacturing breads for sale may be purchased tax free; however, similar machines used by a local retail bakery may not be purchased tax free.
2. The machine is used in, and serves as an essential and indispensable component part of, the manufacturing process and is used on an ongoing and continuous basis during the manufacturing process. **NOTE:** A machine “integral and necessary” to the manufacturer, such as a machine used solely for warehouse, distribution, or administrative purposes, is not tax exempt under the machine exemption since it is not “integral and necessary” to the manufacturing process.
3. The machine must be substantially used (not necessarily exclusively used) in manufacturing tangible personal property for sale (i.e., more than one-third of a machine’s use is for manufacturing.)

A machine meeting the above requirements may be exempt even if it does not have moving parts or is a fixture upon the real estate where it stands. However, buildings and parts of buildings, as well as other improvements which benefit the land generally and may serve other users of the land, are not exempt.

Machine - Replacement Parts and Attachments. Parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of exempt machines are also exempt under the machine exemption in South Carolina Code §12-36-2120(17) if they are: (1) used on or in the operation of exempt machines, (2) manufactured for use on or in the operation of exempt machines, (3) integral and necessary to the operation of exempt machines, and (4) customarily so used.

This means the part or attachment must be: (a) 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 adjustments (except as otherwise provided), (b) a standard part or attachment that is customarily used in connection with the machine, and (c) the machine or

machinery on which it is used would not do the work for which it was designed if the part or attachment were not used. This exempts all parts and attachments without which the machine would do no work, and exempts parts and attachments designed to increase the efficiency of the machine. See South Carolina Regulation 117-302.5 for guidance in determining what qualifies as a part or attachment to a machine.

Examples of Exempt Machines or Machine Parts. Examples of exempt machines or parts of machines include the following:

- ◆ material handling or mechanical conveyor machines feeding the first processing machine; the machine that discharges the finished product from the last machine used in the process; material handling machinery used for transporting in process material from one process stage to another
- ◆ chemicals, including greases, oils, lubricants, and coolants, used in an exempt manufacturing machine that are essential to the functioning of the exempt machine during the manufacturing process
- ◆ tanks which are a part of the chain of processing operations (the exemption does not include storage tanks)
- ◆ transformers, capacitors, and voltage regulators used by manufacturers, processors, or compounders as a part of their manufacturing, processing, or compounding machinery
- ◆ 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
- ◆ recording instruments attached to manufacturing machines
- ◆ belting purchased for use on a particular machine used in manufacturing tangible personal property for sale
- ◆ materials used by manufacturers or contactors in building machines that will manufacture tangible personal property for sale

Examples of Non-Exempt Machines or Parts. Examples of taxable machines or parts include the following:

- ◆ material handling machinery and/or mechanical conveyors up to the point where the materials go into process

- ◆ chemicals used to clean either the manufacturing facility or non-exempt machines, such as storage tanks
- ◆ paint used on exempt manufacturing machines to prevent machine corrosion
- ◆ greases, oils (*e.g.*, motor oils, gear oils, or chain oils), lubricants, and coolants used in an exempt manufacturing machine when such items are not integral and necessary to the manufacturing process, such as those that are not essential in ensuring the functioning of the machine during the manufacturing process
- ◆ machines used for maintenance purposes (i.e., machines used to maintain nonexempt machines that are not integral and necessary to the manufacturing process, or are not used on an ongoing, continuous basis to maintain exempt manufacturing machines that are integral and necessary to the manufacturing process), such as pressure washing machines and ultrasonic cleaning machines used to clean non-exempt machines or parts, such as storage tanks
- ◆ storage racks used to store raw materials or finished goods, or storage tanks used to store raw materials, gasses, or water
- ◆ warehouse machines used for warehouse purposes, such as loading and unloading, storing, or transporting raw materials or finished products
- ◆ storage tanks and piping leading to and from storage tanks and piping bringing gas or water into the plant
- ◆ power lines bringing electricity into the plant
- ◆ administrative machines, furniture, equipment and supplies such as office computers, paper, or items used for the personal comfort, convenience, or use of employees

Machine – A Structure versus a Building. South Carolina Code §12-36-2120(17) can apply to machines that are “structures”. A structure that is a building is not a “machine,” and the materials used to construct the building are not exempt from sales and use tax as a machine, part, or attachment used in manufacturing. See South Carolina Regulation 117-302.5 and South Carolina Revenue Ruling #04-7 for more details.

For additional information on when a structure qualifies as a machine, see (1) South Carolina Revenue Ruling #89-7 where the Department held that a settling basin for a wastewater treatment facility was one part of a single facility and that the facility was a “machine” and (2) South Carolina Private Letter Ruling #90-3 where the Department held that a gamma irradiator constitutes a machine.

Pollution Abatement Machines. South Carolina Code §12-36-2120(17) and South Carolina Regulation 117-302.6 classify pollution control machines as machines used in mining, quarrying, compounding, processing, agricultural packaging, or manufacturing of tangible personal property when installed and operated for compliance with an order of an agency of the United States or of this state to prevent or abate air, water, or noise pollution caused or threatened by the operation of other exempt machines used in the mining, quarrying, compounding, processing, agricultural packaging, and manufacturing of tangible personal property for purposes of South Carolina Code §12-36-2120(17).

The application of this regulation was addressed in Commission Decision #92-19 where it was held that stack liners and ash pond pipes and pumps located at a taxpayer’s electrical generating facility were exempt from sales and use tax on the grounds that these items were “operated exclusively in the abatement of pollution caused by the production of electricity.”

Additionally, the Department determined in South Carolina Private Letter Ruling #92-9 that certain parts, attachments, and components of a chimney stack used in the manufacture of electricity were “machines” required by state and federal law and were necessary and integral to the manufacture of electricity, and, therefore, were exempt from sales and use tax as provided under South Carolina Code §12-36-2120(17) and South Carolina Regulation 117-173 (recodified as 117-302.6). See also *Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission*, 313 S.E.2d 300 (1984).

Machine Owned by Someone Other Than a Manufacturer. South Carolina Code §12-36-2120(17) does not require ownership of the machine by the manufacturer to qualify for the sales and use tax exemption. The use of a machine determines whether it is exempt from sales and use tax.

This issue was considered in *Hercules*. The Court reviewed whether the machine exemption applied to materials purchased to build a waste treatment facility that was owned by a South Carolina town and used substantially by a manufacturer in the manufacture of tangible personal property for sale. The Court determined that the machine exemption applied to the

materials used to construct that facility, without regard to the machine’s ownership, since the facility satisfied a pollution control requirement and thereby allowed the manufacturer to remain in operation. See also *Southeastern-Kusan v. South Carolina Tax Commission*, 280 S.E.2d 57 (1981).

Machine Used Substantially in Manufacturing (Dual Usage Machine). South Carolina Code §12-36-2120(17) requires “substantial,” but not “exclusive,” use of the machine in the manufacture of tangible personal property for sale in order for the machine exemption to apply.

For example, the purchase of a forklift that is used substantially to move materials from one stage of the production process to another (an exempt purpose) and also used to load trucks (a non-exempt purpose) is allowed the machine exemption from sales and use tax. In addition, purchases of parts for the forklift are also exempt from tax.

Further, this principle was reviewed in *Hercules* where the Court determined that a municipally owned waste treatment facility was a machine used substantially in the manufacture of tangible personal property for sale. At this facility, approximately 35% of the waste treated was from a manufacturing plant and the rest was from ordinary municipal sources. The Court concluded that the machine exemption does not provide that the manufacturing use has to be exclusive nor does it require that the manufacturing use be the primary use to which the facility is devoted. In accordance with South Carolina Regulation 117-302.5, more than one-third of a machine’s use in manufacturing is substantial.

Machine Used in Research and Development. See Section 7 below in this Chapter.

Machine Used in Recycling. See Section 3 below in this Chapter.

c. Tangible Personal Property that is an “Ingredient or Component Part” or “Used Directly” in the Process

South Carolina Code §12-36-120(2) does not tax the sale of tangible personal property to a manufacturer or compounder that is an ingredient or component part of the tangible personal property or products manufactured or compounded for sale.

Further, South Carolina Code §12-36-120(3) does not tax the sale of tangible personal property used directly in manufacturing, compounding, or processing tangible personal property for sale. South Carolina Regulation 117-302.1 provides, in part, that something is “used directly” if 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.

South Carolina Regulation 117-302.1 also provides that the sales tax does not apply to the sale of (1) acetylene, oxygen, and other gases sold to manufacturers or compounders that enter into and become an ingredient or component part of the tangible personal property or products which it 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, or (2) plates attached by the manufacturer to its product for identification purposes and which become a part of the product.

d. Electricity

South Carolina Code §12-36-2120(19) exempts from sales and use tax the sale of electricity used by manufacturers, processors, miners, quarriers, or cotton gins to manufacture, mine, or quarry tangible personal property for sale.

South Carolina Regulation 117-302.4 further provides that this exemption applies to electricity to provide lighting necessary for the operation of such machines and 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.

This exemption does not apply to sales of 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.

e. Coal, Coke, and Other Fuel

South Carolina Code §12-36-2120(9) exempts from sales and use tax the sale of coal, coke, or other fuel sold to manufacturers and electric power companies for the generation of heat or power used in manufacturing tangible personal property for sale or the generating of electric power or energy for use. The statute further exempts coal, coke or other fuel sold to manufacturers for the production of by-products or for the generation of electric power or energy for use in manufacturing tangible personal property for sale. For purposes of this exemption, mining and quarrying are considered to be manufacturing.

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.

f. Fuel used by Aircraft Manufacturer

South Carolina Code §12-36-2120(9) also exempts the sale of fuel for (1) the generation of motive power for test flights of aircraft by the manufacturer of the aircraft; and (2) the transportation of an aircraft prior to its completion from one facility of the manufacturer of the aircraft to another facility of the manufacturer of the aircraft, not including the transportation of major component parts for construction or assembly, or the transportation of personnel. These exemptions only apply when the taxpayer invests at least \$750 million dollars in real or personal property or both comprising or located at a single manufacturing facility over a 7-year period and creates at least 3,800 full-time new jobs at the single manufacturing facility during that 7-year period. The taxpayer must notify the Department in writing before the first month it uses these exemptions. **The exemption for certain aircraft fuel became effective November 1, 2009 and required that a notice be filed with the Department prior to October 31, 2015 in order for the taxpayer to qualify for the exemption. This exemption continues to be available to eligible taxpayers who notified the Department prior to October 31, 2015.**

g. Packaging

South Carolina Code §12-36-120(4) does not tax purchases of materials, containers, cores, labels, sacks, or bags that are used incident to the sale and delivery of tangible personal property. South Carolina Regulation 117-302.2 provides definitions of the terms “materials,” “containers,” and “cores.”

“Materials” include 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” include paper, plastic or cloth sacks, bags, boxes, bottles, cans, cartons, drums, barrels, kegs, carboys, cylinders, and crates.

“Cores” include spools, spindles, cylindrical tubes and the like on which tangible personal property is wound.

This sales and use tax exclusion applies to labels affixed to manufactured articles to identify such products only when such labels are passed on to the ultimate consumer of such products, and to excelsior, cellulose wadding, paper stuffing, sawdust and other packing materials used to protect products in transit. This exclusion does not apply to address stickers and shipping tags, and materials used to preserve property during shipment, such as dry ice and rust preventives.

In addition, South Carolina Code §12-36-2120(14) exempts from sales and use tax the sale of wrapping paper, wrapping twine, paper bags, and containers used incident to the sale and delivery of tangible personal property.

h. Sale for Resale or Wholesale Sales

Sales by manufacturers and compounders of tangible personal property are not taxable if the property is sold for resale (e.g., a wholesale sale) under South Carolina Code §12-36-120(1). Further, a manufacturer is considered to be making a wholesale sale and not liable for South Carolina sales and use tax when the manufacturer, at the request of a retailer, drop ships its product in South Carolina to a retailer’s customer and bills the retailer for the product. See South Carolina Revenue Ruling #98-8 for further information on drop shipments.

A resale certificate, Form ST-8A, can be used by retailers to purchase tangible personal property for resale. It is not necessary that a resale certificate be obtained for each purchase; the seller must maintain only one resale certificate per customer. By accepting the resale certificate and having it on file, the seller is relieved of the tax liability provided (1) the resale certificate presented to the seller by the purchaser contains all the information required by the Department and has been fully and properly completed, (2) the seller did not fraudulently fail to collect or remit the tax, or both, and (3) the seller did not solicit a purchaser to participate in an unlawful claim that a sale was for resale. It is not required that Form ST-8A be used. A letter from the purchaser to the seller or a resale certificate from another state is acceptable provided it contains the same information requested on Form ST-8A. In addition, the “Uniform Sales and Use Tax Certificate” published by the Multistate Tax Commission (“MTC”) may be used by a purchaser for the purpose of purchasing tangible personal property that will be resold, leased, or rented in the normal course of the purchaser’s retail business. See South Carolina Revenue Procedure #08-2 for further information on the acceptance of a resale certificate, Form ST-8A, and the liability for the tax.

2. DIRECT PAY AND EXEMPTION CERTIFICATES

Manufacturers and other taxpayers may operate a business of the nature that makes it impractical to account for sales and use taxes at the time of purchase. In such cases, South Carolina Code §12-36-2510 provides that the Department may issue a certificate to authorize taxpayers to make some or all purchases at wholesale or tax free. The holder of a certificate, not the retailer, is liable for any sales and use taxes which may be due on the items purchased with the certificate.

The Department issues two types of certificates: (1) the “direct pay” certificate and (2) the “limited exemption” certificate. Each is briefly discussed below:

- ◆ **Direct Pay Certificate.** This certificate enables the taxpayer issued the certificate to purchase all items free of the sales and use tax and to remit the tax due on items subject to sales and use tax. This is available only for large projects and the use of the method is at the sole discretion of the Department. The direct pay certificate is also referred to as a “Special 19 Agreement.”

Further, South Carolina Code §12-36-2570(E) allows the Department to enter into a written agreement with a taxpayer having a direct pay certificate to allow the taxpayer to remit the sales and use tax on statistical factors set forth in a memorandum of understanding. This method only applies to purchases of routine expense items by the taxpayer for its use, storage, or consumption, and not to purchases by the taxpayer for resale (which are exempt).

- ◆ **Limited Exemption Certificate.** This certificate enables the taxpayer issued the exemption certificate to purchase only those items specifically indicated on the certificate free of sales and use tax. For example, the certificate may show that only machinery and electricity may be purchased tax free. The sales and use tax must be paid on all other purchases at the time of sale. The limited exemption certificate is also referred to as a “special” exemption certificate.

To request a certificate, the taxpayer must submit an application on Form ST-10, “Application for Certificate.” Usually, a visit will be made to the taxpayer’s business to determine if a certificate should be issued. Once approved, the Department will issue the taxpayer an exemption certificate on Form ST-9. The taxpayer should provide a copy of the certificate to the retailer; however, it is not necessary to provide a copy each time a purchase is made.

3. MACHINES USED IN RECYCLING

South Carolina Code §12-36-2120(17) exempts machines used in recycling tangible personal property for sale. “Recycling” is defined to mean any process by which materials which would otherwise become solid waste are collected, separated, or processed and reused, or returned to use in the form of raw materials or products, including composting, for sale.

4. MATERIAL HANDLING SYSTEMS AND EQUIPMENT

South Carolina Code §12-36-2120(51) exempts from sales and use tax material handling systems and material handling equipment used in the operation of a distribution¹ or manufacturing facility including, but not limited to, racks, regardless of whether the racks are used to support all or part of the facility . An investment of \$35 million in real or personal property in South Carolina over a 5-year period is required to qualify for this exemption.

To qualify for this exemption, the taxpayer must notify the Department in writing before the first month it uses the exemption. This notification must provide the date the taxpayer intends for the 5-year investment time period to begin.

In addition, the taxpayer must notify the Department in writing when the \$35 million investment requirement has been met. If the investment requirement has not been met at the end of the 5-year investment period, the taxpayer must notify the Department in writing. The running of the period of limitations for assessment of taxes is suspended beginning with the notice to the Department that the exemption will be used and ending with the notice that the investment requirement has or has not been met.

See South Carolina Revenue Ruling #13-3 for answers to commonly asked questions on the material handling systems exemption. This advisory opinion concluded, in part:

- ◆ Only material handling systems and material handling equipment used in distribution or manufacturing facilities qualify for the exemption.
- ◆ Purchases of replacement and repair parts qualify for the exemption.
- ◆ The investment may be made anywhere in South Carolina and the investment does not have to be made at the same location where the exemption is taken.
- ◆ The investment is limited to real or personal property in South Carolina. Expenditures for wages, employee benefits, taxes, raw materials, and inventory do not meet the investment requirement.

¹ Under Temporary Provisos 117.127 and 50.20, respectively (2019 Act No.91, Part 1B) the State Ports Authority and the Navy Base Intermodal Facility are considered distribution facilities for the purpose of this exemption for State Fiscal Year 2019-2020. Additionally, under Code Section 12-36-2140, for purposes of the exemptions in Article 21, Chapter 36, the term “distribution facility” includes, but is not limited to, a port facility as defined in Code Section 12-6-3375.

5. CONSTRUCTION CONTRACTOR

a. General Information

South Carolina Code §12-36-110 provides that a construction contractor is the user or consumer of everything he buys. A “construction contractor” is a person or business making repairs, alterations, or additions to real property. See South Carolina Regulation 117-314.2.

In general, purchases by construction contractors are retail purchases and are subject to South Carolina sales or use tax. South Carolina Code §12-36-1310(A) provides that if a contractor buys building materials in another state and brings them into South Carolina for use on a construction contract in South Carolina, then the contractor is liable for South Carolina use tax. A credit is allowed against South Carolina use tax for the total taxes (state and local) due and paid in another state pursuant to South Carolina Code §12-36-1310(C).

The following are examples of transactions where the contractor is not subject to South Carolina sales and use tax:

1. The contractor buys property from a South Carolina supplier and the supplier delivers the property to the contractor (or to an agent or donee of the contractor) outside South Carolina. See South Carolina Code §12-36-2120(36).
2. The contractor purchases tangible personal property in South Carolina for use on contracts outside South Carolina. To come within this exclusion, the contractor must perform some work on the property in South Carolina and the property must not be brought back into South Carolina. See South Carolina Code §12-36-110(2).

b. Construction Contracts with Manufacturers

Unlike most purchases by construction contractors, the purchase of materials that are components of machines which are used in manufacturing tangible personal property for sale may be purchased tax free. See South Carolina Regulation 117-302.5. Often, a construction contractor will have a contract with a manufacturer, processor, or compounder who has an exemption certificate and is entitled to the exemption for machines, parts, and attachments.

Since construction contractors usually cannot make tax free purchases, the Department has developed several methods by which a contractor may purchase tax free all items to be used in building machines, parts, and attachments for manufacturers who are exempt from tax. These methods are:

- ◆ **Manufacturer Letter to Contractor’s Suppliers** – The manufacturer furnishes documentation, in the form of a letter, to the contractor’s suppliers establishing that the item is not subject to the tax. The contractor does not use the manufacturer’s exemption certificate.
- ◆ **Agency Agreement** – The contractor enters into a limited agency agreement with the manufacturer and the contractor is allowed to use the manufacturer’s exemption certificate. As an agent, the contractor is legally acting for the manufacturer. The manufacturer is liable for any taxes due, so it is important for the agreement to be in writing and clearly state what the contractor can and cannot buy with the certificate. This is usually used for large projects.
- ◆ **Department Special Agreement** – The Department executes a special agreement with the manufacturer whereby the manufacturer will accept liability and responsibility for payment of all the sales and use tax due on the project. This is only available for large projects and the use of this method is at the sole discretion of the Department. This is referred to as a “Special 19 Agreement.”
- ◆ **Single Sale Exemption Certificate** – The contractor completes Form ST-8 and extends it to the supplier indicating the purchase is exempt under South Carolina Code §12-36-2120(17). A certificate must be extended for each purchase. The contractor assumes full liability for the tax if it is determined that the purchase was used for a non-exempt purpose.

c. Light Construction Equipment

South Carolina Code §12-36-2110(A)(1)(g) provides a maximum sales or use tax of \$500 on purchases of light construction equipment. The equipment must be self-propelled with a maximum of 160 net engine horsepower. Form ST-405 may be completed by the purchaser and given to the retailer in order to limit the tax to \$500. The local option sales and use taxes collected by the Department do not apply to sales subject to the \$500 maximum tax.

If light construction equipment is leased, it is subject to the \$500 maximum tax if the lease is in writing, has a stated term, and remains in force for a period in excess of 90 continuous days. The taxpayer may pay the total tax due at the time the lease is executed or with each lease payment until the \$500 is paid.²

² If the property is required to be registered with SCDMV under Chapter 3 of Title 56, an Infrastructure Maintenance Fee applies upon first registration with SCDMV, and sales and use taxes do not apply.

In South Carolina Technical Advice Memorandum #89-13, the Department concluded that the maximum tax³ does not apply to equipment used to maintain or repair property, such as tractors, loaders, and other self-propelled equipment used to maintain golf courses, parks, and campgrounds.

d. Construction Material Used to Construct a Single Manufacturing or Distribution Facility

South Carolina Code §12-36-2120(67) exempts from sales and use tax construction materials used in the construction of a single manufacturing or distribution⁴ facility, or one that serves both purposes, with a capital investment of at least \$100 million in real and personal property at a single site in the state over an 18-month period.

To qualify for this exemption, the taxpayer must notify the Department in writing before the first month it uses the exemption. This notification must provide the date the taxpayer intends for the 18-month investment time period to begin.

In addition, the taxpayer must notify the Department in writing when the \$100 million investment requirement has been met. If the investment requirement has not been met at the end of the 18-month investment period, the taxpayer must notify the Department in writing. The running of the period of limitations for assessment of taxes is suspended for the time period beginning with notice to the Department before the exemption is used and ending with notice that the investment requirement has or has not been met. See SC Revenue Ruling #15-2.

South Carolina Code §12-36-2120(67) also fully exempts the sale of construction material used in the construction of a new or expanded single manufacturing facility where the taxpayer invests at least \$750 million dollars in real or personal property or both comprising or located at the facility over a 7-year period and creates at least 3,800 full-time new jobs at the facility during that 7-year period. **This exemption for taxpayers making the \$750 million investment and creating at least 3800 full-time new jobs became effective November 1, 2009 and required that a notice be filed with the Department prior to October 31, 2015 in order for the taxpayer to qualify for the exemption. This exemption continues to be available to eligible taxpayers who notified the Department prior to October 31, 2015.**

³ The maximum tax was increased to \$500 as of July 1, 2017.

⁴ Under Temporary Provisos 117.127 and 50.20, respectively, (2019 Act No.91, Part 1B) the State Ports Authority and the Navy Base Intermodal Facility qualify for the construction materials exemption for State Fiscal Year 2019-2020. Additionally, under Code Section 12-36-2140, for purposes of the exemptions in Article 21, Chapter 36, the term “distribution facility” includes, but is not limited to, a port facility as defined in Code Section 12-6-3375.

6. CONTRACTS WITH THE FEDERAL GOVERNMENT

South Carolina Code §12-36-2120(29) exempts from sales and use tax tangible personal property purchased by a person under written contract with the federal government that

- ◆ Becomes part of real or personal property owned by the federal government or
- ◆ Transfers to the federal government, pursuant to a written contract.

The exemption does not apply to purchases of items which do not transfer to the federal government, such as tools. Purchases made by contractors under contracts with state, county, and municipal governments are not exempt from sales and use tax.

Further, South Carolina Regulation 117-314.11 (see also South Carolina Revenue Ruling #04-9) provides that purchases by a construction subcontractor for use in a federal government construction project in South Carolina are exempt if: (a) the subcontractor has a written contract with the general construction contractor that in turn has a written contract for the project with the federal government, and (b) the subcontractor is an agent for the general contractor. In addition, purchases by a subcontractor of the subcontractor for use in a federal government construction project in South Carolina are not subject to the sales and use tax if the general contractor that has the written contract with the federal government has specifically granted his agent the authority to appoint a subagent that can bind the general contractor. The agency agreements with the subcontractors (as agents or subagents) must be in writing to meet the exemption requirement. See South Carolina Regulation 117-314.11 (see also South Carolina Revenue Ruling #04-9) for the conditions that must be met for a subcontractor to be an agent for a general contractor.

7. RESEARCH AND DEVELOPMENT MACHINERY

South Carolina Code §12-36-2120(56) provides an exemption from sales or use tax for machines used in research and development (i.e., machines used directly and primarily in research and development, in the experimental or laboratory sense, of new products, new uses for existing products, or improvement of existing products). South Carolina Revenue Ruling #08-3 provides that for a machine to qualify for this exemption more than 50% of its total use must be for direct use in research and development, as defined in the exemption.

“Machines” includes machines and parts of machines, attachments, and replacements used or manufactured for use on or in the operation of the machines, which are necessary to the

operation of the machines, and are customarily so used. (See Business Property Tax, Chapter 4, Section 5, which addresses a property tax exemption for facilities engaged in research and development.)

8. TECHNOLOGY INTENSIVE FACILITY

South Carolina Code §12-36-2120(65)(a) exempts computer equipment used in connection with a technology intensive facility from the sales and use tax. South Carolina Code §12-36-2120(66) exempts electricity used by a technology intensive facility that qualifies for the exemption in South Carolina Code §12-36-2120(65), and the equipment and raw materials including, without limitation, fuel used by such facility to generate, transform, transmit, distribute, or manage electricity for use in the facility.

In order to qualify for these exemptions, the taxpayer must:

1. Invest at least \$300 million in real or personal property, or both, at the facility over a 5-year period;
2. Create at least 100 new jobs at the facility during that 5-year period, and the average cash compensation of at least 100 of the new jobs is 150% of the per capita income of the State according to the most recently published data available at the time the facility's construction starts; and
3. Spend at least 60% of the \$300 million on computer equipment.

The terms "technology facility" and "computer equipment" are defined as:

1. "Technology intensive facility" - a facility at which a firm engages in the design, development, and introduction of new products or innovative manufacturing processes, or both, through the systematic application of scientific and technical knowledge. It includes North American Industrial Classification Systems ("NAICS") Manual codes 5114 (database and directory publishers), 5112 (software publishers), 54151 (computer systems design and related services), 541511 (custom computer programming services), 541512 (computer design services), 541711 (research and development in biotechnology), 541712 (research and development in physical, engineering, and life sciences (except biotechnology)), 518210 (data processing hosting and related services), 9271 (space research and technology), or a facility primarily used for one or more activities listed under the 2002 version of the NAICS codes 51811 (internet service providers and web search portals). See South Carolina Code §12-6-3360(M)(14)(b).

2. “Computer equipment” - original or replacement servers, routers, switches, power units, network devices, hard drives, processors, memory modules, motherboards, racks, other computer hardware and components, cabling, cooling apparatus, and related or ancillary equipment, machinery, and components, the primary purpose of which is to store, retrieve, aggregate, search, organize, process, analyze, or transfer data or any combination of these, or to support related computer engineering or computer science research.

These exemptions have certain notification requirements to be followed by the taxpayer. The exemptions apply from the start of the investment in, or construction of, the facility. Once the Department certifies that the taxpayer has met the investment and job requirements, all subsequent purchases of, or investments in, computer equipment, including to replace originally deployed computer equipment or to implement future expansions, qualify for the exemption, regardless of when the taxpayer makes the investments.

9. QUALIFIED RECYCLING FACILITY

South Carolina Code §12-36-2120(50) provides an exemption from sales and use tax for

- ◆ Recycling property used at the facility
- ◆ Electricity, natural gas, propane or fuels of any type, oxygen, hydrogen, nitrogen or gases of any type, and fluids and lubricants used by the facility
- ◆ Tangible personal property which becomes, or will become, an ingredient or component part of products manufactured for sale by the facility
- ◆ Tangible personal property of, or for, the facility which is, or will be used: (1) for the handling or transfer of post-consumer waste material, (2) in, or for, the manufacturing process, or (3) in, or for, the handling or transfer of manufactured products
- ◆ Machinery and equipment foundations used, or to be used, by the facility.

The requirements to qualify for this exemption include a minimum level of investment for the recycling facility of at least \$300 million by the end of the fifth calendar year after the year in which the taxpayer begins construction or operation of the facility.

Further, the facility must manufacture products for sale composed of at least 50% post-consumer waste material by weight or volume. The definitions of the terms “recycling property,” “qualified recycling facility,” and “post-consumer waste material” are defined in South Carolina Code §12-6-3460.

10. CLEAN ROOM ENVIRONMENT

South Carolina Code §12-36-2120(54) exempts from sales and use tax the sale of clothing and other attire required for working in a Class 100 or better clean room environment, as defined in Federal Standard 209E.

11. SALE OF BUSINESS

South Carolina Code §12-36-2120(42) exempts from sales and use tax the sale of depreciable assets used in the operation of a business pursuant to the sale of the business. This exemption only applies where the entire business is sold by the owner pursuant to a written contract and the purchaser continues its operation. Purchases of real property, inventory for resale, and intangibles are always exempt.

Under South Carolina Revenue Advisory Bulletin #01-1, the sale of a business will qualify as the sale of the entire business when:

1. The taxpayer sells all the assets of the legal entity (other than a single member limited liability company or a grantor trust which is ignored for tax purposes), or
2. The taxpayer sells all of the assets of a “discrete business enterprise” that is contained within the legal entity.

The Department further determined that whether a taxpayer has sold a discrete business enterprise is determined under the principles relating to a unitary business as set forth in the case law of the South Carolina courts and the United States Supreme Court. If the business being sold is not unitary with other businesses of the taxpayer, the taxpayer will be considered to have sold a discrete business enterprise and will qualify for the exemption.

12. COMPUTER SERVICES AND SOFTWARE

South Carolina Code §12-36-910(C) provides that sales and use tax does not apply to data processing. As used in the statute, “data processing” means the manipulation of information furnished by a customer through all or part of a series of operations involving an interaction of procedures, processes, methods, personnel, and computers.

The term also means the electronic transfer of, or access to, that information. Examples of data processing include, without limitation, summarizing, computing, extracting, storing, retrieving, sorting, sequencing, and the use of computers.

The applicability of sales and use tax to the sale or purchase of computer software depends upon the form of the software sold. Computer software sold and delivered to a purchaser in a tangible form, such as magnetic tape, diskette, or flash drive is subject to sales and use tax. See *Citizens and Southern Systems, Inc. v. South Carolina Tax Commission*, 280 S.C. 138, 311 S.E.2d 717 (1984). In South Carolina Revenue Rulings #96-3 and #12-1, the Department concluded that computer software sold and delivered by electronic means is not subject to sales and use tax since it does not meet the definition of tangible personal property. See South Carolina Revenue Rulings #12-1, #11-2 and #05-13 for more information on the taxation of computer software, hardware, and maintenance contracts.

13. REPAIRING AND RECONDITIONING AIRCRAFT

South Carolina Code §12-36-2120(52) exempts from sales and use tax parts and supplies used by persons engaged in the business of repairing or reconditioning aircraft. This exemption does not extend to tools and other equipment not attached to the aircraft or that do not become a part of the aircraft.

14. GOODS SHIPPED FROM SOUTH CAROLINA

South Carolina Code §12-36-2120(36) provides that when the seller is obligated by contract to deliver tangible personal property to the buyer or to an agent or donee of the buyer at a point outside of South Carolina 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 sales and use tax does not apply provided the property is not returned to a point within South Carolina. The most acceptable proof of transportation outside South Carolina is: (1) a way-bill or bill of lading made to the seller's order and calling for delivery, (2) an insurance receipt or registry issued by the U.S. Postal Department, or a Postal Department Form 3817, or (3) 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. The tax applies when tangible personal property pursuant to a sale is delivered in South Carolina to the buyer or to an agent other than a carrier even though the buyer may subsequently transport the property out of South Carolina.

15. INTERSTATE AND INTERNATIONAL COMMERCE

South Carolina Code §12-36-2120(13), (20), (21), and (40) exempt from sales and use tax railroad cars, locomotives and their parts; vessels and barges of more than 50 tons burden; containers and chassis, including all parts and components sold to international shipping lines which have a contractual relationship with the South Carolina State Ports Authority and are used for the import or export of goods to or from this state; and fuel, lubricants, and supplies for use or consumption aboard ships in intercoastal trade or foreign commerce.

South Carolina Regulation 117-321.1 provides that the exemption in South Carolina Code §12-36-2120(13) for supplies used or consumed aboard ships in intercoastal trade or foreign commerce does not apply to: (1) sales of materials used in fulfilling a contract for the painting, repair, or reconditioning of vessels, barges, ships, or other watercraft, and (2) sales of 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.

Ship chandlers sell marine supplies to operators of all kinds of watercraft and to others. South Carolina Regulation 117-309.7 provides that 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 except for tangible personal property delivered to a ship from a bonded warehouse in the custody and under the supervision of 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.

16. BROADCAST EQUIPMENT

South Carolina Code §12-36-2120(26) exempts from sales and use tax the sale of all supplies, technical equipment, machinery, and electricity to radio, television, and cable television systems for use in producing, broadcasting, or distributing programs. For the purpose of this exemption, radio stations, television stations, and cable television systems are deemed to be manufacturers. See South Carolina Regulation 117-328.

For a discussion concerning the taxation of software used by television and radio stations for broadcasting, see South Carolina Private Letter Ruling #12-1.

17. MOTION PICTURE INDUSTRY

South Carolina Code Title 12, Chapters 36 and 62 contain two film industry sales and use tax incentives designed to promote South Carolina as a filming location. The incentive available in Chapter 62 is a sales and use tax exemption for all qualifying tangible personal property used in connection with the South Carolina filming by a “motion picture production company” that is approved by the South Carolina Film Commission at the South Carolina Department of Parks, Recreation and Tourism (“Film Commission”). The other incentive is a sales and use tax exemption for certain supplies, machinery, and electricity used by a “motion picture company” for use in filming or producing motion pictures in South Carolina. Since the qualifying requirements and approval process of each incentive differs, the applicable South Carolina law should be carefully reviewed.

A general overview of each incentive is provided below.

a. “Motion Picture Production Company” Comprehensive Exemption

To qualify for the sales and use tax exemption provided in South Carolina Code §12-62-30 on funds expended in South Carolina in connection with the filming or production of motion pictures in South Carolina, a motion picture production company must meet the following criteria:

1. The company must be a “motion picture production company” (herein referred to as “Company”) as defined in South Carolina Code §12-62-20(4). The Company must be engaged in the business of producing motion pictures intended for a national theatrical release or for television viewing. It cannot be a Company owned, affiliated, or controlled, in whole or in part, by a Company or person that is in default on a loan made by the State or a loan guaranteed by the State.

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

2. The Company must intend to spend \$250,000 or more in the aggregate in connection with the filming or production of one or more motion pictures in South Carolina within a consecutive 12-month period.

3. The Company must complete an application and obtain approval as a certified motion picture production company from the Film Commission. An estimate of the total expenditures expected to be made in South Carolina in connection with the filming or production must be filed with the Film Commission before South Carolina filming begins.

The application and certification procedures can be obtained from the Film Commission at 803-737-0490. There is no application fee.

Important points to remember concerning this exemption are listed below.

- ◆ Once the Film Commission notifies the Department of Revenue that the Company is approved and meets the qualifying requirements, the Department will issue Company a Form ST-433, “Motion Picture Production Company Sales and Use Tax Exemption Certificate.” The Company should provide a copy of the exemption certificate to the retailer to purchase items used in connection with the South Carolina filming free of sales and use tax.
- ◆ This exemption applies to the 6% state sales and use taxes, the 7% state sales tax on accommodations, the 6% sales tax on additional guest charges, any vehicle license fee that may be imposed, the 11% sales and use tax on 900/976 telephone numbers, and any local sales and use taxes collected by the Department on behalf of a local jurisdiction.
- ◆ The exemption expires on the date filming or production ends.
- ◆ An approved Company that fails to spend \$250,000 within a consecutive 12-month period is liable for the sales and use taxes that would have been paid had the approval not been granted. **NOTE:** Such a Company may be eligible for the more restrictive sales and use tax exemption applicable to supplies and equipment discussed in item (b) below.
- ◆ Expenditures that qualify toward the \$250,000 requirement include purchases of services or intangibles in South Carolina, purchases or rentals of tangible personal property in South Carolina, and purchases or rentals of real property located in South Carolina.
- ◆ The exemption certificate may only be used by the Company in whose name the certificate has been issued since the exemption only applies to sales to, or purchases by, the Company.

- ◆ This incentive does not apply to the production of television coverage of news and athletic events.

For more information on this incentive, see South Carolina Revenue Ruling #08-12.

b. “Motion Picture Production Company” Limited Exemption for Supplies and Equipment

South Carolina Code §12-36-2120(43) exempts from sales and use tax supplies, technical equipment, machinery, and electricity sold to motion picture companies for use in filming or producing motion pictures in South Carolina.

The terms “motion picture company” and “motion picture” defined in Chapter 36 of Title 12 differ from the terms “motion picture production company” and “motion picture” defined in Chapter 62 of Title 12, as discussed above in item (a). The definitions applicable to this exemption are:

1. “Motion picture company” is a company generally engaged in the business of filming or producing motion pictures.
2. “Motion picture” is any audiovisual work with a series of related images either on film, tape, or other embodiment, where the images shown in succession impart an impression of motion together with accompanying sound, if any, which is produced, adapted, or altered for exploitation as entertainment, advertising, promotional, industrial, or educational media.

Important points to remember concerning this exemption are listed below.

- ◆ To receive an exemption certificate for this limited exemption, the motion picture company must apply to the Department of Revenue on Form ST-10, “Application for Certificate.” There is no application fee. Usually, a visit will be made to the motion picture company’s site to determine if a certificate should be issued.
- ◆ Once approved, the Department will issue the motion picture company an exemption certificate on Form ST-9. A copy of this certificate should be given to the retailer upon purchase of the exempt item.
- ◆ The exemption applies to all state sales and use taxes and all local sales and use taxes collected by the Department on behalf of a local jurisdiction.
- ◆ An application to, or approval from, the Film Commission is not needed for this exemption.

c. Other Incentives

See Business Income Tax, Chapter 2, Sections 26 – 29, for more information on income tax credits for investments in a motion picture project or motion picture production facility, an income tax credit for commercial productions, and rebates for a motion picture production company.

18. AUDIOVISUAL MASTER

South Carolina Code §12-36-2120(55) exempts from sales and use tax audiovisual masters made or used by a production company in making visual and audio images for a first generation reproduction. The term “audiovisual master” is defined as an audio or video film, tape, or disk, or another audio or video storage device from which all other copies are made. The term “production company” is defined as a person or entity engaged in the business of making motion picture, television, or radio images for theatrical, commercial, advertising, or educational purposes.

19. CONTRACTING WITH COMMERCIAL PRINTERS

South Carolina Code §12-36-75 provides that certain activities of a person contracting with a commercial printer for printing generally do not require a person to register as a retailer with the Department or require a person to collect or remit South Carolina sales and use taxes.

The statute provides that the following activities of a person will not by themselves create sales and use tax nexus with South Carolina:

1. The ownership or leasing of tangible or intangible property used in printing contracts at the printer’s South Carolina location.
2. The sale by the person contracting with the printer of property printed at and shipped or distributed from the printer’s South Carolina location.
3. Activities performed pursuant or incident to a printing contract by, or on behalf of, a person at the South Carolina premises of the commercial printer.
4. Activities performed pursuant or incident to a printing contract by the commercial printer in South Carolina for or on behalf of a person.

Further, the commercial printer will not be treated as a representative, agent, salesman, canvasser, or solicitor for the person contracting with the printer by reason of a printing contract.

20. DIRECT MAIL ADVERTISING

South Carolina Code §12-36-2120(58) exempts from sales and use tax cooperative direct mail promotional advertising materials and promotional maps, brochures, pamphlets, or discount coupons for use by nonprofit chambers of commerce or nonprofit convention and visitor bureaus, delivered by means of interstate carrier, a mailing house, or a United States Post Office to South Carolina residents free of charge, from locations inside and outside South Carolina.

For purposes of this exemption, “cooperative direct mail promotional advertising materials” means discount coupons, advertising leaflets, and similar printed advertising, including any accompanying envelopes and labels which are distributed with promotional advertising materials of more than one business in a single package to potential customers, at no charge to the potential customer, of the businesses paying for the delivery of the material. See also, Code § 12-36-140(C)(3).

21. SALES TAX HOLIDAY

a. Back to School Holiday

South Carolina Code §12-36-2120(57) provides for an annual three-day “sales tax holiday” beginning 12:01 a.m. on the first Friday in August and ending at midnight the following Sunday.

This sales tax exemption applies to sales of (1) clothing, clothing accessories including, but not limited to, hats, scarves, hosiery, and handbags; (2) footwear; (3) school supplies including, but not limited to, pens, pencils, paper, binders, notebooks, books, book bags, lunchboxes, and calculators; (4) computers, printers and printer supplies, and computer software; and (5) bath wash cloths, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs, pillows, and pillow cases.

This sales tax exemption does not apply to (1) a sale or lease of an item for use in a trade or business; (2) sales of jewelry, cosmetics, eyewear, wallets, watches, and furniture; (3) a sale of an item placed on layaway or similar deferred payment and delivery plan however described; or (4) rental of clothing or footwear.

Before July tenth of each year, the Department is required to publish a list of items qualifying for the exemption. See South Carolina Revenue Ruling #19-4 for a list of examples of items that are exempt from sales and use tax during the sales tax holiday and answers to commonly asked questions about the sales tax holiday.

22. COMPUTER EQUIPMENT

South Carolina Code §12-36-2120(65)(b) exempts computer equipment used in connection with a manufacturing facility where the taxpayer invests at least \$750 million dollars in real or personal property or both comprising or located at the facility over a 7-year period; and creates at least 3,800 new jobs at the facility during that 7-year period. **NOTE: This exemption became effective November 1, 2009 and required that a notice be filed with the Department prior to October 31, 2015 in order for the taxpayer to qualify for the exemption. This exemption continues to be available to eligible taxpayers who notified the Department prior to October 31, 2015.**

For this exemption, computer equipment is defined to mean “original or replacement servers, routers, switches, power units, network devices, hard drives, processors, memory modules, motherboards, racks, other computer hardware and components, cabling, cooling apparatus, and related or ancillary equipment, machinery, and components, the primary purpose of which is to store, retrieve, aggregate, search, organize, process, analyze, or transfer data or any combination of these, or to support related computer engineering or computer science research.”

The exemption applies from the start of the investment in, or construction of, the manufacturing facility. The exemption also sets forth certain notification requirements to be followed by the taxpayer.

In addition, once the Department certifies that the taxpayer has met the investment and job requirements, all subsequent purchases of or investments in computer equipment, including to replace originally deployed computer equipment or to implement future expansions, shall qualify for the exemption, regardless of when the taxpayer makes the investments. The Department may assess any tax due as a result of the taxpayer’s subsequent failure to timely meet the investment and job requirements after being granted the exemption.

23. DATACENTER EXEMPTION

South Carolina Code §12-36-2120(79) exempts from sales and use tax (a) computers, computer equipment and computer hardware and software used within a qualifying datacenter, and (b)

electricity used by a qualifying datacenter and “eligible business property” located and used at the qualifying datacenter. Electricity used for purposes unrelated to the datacenter, such as electricity used in administrative offices, parking lots, storage warehouses, cafeterias, maintenance shops and similar activities is not exempt.

For purposes of the exemption:

“Computer” is defined as an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

“Computer equipment” is defined as computer hardware and components (including servers, routers, power units, network devices, hard drives, processors, motherboards, cooling systems, etc.) the primary purpose of which is to store, retrieve, aggregate, search, organize, process, analyze, or transfer data or any combination of these, or to support related computer engineering or computer science research.

“Computer software” is defined as a set of coded of instructions designed to cause a computer or automatic data processing equipment to perform a task.

“Datacenter” is defined as a new or existing facility at a single location in South Carolina that provides infrastructure for hosting or data processing services and that has power and cooling systems that are created and maintained to be concurrently maintainable and to include redundant capacity components and multiple distribution paths serving the computer equipment at the facility.

“Eligible business property” is defined as property used for the generation, transformation, transmission, distribution, or management of electricity, including exterior substations, and other business personal property used for these purposes.

In order to qualify for the exemption, the datacenter facility must be certified by the South Carolina Department of Commerce and the following requirements must be met:

1. The taxpayer must invest at least \$50 million in real and/or personal property over a 5-year period. If two or more taxpayers are investing, the requirement is \$75 million.
2. The taxpayer must create and maintain at least 25 full-time jobs at the facility with an average cash compensation level of 150% of the per capita income of the State or the county in which the facility is located, whichever is lower. The per capita income levels used to determine eligibility are the most recently published levels available at the time the facility is certified by Commerce. The jobs must be created within the 5-year period.

The taxpayer must maintain the jobs for 3 consecutive years after the datacenter has been certified as having met the investment and job requirements.

The exemption is available to the taxpayer once it has notified both the Department and the Department of Commerce in writing of its intent to claim the exemption and commitment to make the required investment and create and maintain the required number of jobs, and the datacenter has been certified by the Department of Commerce. The taxpayer is required to send a notice to the Department once it has met the minimum job and capital requirements, or at the end of the 5-year investment period if it has not met the requirements. If the taxpayer fails to make the minimum investment or minimum job requirement, the Department may collect the applicable foregone taxes. If the taxpayer meets the capital and job requirements but fails to maintain the jobs for the 3-year period, the taxpayer is not allowed the exemption for computers, computer equipment, and hardware and software purchases until it meets the qualifying jobs requirements. The taxpayer is allowed the exemption for electricity, but the exemption only applies to the percentage of the sales price calculated by dividing the number of qualifying jobs by 25. See South Carolina Revenue Ruling #13-5 for answers to commonly asked questions on the datacenter exemption.

24. MOTORSPORTS ENTERTAINMENT COMPLEX EXEMPTION

South Carolina Code §12-69-30 exempts from sales and use tax building materials, supplies, fixtures, and equipment for the construction, repair, or improvement of or that become a part of a motorsports entertainment complex (as defined in South Carolina Code §12-21-2425). To be eligible for this sales and use tax exemption, a company must submit an application to be approved by the Department, receive written certification from the Department, and meet the other requirements of Chapter 69, Title 12.

The company submitting the application to the Department must attach to the application a practical plan to make a capital investment of at least \$10,000,000 in any motorsports entertainment complex in South Carolina within the 5-year period immediately following approval of the application; the company must designate a member or representative of the company to work with the Department on reporting the investment. The company may begin using the exemption upon receiving written certification from the Department, and the exemption remains effective until December 31st of the 5th full calendar year after its issuance.

If the company fails to meet the investment requirements, it is liable for, and has 60 days to pay without incurring penalties, the sales and use taxes that would have been paid had the exemption not been granted in the same proportion as the actual investment failed to meet the required investment.

9. INFRASTRUCTURE INCENTIVE FOR TOURISM AND RECREATION FACILITIES

The Tourism Infrastructure Admissions Tax Act in Article 27, Chapter 21 of Title 12 allows a portion of the admissions tax collected at a qualifying tourism and recreation facility (“facility”) to be remitted to the county or municipality where the facility is located and to the Infrastructure Fund administered by the South Carolina Coordinating Council for Economic Development (“Council”) for making infrastructure improvements.

If a facility meets the requirements of an establishment, the admissions tax will be subject to the provisions of this law for a 15-year benefit period. The amount to be remitted to the county or municipality is 25% of the admissions tax collected at the establishment. An additional 25% of the admissions tax collected at any establishment must be remitted to the Infrastructure Fund. Counties and municipalities located within 5 miles of the establishment may request grants from the Infrastructure Fund, but preference is given to infrastructure that benefits the facility.

To be an establishment, the facility must be:

1. A major tourism or recreation facility. This is a single tourism or recreational facility in which an investment exceeding \$20 million is made; or
2. A tourism or recreation facility located in a major tourism or recreation area. This is an area designated by a county or municipality as a designated development area that has one or more tourism or recreation facilities that collect admissions tax where there is a combined investment of at least \$20 million.

A tourism or recreation facility can consist of a theme park; an amusement park; a historical, educational or trade museum; a botanical or zoological garden; an aquarium; a cultural center; a theater; a motion picture production studio; a convention center; an arena; a coliseum; an auditorium; a golf course; a spectator or participatory sports facility or any similar establishment that collects admissions tax. Additionally, a “tourism or recreational facility” can be an aquarium or natural history exhibit or museum located within, or contiguous to, an extraordinary retail establishment as described below.

A designated development area must be designated as such by county or municipal ordinance and must include at least one tourism and recreation facility. Such area includes, but is not limited to, a downtown district, a historic district, a waterfront redevelopment area, or redevelopment of a closed military facility. The development area may not exceed 5% of the

total acreage of the municipality or county. A municipality or county may create more than one designated development area, but the combined acreage of all development areas may not exceed 10% of the total acreage of the municipality or county.

To have admissions tax collected at an establishment subject to these provisions, the county or municipality in which an establishment is located must submit a certification application on behalf of the establishment to the Department of Parks, Recreation, and Tourism for approval. The application must be filed within 1 year of the end of the investment period. The investment period is a consecutive 60-month period in which the \$20 million investment is made. Once certified, the benefits continue for 15 years.

Additionally, the establishment must request that the Council determine whether the \$20 million investment creates a new facility or whether it results in the expansion of an existing facility. If it is determined to be an expansion, then only admissions tax in excess of the average admissions tax collected at the establishment for the 24 months immediately preceding the date the certification application is filed is subject to this statute.

South Carolina Code §12-21-6590 allows the Department of Parks, Recreation, and Tourism to designate up to 4 qualifying facilities as “extraordinary retail establishments.” Instead of the admissions tax being subject to the Tourism Infrastructure Admissions Tax Act, a qualifying establishment’s sales tax collected is subject to the Act. The extraordinary retail establishment is not required to collect admissions tax. An extraordinary retail establishment is a single store located in South Carolina that is located in a county with at least 3.5 million visitors a year or which is located within 2 miles of an interstate highway. It must attract at least 2 million visitors a year with at least 35% of those visitors traveling at least 50 miles to the extraordinary retail establishment and it must remit at least \$2 million in sales tax each year. Additionally, it must have a capital investment of at least \$25 million, including land, building, and site preparation costs, and one or more hotels must be built to service the extraordinary retail establishment within 3 years of occupancy.

Prior to completion of the extraordinary retail establishment, the entity operating the extraordinary retail establishment and the county in which it is located may request the Department of Parks, Recreation, and Tourism to conditionally certify the extraordinary retail establishment. The Department of Parks, Recreation, and Tourism may grant this conditional certification based on reasonable projections that the extraordinary retail establishment will meet all requirements within 3 years of issuance of a certificate of occupancy. Conditional certification provides limited benefits to an extraordinary retail establishment; however, it cannot receive monetary benefits prior to satisfying the requirements of the conditional certification and the provisions contained in the definition of a “tourism and recreational facility.”

If the extraordinary retail establishment obtains conditional certification and complies with both the conditional certification and the requirements contained in the definition of a “tourism or recreational facility” then 50% of the sales tax collected by the extraordinary retail establishment will be remitted to the county in which it is located and no amounts will be remitted to the Infrastructure Fund administered by the Council.

NOTE: Effective July 1, 2019 through June 30, 2020, up to \$114,000 in admissions tax revenue collected annually from all events held at a NASCAR sanctioned motor speedway or racetrack that hosts at least one race each year featuring the preeminent NASCAR cup series must be rebated to the motorsports entertainment complex facility in the current fiscal year to keep a NASCAR race at the facility. In addition, any sports facility that hosts at least one preeminent Women's Tennis Association sanctioned tournament or any sports facility that operates as the home venue for a professional soccer team that participates in the United Soccer Leagues, second division or higher, must be rebated half of its admissions tax revenue for the fiscal year and used by that facility for marketing the events held at the facility. See, 2019 House Bill 4000, Part IB, Section 118, Proviso 118.7 (Act No.91).

10. PHONE AND FAX NUMBERS

NOTE: Additional phone numbers are available on the Department’s website at www.dor.sc.gov.

PHONE NUMBERS:

Contact Center – General Information1-844-898-8542

Income Tax:

Corporate Income Tax.....corptax@dor.sc.gov1-844-898-8542 (Option 3 then 5)
 Individual Income Taxiitax@dor.sc.gov 1-844-898-8542 (Option 2)
 WithholdingWithholdingTax@dor.sc.gov ..1-844-898-8542 (Option 3 then 4)

Property Tax:

Property Tax Exemptions.....Property.Exemptions@dor.sc.gov(803) 898-5700
 Fee in Lieu of Property Taxes....Manufacturing,PropertyTax@dor.sc.gov(803) 898-5055
 Manufacturing PropertyManufacturingPropertyTax@dor.sc.gov(803) 898-5055
 Business Personal PropertyBPPProperty@dor.sc.gov(803) 898-5222

Sales and Use TaxesSalesTax@dor.sc.gov1-844-898-8542 (Option 3 then 3)

Infrastructure Incentive for Tourism and Recreation Facilities.....(803) 898-5557

SERVICES

Copies of Tax Returns(803) 896-1164
 Compliance and Recovery Section.....cocrequests@dor.sc.gov.....(803) 898-5381
 Forms Requestforms@dor.sc.gov (803)898-8542
 Taxpayer Advocate.....TaxpayerAdvocate@dor.sc.gov(803) 898-5444
 RegistrationRegistrationforTaxes@dor.sc.gov...(803)898-8542(option 3 then Option 2)
 Telecommunications Device for the Deaf711 in South Carolina
(800) 676-3777 outside of South Carolina

NOTE: Tax forms, advisory opinions, publications, and other tax information are available on the Department’s website at www.dor.sc.gov.

TAXPAYER SERVICE CENTERS

North Charleston.....	2070 Northbrook Blvd., Suite B7	(843) 852-3600
Columbia (Main Office).....	300A Outlet Pointe Blvd.....	1-844-898-8542
Florence	181 East Evans Street, Suite 5.....	(843) 661-4850
Greenville	33 Villa Road, Suite401	(864) 241-1200
Myrtle Beach.....	1350 Farrow Parkway, Suite 200	(843) 839-2960
Rock Hill.....	775 Addison Avenue, Suite 201	(803) 324-7641

OTHER STATE AGENCIES/OFFICES

Coordinating Council for Economic Development	(803) 737-0400
Department of Archives & History (Historic Rehabilitation)	(803) 896-5638
Department of Commerce.....	(803) 737-0400
Department of Health and Environmental Control.....	(803) 898-3432
Department of Insurance.....	(803) 737-6227
Department of Labor, Licensing and Regulation	(803) 896-4300
Department of Parks, Recreation and Tourism	(803) 734-0130
Department of Social Services	(803) 898-7601
Department of Employment and Workforce.....	(803) 737-2400
Film Commission	(803) 737-0498
Secretary of State.....	(803) 734-2170
State Treasurer (College Investment Program)	(803) 734-2101
Workers Compensation Commission	(803) 737-5700

OTHER FEDERAL AGENCIES

Internal Revenue Service	(803) 312-1835
Social Security Administration	(800) 772-1213
Department of Labor	(803) 765-5981



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**ECONOMIC IMPACT ZONE PROPERTY
INVESTMENT CREDIT**
Attach to Forms SC1040, SC1041, SC1120, or SC1120S

- SC SCH. TC-11
(7/95)
3326
19_____

Name As Shown On Tax Return

Social Security or Employer ID Number

This schedule must be completed and filed with the income tax return in order to claim an investment tax credit for the cost basis of economic impact zone property. The definitions on the reverse side should be carefully read before completing this schedule, as there are certain requirements that must be met before qualifying for this tax credit.

1. Economic Impact Zone Property (Qualifying Types)	Cost Basis
a. Manufacturing	1a. _____
b. Production	1b. _____
c. Manufacturing or Production Control Software	1c. _____
d. Extraction	1d. _____
e. Furnishing Transportation	1e. _____
f. Furnishing Communications	1f. _____
g. Furnishing Electrical Energy	1g. _____
h. Furnishing Gas	1h. _____
i. Furnishing Water	1i. _____
j. Furnishing Sewage Disposal Services	1j. _____
2. Total Cost Basis of Qualifying Property	2. _____
3. Credit - Multiply line 2 by 5%	3. _____

GENERAL INSTRUCTIONS

Purpose: Effective April 4, 1995, the General Assembly enacted legislation to allow an income tax investment credit for the cost basis of qualifying property placed in service during the taxable year in an economic impact zone.

Line Instructions

Line 1: Enter the cost basis of the qualifying property placed in service during the taxable year. For property purchased the original use of the property in the economic impact zone must begin with the taxpayer. The cost of construction, reconstruction or erection of qualifying property may also qualify for the credit.

Line 3: The allowable credit must be entered on the appropriate line of form SC1120, SC1120S, SC1065, SC1041, or Schedule TC. No carryovers are allowed.

(See back for definitions.)

DEFINITIONS:

For purposes of this credit:

- (1) "economic impact zone" means a county or municipality, any portion of which is located within fifty miles of the boundaries of an applicable federal military installation, and any area not otherwise included as part of the economic impact zone if the State Budget and Control Board determines the area to be adversely impacted by the closing or realignment of an applicable federal military installation. An applicable federal military installation is one which is closed or realigned under:
 - (a) The Defense Base Closure and Realignment Act of 1990;
 - (b) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act; or
 - (c) Section 2687 of Title 10, United States Code.
- (2) "Economic impact zone qualified manufacturing and productive equipment property" means any property:
 - (a) which is used as an integral part of manufacturing, production or extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services in the economic impact zone;
 - (b) which is tangible property to which Section 168 of the Internal Revenue Code applies;
 - (c) which is Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code); and
 - (d)(i) the construction, reconstruction, or erection of which is completed by the taxpayer in the economic impact zone; or
(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer inside the economic impact zone.
- (3) In the case of any computer software which is used to control or monitor a manufacturing or production process inside the economic impact zone and with respect to which depreciation (or amortization in lieu of depreciation) is allowable, the software must be treated as qualified manufacturing and productive equipment property.
- (4) This Section does not apply to any property to which the other tax credits would apply unless the taxpayer elects to waive the application of the other credits to the property.



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**ECONOMIC IMPACT ZONE PROPERTY
INVESTMENT CREDIT**

SC SCH. TC-11
(Rev. 7/97)
3326

Attach to Forms SC1040, SC1041, SC1120, or SC1120S.

19 _____

Name as Shown on Tax Return

Social Security or Employer ID Number

This schedule must be completed and filed with the income tax return in order to claim an investment tax credit for the cost basis of economic impact zone property. The definitions on the reverse side should be carefully read before completing this schedule, as there are certain requirements that must be met before qualifying for this tax credit.

1. Economic Impact Zone Property (Qualifying Types)	Cost Basis
a. Manufacturing	1a. _____
b. Production	1b. _____
c. Manufacturing or Production Control Software	1c. _____
d. Extraction	1d. _____
e. Furnishing Transportation	1e. _____
f. Furnishing Communications	1f. _____
g. Furnishing Electrical Energy	1g. _____
h. Furnishing Gas	1h. _____
i. Furnishing Water	1i. _____
j. Furnishing Sewage Disposal Services	1j. _____
2. Total Cost Basis of Qualifying Property	2. _____
3. Credit - Multiply line 2 by 5%	3. _____

GENERAL INSTRUCTIONS

Purpose: Effective April 4, 1995, the General Assembly enacted legislation to allow an income tax investment credit for the cost basis of qualifying property placed in service during the taxable year in an economic impact zone.

Line Instructions

Line 1: Enter the cost basis of the qualifying property placed in service during the taxable year. For property purchased, the original use of the property in the economic impact zone must begin with the taxpayer. The cost of construction, reconstruction or erection of qualifying property may also qualify for the credit.

Line 3: The allowable credit must be entered on the appropriate line of form SC1120, SC1120S, SC1065, SC1041, or Schedule TC. Effective for tax years beginning after 1996, an unused credit may be carried forward for ten years from the close of the tax year in which the credit was earned.

DEFINITIONS:

For purposes of this credit:

- (1) **"Economic impact zone"** means a county or municipality, any portion of which is located within fifty miles of the boundaries of an applicable federal military installation, and any area not otherwise included as part of the economic impact zone if the State Budget and Control Board determines the area to be adversely impacted by the closing or realignment of an applicable federal military installation. An applicable federal military installation is one which is closed or realigned under:
 - (a) The Defense Base Closure and Realignment Act of 1990;
 - (b) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act; or
 - (c) Section 2687 of Title 10, United States Code.

- (2) **"Economic impact zone qualified manufacturing and productive equipment property"** means any property:
 - (a) which is used as an integral part of manufacturing, production or extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services in the economic impact zone;
 - (b) which is tangible property to which Section 168 of the Internal Revenue Code applies;
 - (c) which is Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code); and
 - (d)(i) the construction, reconstruction, or erection of which is completed by the taxpayer in the economic impact zone; or
(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer inside the economic impact zone.

- (3) In the case of any computer software which is used to control or monitor a manufacturing or production process inside the economic impact zone and with respect to which depreciation (or amortization in lieu of depreciation) is allowable, the software must be treated as qualified manufacturing and productive equipment property.

- (4) This section does not apply to any property to which the other tax credits would apply unless the taxpayer elects to waive the application of the other credits to the property.



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**ECONOMIC IMPACT ZONE PROPERTY
INVESTMENT CREDIT**

SC SCH. TC-11-A

(Rev. 9/98)
3347

1998

Attach to Forms SC1040, SC1041, SC1120, SC1120S, SC1120U or SC1065.

Name as Shown on Tax Return	EIZ County	Social Security or Employer ID Number
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This schedule must be completed and filed with the income tax return in order to claim an investment tax credit for the cost basis of economic impact zone property. The definitions on the reverse side should be carefully read before completing this schedule, as there are certain requirements that must be met before qualifying for this tax credit.

Purpose: Use this form to claim the income tax investment credit for qualifying Economic Impact Zone Property for taxable years beginning after 1997 for investments made before July 1, 1998. During this period the allowable credit may not reduce a taxpayer's income tax liability by more than fifty percent.

1. Economic Impact Zone Property (Qualifying Types)	Cost Basis
a. Manufacturing	1a. _____
b. Production	1b. _____
c. Manufacturing or Production Control Software	1c. _____
d. Extraction	1d. _____
e. Furnishing Transportation	1e. _____
f. Furnishing Communications	1f. _____
g. Furnishing Electrical Energy	1g. _____
h. Furnishing Gas	1h. _____
i. Furnishing Water	1i. _____
j. Furnishing Sewage Disposal Services	1j. _____
2. Total Cost Basis of Qualifying Property	2. _____
3. Tentative Credit - Multiply line 2 by 5%	3. _____
4. Income Tax Liability (from appropriate line of tax return)	4. _____
5. Maximum Tentative Credit (50% times line 4)	5. _____
6. Credit - Enter the lesser of line 3 or line 5	6. _____

Note: For carryovers of unused credits or investments made after June 30, 1998, see Schedule TC-11-B.

GENERAL INSTRUCTIONS

Line Instructions

Line 1: Enter the basis of the qualifying property placed in service during the taxable year. For property purchased, the original use of the property in the economic impact zone must begin with the taxpayer. The cost of construction, reconstruction or erection of qualifying property may also qualify for the credit.

Line 6: The allowable credit must be entered on the appropriate line of form SC1120, SC1120S, SC1065, SC1041, SC1120U, or Schedule TC. Effective for tax years beginning after 1996, an unused credit may be carried forward for ten years from the close of the tax year in which the credit was earned.

DEFINITIONS:

For purposes of this credit:

- (1) (A) **"Economic Impact Zone"** means a county or municipality, any portion of which is located within fifty miles of the boundaries of an applicable federal military installation, and any area not otherwise included as part of the economic impact zone if the State Budget and Control Board determines the area to be adversely impacted by the closing or realignment of an applicable federal military installation. An applicable federal military installation is one which is closed or realigned under:
- (a) The Defense Base Closure and Realignment Act of 1990;
 - (b) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act; or
 - (c) Section 2687 of Title 10, United States Code.
- (B) The following counties are Economic Impact Zone counties:
- | | | |
|------------|------------|--------------|
| Aiken | Colleton | Jasper |
| Allendale | Dillon | Lexington |
| Bamberg | Dorchester | Marion |
| Barnwell | Edgefield | McCormick |
| Beaufort | Florence | Newberry |
| Berkeley | Georgetown | Orangeburg |
| Calhoun | Greenwood | Richland |
| Charleston | Hampton | Saluda |
| Clarendon | Horry | Williamsburg |
- (2) **"Economic Impact Zone qualified manufacturing and productive property"** means any property:
- (A) which is used as an integral part of manufacturing, production or extraction of or furnishing transportation, communication, electrical energy, gas, water, or sewage disposal services in the economic impact zone;
 - (B) which is tangible property to which Section 168 of the Internal Revenue Code applies;
 - (C) which is Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code); and
 - (D) (i) the construction, reconstruction, or erection of which is completed by the taxpayer in the economic impact zone; or
(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer inside the economic impact zone.
- (3) In the case of any computer software which is used to control or monitor a manufacturing or production process inside the economic impact zone and with respect to which depreciation (or amortization in lieu of depreciation) is allowable, the software must be treated as qualified manufacturing and productive equipment property.
- (4) This section does not apply to any property to which the other tax credits would apply unless the taxpayer elects to waive the application of the other credits to the property.



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**ECONOMIC IMPACT ZONE PROPERTY
INVESTMENT CREDIT**

SC SCH. TC-11-B

(Rev. 9/98)
3348

19 _____

Attach to Forms SC1040, SC1041, SC1120, SC1120S or SC1120U.

Name as Shown on Tax Return

Social Security or Employer ID Number

This schedule must be completed and filed with the income tax return in order to claim an investment tax credit for the cost basis of economic impact zone property. The definitions on the reverse side should be carefully read before completing this schedule, as there are certain requirements that must be met before qualifying for this tax credit.

Purpose: Use this form to claim the income tax investment credit for qualifying Economic Impact Zone Property for investments made after June 30, 1998.

Enter Economic Impact Zone Property on the schedule below. (Qualifying property is used as an integral part of manufacturing or production or used as an integral part of extracting of or furnishing transportation, communications, electrical energy, gas, water or sewage disposal services in the economic impact zone.)

	(1) Basis	(2) Credit Percentage	(3) Credit Amount (column 1 x column 2)
1. Three-year Property	_____	1%	1. _____
2. Five-year Property	_____	2%	2. _____
3. Seven-year Property	_____	3%	3. _____
4. Ten-year Property	_____	4%	4. _____
5. Fifteen-year Property or greater	_____	5%	5. _____
6. Carryover of unused credits from tax years beginning after 1996			6. _____
7. Tentative Credit (total of Col. 3 lines 1 through 5) Caution: If you are not a Form SC1120U filer stop here. Line 7 is your credit amount.			7. _____
8. Maximum Credit (Form SC1120U filers)			8. <u>\$1,000,000</u>
9. Credit - Enter the lesser of line 7 or line 8			9. _____

Note: For taxable years beginning after 1997 for investments made before July 1, 1998, see Schedule TC-11-A.

GENERAL INSTRUCTIONS

- (1) Effective for qualifying investments made after June 30, 1998, the amount of the credit is equal to the aggregate of:
Three-year Property - one percent of total aggregate bases for all three-year property that qualifies;
Five-year Property - two percent of total aggregate bases for all five-year property that qualifies;
Seven-year Property - three percent of total aggregate bases for all seven-year property that qualifies;
Ten-year Property - four percent of total aggregate bases for all ten-year property that qualifies;
Fifteen-year Property or greater - five percent of total aggregate bases for all fifteen-year or greater property that qualifies.
Note: See Definitions on reverse.
- (2) Also effective for qualifying investments made after June 30, 1998, the basis of the qualifying property must be reduced by the amount of the credit claimed with respect to the property. The corresponding decrease in the depreciation deduction will result in an addition to federal taxable income for South Carolina income tax purposes.
- (3) Effective for qualifying investments made after June 30, 1998, the amount of the credit is limited to no more than five million dollars for any entity subject to the license tax provided in Section 12-20-100 (Form SC1120U filers). Note: the credit offsets income tax, not license tax.

DEFINITIONS:

For the purpose of this credit:

- (1) **Economic impact zone qualified manufacturing and productive equipment property**" means any property:
 - (a) which is used as an integral part of manufacturing or production, or used as an integral part of extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services in the economic impact zone;
 - (b) which is tangible property to which Section 168 of the Internal Revenue Code applies;
 - (c) which is Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code); and
 - (d)(i) the construction, reconstruction, or erection of which is completed by the taxpayer in the economic impact zone; or
 - (ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer inside the economic impact zone.
- (2) In the case of any computer software which is used to control or monitor a manufacturing or production process inside the economic impact zone and with respect to which depreciation (or amortization in lieu of depreciation) is allowable, the software must be treated as qualified manufacturing and productive equipment property.
- (3) This section does not apply to any property to which the other tax credits would apply unless the taxpayer elects to waive the application of the other credits to the property.
- (4) Whether property is three-year property, five-year property, seven-year property, ten-year property or fifteen-year property is determined based on the applicable recovery period for such property under Section 168(e) of the Internal Revenue Code.
- (5) (A) **"Economic impact zone"** means a county or municipality, any portion of which is located within fifty miles of the boundaries of an applicable federal military installation, and any area not otherwise included as part of the economic impact zone if the State Budget and Control Board determines the area to be adversely impacted by the closing or realignment of an applicable federal military installation. An applicable federal military installation is one which is closed or realigned under:
 - (a) The Defense Base Closure and Realignment Act of 1990;
 - (b) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act; or
 - (c) Section 2687 of Title 10, United States Code.
- (B) The following counties are Economic Impact Zone Counties:

Aiken	Colleton	Jasper
Allendale	Dillon	Lexington
Bamberg	Dorchester	Marion
Barnwell	Edgefield	McCormick
Beaufort	Florence	Newberry
Berkeley	Georgetown	Orangeburg
Calhoun	Greenwood	Richland
Charleston	Hampton	Saluda
Clarendon	Horry	Williamsburg

GENERAL INFORMATION

- (A) For tax years beginning after 1996, any unused credit allowed pursuant to this section may be carried forward for ten years from the close of the tax year in which the credit was earned.
- (B) For any qualifying investments made after June 30, 1998, if during any taxable year and before the end of applicable recover period for such property as determined under Section 168(c) of the Internal Revenue Code, the taxpayer disposes of or removes from the economic impact zone, economic impact qualified manufacturing and productive equipment property, then the income tax due under Chapter 6 by the taxpayer for the current taxable year must be increased by the full amount of any credit claimed in prior years with respect to such property. See SC SCH TC-11-R.
- (C) For South Carolina income tax purposes, the basis of the economic impact zone qualified manufacturing and productive equipment property must be reduced by the amount of any credit claimed with respect to the property. For any qualifying investments made after June 30, 1998, if a taxpayer is required to recapture the economic impact zone investment tax credit, the taxpayer may increase the basis of the property by the amount of any basis reduction attributable with claiming the economic impact zone investment tax credit in prior years. The basis must be increased in the year in which the credit is recaptured.
- (D) The credit allowed by this section for investments made after June 30, 1998 is limited to no more than five million dollars for any entity subject to the license tax as provided in Section 12-20-100.



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**ECONOMIC IMPACT ZONE PROPERTY
INVESTMENT CREDIT**

SC SCH. TC-11-B

(Rev. 9/98)
3348

19 _____

Attach to Forms SC1040, SC1041, SC1120, SC1120S or SC1120U.

Name as Shown on Tax Return

Social Security or Employer ID Number

This schedule must be completed and filed with the income tax return in order to claim an investment tax credit for the cost basis of economic impact zone property. The definitions on the reverse side should be carefully read before completing this schedule, as there are certain requirements that must be met before qualifying for this tax credit.

Purpose: Use this form to claim the income tax investment credit for qualifying Economic Impact Zone Property for investments made after June 30, 1998.

Enter Economic Impact Zone Property on the schedule below. (Qualifying property is used as an integral part of manufacturing or production or used as an integral part of extracting or furnishing transportation, communications, electrical energy, gas, water or sewage disposal services in the economic impact zone.)

	(1) Basis	(2) Credit Percentage	(3) Credit Amount (column 1 x column 2)
1. Three-year Property	_____	1%	1. _____
2. Five-year Property	_____	2%	2. _____
3. Seven-year Property	_____	3%	3. _____
4. Ten-year Property	_____	4%	4. _____
5. Fifteen-year Property or greater	_____	5%	5. _____
6. Total of lines 1 through 5			6. _____
7. Maximum Credit (Form SC1120U filers) For investments made after June 30, 1998			7. <u>\$5,000,000</u>
8. Carryover of unused credits from 1997			8. _____
9. Credit - Total of lines 6 and 8			9. _____

Caution: SC1120U filers add the **lesser** of lines 6 or 7 to line 8

Note: For taxable years beginning after 1997 for investments made before July 1, 1998, see Schedule TC-11-A.

GENERAL INSTRUCTIONS

- (1) Effective for qualifying investments made after June 30, 1998, the amount of the credit is equal to the aggregate of:
 - Three-year Property** - one percent of total aggregate bases for all three-year property that qualifies;
 - Five-year Property** - two percent of total aggregate bases for all five-year property that qualifies;
 - Seven-year Property** - three percent of total aggregate bases for all seven-year property that qualifies;
 - Ten-year Property** - four percent of total aggregate bases for all ten-year property that qualifies;
 - Fifteen-year Property or greater** - five percent of total aggregate bases for all fifteen-year or greater property that qualifies.

Note: See Definitions on reverse.
- (2) Also effective for qualifying investments made after June 30, 1998, the basis of the qualifying property must be reduced by the amount of the credit claimed with respect to the property. The corresponding decrease in the depreciation deduction will result in an addition to federal taxable income for South Carolina income tax purposes.
- (3) Effective for qualifying investments made after June 30, 1998, the amount of the credit is limited to no more than five million dollars for any entity subject to the license tax provided in Section 12-20-100 (Form SC1120U filers). Note: the credit offsets income tax, not license tax.



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**ECONOMIC IMPACT ZONE PROPERTY
INVESTMENT CREDIT**

SC SCH. TC-11

(Rev. 8/17/99)
3348

19 _____

Attach to Forms SC1040, SC1041, SC1120, SC1120S or SC1120U.

Name as Shown on Tax Return	EIZ County	Social Security or Employer ID Number
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This schedule must be completed and filed with the income tax return in order to claim an investment tax credit for the cost basis of economic impact zone property. The definitions on the reverse side should be carefully read before completing this schedule, as there are certain requirements that must be met before qualifying for this tax credit.

Purpose: Use this form to claim the income tax investment credit for qualifying Economic Impact Zone Property for investments made after June 30, 1998.

Enter Economic Impact Zone Property on the schedule below. (Qualifying property is used as an integral part of manufacturing or production or used as an integral part of extracting of or furnishing transportation, communications, electrical energy, gas, water or sewage disposal services in the economic impact zone.)

	(1) Basis	(2) Credit Percentage	(3) Credit Amount (column 1 x column 2)
1. Three-year Property	_____	1%	1. _____
2. Five-year Property	_____	2%	2. _____
3. Seven-year Property	_____	3%	3. _____
4. Ten-year Property	_____	4%	4. _____
5. Fifteen-year Property or greater	_____	5%	5. _____
6. Total of lines 1 through 5			6. _____
7. Maximum Credit (Form SC1120U filers)			7. \$5,000,000
8. Carryover of unused credits from 1997 and later			8. _____
9. Credit - Total of lines 6 and 8			9. _____

Caution: SC1120U filers add the **lesser** of lines 6 or 7 to line 8

GENERAL INSTRUCTIONS

- (1) Effective for qualifying investments made after June 30, 1998, the amount of the credit is equal to the aggregate of:
 - Three-year Property** - one percent of total aggregate bases for all three-year property that qualifies;
 - Five-year Property** - two percent of total aggregate bases for all five-year property that qualifies;
 - Seven-year Property** - three percent of total aggregate bases for all seven-year property that qualifies;
 - Ten-year Property** - four percent of total aggregate bases for all ten-year property that qualifies;
 - Fifteen-year Property or greater** - five percent of total aggregate bases for all fifteen-year or greater property that qualifies.

Note: See Definitions on reverse.
- (2) Also effective for qualifying investments made after June 30, 1998, the basis of the qualifying property must be reduced by the amount of the credit claimed with respect to the property. The corresponding decrease in the depreciation deduction will result in an addition to federal taxable income for South Carolina income tax purposes.
- (3) Effective for qualifying investments made after June 30, 1998, the amount of the credit is limited to no more than five million dollars for any entity subject to the license tax provided in Section 12-20-100 (Form SC1120U filers). Note: the credit offsets income tax, not license tax.

DEFINITIONS:

For the purpose of this credit:

- (1) **Economic impact zone qualified manufacturing and productive equipment property** means any property:
 - (a) which is used as an integral part of manufacturing or production, or used as an integral part of extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services in the economic impact zone;
 - (b) which is tangible property to which Section 168 of the Internal Revenue Code applies;
 - (c) which is Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code); and
 - (d)(i) the construction, reconstruction, or erection of which is completed by the taxpayer in the economic impact zone; or
(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer inside the economic impact zone.
- (2) In the case of any computer software which is used to control or monitor a manufacturing or production process inside the economic impact zone and with respect to which depreciation (or amortization in lieu of depreciation) is allowable, the software must be treated as qualified manufacturing and productive equipment property.
- (3) This section does not apply to any property to which the other tax credits would apply unless the taxpayer elects to waive the application of the other credits to the property.
- (4) Whether property is three-year property, five-year property, seven-year property, ten-year property or fifteen-year property is determined based on the applicable recovery period for such property under Section 168(e) of the Internal Revenue Code.
- (5) (A) **"Economic impact zone"** means a county or municipality, any portion of which is located within fifty miles of the boundaries of an applicable federal military installation, and any area not otherwise included as part of the economic impact zone if the State Budget and Control Board determines the area to be adversely impacted by the closing or realignment of an applicable federal military installation. An applicable federal military installation is one which is closed or realigned under:
 - (a) The Defense Base Closure and Realignment Act of 1990;
 - (b) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act; or
 - (c) Section 2687 of Title 10, United States Code.
- (B) The following counties are Economic Impact Zone Counties:

Aiken	Colleton	Jasper
Allendale	Dillon	Lexington
Bamberg	Dorchester	Marion
Barnwell	Edgefield	McCormick
Beaufort	Florence	Newberry
Berkeley	Georgetown	Orangeburg
Calhoun	Greenwood	Richland
Charleston	Hampton	Saluda
Clarendon	Horry	Williamsburg

GENERAL INFORMATION

- (A) For tax years beginning after 1996, any unused credit allowed pursuant to this section may be carried forward for ten years from the close of the tax year in which the credit was earned.
- (B) **For any qualifying investments made after June 30, 1998, if during any taxable year and before the end of applicable recovery period for such property as determined under Section 168(c) of the Internal Revenue Code, the taxpayer disposes of or removes from the economic impact zone, economic impact qualified manufacturing and productive equipment property, then the income tax due under Chapter 6 by the taxpayer for the current taxable year must be increased by the full amount of any credit claimed in prior years with respect to such property. See SC SCH TC-11-R.**
- (C) For South Carolina income tax purposes, the basis of the economic impact zone qualified manufacturing and productive equipment property must be reduced by the amount of any credit claimed with respect to the property. For any qualifying investments made after June 30, 1998, if a taxpayer is required to recapture the economic impact zone investment tax credit, the taxpayer may increase the basis of the property by the amount of any basis reduction attributable with claiming the economic impact zone investment tax credit in prior years. The basis must be increased in the year in which the credit is recaptured.
- (D) The credit allowed by this section for investments made after June 30, 1998 is limited to no more than five million dollars for any entity subject to the license tax as provided in Section 12-20-100.



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**ECONOMIC IMPACT ZONE PROPERTY
INVESTMENT CREDIT**

SC SCH. TC-11

(Rev. 9/11/00)
3348

20 _____

Attach to Forms SC1040, SC1041, SC1120, SC1120S or SC1120U.

Name as Shown on Tax Return	EIZ County	Social Security or Employer ID Number
-----------------------------	------------	---------------------------------------

This schedule must be completed and filed with the income tax return in order to claim an investment tax credit for the cost basis of economic impact zone property. The definitions on the reverse side should be carefully read before completing this schedule, as there are certain requirements that must be met before qualifying for this tax credit.

Purpose: Use this form to claim the income tax investment credit for qualifying Economic Impact Zone Property for investments made after June 30, 1998.

Enter Economic Impact Zone Property on the schedule below. (Qualifying property is used as an integral part of manufacturing or production or used as an integral part of extracting of or furnishing transportation, communications, electrical energy, gas, water or sewage disposal services in the economic impact zone. **A credit cannot be taken on property transferred from somewhere else (either in-state or out-of-state) unless the original use of such property commences with the taxpayer inside the economic impact zone. Recapture of the credit will be required if the taxpayer disposes of or removes the property from the economic impact zone before the useful life (per section 168(e) of the Internal Revenue Code) of the property.**)

	(1) Basis	(2) Credit Percentage	(3) Credit Amount (column 1 x column 2)
1. Three-year Property	_____	1%	1. _____
2. Five-year Property	_____	2%	2. _____
3. Seven-year Property	_____	3%	3. _____
4. Ten-year Property	_____	4%	4. _____
5. Fifteen-year Property or greater	_____	5%	5. _____
6. Total of lines 1 through 5			6. _____
7. Maximum Credit (Form SC1120U filers)			7. \$5,000,000
8. Carryover of unused credits from 1997 and later			8. _____
9. Credit - Total of lines 6 and 8			9. _____

Caution: SC1120U filers add the **lesser** of lines 6 or 7 to line 8

GENERAL INSTRUCTIONS

- (1) Effective for qualifying investments made after June 30, 1998, the amount of the credit is equal to the aggregate of:
 - Three-year Property** - one percent of total aggregate bases for all three-year property that qualifies;
 - Five-year Property** - two percent of total aggregate bases for all five-year property that qualifies;
 - Seven-year Property** - three percent of total aggregate bases for all seven-year property that qualifies;
 - Ten-year Property** - four percent of total aggregate bases for all ten-year property that qualifies;
 - Fifteen-year Property or greater** - five percent of total aggregate bases for all fifteen-year or greater property that qualifies.

Note: See Definitions on reverse.
- (2) Also effective for qualifying investments made after June 30, 1998, the basis of the qualifying property must be reduced by the amount of the credit claimed with respect to the property. The corresponding decrease in the depreciation deduction will result in an addition to federal taxable income for South Carolina income tax purposes.
- (3) Effective for qualifying investments made after June 30, 1998, the amount of the credit is limited to no more than five million dollars for any entity subject to the license tax provided in Section 12-20-100 (Form SC1120U filers). Note: the credit offsets income tax, not license tax.

DEFINITIONS:

For the purpose of this credit:

- (1) **Economic impact zone qualified manufacturing and productive equipment property**" means any property:
 - (a) which is used as an integral part of manufacturing or production, or used as an integral part of extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services in the economic impact zone;
 - (b) which is tangible property to which Section 168 of the Internal Revenue Code applies;
 - (c) which is Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code); and
 - (d)(i) the construction, reconstruction, or erection of which is completed by the taxpayer in the economic impact zone; or
(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer inside the economic impact zone.
- (2) In the case of any computer software which is used to control or monitor a manufacturing or production process inside the economic impact zone and with respect to which depreciation (or amortization in lieu of depreciation) is allowable, the software must be treated as qualified manufacturing and productive equipment property.
- (3) This section does not apply to any property to which the other tax credits would apply unless the taxpayer elects to waive the application of the other credits to the property.
- (4) Whether property is three-year property, five-year property, seven-year property, ten-year property or fifteen-year property is determined based on the applicable recovery period for such property under Section 168(e) of the Internal Revenue Code.
- (5) (A) **"Economic impact zone"** means a county or municipality, any portion of which is located within fifty miles of the boundaries of an applicable federal military installation, and any area not otherwise included as part of the economic impact zone if the State Budget and Control Board determines the area to be adversely impacted by the closing or realignment of an applicable federal military installation. An applicable federal military installation is one which is closed or realigned under:
 - (a) The Defense Base Closure and Realignment Act of 1990;
 - (b) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act; or
 - (c) Section 2687 of Title 10, United States Code.(B) The following counties are Economic Impact Zone Counties:

Aiken	Colleton	Jasper
Allendale	Dillon	Lexington
Bamberg	Dorchester	Marion
Barnwell	Edgefield	McCormick
Beaufort	Florence	Newberry
Berkeley	Georgetown	Orangeburg
Calhoun	Greenwood	Richland
Charleston	Hampton	Saluda
Clarendon	Horry	Williamsburg

GENERAL INFORMATION

- (A) For tax years beginning after 1996, any unused credit allowed pursuant to this section may be carried forward for ten years from the close of the tax year in which the credit was earned.
- (B) **For any qualifying investments made after June 30, 1998, if during any taxable year and before the end of applicable recovery period for such property as determined under Section 168(c) of the Internal Revenue Code, the taxpayer disposes of or removes from the economic impact zone, economic impact qualified manufacturing and productive equipment property, then the income tax due under Chapter 6 by the taxpayer for the current taxable year must be increased by the full amount of any credit claimed in prior years with respect to such property. See SC SCH TC-11-R.**
- (C) For South Carolina income tax purposes, the basis of the economic impact zone qualified manufacturing and productive equipment property must be reduced by the amount of any credit claimed with respect to the property. For any qualifying investments made after June 30, 1998, if a taxpayer is required to recapture the economic impact zone investment tax credit, the taxpayer may increase the basis of the property by the amount of any basis reduction attributable with claiming the economic impact zone investment tax credit in prior years. The basis must be increased in the year in which the credit is recaptured.

Social Security Privacy Act Disclosure

It is mandatory that you provide your social security number on this tax form if you are an individual taking this credit. 42 U.S.C 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration of any tax. SC Regulation 117-1 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**ECONOMIC IMPACT ZONE PROPERTY
INVESTMENT CREDIT**

SC SCH. TC-11

(Rev. 8/26/02)
3348

20 _____

Attach to Forms SC1040, SC1041, SC1120, SC1120S or SC1120U.

Name as Shown on Tax Return

EIZ County

Social Security or Employer ID Number

This schedule must be completed and filed with the income tax return in order to claim an investment tax credit for the cost basis of economic impact zone property. The definitions on the reverse side should be carefully read before completing this schedule, as there are certain requirements that must be met before qualifying for this tax credit.

Purpose: Use this form to claim the income tax investment credit for qualifying Economic Impact Zone Property for investments made after June 30, 1998.

Enter Economic Impact Zone Property on the schedule below. (Qualifying property is used as an integral part of manufacturing or production or used as an integral part of extracting of or furnishing transportation, communications, electrical energy, gas, water or sewage disposal services in the economic impact zone. **A credit cannot be taken on property transferred from somewhere else (either in-state or out-of-state) unless the original use of such property commences with the taxpayer inside the economic impact zone. Recapture of the credit will be required if the taxpayer disposes of or removes the property from the economic impact zone before the useful life (per section 168(e) of the Internal Revenue Code) of the property.)**

	(1) Basis	(2) Credit Percentage	(3) Credit Amount (column 1 x column 2)
1. Three-year Property	_____	1%	1. _____
2. Five-year Property	_____	2%	2. _____
3. Seven-year Property	_____	3%	3. _____
4. Ten-year Property	_____	4%	4. _____
5. Fifteen-year Property or greater	_____	5%	5. _____
6. Total of lines 1 through 5			6. _____
7. Maximum Credit (Form SC1120U filers)			7. \$5,000,000
8. Carryover of unused credits from 1997 and later			8. _____
9. Credit - Total of lines 6 and 8			9. _____

Caution: SC1120U filers add the **lesser** of lines 6 or 7 to line 8

GENERAL INSTRUCTIONS

- Effective for qualifying investments made after June 30, 1998, the amount of the credit is equal to the aggregate of:
Three-year Property - one percent of total aggregate bases for all three-year property that qualifies;
Five-year Property - two percent of total aggregate bases for all five-year property that qualifies;
Seven-year Property - three percent of total aggregate bases for all seven-year property that qualifies;
Ten-year Property - four percent of total aggregate bases for all ten-year property that qualifies;
Fifteen-year Property or greater - five percent of total aggregate bases for all fifteen-year or greater property that qualifies.
Note: See Definitions on reverse.
- Also effective for qualifying investments made after June 30, 1998, the basis of the qualifying property must be reduced by the amount of the credit claimed with respect to the property. The corresponding decrease in the depreciation deduction will result in an addition to federal taxable income for South Carolina income tax purposes.
- Effective for qualifying investments made after June 30, 1998, the amount of the credit is limited to no more than five million dollars for any entity subject to the license tax provided in Section 12-20-100 (Form SC1120U filers). Note: the credit offsets income tax, not license tax.

DEFINITIONS:

For the purpose of this credit:

- (1) **Economic impact zone qualified manufacturing and productive equipment property**" means any property:
 - (a) which is used as an integral part of manufacturing or production, or used as an integral part of extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services in the economic impact zone;
 - (b) which is tangible property to which Section 168 of the Internal Revenue Code applies;
 - (c) which is Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code); and
 - (d)(i) the construction, reconstruction, or erection of which is completed by the taxpayer in the economic impact zone; or
(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer inside the economic impact zone.
- (2) In the case of any computer software which is used to control or monitor a manufacturing or production process inside the economic impact zone and with respect to which depreciation (or amortization in lieu of depreciation) is allowable, the software must be treated as qualified manufacturing and productive equipment property.
- (3) This section does not apply to any property to which the other tax credits would apply unless the taxpayer elects to waive the application of the other credits to the property.
- (4) Whether property is three-year property, five-year property, seven-year property, ten-year property or fifteen-year property is determined based on the applicable recovery period for such property under Section 168(e) of the Internal Revenue Code.
- (5) (A) **"Economic impact zone"** means a county or municipality, any portion of which is located within fifty miles of the boundaries of an applicable federal military installation, and any area not otherwise included as part of the economic impact zone if the State Budget and Control Board determines the area to be adversely impacted by the closing or realignment of an applicable federal military installation. An applicable federal military installation is one which is closed or realigned under:
 - (a) The Defense Base Closure and Realignment Act of 1990;
 - (b) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act; or
 - (c) Section 2687 of Title 10, United States Code.(B) The following counties are Economic Impact Zone Counties:

Aiken	Calhoun	Edgefield	Jasper	Richland
Allendale	Charleston	Florence	Lexington	Saluda
Bamberg	Clarendon	Georgetown	Marion	Williamsburg
Barnwell	Colleton	Greenwood	McCormick	
Beaufort	Dillon	Hampton	Newberry	
Berkeley	Dorchester	Horry	Orangeburg	

GENERAL INFORMATION

- (A) For tax years beginning after 1996, any unused credit allowed pursuant to this section may be carried forward for ten years from the close of the tax year in which the credit was earned.
- (B) **For any qualifying investments made after June 30, 1998, if during any taxable year and before the end of applicable recovery period for such property as determined under Section 168(c) of the Internal Revenue Code, the taxpayer disposes of or removes from the economic impact zone, economic impact qualified manufacturing and productive equipment property, then the income tax due under Chapter 6 by the taxpayer for the current taxable year must be increased by the full amount of any credit claimed in prior years with respect to such property. See SC SCH TC-11-R.**
- (C) For South Carolina income tax purposes, the basis of the economic impact zone qualified manufacturing and productive equipment property must be reduced by the amount of any credit claimed with respect to the property. For any qualifying investments made after June 30, 1998, if a taxpayer is required to recapture the economic impact zone investment tax credit, the taxpayer may increase the basis of the property by the amount of any basis reduction attributable with claiming the economic impact zone investment tax credit in prior years. The basis must be increased in the year in which the credit is recaptured.
- (D) The credit allowed by this section for investments made after June 30, 1998 is limited to no more than five million dollars for any entity subject to the license tax as provided in Section 12-20-100.

Social Security Privacy Act Disclosure

It is mandatory that you provide your social security number on this tax form if you are an individual taking this credit. 42 U.S.C 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration of any tax. SC Regulation 117-1 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

The Family Privacy Protection Act

Under the Family Privacy Protection Act, the collection of personal information from citizens by the Department of Revenue is limited to the information necessary for the Department to fulfill its statutory duties. In most instances, once this information is collected by the Department, it is protected by law from public disclosure. In those situations where public disclosure is not prohibited, the Family Privacy Protection Act prevents such information from being used by third parties for commercial solicitation purposes.



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**ECONOMIC IMPACT ZONE PROPERTY
INVESTMENT CREDIT**

SC SCH. TC-11

(Rev. 8/5/03)
3348

20 _____

Attach to Forms SC1040, SC1041, SC1065, SC1120, SC1120S or SC1120U.

Name as Shown on Tax Return	EIZ County	Social Security or Employer ID Number
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This schedule must be completed and filed with the income tax return in order to claim an investment tax credit for the cost basis of economic impact zone property. The definitions on the reverse side should be carefully read before completing this schedule, as there are certain requirements that must be met before qualifying for this tax credit.

Purpose: Use this form to claim the income tax investment credit for qualifying Economic Impact Zone Property for investments made after June 30, 1998.

Enter Economic Impact Zone Property on the schedule below. (Qualifying property is used as an integral part of manufacturing or production or used as an integral part of extracting or furnishing transportation, communications, electrical energy, gas, water or sewage disposal services in the economic impact zone. **A credit cannot be taken on property transferred from somewhere else (either in-state or out-of-state) unless the original use of such property commences with the taxpayer inside the economic impact zone. Recapture of the credit will be required if the taxpayer disposes of or removes the property from the economic impact zone before the useful life (per section 168(e) of the Internal Revenue Code) of the property.)**

	(1) Basis	(2) Credit Percentage	(3) Credit Amount (column 1 x column 2)
1. Three-year Property	_____	1%	1. _____
2. Five-year Property	_____	2%	2. _____
3. Seven-year Property	_____	3%	3. _____
4. Ten-year Property	_____	4%	4. _____
5. Fifteen-year Property or greater	_____	5%	5. _____
6. Total of lines 1 through 5			6. _____
7. Maximum Credit (Form SC1120U filers)			7. \$5,000,000
8. Carryover of unused credits from 1997 and later			8. _____
9. Credit - Total of lines 6 and 8			9. _____

Caution: SC1120U filers add the **lesser** of lines 6 or 7 to line 8

GENERAL INSTRUCTIONS

- (1) Effective for qualifying investments made after June 30, 1998, the amount of the credit is equal to the aggregate of:
 - Three-year Property** - one percent of total aggregate bases for all three-year property that qualifies;
 - Five-year Property** - two percent of total aggregate bases for all five-year property that qualifies;
 - Seven-year Property** - three percent of total aggregate bases for all seven-year property that qualifies;
 - Ten-year Property** - four percent of total aggregate bases for all ten-year property that qualifies;
 - Fifteen-year Property or greater** - five percent of total aggregate bases for all fifteen-year or greater property that qualifies.

Note: See Definitions on reverse.
- (2) Also effective for qualifying investments made after June 30, 1998, the basis of the qualifying property must be reduced by the amount of the credit claimed with respect to the property. The corresponding decrease in the depreciation deduction will result in an addition to federal taxable income for South Carolina income tax purposes.
- (3) Effective for qualifying investments made after June 30, 1998, the amount of the credit is limited to no more than five million dollars for any entity subject to the license tax provided in Section 12-20-100 (Form SC1120U filers). Note: the credit offsets income tax, not license tax.

DEFINITIONS:

For the purpose of this credit:

- (1) **Economic impact zone qualified manufacturing and productive equipment property** means any property:
 - (a) which is used as an integral part of manufacturing or production, or used as an integral part of extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services in the economic impact zone;
 - (b) which is tangible property to which Section 168 of the Internal Revenue Code applies;
 - (c) which is Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code); and
 - (d)(i) the construction, reconstruction, or erection of which is completed by the taxpayer in the economic impact zone; or
(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer inside the economic impact zone.
- (2) In the case of any computer software which is used to control or monitor a manufacturing or production process inside the economic impact zone and with respect to which depreciation (or amortization in lieu of depreciation) is allowable, the software must be treated as qualified manufacturing and productive equipment property.
- (3) This section does not apply to any property to which the other tax credits would apply unless the taxpayer elects to waive the application of the other credits to the property.
- (4) Whether property is three-year property, five-year property, seven-year property, ten-year property or fifteen-year property is determined based on the applicable recovery period for such property under Section 168(e) of the Internal Revenue Code.
- (5) (A) **"Economic impact zone"** means a county or municipality, any portion of which is located within fifty miles of the boundaries of an applicable federal military installation, and any area not otherwise included as part of the economic impact zone if the State Budget and Control Board determines the area to be adversely impacted by the closing or realignment of an applicable federal military installation. An applicable federal military installation is one which is closed or realigned under:
 - (a) The Defense Base Closure and Realignment Act of 1990;
 - (b) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act; or
 - (c) Section 2687 of Title 10, United States Code.(B) The following counties are Economic Impact Zone Counties:

Aiken	Calhoun	Edgefield	Jasper	Richland
Allendale	Charleston	Florence	Lexington	Saluda
Bamberg	Clarendon	Georgetown	Marion	Williamsburg
Barnwell	Colleton	Greenwood	McCormick	
Beaufort	Dillon	Hampton	Newberry	
Berkeley	Dorchester	Horry	Orangeburg	

GENERAL INFORMATION

- (A) For tax years beginning after 1996, any unused credit allowed pursuant to this section may be carried forward for ten years from the close of the tax year in which the credit was earned.
- (B) **For any qualifying investments made after June 30, 1998, if during any taxable year and before the end of applicable recovery period for such property as determined under Section 168(c) of the Internal Revenue Code, the taxpayer disposes of or removes from the economic impact zone, economic impact qualified manufacturing and productive equipment property, then the income tax due under Chapter 6 by the taxpayer for the current taxable year must be increased by the full amount of any credit claimed in prior years with respect to such property. See SC SCH TC-11-R.**
- (C) For South Carolina income tax purposes, the basis of the economic impact zone qualified manufacturing and productive equipment property must be reduced by the amount of any credit claimed with respect to the property. For any qualifying investments made after June 30, 1998, if a taxpayer is required to recapture the economic impact zone investment tax credit, the taxpayer may increase the basis of the property by the amount of any basis reduction attributable with claiming the economic impact zone investment tax credit in prior years. The basis must be increased in the year in which the credit is recaptured.
- (D) The credit allowed by this section for investments made after June 30, 1998 is limited to no more than five million dollars for any entity subject to the license tax as provided in Section 12-20-100.

Social Security Privacy Act Disclosure

It is mandatory that you provide your social security number on this tax form if you are an individual taking this credit. 42 U.S.C 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration of any tax. SC Regulation 117-201 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

The Family Privacy Protection Act

Under the Family Privacy Protection Act, the collection of personal information from citizens by the Department of Revenue is limited to the information necessary for the Department to fulfill its statutory duties. In most instances, once this information is collected by the Department, it is protected by law from public disclosure. In those situations where public disclosure is not prohibited, the Family Privacy Protection Act prevents such information from being used by third parties for commercial solicitation purposes.



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**ECONOMIC IMPACT ZONE PROPERTY
INVESTMENT CREDIT**

Attach to Forms SC1040, SC1041, SC1065, SC1120, SC1120S or SC1120U.

SC SCH. TC-11

(Rev. 9/8/05)
3348

20 _____

Name as Shown on Tax Return	EIZ County	Social Security or Employer ID Number
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This schedule must be completed and filed with the income tax return in order to claim an investment tax credit for the cost basis of economic impact zone property. The definitions on the reverse side should be carefully read before completing this schedule, as there are certain requirements that must be met before qualifying for this tax credit.

Purpose: Use this form to claim the income tax investment credit for qualifying Economic Impact Zone Property for investments made after June 30, 1998.

Enter Economic Impact Zone Property on the schedule below. (Qualifying property is used as an integral part of manufacturing or production or used as an integral part of extracting or furnishing transportation, communications, electrical energy, gas, water or sewage disposal services in the economic impact zone. **A credit cannot be taken on property transferred from somewhere else (either in-state or out-of-state) unless the original use of such property commences with the taxpayer inside the economic impact zone. Recapture of the credit will be required if the taxpayer disposes of or removes the property from the economic impact zone before the useful life (per section 168(e) of the Internal Revenue Code) of the property.**)

	(1) Basis	(2) Credit Percentage	(3) Credit Amount (column 1 x column 2)
1. Three-year Property	_____	1%	1. _____
2. Five-year Property	_____	2%	2. _____
3. Seven-year Property	_____	3%	3. _____
4. Ten-year Property	_____	4%	4. _____
5. Fifteen-year Property or greater	_____	5%	5. _____
6. Total of lines 1 through 5			6. _____
7. Maximum Credit (Form SC1120U filers)			7. \$5,000,000
8. Carryover of unused credits from 1997 and later			8. _____
9. Credit - Total of lines 6 and 8			9. _____

Caution: SC1120U filers add the **lesser** of lines 6 or 7 to line 8

GENERAL INSTRUCTIONS

- Effective for qualifying investments made after June 30, 1998, the amount of the credit is equal to the aggregate of:
 - Three-year Property** - one percent of total aggregate bases for all three-year property that qualifies;
 - Five-year Property** - two percent of total aggregate bases for all five-year property that qualifies;
 - Seven-year Property** - three percent of total aggregate bases for all seven-year property that qualifies;
 - Ten-year Property** - four percent of total aggregate bases for all ten-year property that qualifies;
 - Fifteen-year Property or greater** - five percent of total aggregate bases for all fifteen-year or greater property that qualifies. **Note:** See Definitions on reverse.
- Also effective for qualifying investments made after June 30, 1998, the basis of the qualifying property must be reduced by the amount of the credit claimed with respect to the property. The corresponding decrease in the depreciation deduction will result in an addition to federal taxable income for South Carolina income tax purposes.
- Effective for qualifying investments made after June 30, 1998, the amount of the credit is limited to no more than five million dollars for any entity subject to the license tax provided in Section 12-20-100 (Form SC1120U filers). Note: the credit offsets income tax, not license tax.

DEFINITIONS:

For the purpose of this credit:

- (1) **Economic impact zone qualified manufacturing and productive equipment property**" means any property:
 - (a) which is used as an integral part of manufacturing or production, or used as an integral part of extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services in the economic impact zone;
 - (b) which is tangible property to which Section 168 of the Internal Revenue Code applies;
 - (c) which is Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code); and
 - (d)(i) the construction, reconstruction, or erection of which is completed by the taxpayer in the economic impact zone; or
(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer inside the economic impact zone.
- (2) In the case of any computer software which is used to control or monitor a manufacturing or production process inside the economic impact zone and with respect to which depreciation (or amortization in lieu of depreciation) is allowable, the software must be treated as qualified manufacturing and productive equipment property.
- (3) This section does not apply to any property to which the other tax credits would apply unless the taxpayer elects to waive the application of the other credits to the property.
- (4) Whether property is three-year property, five-year property, seven-year property, ten-year property or fifteen-year property is determined based on the applicable recovery period for such property under Section 168(e) of the Internal Revenue Code.
- (5) (A) **"Economic impact zone"** means a county or municipality, any portion of which is located within fifty miles of the boundaries of an applicable federal military installation, and any area not otherwise included as part of the economic impact zone if the State Budget and Control Board determines the area to be adversely impacted by the closing or realignment of an applicable federal military installation. An applicable federal military installation is one which is closed or realigned under:
 - (a) The Defense Base Closure and Realignment Act of 1990;
 - (b) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act; or
 - (c) Section 2687 of Title 10, United States Code.(B) The following counties are Economic Impact Zone Counties:

Aiken	Calhoun	Edgefield	Jasper	Richland
Allendale	Charleston	Florence	Lexington	Saluda
Bamberg	Clarendon	Georgetown	Marion	Williamsburg
Barnwell	Colleton	Greenwood	McCormick	
Beaufort	Dillon	Hampton	Newberry	
Berkeley	Dorchester	Horry	Orangeburg	

GENERAL INFORMATION

- (A) For tax years beginning after 1996, any unused credit allowed pursuant to this section may be carried forward for ten years from the close of the tax year in which the credit was earned.
- (B) **For any qualifying investments made after June 30, 1998, if during any taxable year and before the end of applicable recovery period for such property as determined under Section 168(c) of the Internal Revenue Code, the taxpayer disposes of or removes from the economic impact zone, economic impact qualified manufacturing and productive equipment property, then the income tax due under Chapter 6 by the taxpayer for the current taxable year must be increased by the full amount of any credit claimed in prior years with respect to such property. See SC SCH TC-11-R.**
- (C) For South Carolina income tax purposes, the basis of the economic impact zone qualified manufacturing and productive equipment property must be reduced by the amount of any credit claimed with respect to the property. For any qualifying investments made after June 30, 1998, if a taxpayer is required to recapture the economic impact zone investment tax credit, the taxpayer may increase the basis of the property by the amount of any basis reduction attributable with claiming the economic impact zone investment tax credit in prior years. The basis must be increased in the year in which the credit is recaptured.
- (D) The credit allowed by this section for investments made after June 30, 1998 is limited to no more than five million dollars for any entity subject to the license tax as provided in Section 12-20-100.

Effective June 1, 2005, this section applies for credits earned in taxable years beginning after 1996.

If a taxpayer (1) has made a total capital investment of not less than \$50,000,000 in South Carolina in the previous 5 years, (2) is engaged in an activity or activities in South Carolina listed under Section 31, 32 or 33 of the North American Industry Classification System (NAICS) Manual, and (3) either (a) employs 1,000 or more full-time workers in South Carolina while having a total capital investment here of at least \$500,000,000 or (b) employs 850 or more full-time workers in South Carolina while having a total capital investment here of not less than \$750,000,000, any credit unused within the initial 10 year period can be carried forward for use in any subsequent tax years. Credits carried forward beyond the initial 10 year period may not reduce a taxpayer's state income tax liability in any tax year by more than 25%.

Social Security Privacy Act Disclosure

It is mandatory that you provide your social security number on this tax form if you are an individual taking this credit. 42 U.S.C 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration of any tax. SC Regulation 117-201 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

The Family Privacy Protection Act

Under the Family Privacy Protection Act, the collection of personal information from citizens by the Department of Revenue is limited to the information necessary for the Department to fulfill its statutory duties. In most instances, once this information is collected by the Department, it is protected by law from public disclosure. In those situations where public disclosure is not prohibited, the Family Privacy Protection Act prevents such information from being used by third parties for commercial solicitation purposes.



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**ECONOMIC IMPACT ZONE PROPERTY
INVESTMENT CREDIT**

SC SCH. TC-11
(Rev. 10/4/06)
3348
20 _____

Attach to Forms SC1040, SC1041, SC1065, SC1120, SC1120S or SC1120U.

Name as Shown on Tax Return	EIZ County	Social Security or Employer ID Number
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This schedule must be completed and filed with the income tax return in order to claim an investment tax credit for the cost basis of economic impact zone property. The definitions on the reverse side should be carefully read before completing this schedule, as there are certain requirements that must be met before qualifying for this tax credit.

Purpose: Use this form to claim the income tax investment credit for qualifying Economic Impact Zone Property for investments made after June 30, 1998.

Enter Economic Impact Zone Property on the schedule below. (Qualifying property is used as an integral part of manufacturing or production or used as an integral part of extracting or furnishing transportation, communications, electrical energy, gas, water or sewage disposal services in the economic impact zone. **A credit cannot be taken on property transferred from somewhere else (either in-state or out-of-state) unless the original use of such property commences with the taxpayer inside the economic impact zone. Recapture of the credit will be required if the taxpayer disposes of or removes the property from the economic impact zone before the useful life (per section 168(e) of the Internal Revenue Code) of the property.**)

	(1) Basis	(2) Credit Percentage	(3) Credit Amount (column 1 x column 2)
1. Three-year Property	_____	1%	1. _____
2. Five-year Property	_____	2%	2. _____
3. Seven-year Property	_____	3%	3. _____
4. Ten-year Property	_____	4%	4. _____
5. Fifteen-year Property or greater	_____	5%	5. _____
6. Total of lines 1 through 5			6. _____
7. Maximum Credit (Form SC1120U filers)			7. <u>\$5,000,000</u>
8. Carryover of unused credits from 1997 and later			8. _____
9. Credit - Total of lines 6 and 8			9. _____

Caution: SC1120U filers add the **lesser** of lines 6 or 7 to line 8

GENERAL INSTRUCTIONS

- Effective for qualifying investments made after June 30, 1998, the amount of the credit is equal to the aggregate of:
 - Three-year Property** - one percent of total aggregate bases for all three-year property that qualifies;
 - Five-year Property** - two percent of total aggregate bases for all five-year property that qualifies;
 - Seven-year Property** - three percent of total aggregate bases for all seven-year property that qualifies;
 - Ten-year Property** - four percent of total aggregate bases for all ten-year property that qualifies;
 - Fifteen-year Property or greater** - five percent of total aggregate bases for all fifteen-year or greater property that qualifies. **Note:** See Definitions on reverse.
- Also effective for qualifying investments made after June 30, 1998, the basis of the qualifying property must be reduced by the amount of the credit claimed with respect to the property. The corresponding decrease in the depreciation deduction will result in an addition to federal taxable income for South Carolina income tax purposes.
- Effective for qualifying investments made after June 30, 1998, the amount of the credit is limited to no more than five million dollars for any entity subject to the license tax provided in Section 12-20-100 (Form SC1120U filers). Note: the credit offsets income tax, not license tax.

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DEFINITIONS:

For the purpose of this credit:

- (1) **Economic impact zone qualified manufacturing and productive equipment property**" means any property:
 - (a) which is used as an integral part of manufacturing or production, or used as an integral part of extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services in the economic impact zone;
 - (b) which is tangible property to which Section 168 of the Internal Revenue Code applies;
 - (c) which is Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code); and
 - (d)(i) the construction, reconstruction, or erection of which is completed by the taxpayer in the economic impact zone; or
 - (ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer inside the economic impact zone.
- (2) In the case of any computer software which is used to control or monitor a manufacturing or production process inside the economic impact zone and with respect to which depreciation (or amortization in lieu of depreciation) is allowable, the software must be treated as qualified manufacturing and productive equipment property.
- (3) This section does not apply to any property to which the other tax credits would apply unless the taxpayer elects to waive the application of the other credits to the property.
- (4) Whether property is three-year property, five-year property, seven-year property, ten-year property or fifteen-year property is determined based on the applicable recovery period for such property under Section 168(e) of the Internal Revenue Code.
- (5) (A) **"Economic impact zone"** means a county or municipality, any portion of which is located within fifty miles of the boundaries of an applicable federal military installation, and any area not otherwise included as part of the economic impact zone if the State Budget and Control Board determines the area to be adversely impacted by the closing or realignment of an applicable federal military installation. An applicable federal military installation is one which is closed or realigned under:
 - (a) The Defense Base Closure and Realignment Act of 1990;
 - (b) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act; or
 - (c) Section 2687 of Title 10, United States Code.
 (B) The following counties are Economic Impact Zone Counties:

Aiken	Calhoun	Edgefield	Jasper	Richland
Allendale	Charleston	Florence	Lexington	Saluda
Bamberg	Clarendon	Georgetown	Marion	Williamsburg
Barnwell	Colleton	Greenwood	McCormick	
Beaufort	Dillon	Hampton	Newberry	
Berkeley	Dorchester	Horry	Orangeburg	

GENERAL INFORMATION

- (A) For tax years beginning after 1996, any unused credit allowed pursuant to this section may be carried forward for ten years from the close of the tax year in which the credit was earned.
- (B) **For any qualifying investments made after June 30, 1998, if during any taxable year and before the end of applicable recovery period for such property as determined under Section 168(c) of the Internal Revenue Code, the taxpayer disposes of or removes from the economic impact zone, economic impact qualified manufacturing and productive equipment property, then the income tax due under Chapter 6 by the taxpayer for the current taxable year must be increased by the full amount of any credit claimed in prior years with respect to such property. See SC SCH TC-11-R.**
- (C) For South Carolina income tax purposes, the basis of the economic impact zone qualified manufacturing and productive equipment property must be reduced by the amount of any credit claimed with respect to the property. For any qualifying investments made after June 30, 1998, if a taxpayer is required to recapture the economic impact zone investment tax credit, the taxpayer may increase the basis of the property by the amount of any basis reduction attributable with claiming the economic impact zone investment tax credit in prior years. The basis must be increased in the year in which the credit is recaptured.
- (D) The credit allowed by this section for investments made after June 30, 1998 is limited to no more than five million dollars for any entity subject to the license tax as provided in Section 12-20-100.

Effective June 1, 2005, this section applies for credits earned in taxable years beginning after 1996.

If a taxpayer (1) has made a total capital investment of not less than \$50,000,000 in South Carolina in the previous 5 years, (2) is engaged in an activity or activities in South Carolina listed under Section 31, 32 or 33 of the North American Industry Classification System (NAICS) Manual, and (3) either (a) employs 1,000 or more full-time workers in South Carolina while having a total capital investment here of at least \$500,000,000 or (b) employs 850 or more full-time workers in South Carolina while having a total capital investment here of not less than \$750,000,000, any credit unused within the initial 10 year period can be carried forward for use in any subsequent tax years. Credits carried forward beyond the initial 10 year period may not reduce a taxpayer's state income tax liability in any tax year by more than 25%.

Social Security Privacy Act Disclosure

It is mandatory that you provide your social security number on this tax form if you are an individual taking this credit. 42 U.S.C 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration of any tax. SC Regulation 117-201 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

The Family Privacy Protection Act

Under the Family Privacy Protection Act, the collection of personal information from citizens by the Department of Revenue is limited to the information necessary for the Department to fulfill its statutory duties. In most instances, once this information is collected by the Department, it is protected by law from public disclosure. In those situations where public disclosure is not prohibited, the Family Privacy Protection Act prevents such information from being used by third parties for commercial solicitation purposes.



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**ECONOMIC IMPACT ZONE PROPERTY
INVESTMENT CREDIT**

Attach to Forms SC1040, SC1041, SC1065, SC1120, SC1120S or SC1120U.

Name as Shown on Tax Return

EIZ County

Social Security or Employer ID Number

This schedule must be completed and filed with the income tax return in order to claim an investment tax credit for the cost basis of economic impact zone property. The definitions on the reverse side should be carefully read before completing this schedule, as there are certain requirements that must be met before qualifying for this tax credit.

Purpose: Use this form to claim the income tax investment credit for qualifying Economic Impact Zone Property for investments made after June 30, 1998.

Enter Economic Impact Zone Property on the schedule below. (Qualifying property is used as an integral part of manufacturing or production or used as an integral part of extracting of or furnishing transportation, communications, electrical energy, gas, water or sewage disposal services in the economic impact zone. **A credit cannot be taken on property transferred from somewhere else (either in-state or out-of-state) unless the original use of such property commences with the taxpayer inside the economic impact zone. Recapture of the credit will be required if the taxpayer disposes of or removes the property from the economic impact zone before the useful life (per section 168(e) of the Internal Revenue Code) of the property.**)

	(1) Basis	(2) Credit Percentage	(3) Credit Amount (column 1 x column 2)
1. Three-year Property	_____	1%	1. _____
2. Five-year Property	_____	2%	2. _____
3. Seven-year Property	_____	3%	3. _____
4. Ten-year Property	_____	4%	4. _____
5. Fifteen-year Property or greater	_____	5%	5. _____
6. Total of lines 1 through 5			6. _____
7. Maximum Credit (Form SC1120U filers)			7. \$5,000,000
8. Carryover of unused credits from 1997 and later			8. _____
9. Credit - Total of lines 6 and 8			9. _____

Caution: SC1120U filers add the **lesser** of lines 6 or 7 to line 8

GENERAL INSTRUCTIONS

- (1) Effective for qualifying investments made after June 30, 1998, the amount of the credit is equal to the aggregate of:
Three-year Property - one percent of total aggregate bases for all three-year property that qualifies;
Five-year Property - two percent of total aggregate bases for all five-year property that qualifies;
Seven-year Property - three percent of total aggregate bases for all seven-year property that qualifies;
Ten-year Property - four percent of total aggregate bases for all ten-year property that qualifies;
Fifteen-year Property or greater - five percent of total aggregate bases for all fifteen-year or greater property that qualifies. **Note:** See Definitions on reverse.
- (2) Also effective for qualifying investments made after June 30, 1998, the basis of the qualifying property must be reduced by the amount of the credit claimed with respect to the property. The corresponding decrease in the depreciation deduction will result in an addition to federal taxable income for South Carolina income tax purposes.
- (3) Effective for qualifying investments made after June 30, 1998, the amount of the credit is limited to no more than five million dollars for any entity subject to the license tax provided in Section 12-20-100 (Form SC1120U filers). Note: the credit offsets income tax, not license tax.

DEFINITIONS:

For the purpose of this credit:

- (1) **Economic impact zone qualified manufacturing and productive equipment property** means any property:
 - (a) which is used as an integral part of manufacturing or production, or used as an integral part of extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services in the economic impact zone;
 - (b) which is tangible property to which Section 168 of the Internal Revenue Code applies;
 - (c) which is Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code); and
 - (d)(i) the construction, reconstruction, or erection of which is completed by the taxpayer in the economic impact zone; or
 - (ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer inside the economic impact zone.
- (2) In the case of any computer software which is used to control or monitor a manufacturing or production process inside the economic impact zone and with respect to which depreciation (or amortization in lieu of depreciation) is allowable, the software must be treated as qualified manufacturing and productive equipment property.
- (3) This section does not apply to any property to which the other tax credits would apply unless the taxpayer elects to waive the application of the other credits to the property.
- (4) Whether property is three-year property, five-year property, seven-year property, ten-year property or fifteen-year property is determined based on the applicable recovery period for such property under Section 168(e) of the Internal Revenue Code.
- (5) (A) **"Economic impact zone"** means a county or municipality, any portion of which is located within fifty miles of the boundaries of an applicable federal military installation, and any area not otherwise included as part of the economic impact zone if the State Budget and Control Board determines the area to be adversely impacted by the closing or realignment of an applicable federal military installation. An applicable federal military installation is one which is closed or realigned under:
 - (a) The Defense Base Closure and Realignment Act of 1990;
 - (b) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act; or
 - (c) Section 2687 of Title 10, United States Code.(B) The following counties are Economic Impact Zone Counties:

Aiken	Berkeley	Dillon	Greenwood	Marion	Saluda
Allendale	Calhoun	Dorchester	Hampton	McCormick	Williamsburg
Bamberg	Charleston	Edgefield	Horry	Newberry	
Barnwell	Clarendon	Florence	Jasper	Orangeburg	
Beaufort	Colleton	Georgetown	Lexington	Richland	

- (A) For tax years beginning after 1996, any unused credit allowed pursuant to this section may be carried forward for ten years from the close of the tax year in which the credit was earned.
- (B) **For any qualifying investments made after June 30, 1998, if during any taxable year and before the end of applicable recovery period for such property as determined under Section 168(c) of the Internal Revenue Code, the taxpayer disposes of or removes from the economic impact zone, economic impact qualified manufacturing and productive equipment property, then the income tax due under Chapter 6 by the taxpayer for the current taxable year must be increased by the full amount of any credit claimed in prior years with respect to such property. See SC SCH TC-11-R.**
- (C) For South Carolina income tax purposes, the basis of the economic impact zone qualified manufacturing and productive equipment property must be reduced by the amount of any credit claimed with respect to the property. For any qualifying investments made after June 30, 1998, if a taxpayer is required to recapture the economic impact zone investment tax credit, the taxpayer may increase the basis of the property by the amount of any basis reduction attributable with claiming the economic impact zone investment tax credit in prior years. The basis must be increased in the year in which the credit is recaptured.
- (D) The credit allowed by this section for investments made after June 30, 1998 is limited to no more than five million dollars for any entity subject to the license tax as provided in Section 12-20-100.

Effective June 1, 2005, this section applies for credits earned in taxable years beginning after 1996.

If a taxpayer (1) has made a total capital investment of not less than \$50,000,000 in South Carolina in the previous 5 years, (2) is engaged in an activity or activities in South Carolina listed under Section 31, 32 or 33 of the North American Industry Classification System (NAICS) Manual, and (3) either (a) employs 1,000 or more full-time workers in South Carolina while having a total capital investment here of at least \$500,000,000 or (b) employs 850 or more full-time workers in South Carolina while having a total capital investment here of not less than \$750,000,000, any credit unused within the initial 10 year period can be carried forward for use in any subsequent tax years. Credits carried forward beyond the initial 10 year period may not reduce a taxpayer's state income tax liability in any tax year by more than 25%.

Social Security Privacy Act Disclosure

It is mandatory that you provide your social security number on this tax form if you are an individual taking this credit. 42 U.S.C 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration of any tax. SC Regulation 117-201 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

The Family Privacy Protection Act

Under the Family Privacy Protection Act, the collection of personal information from citizens by the Department of Revenue is limited to the information necessary for the Department to fulfill its statutory duties. In most instances, once this information is collected by the Department, it is protected by law from public disclosure. In those situations where public disclosure is not prohibited, the Family Privacy Protection Act prevents such information from being used by third parties for commercial solicitation purposes.

33482027

**CAPITAL INVESTMENT CREDIT**

Attach to your Income Tax Return

Name as Shown on Tax Return

County

FEIN

IMPORTANT: Use 2010 version of this form to claim credit for qualifying investments made in an Economic Impact Zone before January 1, 2011. Prior year forms are available at www.sctax.org.

Purpose: Use this form to claim the capital investment credit for qualified investments made in this State on or after January 1, 2011. This schedule must be completed and filed with the income tax return in order to claim a capital investment credit for the cost basis of qualified manufacturing and productive equipment property.

Read the definitions on the reverse side carefully before completing this schedule.

Enter qualified manufacturing and productive equipment property on the schedule below.

NOTE: Qualified property is property used as an integral part of manufacturing or production or used as an integral part of extracting or furnishing transportation, communications, electrical energy, gas, water or sewage disposal services in this State. **Credit cannot be taken on property transferred from somewhere else unless the original use of such property commences with the taxpayer inside the State on or after January 1, 2011 or in an Economic Impact Zone before January 1, 2011. Recapture of the credit will be required if the taxpayer disposes of or removes the property from this State before the useful life of the property.**

	(1) Basis	(2) Credit Percentage	(3) Credit Amount (column 1 x column 2)
1. Three-year Property	_____	0.5%	1. _____
2. Five-year Property	_____	1.0%	2. _____
3. Seven-year Property	_____	1.5%	3. _____
4. Ten-year Property	_____	2.0%	4. _____
5. Fifteen-year Property or greater	_____	2.5%	5. _____
6. Total of lines 1 through 5			6. _____
7. Maximum Credit (Form SC1120U filers)			7. <u>\$5,000,000</u>
8. Carryover of unused credits from 1997 and later			8. _____
9. Credit - Total of lines 6 and 8			9. _____

Caution: SC1120U filers add the **lesser** of lines 6 or 7 to line 8

GENERAL INSTRUCTIONS

IMPORTANT: Use 2010 version of this form to claim credit for qualifying investments made in an Economic Impact Zone before January 1, 2011. Prior year forms are available at www.sctax.org.

Credit amount

Effective January 1, 2011, a capital investment credit against income tax is allowed for any tax year in which the taxpayer places qualified manufacturing and productive equipment property in service in this State. The amount of the credit allowed by this section is equal to the aggregate of:

- 0.5% of total aggregate bases for all **3-year** property that qualifies;
- 1.0% of total aggregate bases for all **5-year** property that qualifies;
- 1.5% of total aggregate bases for all **7-year** property that qualifies;
- 2.0% of total aggregate bases for all **10-year** property that qualifies;
- 2.5% of total aggregate bases for all **15-year or greater** property that qualifies.

Whether property is 3-year property, 5-year property, 7-year property, 10-year property or 15-year property is determined based on the applicable recovery period for such property under Section 168(e) of the Internal Revenue Code (IRC).

Qualified property

"Qualified manufacturing and productive equipment property" means any property:

- (a) which is used as an integral part of manufacturing or production, or used as an integral part of extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services in the economic impact zone;
- (b) which is tangible property to which IRC Section 168 applies;
- (c) which is Section 1245 property (as defined in IRC Section 1245(a)(3)); and
- (d)(i) the construction, reconstruction, or erection of which is completed by the taxpayer in this State; or
(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer inside this State.

In the case of any computer software which is used to control or monitor a manufacturing or production process inside this State and with respect to which depreciation (or amortization in lieu of depreciation) is allowable, the software must be treated as qualified manufacturing and productive equipment property.

This credit does not apply to any property to which the other tax credits would apply unless the taxpayer elects to waive the application of the other credits to the property.

Credit carryover

Unused credit allowed pursuant to this section may be carried forward for 10 years from the close of the tax year in which the credit was earned.

In the case of credit unused within the initial 10-year period, a taxpayer may continue to carry forward unused credits for use in any subsequent tax years if the taxpayer:

- (a) is engaged in this State in an activity or activities listed under the North American Industry Classification System Manual (NAICS) Section 31, 32, or 33;
- (b)(i) is employing 1,000 or more full-time workers in this State and having a total capital investment in this State of not less than \$500 million; or
(ii) is employing 850 or more full-time workers in this State and having a total capital investment in this State of not less than \$750 million; and
- (c) made a total capital investment of not less than \$50 million in the previous five years.

Limitations

Credits carried forward beyond the initial 10-year period may not reduce a taxpayer's state income tax liability in any subsequent tax year by more than 25%.

An entity subject to the license tax provided in Section 12-20-100 is limited to \$5 million dollars in credit for investments made after June 30, 1998.

Recapture

If during any tax year and before the end of applicable recovery period for such property as determined under IRC Section 168(e), the taxpayer disposes of or removes from this State qualified manufacturing and productive equipment property, then the income tax due by the taxpayer for the current tax year must be increased by an amount of any credit claimed in prior years with respect to such property determined by assuming the credit is earned ratably over the useful life of the property and recapturing pro rata the unearned portion of the credit. Complete TC-11R.

Reduction in basis

For South Carolina income tax purposes, the basis of the qualified manufacturing and productive equipment property must be reduced by the amount of any credit claimed with respect to the property. A taxpayer required to recapture the capital investment credit may increase the basis of the property by the amount of any basis reduction attributable with claiming the investment tax credit in prior years. The basis must be increased in the year in which the credit is recaptured.

Social Security Privacy Act Disclosure

It is mandatory that you provide your social security number on this tax form if you are an individual taking this credit. 42 U.S.C. 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration of any tax. SC Regulation 117-201 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

The Family Privacy Protection Act

Under the Family Privacy Protection Act, the collection of personal information from citizens by the Department of Revenue is limited to the information necessary for the Department to fulfill its statutory duties. In most instances, once this information is collected by the Department, it is protected by law from public disclosure. In those situations where public disclosure is not prohibited, the Family Privacy Protection Act prevents such information from being used by third parties for commercial solicitation purposes.

33482027

**CAPITAL INVESTMENT CREDIT**

Attach to your Income Tax Return

Name as Shown on Tax Return

County

SSN or FEIN

IMPORTANT: Use 2010 version of this form to claim credit for qualifying investments made in an Economic Impact Zone before January 1, 2011. Prior year forms are available at www.sctax.org.

Purpose: Use this form to claim the capital investment credit for qualified investments made in this State on or after January 1, 2011. This schedule must be completed and filed with the income tax return in order to claim a capital investment credit for the cost basis of qualified manufacturing and productive equipment property.

Read the definitions on the reverse side carefully before completing this schedule.

Enter qualified manufacturing and productive equipment property on the schedule below.

NOTE: Qualified property is property used as an integral part of manufacturing or production or used as an integral part of extracting or furnishing transportation, communications, electrical energy, gas, water or sewage disposal services in this State. **Credit cannot be taken on property transferred from somewhere else unless the original use of such property commences with the taxpayer inside the State on or after January 1, 2011 or in an Economic Impact Zone before January 1, 2011. Recapture of the credit will be required if the taxpayer disposes of or removes the property from this State before the useful life of the property.**

	(1) Basis	(2) Credit Percentage	(3) Credit Amount (column 1 x column 2)
1. Three-year Property	_____	0.5%	1. _____
2. Five-year Property	_____	1.0%	2. _____
3. Seven-year Property	_____	1.5%	3. _____
4. Ten-year Property	_____	2.0%	4. _____
5. Fifteen-year Property or greater	_____	2.5%	5. _____
6. Total of lines 1 through 5			6. _____
7. Maximum Credit (Form SC1120U filers)			7. <u>\$5,000,000</u>
8. Carryover of unused credits from 1997 and later			8. _____
9. Credit - Total of lines 6 and 8			9. _____

Caution: SC1120U filers add the **lesser** of lines 6 or 7 to line 8

GENERAL INSTRUCTIONS

IMPORTANT: Use 2010 version of this form to claim credit for qualifying investments made in an Economic Impact Zone before January 1, 2011. Prior year forms are available at www.sctax.org.

Credit amount

Effective January 1, 2011, a capital investment credit against income tax is allowed for any tax year in which the taxpayer places qualified manufacturing and productive equipment property in service in this State. The amount of the credit allowed by this section is equal to the aggregate of:

- 0.5% of total aggregate bases for all **3-year** property that qualifies;
- 1.0% of total aggregate bases for all **5-year** property that qualifies;
- 1.5% of total aggregate bases for all **7-year** property that qualifies;
- 2.0% of total aggregate bases for all **10-year** property that qualifies;
- 2.5% of total aggregate bases for all **15-year or greater** property that qualifies.

Whether property is 3-year property, 5-year property, 7-year property, 10-year property or 15-year property is determined based on the applicable recovery period for such property under Section 168(e) of the Internal Revenue Code (IRC).

Qualified property

"Qualified manufacturing and productive equipment property" means any property:

- (a) which is used as an integral part of manufacturing or production, or used as an integral part of extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services in the economic impact zone;
- (b) which is tangible property to which IRC Section 168 applies;
- (c) which is Section 1245 property (as defined in IRC Section 1245(a)(3)); and
- (d)(i) the construction, reconstruction, or erection of which is completed by the taxpayer in this State; or
(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer inside this State.

In the case of any computer software which is used to control or monitor a manufacturing or production process inside this State and with respect to which depreciation (or amortization in lieu of depreciation) is allowable, the software must be treated as qualified manufacturing and productive equipment property.

This credit does not apply to any property to which the other tax credits would apply unless the taxpayer elects to waive the application of the other credits to the property.

Credit carryover

Unused credit allowed pursuant to this section may be carried forward for 10 years from the close of the tax year in which the credit was earned.

In the case of credit unused within the initial 10-year period, a taxpayer may continue to carry forward unused credits for use in any subsequent tax years if the taxpayer:

- (a) is engaged in this State in an activity or activities listed under the North American Industry Classification System Manual (NAICS) Section 31, 32, or 33;
- (b)(i) is employing 1,000 or more full-time workers in this State and having a total capital investment in this State of not less than \$500 million; or
(ii) is employing 850 or more full-time workers in this State and having a total capital investment in this State of not less than \$750 million; and
- (c) made a total capital investment of not less than \$50 million in the previous five years.

Limitations

Credits carried forward beyond the initial 10-year period may not reduce a taxpayer's state income tax liability in any subsequent tax year by more than 25%.

An entity subject to the license tax provided in Section 12-20-100 is limited to \$5 million dollars in credit for investments made after June 30, 1998.

Recapture

If during any tax year and before the end of applicable recovery period for such property as determined under IRC Section 168(e), the taxpayer disposes of or removes from this State qualified manufacturing and productive equipment property, then the income tax due by the taxpayer for the current tax year must be increased by an amount of any credit claimed in prior years with respect to such property determined by assuming the credit is earned ratably over the useful life of the property and recapturing pro rata the unearned portion of the credit. Complete TC-11R.

Reduction in basis

For South Carolina income tax purposes, the basis of the qualified manufacturing and productive equipment property must be reduced by the amount of any credit claimed with respect to the property. A taxpayer required to recapture the capital investment credit may increase the basis of the property by the amount of any basis reduction attributable with claiming the investment tax credit in prior years. The basis must be increased in the year in which the credit is recaptured.

Social Security Privacy Act Disclosure

It is mandatory that you provide your social security number on this tax form if you are an individual taking this credit. 42 U.S.C 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration of any tax. SC Regulation 117-201 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

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Under the Family Privacy Protection Act, the collection of personal information from citizens by the Department of Revenue is limited to the information necessary for the Department to fulfill its statutory duties. In most instances, once this information is collected by the Department, it is protected by law from public disclosure. In those situations where public disclosure is not prohibited, the Family Privacy Protection Act prevents such information from being used by third parties for commercial solicitation purposes.

33482027



CAPITAL INVESTMENT CREDIT

Attach to your Income Tax Return

Name as Shown on Tax Return

County

SSN or FEIN

IMPORTANT: Use 2010 version of this form to claim credit for qualifying investments made in an Economic Impact Zone before January 1, 2011. Prior year forms are available at www.sctax.org.

Purpose: Use this form to claim the capital investment credit for qualified investments made in this State on or after January 1, 2011. This schedule must be completed and filed with the income tax return in order to claim a capital investment credit for the cost basis of qualified manufacturing and productive equipment property.

Read the definitions on the reverse side carefully before completing this schedule.

Enter qualified manufacturing and productive equipment property on the schedule below.

NOTE: Qualified property is property used as an integral part of manufacturing or production or used as an integral part of extracting or furnishing transportation, communications, electrical energy, gas, water or sewage disposal services in this State. **Credit cannot be taken on property transferred from somewhere else unless the original use of such property commences with the taxpayer inside the State on or after January 1, 2011 or in an Economic Impact Zone before January 1, 2011. Recapture of the credit will be required if the taxpayer disposes of or removes the property from this State before the useful life of the property.**

	(1) Basis	(2) Credit Percentage	(3) Credit Amount (column 1 x column 2)
1. Three-year Property	_____	0.5%	1. _____
2. Five-year Property	_____	1.0%	2. _____
3. Seven-year Property	_____	1.5%	3. _____
4. Ten-year Property	_____	2.0%	4. _____
5. Fifteen-year Property or greater	_____	2.5%	5. _____
6. Total of lines 1 through 5			6. _____
7. 4 Maximum Credit (Form SC1120U filers)			3. <u>2</u> 5,000,000
5 Carryover of unused credits from 1997 and later			8. <u>6</u> _____
9. <u>8</u> Credit - Total of lines 6 and 8 <u>9</u>			9. <u>7</u> _____

Caution: SC1120U filers add the lesser of lines 6 or 7 to line 8 10

GENERAL INSTRUCTIONS

IMPORTANT: Use 2010 version of this form to claim credit for qualifying investments made in an Economic Impact Zone before January 1, 2011. Prior year forms are available at www.sctax.org.

Credit amount

Effective January 1, 2011, a capital investment credit against income tax is allowed for any tax year in which the taxpayer places qualified manufacturing and productive equipment property in service in this State. The amount of the credit allowed by this section is equal to the aggregate of:

- 0.5% of total aggregate bases for all **3-year** property that qualifies;
- 1.0% of total aggregate bases for all **5-year** property that qualifies;
- 1.5% of total aggregate bases for all **7-year** property that qualifies;
- 2.0% of total aggregate bases for all **10-year** property that qualifies;
- 2.5% of total aggregate bases for all **15-year or greater** property that qualifies.

Summary of Comments on tc11wr (003).pdf

Page: 1

Number: 1 Author: thomaro Subject: Highlight Date: 1/9/2014 4:22:33 PM

Number: 2 Author: thomaro Subject: Cross-Out Date: 1/9/2014 4:23:19 PM

Number: 3 Author: thomaro Subject: Cross-Out Date: 1/9/2014 4:30:40 PM

Number: 4 Author: thomaro Subject: Cross-Out Date: 1/9/2014 4:31:04 PM

Number: 5 Author: thomaro Subject: Cross-Out Date: 1/9/2014 4:31:20 PM

Number: 6 Author: thomaro Subject: Inserted Text Date: 1/9/2014 4:31:46 PM

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Number: 7 Author: thomaro Subject: Inserted Text Date: 1/9/2014 4:32:16 PM

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Number: 8 Author: thomaro Subject: Inserted Text Date: 1/9/2014 4:31:59 PM

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Number: 9 Author: thomaro Subject: Inserted Text Date: 1/9/2014 4:32:40 PM

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Number: 10 Author: thomaro Subject: Inserted Text Date: 1/9/2014 4:39:47 PM

Caution SC1120U filers: A utility may not claim more than \$5 million in capital investment credits and/or Economic Impact Zone credits for investments made after June 30, 1998. You must reduce lines 6 and 8 so that total credits for this period do not exceed \$5 million.

Whether property is 3-year property, 5-year property, 7-year property, 10-year property or 15-year property is determined based on the applicable recovery period for such property under Section 168(e) of the Internal Revenue Code (IRC).

Qualified property

"Qualified manufacturing and productive equipment property" means any property:

- (a) which is used as an integral part of manufacturing or production, or used as an integral part of extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services in the economic impact zone;
- (b) which is tangible property to which IRC Section 168 applies;
- (c) which is Section 1245 property (as defined in IRC Section 1245(a)(3)); and
- (d)(i) the construction, reconstruction, or erection of which is completed by the taxpayer in this State; or
(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer inside this State.

In the case of any computer software which is used to control or monitor a manufacturing or production process inside this State and with respect to which depreciation (or amortization in lieu of depreciation) is allowable, the software must be treated as qualified manufacturing and productive equipment property.

This credit does not apply to any property to which the other tax credits would apply unless the taxpayer elects to waive the application of the other credits to the property.

Credit carryover

Unused credit allowed pursuant to this section may be carried forward for 10 years from the close of the tax year in which the credit was earned.

In the case of credit unused within the initial 10-year period, a taxpayer may continue to carry forward unused credits for use in any subsequent tax years if the taxpayer:

- (a) is engaged in this State in an activity or activities listed under the North American Industry Classification System Manual (NAICS) Section 31, 32, or 33;
- (b)(i) is employing 1,000 or more full-time workers in this State and having a total capital investment in this State of not less than \$500 million; or
(ii) is employing 850 or more full-time workers in this State and having a total capital investment in this State of not less than \$750 million; and
- (c) made a total capital investment of not less than \$50 million in the previous five years.

Limitations

Credits carried forward beyond the initial 10-year period may not reduce a taxpayer's state income tax liability in any subsequent tax year by more than 25%.

An entity subject to the license tax provided in Section 12-20-100 is limited to \$5 million dollars in credit for investments made after June 30, 1998.

Recapture

If during any tax year and before the end of applicable recovery period for such property as determined under IRC Section 168(e), the taxpayer disposes of or removes from this State qualified manufacturing and productive equipment property, then the income tax due by the taxpayer for the current tax year must be increased by an amount of any credit claimed in prior years with respect to such property determined by assuming the credit is earned ratably over the useful life of the property and recapturing pro rata the unearned portion of the credit. Complete TC-11R.

Reduction in basis

For South Carolina income tax purposes, the basis of the qualified manufacturing and productive equipment property must be reduced by the amount of any credit claimed with respect to the property. A taxpayer required to recapture the capital investment credit may increase the basis of the property by the amount of any basis reduction attributable with claiming the investment tax credit in prior years. The basis must be increased in the year in which the credit is recaptured.

Social Security Privacy Act Disclosure

It is mandatory that you provide your social security number on this tax form if you are an individual taking this credit. 42 U.S.C 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration of any tax. SC Regulation 117-201 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

The Family Privacy Protection Act

Under the Family Privacy Protection Act, the collection of personal information from citizens by the Department of Revenue is limited to the information necessary for the Department to fulfill its statutory duties. In most instances, once this information is collected by the Department, it is protected by law from public disclosure. In those situations where public disclosure is not prohibited, the Family Privacy Protection Act prevents such information from being used by third parties for commercial solicitation purposes.

33482027



CAPITAL INVESTMENT CREDIT

Attach to your Income Tax Return

Name as Shown on Tax Return

County

SSN or FEIN

IMPORTANT: Use 2010 version of this form to claim credit for qualifying investments made in an Economic Impact Zone before January 1, 2011. Prior year forms are available at www.sctax.org.

Purpose: Use this form to claim the capital investment credit for qualified investments made in this State on or after January 1, 2011. This schedule must be completed and filed with the income tax return in order to claim a capital investment credit for the cost basis of qualified manufacturing and productive equipment property.

Read the definitions on the reverse side carefully before completing this schedule.

Enter qualified manufacturing and productive equipment property on the schedule below.

NOTE: Qualified property is property used as an integral part of manufacturing or production or used as an integral part of extracting or furnishing transportation, communications, electrical energy, gas, water or sewage disposal services in this State. **Credit cannot be taken on property transferred from somewhere else unless the original use of such property commences with the taxpayer inside the State on or after January 1, 2011 or in an Economic Impact Zone before January 1, 2011. Recapture of the credit will be required if the taxpayer disposes of or removes the property from this State before the useful life of the property.**

	(1) Basis	(2) Credit Percentage	(3) Credit Amount (column 1 x column 2)
1. Three-year Property	_____	0.5%	1. _____
2. Five-year Property	_____	1.0%	2. _____
3. Seven-year Property	_____	1.5%	3. _____
4. Ten-year Property	_____	2.0%	4. _____
5. Fifteen-year Property or greater	_____	2.5%	5. _____
6. Total of lines 1 through 5			6. _____
7. Carryover of unused credits from 1997 and later			7. _____
8. Credit - Total of lines 6 and 7			8. _____

Caution SC1120U filers: A utility may not claim more than \$5 million in capital investment credits and/or Economic Impact Zone credits for investments made after June 30, 1998. You must reduce lines 6 and 8 so that total credits for this period do not exceed \$5 million.

GENERAL INSTRUCTIONS

IMPORTANT: Use 2010 version of this form to claim credit for qualifying investments made in an Economic Impact Zone before January 1, 2011. Prior year forms are available at www.sctax.org.

Credit amount

Effective January 1, 2011, a capital investment credit against income tax is allowed for any tax year in which the taxpayer places qualified manufacturing and productive equipment property in service in this State. The amount of the credit allowed by this section is equal to the aggregate of:

- 0.5% of total aggregate bases for all **3-year** property that qualifies;
- 1.0% of total aggregate bases for all **5-year** property that qualifies;
- 1.5% of total aggregate bases for all **7-year** property that qualifies;
- 2.0% of total aggregate bases for all **10-year** property that qualifies;
- 2.5% of total aggregate bases for all **15-year or greater** property that qualifies.

Whether property is 3-year property, 5-year property, 7-year property, 10-year property or 15-year property is determined based on the applicable recovery period for such property under Section 168(e) of the Internal Revenue Code (IRC).

Qualified property

"Qualified manufacturing and productive equipment property" means any property:

- (a) which is used as an integral part of manufacturing or production, or used as an integral part of extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services in the economic impact zone;
- (b) which is tangible property to which IRC Section 168 applies;
- (c) which is Section 1245 property (as defined in IRC Section 1245(a)(3)); and
- (d)(i) the construction, reconstruction, or erection of which is completed by the taxpayer in this State; or
(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer inside this State.

In the case of any computer software which is used to control or monitor a manufacturing or production process inside this State and with respect to which depreciation (or amortization in lieu of depreciation) is allowable, the software must be treated as qualified manufacturing and productive equipment property.

This credit does not apply to any property to which the other tax credits would apply unless the taxpayer elects to waive the application of the other credits to the property.

Credit carryover

Unused credit allowed pursuant to this section may be carried forward for 10 years from the close of the tax year in which the credit was earned.

In the case of credit unused within the initial 10-year period, a taxpayer may continue to carry forward unused credits for use in any subsequent tax years if the taxpayer:

- (a) is engaged in this State in an activity or activities listed under the North American Industry Classification System Manual (NAICS) Section 31, 32, or 33;
- (b)(i) is employing 1,000 or more full-time workers in this State and having a total capital investment in this State of not less than \$500 million; or
(ii) is employing 850 or more full-time workers in this State and having a total capital investment in this State of not less than \$750 million; and
- (c) made a total capital investment of not less than \$50 million in the previous five years.

Limitations

Credits carried forward beyond the initial 10-year period may not reduce a taxpayer's state income tax liability in any subsequent tax year by more than 25%.

An entity subject to the license tax provided in Section 12-20-100 is limited to \$5 million dollars in credit for investments made after June 30, 1998.

Recapture

If during any tax year and before the end of applicable recovery period for such property as determined under IRC Section 168(e), the taxpayer disposes of or removes from this State qualified manufacturing and productive equipment property, then the income tax due by the taxpayer for the current tax year must be increased by an amount of any credit claimed in prior years with respect to such property determined by assuming the credit is earned ratably over the useful life of the property and recapturing pro rata the unearned portion of the credit. Complete TC-11R.

Reduction in basis

For South Carolina income tax purposes, the basis of the qualified manufacturing and productive equipment property must be reduced by the amount of any credit claimed with respect to the property. A taxpayer required to recapture the capital investment credit may increase the basis of the property by the amount of any basis reduction attributable with claiming the investment tax credit in prior years. The basis must be increased in the year in which the credit is recaptured.

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33482027

**CAPITAL INVESTMENT CREDIT**

Attach to your Income Tax Return

20

Name as Shown on Tax Return

County

SSN or FEIN

IMPORTANT: Use 2010 version of this form to claim credit for qualifying investments made in an Economic Impact Zone before January 1, 2011. Prior year forms are available at www.sctax.org.

Purpose: Use this form to claim the capital investment credit for qualified investments made in this State on or after January 1, 2011. This schedule must be completed and filed with the income tax return in order to claim a capital investment credit for the cost basis of qualified manufacturing and productive equipment property.

Read the definitions on the reverse side carefully before completing this schedule.

Enter qualified manufacturing and productive equipment property on the schedule below.

NOTE: Qualified property is property used as an integral part of manufacturing or production or used as an integral part of extracting or furnishing transportation, communications, electrical energy, gas, water or sewage disposal services in this State. **Credit cannot be taken on property transferred from somewhere else unless the original use of such property commences with the taxpayer inside the State on or after January 1, 2011 or in an Economic Impact Zone before January 1, 2011. Recapture of the credit will be required if the taxpayer disposes of or removes the property from this State before the useful life of the property.**

	(1) Basis	(2) Credit Percentage	(3) Credit Amount (column 1 x column 2)
1. Three-year Property	_____	0.5%	1. _____
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3. Seven-year Property	_____	1.5%	3. _____
4. Ten-year Property	_____	2.0%	4. _____
5. Fifteen-year Property or greater	_____	2.5%	5. _____
6. Total of lines 1 through 5			6. _____
7. Carryover of unused credits from 1997 and later			7. _____
8. Credit - Total of lines 6 and 7			8. _____

Caution SC1120U filers: A utility may not claim more than \$5 million in capital investment credits and/or Economic Impact Zone credits for investments made after June 30, 1998. You must reduce lines 6 and 8 so that total credits for this period do not exceed \$5 million.

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Credit amount

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- 1.0% of total aggregate bases for all **5-year** property that qualifies;
- 1.5% of total aggregate bases for all **7-year** property that qualifies;
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- 2.5% of total aggregate bases for all **15-year or greater** property that qualifies.

Whether property is 3-year property, 5-year property, 7-year property, 10-year property or 15-year property is determined based on the applicable recovery period for such property under Section 168(e) of the Internal Revenue Code (IRC).

Qualified property

"Qualified manufacturing and productive equipment property" means any property:

- (a) which is used as an integral part of manufacturing or production, or used as an integral part of extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services in the economic impact zone;
- (b) which is tangible property to which IRC Section 168 applies;
- (c) which is Section 1245 property (as defined in IRC Section 1245(a)(3)); and
- (d)(i) the construction, reconstruction, or erection of which is completed by the taxpayer in this State; or
(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer inside this State.

In the case of any computer software which is used to control or monitor a manufacturing or production process inside this State and with respect to which depreciation (or amortization in lieu of depreciation) is allowable, the software must be treated as qualified manufacturing and productive equipment property.

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Credit carryover

Unused credit allowed pursuant to this section may be carried forward for 10 years from the close of the tax year in which the credit was earned.

In the case of credit unused within the initial 10-year period, a taxpayer may continue to carry forward unused credits for use in any subsequent tax years if the taxpayer:

- (a) is engaged in this State in an activity or activities listed under the North American Industry Classification System Manual (NAICS) Section 31, 32, or 33;
- (b)(i) is employing 1,000 or more full-time workers in this State and having a total capital investment in this State of not less than \$500 million; or
(ii) is employing 850 or more full-time workers in this State and having a total capital investment in this State of not less than \$750 million; and
- (c) made a total capital investment of not less than \$50 million in the previous five years.

Limitations

Credits carried forward beyond the initial 10-year period may not reduce a taxpayer's state income tax liability in any subsequent tax year by more than 25%.

An entity subject to the license tax provided in Section 12-20-100 is limited to \$5 million dollars in credit for investments made after June 30, 1998.

Recapture

If during any tax year and before the end of applicable recovery period for such property as determined under IRC Section 168(e), the taxpayer disposes of or removes from this State qualified manufacturing and productive equipment property, then the income tax due by the taxpayer for the current tax year must be increased by an amount of any credit claimed in prior years with respect to such property determined by assuming the credit is earned ratably over the useful life of the property and recapturing pro rata the unearned portion of the credit. Complete TC-11R.

Reduction in basis

For South Carolina income tax purposes, the basis of the qualified manufacturing and productive equipment property must be reduced by the amount of any credit claimed with respect to the property. A taxpayer required to recapture the capital investment credit may increase the basis of the property by the amount of any basis reduction attributable with claiming the investment tax credit in prior years. The basis must be increased in the year in which the credit is recaptured.

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CAPITAL INVESTMENT CREDIT

Attach to your Income Tax Return

Name as Shown on Tax Return

County

SSN or FEIN

IMPORTANT: Use 2010 version of this form to claim credit for qualifying investments made in an Economic Impact Zone before January 1, 2011. Prior year forms are available at www.sctax.org.

Purpose: Use this form to claim the capital investment credit for qualified investments made in this State on or after January 1, 2011. This schedule must be completed and filed with the income tax return in order to claim a capital investment credit for the cost basis of qualified manufacturing and productive equipment property.

Read the definitions on the reverse side carefully before completing this schedule.

Enter qualified manufacturing and productive equipment property on the schedule below.

NOTE: Qualified property is property used as an integral part of manufacturing or production or used as an integral part of extracting of or furnishing transportation, communications, electrical energy, gas, water or sewage disposal services in this State and meets the other requirements of SC Code Section 12-14-60. **Credit cannot be taken on property transferred from somewhere else unless the original use of such property commences with the taxpayer inside the State on or after January 1, 2011 or in an Economic Impact Zone before January 1, 2011. Recapture of the credit will be required if the taxpayer disposes of or removes the property from this State before the end of the applicable recovery period of the property.**

	(1) Basis	(2) Credit Percentage	(3) Credit Amount (column 1 x column 2)
1. Three-year Property	_____	0.5%	1. _____
2. Five-year Property	_____	1.0%	2. _____
3. Seven-year Property	_____	1.5%	3. _____
4. Ten-year Property	_____	2.0%	4. _____
5. Fifteen-year Property or greater	_____	2.5%	5. _____
6. Total of lines 1 through 5			6. _____
7. Carryover of unused credits from 1997 and later			7. _____
8. Credit - Total of lines 6 and 7			8. _____
Complete line 9 if subject to the license fee for utilities in SC Code Section 12-20-100.			
9. Enter amount from the Worksheet in the instructions.			
Line 9 is the credit amount for taxpayers subject to the license fee for utilities in SC Code Section 12-20-100. The credit for all other taxpayers is the amount on line 8.			

GENERAL INSTRUCTIONS

IMPORTANT: Use 2010 version of this form to claim credit for qualifying investments made in an Economic Impact Zone before January 1, 2011. Prior year forms are available at www.sctax.org.

Credit amount

Effective January 1, 2011, a capital investment credit against income tax is allowed for any tax year in which the taxpayer places qualified manufacturing and productive equipment property in service in this State. The amount of the credit allowed by this section is equal to the aggregate of:

- 0.5% of total aggregate bases for all **3-year** property that qualifies;
- 1.0% of total aggregate bases for all **5-year** property that qualifies;
- 1.5% of total aggregate bases for all **7-year** property that qualifies;
- 2.0% of total aggregate bases for all **10-year** property that qualifies;
- 2.5% of total aggregate bases for all **15-year or greater** property that qualifies.

Whether property is 3-year property, 5-year property, 7-year property, 10-year property or 15-year property is determined based on the applicable recovery period for such property under Section 168(e) of the Internal Revenue Code (IRC).

Qualified property

"Qualified manufacturing and productive equipment property" means any property:

- (a) which is used as an integral part of manufacturing or production, or used as an integral part of extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services in the economic impact zone;
- (b) which is tangible property to which IRC Section 168 applies;
- (c) which is Section 1245 property (as defined in IRC Section 1245(a)(3)); and
- (d)(i) the construction, reconstruction, or erection of which is completed by the taxpayer in this State; or
(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer inside this State.

In the case of any computer software which is used to control or monitor a manufacturing or production process inside this State and with respect to which depreciation (or amortization in lieu of depreciation) is allowable, the software must be treated as qualified manufacturing and productive equipment property.

This credit does not apply to any property to which the other tax credits would apply unless the taxpayer elects to waive the application of the other credits to the property.

Credit carryover

Unused credit allowed pursuant to this section may be carried forward for 10 years from the close of the tax year in which the credit was earned.

In the case of credit unused within the initial 10-year period, a taxpayer may continue to carry forward unused credits for use in any subsequent tax years if the taxpayer:

- (a) is engaged in this State in an activity or activities listed under the North American Industry Classification System Manual (NAICS) Section 31, 32, or 33;
- (b)(i) is employing 1,000 or more full-time workers in this State and having a total capital investment in this State of not less than \$500 million; or
(ii) is employing 850 or more full-time workers in this State and having a total capital investment in this State of not less than \$750 million; and
- (c) made a total capital investment of not less than \$50 million in the previous five years.

Limitations

Credits carried forward beyond the initial 10-year period may not reduce a taxpayer's state income tax liability in any subsequent tax year by more than 25%.

An entity subject to the license tax provided in Section 12-20-100 is limited to \$5 million dollars in credit for investments made after June 30, 1998.

LINE 7 WORKSHEET. Complete if your company is subject to the license fee under S.C. Code Section 12-20-100 for utilities.

- 1. Total capital investment credits and Economic Impact Zone credits that can be earned for investments made after June 30, 1998 1. \$ \$5,000,000.00
- 2. Total capital investment credits and Economic Impact Zone credits used in prior years for investments made after June 30, 1998 2. \$ _____
- 3. Line 1 minus line 2 3. \$ _____
- 4. Enter amount from line 8 4. \$ _____
- 5. Enter the smaller of lines 3 or 4 here and on line 9 5. \$ _____

Recapture

If during any tax year and before the end of applicable recovery period for such property as determined under IRC Section 168(e), the taxpayer disposes of or removes from this State qualified manufacturing and productive equipment property, then the income tax due by the taxpayer for the current tax year must be increased by an amount of any credit claimed in prior years with respect to such property determined by assuming the credit is earned ratably over the useful life of the property and recapturing pro rata the unearned portion of the credit. Complete TC-11R.

Reduction in basis

For South Carolina income tax purposes, the basis of the qualified manufacturing and productive equipment property must be reduced by the amount of any credit claimed with respect to the property. A taxpayer required to recapture the capital investment credit may increase the basis of the property by the amount of any basis reduction attributable with claiming the investment tax credit in prior years. The basis must be increased in the year in which the credit is recaptured.

Social Security Privacy Act Disclosure

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**CAPITAL INVESTMENT CREDIT**

Attach to your Income Tax Return

Name as Shown on Tax Return

County

SSN or FEIN

IMPORTANT: Use 2010 version of this form to claim credit for qualifying investments made in an Economic Impact Zone before January 1, 2011. Prior year forms are available at www.dor.sc.gov.

Purpose: Use this form to claim the capital investment credit for qualified investments made in this State on or after January 1, 2011. This schedule must be completed and filed with the income tax return in order to claim a capital investment credit for the cost basis of qualified manufacturing and productive equipment property.

Read the definitions on the reverse side carefully before completing this schedule.

Enter qualified manufacturing and productive equipment property on the schedule below.

NOTE: Qualified property is property used as an integral part of manufacturing or production or used as an integral part of extracting of or furnishing transportation, communications, electrical energy, gas, water or sewage disposal services in this State and meets the other requirements of SC Code Section 12-14-60. **Credit cannot be taken on property transferred from somewhere else unless the original use of such property commences with the taxpayer inside the State on or after January 1, 2011 or in an Economic Impact Zone before January 1, 2011. Recapture of the credit will be required if the taxpayer disposes of or removes the property from this State before the end of the applicable recovery period of the property.**

	(1) Basis	(2) Credit Percentage	(3) Credit Amount (column 1 x column 2)
1. Three-year Property	_____	0.5%	1. _____
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3. Seven-year Property	_____	1.5%	3. _____
4. Ten-year Property	_____	2.0%	4. _____
5. Fifteen-year Property or greater	_____	2.5%	5. _____
6. Total of lines 1 through 5			6. _____
7. Unused credits from 1997 and later that are available to carry forward.			7. _____
8. Credit - Total of lines 6 and 7 Complete line 9 if subject to the license fee for utilities in SC Code Section 12-20-100.			8. _____
9. Utilities only: Enter amount from the Worksheet in the instructions.			9. _____
10. The lesser of lines 8 and 9. This is your total credit available for the current year.			10. _____

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Credit amount

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- 2.5% of total aggregate bases for all **15-year or greater** property that qualifies.

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- (c) made a total capital investment of not less than \$50 million in the previous five years.



Limitations

Credits carried forward beyond the initial 10-year period may not reduce a taxpayer's state income tax liability in any subsequent tax year by more than 25%.

An entity subject to the license tax provided in Section 12-20-100 is limited to \$5 million dollars in credit for investments made after June 30, 1998.

LINE 9 WORKSHEET. Complete if your company is subject to the license fee under S.C. Code Section 12-20-100 for utilities.

- 1. Total capital investment credits and Economic Impact Zone credits that can be earned for investments made after June 30, 1998 1. \$ \$5,000,000.00
- 2. Total capital investment credits and Economic Impact Zone credits used in prior years for investments made after June 30, 1998 2. \$ _____
- 3. Line 1 minus line 2 3. \$ _____
- 4. Enter amount from line 8 4. \$ _____
- 5. Enter the smaller of lines 3 or 4 here and on line 9 5. \$ _____

Recapture

If during any tax year and before the end of applicable recovery period for such property as determined under IRC Section 168(e), the taxpayer disposes of or removes from this State qualified manufacturing and productive equipment property, then the income tax due by the taxpayer for the current tax year must be increased by an amount of any credit claimed in prior years with respect to such property determined by assuming the credit is earned ratably over the useful life of the property and recapturing pro rata the unearned portion of the credit. Complete TC-11R.

Reduction in basis

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33483025



State of South Carolina
Department of Revenue
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214

November 26, 2013

Duke Energy Corporation & Affiliates
400 South Tryon Street, ST22M
Charlotte, NC 28285

Tax Type: Corp. Income/License
Periods: 12/31/08-12/31/11
File #: 21057418-1
Response Date: December 26, 2013
Audit #: 00/36/7335

Attn: Larry Jackson

Sir or Madam:

The audit of the above referenced tax return(s) has been completed by the Audit Services Division of the South Carolina Department of Revenue. Enclosed is a "Report of Field Audit" (AS-54) which explains our Amended "Proposed Notice of Adjustment".

If you agree with the changes detailed in the enclosed report, the balance shown to be due on Form AS-54 should be remitted to this office by the response date, to avoid additional interest and penalties, if applicable. Please include a copy of the AS-54 with your check to insure proper processing.

If you agree with the Division's adjustments but are unable to make full payment at this time, please complete the enclosed Waiver of Restriction on Assessment (SC 870) and return it to this office by the response date of this letter. Upon receipt of this document, a "Final Assessment" will be issued.

If you disagree with any of the adjustments of tax, interest, or penalties that have been proposed by the Division, a written protest must be submitted to this office by the response date stated above.

If you do not respond to this letter by the response date stated above, the Division will issue the "Final Assessment" and begin collection action.

Should you have any questions, please do not hesitate to call me at the number listed below.

Yours very truly,

S.C. DEPARTMENT OF REVENUE
LAW & COMPLIANCE



Earle Toole – Non-Resident Audit Supervisor
(803)898-5909
(803)896-0066 (fax)

/mb
Enclosure

Form Letter AS-54-PA (Rev. 8/95)

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
WAIVER OF RESTRICTION ON ASSESSMENT
AND COLLECTION OF ADDITIONAL TAX OR
ACCEPTANCE OF OVERASSESSMENT

Taxpayer Name(s) _____
(Please type or print)

Doing Business As _____

Street Address _____

City _____ State _____ Zip Code _____

Identification Number (SSN, FEI, etc.) _____

File Number: _____

Audit #: _____

Audit periods: From _____ To _____

Increase (Decrease) in Tax, Interest and Penalties

Type of Tax _____

Tax \$ _____ Interest \$ _____ Penalty \$ _____ Total \$ _____

Total due \$ _____ If paid by _____ Including interest.

This information was prepared by: _____ Telephone: _____

CONSENT TO ASSESSMENT AND COLLECTION OF ADDITIONAL
TAX OR ACCEPTANCE OF REFUND DETERMINATION

I have read and understand the instructions on the reverse side. I consent to the assessment and collection of any additional tax and penalties or accept any decrease in tax and penalties shown above, plus any interest provided by law. I understand that by signing this waiver, I consent to the above determination(s) and must pay the additional amounts prior to contesting this matter any further.

Taxpayer's Signature: _____ Date: _____

Spouse's Signature: _____ Date: _____

Corporation name: _____

By: _____ Title: _____ Date: _____



Section I: Taxpayer Identification

Taxpayer Name (s): _____
(Please type or print)

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: _____

Period (s) Covered: _____

Type (s) of Tax (es) or matter. Check all that apply:

- Corporate Income Tax Deed Recording Fee Employer Withholding Tax
- Individual Income Tax Liquor by the Drink Tax Motor Fuel Tax
- Partnership Income Tax Regulatory Violation Sales and Use Tax
- Other (Specify) _____

Identification Number (Social Security Number, License Number, File Number, etc.):

Section II: Department of Revenue Document to be Attached

Please attach a copy of the Department of Revenue document or notice you received which led to the filing of this protest.

Section III: Reason for Protest

State all the reasons you disagree, including a statement of facts supporting your position and the law or other authority upon which you rely. (If the amount of proposed assessment is less than \$2,500 you need not provide your legal authority unless you are a partnership, "S" corporation, an exempt organization or an employee plan and the proposed tax is imposed by Chapters 6, 11, or 13 of Title 12.) The law or other authority supporting your position must be furnished on all regulatory violations. Add additional sheets if necessary.

(over)

**SOUTH CAROLINA DEPARTMENT OF REVENUE
REPORT OF FIELD AUDIT: INCOME TAX & LICENSE FEE**

AUDIT AMENDED 11/20/2013

TAXPAYER:	Duke Enegy Corporation & Affiliates	FEI#:	20-2777218
ADDRESS:	400 South Tryon Street, ST22M	FILE #	21057418-1
	Charlotte, NC 28285	PERIOD:	12/31/2008 - 12/31/2011
		DATE:	11/26/2013
		AUDITOR:	Sharpe Golebiowski

INTEREST COMPUTED TO: 1/1/2014

INCOME TAX:				
PERIOD ENDED:	INCOME TAX	INTEREST	PENALTY	TOTALS
12/31/2008 (1)	\$ -			\$ -
12/31/2009	-			-
12/31/2010	2,690,827	250,493		2,941,320
12/31/2011	530,550	29,400		559,950
TOTALS	\$ 3,221,377	\$ 279,893	\$ -	\$ 3,501,270

LICENSE FEE:				
PERIOD ENDED:	LICENSE FEE	INTEREST	PENALTY	TOTALS
12/31/2009 (2)	\$ -			\$ -
12/31/2010	933,005	126,324		1,059,329
12/31/2011	(1,230,449)	(6,184)		(1,236,633)
12/31/2012	165,068	9,147		174,215
TOTALS	\$ (132,376)	\$ 129,287	\$ -	\$ (3,089)

SUMMARY				
PERIOD ENDED:	TAX/FEE	INTEREST	PENALTY	TOTALS
INCOME TAX	\$ 3,221,377	\$ 279,893	\$ -	\$ 3,501,270
LICENSE FEE	(132,376)	129,287	-	(3,089)
TOTALS	\$ 3,089,001	\$ 409,180	\$ -	\$ 3,498,181

**SOUTH CAROLINA DEPARTMENT OF REVENUE
REPORT OF FIELD AUDIT: INCOME TAX & LICENSE FEE**

AUDIT AMENDED 11/20/2013

TAXPAYER:	Duke Enegy Corporation & Affiliates	FEI#:	20-2777218
ADDRESS:	400 South Tryon Street, ST22M Charlotte, NC 28285	FILE #	21057418-1
		PERIOD:	12/31/2008 - 12/31/2011
		DATE:	11/19/2013
		AUDITOR:	Sharpe Golebiowski

EXPLANATIONS:**(1) AUDIT ASSESSMENT EXTENDED UP TO SIX YEARS**

The audit is extended beyond the normal three year period as the understatement of tax shown on the return is greater than 20%.

S.C. Code Ann. § 12-54-85(C)(3)
Time limitation for assessment of taxes or fees; exceptions.

- (C) Taxes may be determined and assessed after the thirty-six month limitation if:
- (3) there is a twenty percent understatement of the total of all taxes required to be shown on the return or document. The taxes in this case may be assessed at any time within seventy-two months from the date the return or document was filed or due to be filed, whichever is later. For the purpose of this item, the total of all taxes required to be shown on the return is the total of all taxes required to be shown on the return before any reduction for estimated payments, withholding payments, other prepayments, or discount allowed for timely filing of the return and payment of the tax due, but that amount must be reduced by another credit that may be claimed on the return

- (2) Understatement of 875,422 for the 12/09 corporate license fee year does not extend statute of limitations up to six years since the understatement is not greater than 20%. Therefore this adjustment is not being applied.

See S.C. Code Ann. § 12-54-85(C)(3) copied in Note 1 above.

**SOUTH CAROLINA DEPARTMENT OF REVENUE
REPORT OF FIELD AUDIT: INCOME TAX & LICENSE FEE**

AUDIT AMENDED 11/20/2013

TAXPAYER:	Duke Enegy Corporation & Affiliates	FEI#:	20-2777218
ADDRESS:	400 South Tryon Street, ST22M Charlotte, NC 28285	FILE #	21057418-1
		PERIOD:	12/31/2008 - 12/31/2011
		DATE:	11/19/2013
		AUDITOR:	Sharpe Golebiowski

INTEREST:**S.C. Code Ann. § 12-54-25****Interest due on late taxes; applicable interest rate.**

(A) If any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety. For administrative convenience, the department may waive up to thirty days' interest.

(B) For purposes of this section, a tax is due on the last day provided for its payment, without regard for any extension of time for payment and without regard for or to any assessment under Section 12-60-910. Stamp taxes and any other tax for which no payment date is provided are due on the day the liability arises.

(C) *Omitted*

(D) Except as preempted or superseded by federal law or inter-governmental compact such as the International Fuel Tax Agreement, the rate of interest on underpayments and overpayments is established by the department in the same manner and at the same time as the underpayment rate provided in Internal Revenue Code Sections 6621(a)(2) and 6622.

South Carolina Information Letter No. 13-11, 06/26/2011

Note reduction of interest rate on refunds. For the current fiscal year (July 1, 2013 through June 30, 2014), Budget Provisos 92.10 and 117.94 direct the Department to reduce the rate of interest paid on eligible refunds by a total of three percentage points from the above listed rates. 2013 H.3710, Part IB, Sections 92 and 117.

**SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF NET INCOME & TAX**

AUDIT AMENDED 11/20/2013

TAXPAYER: Duke Eney Corporation & Affiliates
FILE #: 21057418-1
PERIOD: 12/31/2008 - 12/31/2011

SCHEDULE: A
AUDITOR: Sharpe
Golebiowski
DATE: 11/19/2013

PERIOD ENDED: 12/31/2008 - 4th Amended (1)

	20-2777218	84-1274542	88-0366429	56-0858436	56-1879392	31-1735353	31-1413899
	Duke Energy Corporation (5)	DETFI Management, Inc. (4)	Duke Energy Global Markets, Inc.	Duke Project Services, Inc.	DukeNet Communications, LLC (4)	Duke Energy Generation Services, Inc.	Duke Energy Shared Services, Inc.
APPORTIONABLE INCOME PER RETURN:	\$ (394,945,908)	\$ 16,683,426	\$ (29,996,051)	\$ 481,309	\$ 10,426,596	\$ 67,206,224	\$ 31,829,775
ADJUSTMENTS:							
Increase in taxable base for EIZ Credit (7)	239,733						
Capital losses in excess of capital gains (2)	48,332,841						
Equitable apportionment (3)	52,286,027						
APPORTIONABLE INCOME AS ADJUSTED	(294,087,307)	16,683,426	(29,996,051)	481,309	10,426,596	67,206,224	31,829,775
SC APPORTIONMENT RATIO (4)/(5)	31.8575%	7.9979%	0.0071%	0.0000%	15.4371%	0.0000%	0.0102%
SC PROPORTION	(93,688,727)	1,334,325	(2,130)	-	1,609,565	-	3,247
ALLOCABLE TO SC	-	-	-	-	-	-	-
SUBTOTAL	(93,688,727)	1,334,325	(2,130)	-	1,609,565	-	3,247
GROSS RECEIPTS PHASE-IN ADJUSTMENT (6)	-	-	-	-	-	-	(1,302)
SC NET INCOME	<u>\$ (93,688,727)</u>	<u>\$ 1,334,325</u>	<u>\$ (2,130)</u>	<u>\$ -</u>	<u>\$ 1,609,565</u>	<u>\$ -</u>	<u>\$ 1,945</u>

**SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF NET INCOME & TAX**

AUDIT AMENDED 11/20/2013

TAXPAYER: Duke Enegy Corporation & Affiliates
FILE #: 21057418-1
PERIOD: 12/31/2008 - 12/31/2011

SCHEDULE: A
AUDITOR: Sharpe
Golebiowski
DATE: 11/19/2013

	87-0622575	56-0751405	56-0891274	56-0891283	31-1503859	26-3038228	20-2777218
	Duke Energy Registration Services, Inc. (4)	Wateree Power Company	Greenville Gas and Electric Light and Power Company	Southern Power Company	Duke Energy Generation Services Holding Company, Inc.	Duke Corporate Services, Inc. (4)	Combined
APPORTIONABLE INCOME PER RETURN:	\$ 11,551,363	\$ -	\$ -	\$ -	\$ (43,505,651)	\$ (46,611,192)	\$ (376,880,109)
ADJUSTMENTS:							
Increase in taxable base for EIZ Credit (7)							239,733
Capital losses in excess of capital (2)							48,332,841
Equitable apportionment (3)							52,286,027
APPORTIONABLE INCOME AS ADJUSTED	11,551,363	-	-	-	(43,505,651)	(46,611,192)	(276,021,508)
SC APPORTIONMENT RATIO (4)(5)	36.6752%	0.0000%	0.0000%	0.0000%	0.0000%	3.8761%	
SC PROPORTION	4,236,486	-	-	-	-	(1,806,693)	(88,313,927)
ALLOCABLE TO SC	-	-	-	-	-	-	-
SUBTOTAL	4,236,486	-	-	-	-	(1,806,693)	(88,313,927)
GROSS RECEIPTS PHASE-IN ADJUSTMENT (6)	-	-	-	-	-	-	(1,302)
SC NET INCOME	\$ 4,236,486	\$ -	\$ -	\$ -	\$ -	\$ (1,806,693)	(88,315,229)
LESS: SC NOL CARRYOVER							-
TAXABLE NET INCOME							(88,315,229)
TAX RATE							5.0000%
TAX DUE							-
TAX CREDIT: EIZ (Schedule C)							-
BALANCE							-
TAX PREVIOUSLY PAID							-
UNDERPAYMENT (OVERPAYMENT)							\$ -

**SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF NET INCOME & TAX**

AUDIT AMENDED 11/20/2013

TAXPAYER: Duke Enegy Corporation & Affiliates
FILE #: 21057418-1
PERIOD: 12/31/2008 - 12/31/2011

SCHEDULE: A
AUDITOR: Sharpe
Golebiowski
DATE: 11/19/2013

EXPLANATIONS:

(1) THE TAXPAYER HAS AMENDED THE 12/08 RETURN FOUR TIMES

The first amended return was dated 3/10/10 and the taxpayer increased the license fee due by 453,081. Despite increasing the license fee due, the taxpayer did not pay any additional license fee. Instead, the amount of estimated taxes to carry forward to the succeeding tax year which was shown on the original return was simply adjusted downward by the amount of the increase license fee due. Estimated taxes amounts cannot be changed via an audit. So, for the purposes of this write-up the amount of taxes paid are shown as computed on the original return filed.

The 2nd and 3rd amended returns are dated 9/14/12. One of which adds license fee R&D credits of 1,117,776, while the other was a protective claim pursuant to litigation with the SC Department of Revenue regarding the proper apportionment method for Duke Energy Corporation. The Department's position that Duke Energy Corporation should utilize the Four-Factor method to apportion SC income was sustained by the Administrative Law Court. The taxpayer has appealed the decision, however.

The fourth amended, dated 6/18/13, reflected changes to Duke Energy Corporation Federal Taxable Income.

Since utilization of the four-factor apportionment method is higher than the gross receipts ratio utilized on the original return, the taxpayer's SC loss generated, and in turn carried forward to succeeding years, is increased.

See *Schedule B* for information on the computation of the four factor apportionment ratio of Duke Energy Corporation.

(2) CAPITAL LOSSES IN EXCESS OF CAPITAL GAINS ARE NOT DEDUCTIBLE.

Property that is treated as a capital asset under *IRC §1222* results in a capital gain or loss when sold. A corporation can deduct capital losses only up to the amount of its capital gains. In other words, if a corporation has a net capital loss, it cannot be deducted in the current tax year [*IRC §1211(a)*]. For federal income tax purposes, a corporation's net capital loss must be carried back to each of the three tax years that proceed the loss year, then forward five years and used to offset capital gains occurring in those years [*IRC §1212(a)(1)*].

For South Carolina income tax purposes, capital losses cannot be carried back; capital losses may be carried forward for five years:

**S.C. Code Ann. § 12-6-1130
Taxable income; computation; modifications.**

A corporation may not carry back a net capital loss as permitted by Internal Revenue Code Section 1212(a). A net capital loss may be carried forward to future years to the extent provided in Internal Revenue Code Section 1212(a).

SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF NET INCOME & TAX

AUDIT AMENDED 11/20/2013

TAXPAYER: Duke Energy Corporation & Affiliates
FILE #: 21057418-1
PERIOD: 12/31/2008 - 12/31/2011

SCHEDULE: A
AUDITOR: Sharpe
Golebiowski
DATE: 11/19/2013

(3) MATCHING PRINCIPAL VIOLATED. EXPENSES MUST BE MATCHED WITH RELATED REVENUE.

Description Description of Matching Principle Violation

General Discussion of Duke Energy Corporation Structure:

Duke Energy Corporation, Inc. (DEC) is the ultimate parent of many subsidiaries, most of which are reporting as C Corporations. DEC also owns several single member LLC's (See **Note 3d**). Both the subsidiaries reporting as single member LLC's, as well as the entities reporting as a C Corporations, represent distinct business activities. The difference is not how DEC serves these companies, nor is it how the companies relate to DEC; rather, the difference is how the business activities of said companies are reported. The single member LLC's, like the DEC subsidiaries reporting as C Corporations, are individual entities owned by and are served by DEC.

Duke Energy Carolinas, LLC is a single member LLC reporting directly under Duke Energy Corporation. Duke Energy Carolinas, LLC reports the vast majority of Duke as a whole's South Carolina gross receipts (93%). DEC files in South Carolina, thereby reporting Duke Energy Carolina's LLC activity.

General Discussion of Expenses in Question:

As the ultimate parent, Duke Energy Corporation provides various services to all of its subsidiaries and incurs expenses for the benefit of all of its subsidiaries. These expenditures don't merely benefit any one company, but all of the companies owned by DEC. This is true regardless of whether the subsidiary is filing as a C Corporation or a single member LLC reporting directly under DEC.

DEC is not reimbursed for these costs nor are the expenses allocated to any subsidiaries. DEC merely reports and pays all of the expenses for the DEC group as a whole. As a result of these expenditures, DEC (when examined separately from its single member LLC's) consistently sustains substantial losses.

This causes the beneficiary subsidiaries' taxable income to be overstated and DEC's taxable income to be understated.

Matching Principle Violation:

Because Duke Energy Corporation does not receive reimbursement or allocate the expenses, it alone absorbs the entire loss created by expenses, which, again, benefit all of DEC's subsidiaries.

Because the expenses in question are absorbed only by Duke Energy Corporation, those expenses are not being accurately matched to the related revenue. In other words, the expenses are not solely related to DEC, and, therefore, should not be solely deducted against DEC's revenue.

Adjustments Made to Remedy the Distorted SC Net Income For DEC:

DEC as a holding company incurs expenses for all the entities it owns and only a percentage of the expenses applies to DECAR and the other disregarded entities of DEC. Therefore, the gross receipts reflected on line 1A^c or line 1B^c of the US 1120 Proforma of DECAR and the other disregarded entities of DEC are related to the total gross receipts reflected on line 1A or line 1B of the federal consolidated return of DEC and Affiliates. This percentage is subtracted from 1 to obtain the percentage of the taxable losses of DEC (exclusive of the disregarded entities) that does not apply to the disregarded entities of DEC. This percentage is multiplied by the taxable loss of DEC (exclusive of its disregarded entities) to obtain the amount added back to the SC apportionable base for DEC.

**SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF NET INCOME & TAX**

AUDIT AMENDED 11/20/2013

TAXPAYER: Duke Energy Corporation & Affiliates
FILE #: 21057418-1
PERIOD: 12/31/2008 - 12/31/2011

SCHEDULE: A
AUDITOR: Sharpe
Golebiowski
DATE: 11/19/2013

Computation of Add-Back to Apportionable Base of DEC:

	<u>12/31/2008</u>	<u>12/31/2009</u>	<u>12/31/2010</u>	<u>12/31/2011</u>
Loss Add Back				
Duke Energy Corporation taxable losses (exclusive of disregarded entities) per Line 30 of US 1120 Proforma	\$ 100,108,872	\$ 206,950,682	\$ 264,824,572	\$ 212,932,364
Percentage to add back	52.2292%	50.4169%	51.3052%	59.6124%
Loss to add back	<u>\$ 52,286,027</u>	<u>\$ 104,338,112</u>	<u>\$ 135,868,781</u>	<u>\$ 126,934,055</u>
Percentage Add Back				
Gross receipts per line 1A or 1B US 1120 Proforma for the disregarded entities of Duke Corporation	\$ 5,908,553,263	\$ 5,532,670,020	\$ 6,393,515,070	\$ 6,490,330,244
Everywhere Gross Receipts, line 1A or 1B US 1120 Federal Consolidated	12,368,536,372	11,158,377,884	13,129,770,173	16,070,099,331
% of DEC's federal taxable loss (exclusive of the disregarded entities) that apply to the disregarded entities of DEC	47.7708%	49.5831%	48.6948%	40.3876%
Amount of loss to add back to apportionable base (1 minus above percentage)	<u>52.2292%</u>	<u>50.4169%</u>	<u>51.3052%</u>	<u>59.6124%</u>

**SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF NET INCOME & TAX**

AUDIT AMENDED 11/20/2013

TAXPAYER: Duke Energy Corporation & Affiliates
FILE #: 21057418-1
PERIOD: 12/31/2008 - 12/31/2011

SCHEDULE: A
AUDITOR: Sharpe
Golebiowski
DATE: 11/19/2013

*** South Carolina Receipts Sourced to SC Per the Consolidated Returns Filed for Duke Energy Corporation & Affiliates:**

	<u>12/31/2008</u>	<u>12/31/2009</u>	<u>12/31/2010</u>	<u>12/31/2011</u>	<u>Average %</u>
Duke Energy Carolinas, LLC ¹	\$ 1,503,407,012	\$ 1,390,474,000	\$ 1,474,093,941	\$ 1,593,457,000	
DETM Management, Inc.	65,482,451	25,622,245	3,948,895		
Duke Energy Global Markets, Inc.					
Duke Project Services, Inc.					
DukeNet Communications, LLC	8,398,297	11,668,493			
Duke Energy Generation Services, Inc.			602	616,527	
Duke Energy Shared Services, Inc.					
Duke Energy Registration Services, Inc.	47,534,453	3			
Wateree Power Company					
Greenville Gas and Electric Light and Power Company					
Southern Power Company					
Duke Energy Generation Services Holding Company, Inc.					
Duke Energy Corporate Services, Inc.	40,572,857	67,031,635	76,218,733	73,138,568	
DukeNet VentureCo, Inc.			10,203,978	8,358,697	
Total Gross Receipts Sourced to SC Per the SC Consolidated Returns	\$ 1,665,395,070	\$ 1,494,796,376	\$ 1,564,466,149	\$ 1,675,570,792	
Percentage of Duke Energy Carolinas, LLC Gross Receipts to Total Gross Receipts	90.2733%	93.0210%	94.2234%	95.0994%	93.1543%

¹100% of the receipts sourced to SC for Duke Energy Corporation are from disregarded entity, Duke Carolinas, LLC

**SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF NET INCOME & TAX**

AUDIT AMENDED 11/20/2013

TAXPAYER: Duke Enegy Corporation & Affiliates
FILE #: 21057418-1
PERIOD: 12/31/2008 - 12/31/2011

SCHEDULE: A
AUDITOR: Sharpe
Golebiowski
DATE: 11/19/2013

^b This is a Description of the Business Activity of Duke Energy Corporation (Exclusive of its Disregarded Entities) as Provided by the Taxpayer's Representative:

-Duke Energy Corporation's ("DEC") information is as follows:

- DEC's business activity is to serve as a holding company which conducts substantially all of its business operations through its subsidiaries. DEC is the publically traded entity for the enterprise and is listed on the NY stock exchange.
- DEC(the holding company, not including Duke Energy Carolinas) has no employees. *This appears to be incorrect.*¹
- DEC's interest expense and other administrative expenses are incurred to finance the activities of the enterprise. Duke Energy and its subsidiaries have various financial and performance guarantees and indemnification, which are issued in the normal course of business related to shareholder activity.
- DEC's negative "revenue" is intercompany eliminations related to insurance provided to Duke Energy Carolinas.

¹This appears to be an incorrect statement as the US 1120 Proforma of Duke Energy Corporation (exclusive of its disregarded entities) reflects substantial payroll for all audit years except 12/310:

	<u>12/31/2008</u>	<u>12/31/2009</u>	<u>12/31/2010</u>	<u>12/31/2011</u>
Salaries and Wages, Line 13 US 1120	77,461,470	14,837,448	(803,875)	31,640,328

^cFor 12/08 through 12/10 the gross receipts are shown on line 1A of the federal return and line 1B for 12/11.

^dDisregarded Entities of DEC:

<u>12/31/2008</u>		
<u>Entity Name</u>	<u>FEI Number</u>	<u>Gross Receipts, Line 1A US 1120 Proforma</u>
Duke Energy Carolinas, LLC	56-0205520	5,908,553,263

**SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF NET INCOME & TAX**

AUDIT AMENDED 11/20/2013

TAXPAYER: Duke Enegy Corporation & Affiliates
FILE #: 21057418-1
PERIOD: 12/31/2008 - 12/31/2011

SCHEDULE: A
AUDITOR: Sharpe
Golebiowski
DATE: 11/19/2013

12/31/2009		
Entity Name	FEI Number	Gross Receipts, Line 1A US 1120 Proforma
Duke Energy Carolinas, LLC	56-0205520	5,532,670,020
MCP, LLC	57-1106058	-
Sandy River Timber, LLC	26-2248016	-
TBP Properties, LLC	33-1162179	-
TRES Timber, LLC	33-1162176	-
Total		<u>5,532,670,020</u>

12/31/2010		
Entity Name	FEI Number	Gross Receipts, Line 1A US 1120 Proforma
Duke Energy Carolinas, LLC	56-0205520	6,391,020,034
MCP, LLC	57-1106058	-
Sandy River Timber, LLC	26-2248016	-
TBP Properties, LLC	33-1162179	-
TRES Timber, LLC	33-1162176	-
DEGS NC Solar, LLC	27-2121073	4,270,489
Solar Star NC I, LLC	27-2049842	(629,177)
Solar Star NC I, LLC	27-2217869	-
Taylorsville Solar, LLC	27-3631582	(1,146,276)
Total		<u>6,393,515,070</u>

**SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF NET INCOME & TAX**

AUDIT AMENDED 11/20/2013

TAXPAYER: Duke Enegy Corporation & Affiliates
FILE #: 21057418-1
PERIOD: 12/31/2008 - 12/31/2011

SCHEDULE: A
AUDITOR: Sharpe
Golebiowski
DATE: 11/19/2013

12/31/2011		
<u>Entity Name</u>	<u>FEI Number</u>	<u>Gross Receipts, Line 1A US 1120 Proforma</u>
Duke Energy Carolinas, LLC	56-0205520	6,489,164,454
MCP, LLC	57-1106058	-
Sandy River Timber, LLC	26-2248016	-
TBP Properties, LLC	33-1162179	-
TRES Timber, LLC	33-1162176	-
DEGS NC Solar, LLC	27-2121073	-
Solar Star NC I, LLC	27-2049842	293,702
Solar Star NC I, LLC	27-2217869	-
Taylorsville Solar, LLC	27-3631582	275,710
CS Murphy Point, LLC	27-1608328	119,184
Martins Creek Solar NC, LLC	27-2326071	247,180
Murphy Farm Power, LLC	27-1738688	200,979
North Carolina Renewable Properties, LLC	27-4226281	29,035
Total		<u><u>6,490,330,244</u></u>

**SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF NET INCOME & TAX**

AUDIT AMENDED 11/20/2013

TAXPAYER: Duke Enegy Corporation & Affiliates
FILE #: 21057418-1
PERIOD: 12/31/2008 - 12/31/2011

SCHEDULE: A
AUDITOR: Sharpe
Golebiowski
DATE: 11/19/2013

(4) GROSS RECEIPTS APPORTIONMENT METHOD REQUIRED FOR THE CERTAIN AFFILIATES BECAUSE THE TAXPAYERS DO NOT DEAL IN THE SALE OR MANUFACTURE OF TANGIBLE PERSONAL PROPERTY

Based on information provided by the taxpayer or obtained by the auditors, the below entities are required to utilize the gross receipts ratio to apportion their SC income since these entities do not appear to be involved in the manufacturing or sale of tangible personal property.

For purposes of this write-up the SC sales as show on the SC 1120 was assumed to be the same ratio as the gross receipts ratio.

	<u>84-1274542</u>	<u>56-1879392</u>	<u>87-0622575</u>	<u>26-3038228</u>
	DETMi	DukeNet	Duke Energy	Duke Corporate
	Management,	Communications,	Registration	Services, Inc.^a
	Inc.^a	LLC^a	Services, Inc.^a	Services, Inc.^a
SC receipts per apportionment workpapers	65,482,451	8,398,297	47,534,453	40,572,857
Everywhere receipts per apportionment workpapers	818,744,699	54,403,292	129,609,243	1,046,746,574
SC gross receipts apportionment ratio	7.9979%	15.4371%	36.6752%	3.8761%

S.C. Code Ann. § 12-6-2290

Apportionment of remaining net income where principal profits or income derived from sources not otherwise described by this chapter.

If the principal profits or income of a taxpayer are derived from sources other than those described in Section 12-6-2252 or Section 12-6-2310, the taxpayer shall apportion its remaining net income using a fraction in which the numerator is gross receipts from within this State during the taxable year and the denominator is total gross receipts from everywhere during the taxable year. For purposes of this section, items included in gross receipts are as provided in Section 12-6-2295.

**SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF NET INCOME & TAX**

AUDIT AMENDED 11/20/2013

TAXPAYER: Duke Enegy Corporation & Affiliates
FILE #: 21057418-1
PERIOD: 12/31/2008 - 12/31/2011

SCHEDULE: A
AUDITOR: Sharpe
Golebiowski
DATE: 11/19/2013

*** General Descriptions of the Above Companies:**

-DETM Management, Inc:

Holding Company for disregarded entities including Duke Ventures, LLC, which owns a partnership interest in companies involved in real estate development and Duke Energy Business Services, LLC, which appears to perform services for affiliates.

-DukeNet Communications, LLC:

From the taxpayer's website:

WHO IS DUKENET?

Headquartered in Charlotte, NC, DukeNet Communications is a leading regional telecommunications service provider, offering robust fiber network solutions for data centers, wireless carriers, government, healthcare, manufacturing, finance, education, and enterprise across our region.

Our Story is grounded in a legendary service-provider history. For more than 100 years, Duke Energy Corporation has been one of the largest and most reliable electric providers in the nation. It was here that DukeNet Communications was born.

DukeNet is stable and well-positioned for growth: jointly owned by two multi-billion dollar companies (publically owned Duke Energy and privately held Alinda Capital Partners), we are here for the long run.

-Duke Energy Registration Services, Inc.

Holding Company for entities which appear to be involved in services.

If the taxpayer provides information to indicate that the assumptions made above are incorrect, consideration will be given to adjusting the audit.

-Duke Corporate Services, Inc.

Serves as the holding company to Duke Energy Business Services, LLC

(5) FOUR FACTOR APPORTIONMENT REQUIRED

The taxpayer is required to utilize the 4-factor apportionment ratio (with gross receipts phase-in) to apportion SC income because the taxpayer deals in the sale or manufacture of tangible personal property.

See **Schedule B** for information on the computation of the four factor apportionment ratio of Duke Energy Corporation.

SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF NET INCOME & TAX

AUDIT AMENDED 11/20/2013

TAXPAYER: Duke Enegy Corporation & Affiliates
FILE #: 21057418-1
PERIOD: 12/31/2008 - 12/31/2011

SCHEDULE: A
AUDITOR: Sharpe
Golebiowski
DATE: 11/19/2013

(6) PHASE IN OF GROSS RECEIPTS RATIO IN ACCORDANCE WITH SC REVENUE RULING NO. 09-15

4 factor ratio calculation

From the taxpayer's apportionment workpapers:	20-2777218	Single Factor 84-1274542	88-0366429	56-0858436	Single Factor 56-1879392	31-1735353	31-1413899
Property ratio	33.4995%		0.0282%	0.0000%		0.0000%	0.0000%
Payroll ratio	44.2400%		0.0000%	0.0000%		0.0000%	0.0409%
Sales ratio	24.8451%		0.0000%	0.0000%		0.0000%	0.0000%
Sales ratio	24.8451%		0.0000%	0.0000%		0.0000%	0.0000%
Total of 4 ratios	127.4298%		0.0282%	0.0000%		0.0000%	0.0409%
Average of 4 ratios	31.8575%		0.0071%	0.0000%		0.0000%	0.0102%

Phase-in adjustment calculation

Phase-in adjustment amount	40% 20-2777218	Single Factor 84-1274542	40% 88-0366429	40% 56-0858436	Single Factor 56-1879392	40% 31-1735353	40% 31-1413899
SC net income utilizing the 4 factor ratio:							
Apportionable income	(294,087,307)		(29,996,051)	481,309		67,206,224	31,829,775
	31.8575%		0.0071%	0.0000%		0.0000%	0.0102%
Apportioned income	(93,688,727)		(2,115)	-		-	3,255
SC net income utilizing the sales ratio	(73,066,422)		-	-		-	-
SC net income utilizing the 4 factor ratio	(93,688,727)		(2,115)	-		-	3,255
Difference	20,622,305		2,115	-		-	(3,255)
Phase in adjustment	40.00%		40.00%	40.00%		40.00%	40.00%
Potential adjustment	8,248,922		846	-		-	(1,302)
Gross receipts phase-in adjustment	-		-	-		-	(1,302)

**SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF NET INCOME & TAX**

AUDIT AMENDED 11/20/2013

TAXPAYER: Duke Enegy Corporation & Affiliates
FILE #: 21057418-1
PERIOD: 12/31/2008 - 12/31/2011

SCHEDULE: A
AUDITOR: Sharpe
Golebiowski
DATE: 11/19/2013

<u>4 factor ratio calculation</u>						
From the taxpayer's apportionment workpapers:	<i>Single Factor</i> 87-0622575	56-0751405	56-0891274	56-0891283	31-1503859	<i>Single Factor</i> 26-3038228
Property ratio		0.0000%	0.0000%	0.0000%	0.0000%	0.0000%
Payroll ratio		0.0000%	0.0000%	0.0000%	0.0000%	0.0000%
Sales ratio		0.0000%	0.0000%	0.0000%	0.0000%	0.0000%
Sales ratio		0.0000%	0.0000%	0.0000%	0.0000%	0.0000%
Total of 4 ratios		0.0000%	0.0000%	0.0000%	0.0000%	0.0000%
Average of 4 ratios		0.0000%	0.0000%	0.0000%	0.0000%	0.0000%
<u>Phase-in adjustment calculation</u>						
Phase-in adjustment amount	<i>Single Factor</i> 87-0622575	40%	40%	40%	40%	<i>Single Factor</i> 26-3038228
SC net income utilizing the 4 factor ratio:						
Apportionable income		-	-	-	(43,505,651)	
		0.0000%	0.0000%	0.0000%	0.0000%	
Apportioned income		-	-	-	-	
SC net income utilizing the sales ratio		-	-	-	-	
SC net income utilizing the 4 factor ratio		-	-	-	-	
Difference		-	-	-	-	
Phase in adjustment		40.00%	40.00%	40.00%	40.00%	
Potential adjustment		-	-	-	-	
Gross receipts phase-in adjustment		-	-	-	-	

South Carolina Revenue Ruling No. 09-15, 11/17/2009

In 2006, the South Carolina Legislature enacted a change in the apportionment method provided in Code Section 12-6-2250 for taxpayers whose principal business in South Carolina is manufacturing or any form of collecting, buying, assembling, or processing goods and materials within South Carolina, or selling, distributing, or dealing in tangible personal property within South Carolina. The current three factor apportionment method for a multistate taxpayer (based on property, payroll, and double weighted sales) is changing to a single sales factor apportionment method. This change is being phased-in for income tax years beginning in 2007 through 2010. For income tax years beginning in 2011, the single sales factor apportionment method in Code Section 12-6-2252 will replace the current three factor apportionment method in Code Section 12-6-2250 .

During the phase-in period, a multistate taxpayer dealing in tangible personal property will determine income apportioned to South Carolina as follows: (1) by using the existing three factor apportionment method and, if applicable, (2) by using the new single sales factor apportionment method. If the new single sales factor apportionment method results in a reduction in income apportioned to South Carolina, then the taxpayer is allowed to use a 20% -80% reduction (as applicable for income tax years beginning in 2007 — 2010) to determine the

**SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF NET INCOME & TAX**

AUDIT AMENDED 11/20/2013

TAXPAYER: Duke Enegy Corporation & Affiliates
FILE #: 21057418-1
PERIOD: 12/31/2008 - 12/31/2011

SCHEDULE: A
AUDITOR: Sharpe
Golebiowski
DATE: 11/19/2013

(7) The tax basis of any assets on which an EIZ credit is claimed must be reduced by the amount of the credit. This, in turn would reduce the depreciation expense. The taxpayer did not do this on the original returns filed. The numbers used are per documents provided by the taxpayer's representative entitled "2008 Depreciation Adjustment for Qualifying Additions"

**SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF NET INCOME & TAX**

AUDIT AMENDED 11/20/2013

TAXPAYER: Duke Eney Corporation & Affiliates
FILE #: 21057418-1
PERIOD: 12/31/2008 - 12/31/2011

SCHEDULE: A-1
AUDITOR: Sharpe Golebiowski
DATE: 11/19/2013

PERIOD ENDED: 12/31/2009 *Amended*

	<u>20-2777218</u>	<u>84-1274542</u>	<u>88-0366429</u>	<u>56-0858436</u>	<u>56-1879392</u>	<u>31-1735353</u>	<u>87-0622575</u>
	Duke Energy Corporation (3)	DETM Management, Inc. (2)	Duke Energy Global Markets, Inc.	Duke Project Services, Inc.	DukeNet Communications, LLC (2)	Duke Energy Generation Services, Inc.	Duke Energy Registration Services, Inc. (2)
APPORTIONABLE INCOME PER RETURN:	\$ 132,997,575	\$ (34,687,824)	\$ (17,570,057)	\$ 39,903	\$ 23,146,447	\$ 23,073,186	\$ (18,472,068)
ADJUSTMENTS:							
Increase in taxable base for EIZ Credit (5)	267,517						
Equitable apportionment (1)	104,338,112						
APPORTIONABLE INCOME AS ADJUSTED	237,603,204	(34,687,824)	(17,570,057)	39,903	23,146,447	23,073,186	(18,472,068)
SC APPORTIONMENT RATIO (2)/(3)	32.2308%	18.2129%	0.0071%	0.0000%	18.8067%	0.0000%	0.0001%
SC PROPORTION	76,581,478	(6,317,675)	(1,247)	-	4,353,082	-	(25)
ALLOCABLE TO SC	-						
SUBTOTAL	76,581,478	(6,317,675)	(1,247)	-	4,353,082	-	(25)
GROSS RECEIPTS PHASE-IN ADJUSTMENT (4)	(10,013,077)	-	-	-	-	-	-
SC NET INCOME	\$ 66,568,401	\$ (6,317,675)	\$ (1,247)	\$ -	\$ 4,353,082	\$ -	\$ (25)

**SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF NET INCOME & TAX**

AUDIT AMENDED 11/20/2013

TAXPAYER: Duke Enegy Corporation & Affiliates
FILE #: 21057418-1
PERIOD: 12/31/2008 - 12/31/2011

SCHEDULE: A-1
AUDITOR: Sharpe
Golebiowski
DATE: 11/19/2013

	<u>56-0751405</u>	<u>56-0891274</u>	<u>56-0891283</u>	<u>31-1503859</u>	<u>26-3038228</u>	<u>20-2777218</u>
	Wateree Power Company	Greenville Gas and Electric Light Company	Southern Power Company	Duke Energy Generation Services Holding Company, Inc.	Duke Corporate Services, Inc. (2)	Combined
APPORTIONABLE INCOME PER RETURN:	\$ -	\$ -	\$ -	\$ (181,004,687)	\$ (26,097,454)	\$ (98,574,979)
ADJUSTMENTS:						
Increase in taxable base for EIZ Credit (5)						267,517
Equitable apportionment (1)						104,338,112
APPORTIONABLE INCOME AS ADJUSTED	-	-	-	(181,004,687)	(26,097,454)	6,030,650
SC APPORTIONMENT RATIO (2)(3)	0.0000%	0.0000%	0.0000%	0.0020%	3.2713%	
SC PROPORTION	-	-	-	(3,620)	(853,713)	73,758,280
ALLOCABLE TO SC						-
SUBTOTAL	-	-	-	(3,620)	(853,713)	73,758,280
GROSS RECEIPTS PHASE-IN ADJUSTMENT (4)	-	-	-	-	-	(10,013,077)
SC NET INCOME	\$ -	\$ -	\$ -	\$ (3,620)	\$ (853,713)	63,745,203
LESS: SC NOL CARRYOVER						(88,315,229)
TAXABLE NET INCOME						(24,570,026)
TAX RATE						5.0000%
TAX DUE						-
TAX CREDIT: EIZ (Schedule C)						-
BALANCE						-
TAX PREVIOUSLY PAID						-
UNDERPAYMENT (OVERPAYMENT)						\$ -

EXPLANATIONS:

(1) MATCHING PRINCIPAL VIOLATED. EXPENSES MUST BE MATCHED WITH RELATED REVENUE.

Refer to *Note 3* on *Schedule A* for details.

**SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF NET INCOME & TAX**

AUDIT AMENDED 11/20/2013

TAXPAYER: Duke Enegy Corporation & Affiliates
FILE #: 21057418-1
PERIOD: 12/31/2008 - 12/31/2011

SCHEDULE: A-1
AUDITOR: Sharpe
Golebiowski
DATE: 11/19/2013

(2) GROSS RECEIPTS APPORTIONMENT METHOD REQUIRED FOR THE CERTAIN AFFILIATES BECAUSE THE TAXPAYERS DO NOT DEAL IN THE SALE OR MANUFACTURE OF TANGIBLE PERSONAL PROPERTY

Based on information provided by the taxpayer or obtained by the auditors, the below entities are required to utilize the gross receipts ratio to apportion their SC income since these entities do not appear to be involved in the manufacturing or sale of tangible personal property.

For purposes of this write-up the SC sales as show on the SC 1120 was assumed to be the same ratio as the gross receipts ratio.

	<u>84-1274542</u>	<u>56-1879392</u>	<u>87-0622575</u>	<u>26-3038228</u>
	<u>DEMI</u>	<u>DukeNet</u>	<u>Duke Energy</u>	
	<u>Management,</u>	<u>Communications,</u>	<u>Registration</u>	<u>Duke Corporate</u>
	<u>Inc.^a</u>	<u>LLC^a</u>	<u>Services, Inc.^a</u>	<u>Services, Inc.^a</u>
SC receipts per apportionment workpapers	25,622,245	11,668,493	3	67,031,635
Everywhere receipts per apportionment workpapers	140,681,482	62,044,356	2,185,286	2,049,113,379
SC gross receipts apportionment ratio	18.2129%	18.8067%	0.0001%	3.2713%

S.C. Code Ann. § 12-6-2290

Apportionment of remaining net income where principal profits or income derived from sources not otherwise described by this chapter.

If the principal profits or income of a taxpayer are derived from sources other than those described in Section 12-6-2252 or Section 12-6-2310, the taxpayer shall apportion its remaining net income using a fraction in which the numerator is gross receipts from within this State during the taxable year and the denominator is total gross receipts from everywhere during the taxable year. For purposes of this section, items included in gross receipts are as provided in Section 12-6-2295.

^aSee *Note 4* on *Schedule A* for a general description of the above company's activities.

(3) FOUR FACTOR APPORTIONMENT REQUIRED

The taxpayer is required to utilize the 4-factor apportionment ratio (with gross receipts phase-in) to apportion SC income because the taxpayer deals in the sale or manufacture of tangible personal property.

See *Schedule B* for information on the computation of the four factor apportionment ratio of Duke Energy Corporation.

**SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF NET INCOME & TAX**

AUDIT AMENDED 11/20/2013

TAXPAYER: Duke Enegy Corporation & Affiliates
FILE #: 21057418-1
PERIOD: 12/31/2008 - 12/31/2011

SCHEDULE: A-1
AUDITOR: Sharpe
Golebiowski
DATE: 11/19/2013

(4) PHASE IN OF GROSS RECEIPTS RATIO IN ACCORDANCE WITH SC REVENUE RULING NO. 09-15

4 factor ratio calculation

From the taxpayer's apportionment workpapers:	20-2777218	Single Factor 84-1274542	88-0366429	56-0858436	Single Factor 56-1879392	31-1735353	Single Factor 87-0622575
Property ratio	32.6404%		0.0000%	0.0000%		0.0000%	
Payroll ratio	45.8686%		0.0000%	0.0000%		0.0000%	
Sales ratio	25.2072%		0.0000%	0.0000%		0.0000%	
Sales ratio	25.2072%		0.0000%	0.0000%		0.0000%	
Total of 4 ratios	128.9233%		0.0000%	0.0000%		0.0000%	
Average of 4 ratios	32.2308%		0.0000%	0.0000%		0.0000%	

Phase-in adjustment calculation

Phase-in adjustment amount SC net income utilizing the 4 factor ratio:	60% 20-2777218	Single Factor 84-1274542	60% 88-0366429	60% 56-0858436	Single Factor 56-1879392	60% 31-1735353	Single Factor 87-0622575
Apportionable income	237,603,204		(17,570,057)	39,903		23,073,186	
	32.2308%		0.0000%	0.0000%		0.0000%	
Apportioned income	76,581,478		-	-		-	
SC net income utilizing the sales ratio	59,893,017		-	-		-	
SC net income utilizing the 4 factor ratio	76,581,478		-	-		-	
Difference	(16,688,461)		-	-		-	
Phase in adjustment	60.00%		60.00%	60.00%		60.00%	
Potential adjustment	(10,013,077)		-	-		-	
Gross receipts phase-in adjustment	(10,013,077)		-	-		-	

4 factor ratio calculation

From the taxpayer's apportionment workpapers:	56-0751405	56-0891274	56-0891283	31-1503859	Single Factor 26-3038228
Property ratio	0.0000%	0.0000%	0.0000%	0.0081%	
Payroll ratio	0.0000%	0.0000%	0.0000%	0.0000%	
Sales ratio	0.0000%	0.0000%	0.0000%	0.0000%	
Sales ratio	0.0000%	0.0000%	0.0000%	0.0000%	
Total of 4 ratios	0.0000%	0.0000%	0.0000%	0.0081%	
Average of 4 ratios	0.0000%	0.0000%	0.0000%	0.0020%	

**SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF NET INCOME & TAX**

AUDIT AMENDED 11/20/2013

TAXPAYER: Duke Enegy Corporation & Affiliates
FILE #: 21057418-1
PERIOD: 12/31/2008 - 12/31/2011

SCHEDULE: A-1
AUDITOR: Sharpe
Golebiowski
DATE: 11/19/2013

Phase-in adjustment calculation

Phase-in adjustment amount	60%	60%	60%	60%	Single Factor
SC net income utilizing the 4 factor ratio:	56-0751405	56-0891274	56-0891283	31-1503859	26-3038228
Apportionable income	-	-	-	-	-
Apportioned income	0.0000%	0.0000%	0.0000%	0.0020%	
SC net income utilizing the sales ratio	-	-	-	-	-
SC net income utilizing the 4 factor ratio	-	-	-	-	-
Difference	-	-	-	-	-
Phase in adjustment	60.00%	60.00%	60.00%	60.00%	
Potential adjustment	-	-	-	-	-
Gross receipts phase-in adjustment	-	-	-	-	

South Carolina Revenue Ruling No. 09-15, 11/17/2009

In 2006, the South Carolina Legislature enacted a change in the apportionment method provided in Code Section 12-6-2250 for taxpayers whose principal business in South Carolina is manufacturing or any form of collecting, buying, assembling, or processing goods and materials within South Carolina, or selling, distributing, or dealing in tangible personal property within South Carolina. The current three factor apportionment method for a multistate taxpayer (based on property, payroll, and double weighted sales) is changing to a single sales factor apportionment method. This change is being phased-in for income tax years beginning in 2007 through 2010. For income tax years beginning in 2011, the single sales factor apportionment method in Code Section 12-6-2252 will replace the current three factor apportionment method in Code Section 12-6-2250.

During the phase-in period, a multistate taxpayer dealing in tangible personal property will determine income apportioned to South Carolina as follows: (1) by using the existing three factor apportionment method and, if applicable, (2) by using the new single sales factor apportionment method. If the new single sales factor apportionment method results in a reduction in income apportioned to South Carolina, then the taxpayer is allowed to use a 20% -80% reduction (as applicable for income tax years beginning in 2007 — 2010) to determine the

(5) The tax basis of any assets on which an EIZ credit is claimed must be reduced by the amount of the credit. This, in turn would reduce the depreciation expense. The taxpayer did not do this on the original returns filed. The numbers used are per documents provided by the taxpayer's representative entitled "2009 Depreciation Adjustment for Qualifying Additions"

**SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF NET INCOME & TAX**

AUDIT AMENDED 11/20/2013

TAXPAYER: Duke Enegy Corporation & Affiliates
FILE #: 21057418-1
PERIOD: 12/31/2008 - 12/31/2011

SCHEDULE: A-2
AUDITOR: Sharpe
Golebiowski
DATE: 11/19/2013

PERIOD ENDED: 12/31/2010 *Amended*

	20-2777218	84-1274542	56-0858436	31-1735353	87-0622575	56-0751405
	Duke Energy Corporation (3)	DEMI Management, Inc. (2)	Duke Project Services, Inc.	Duke Energy Generation Services, Inc.	Duke Energy Registration Services, Inc. (2)	Wateree Power Company
APPORTIONABLE INCOME PER RETURN:	\$ 294,143,982	\$ (135,396,599)	\$ 519,817	\$ 4,396,691	\$ (32,318,237)	\$ -
ADJUSTMENTS:						
Increase in taxable base for EIZ Credit (5)	296,616					
Equitable apportionment (1)	135,868,781					
APPORTIONABLE INCOME AS ADJUSTED	430,309,379	(135,396,599)	519,817	4,396,691	(32,318,237)	-
SC APPORTIONMENT RATIO (2)(3)	30.1725%	10.1858%	0.0000%	0.0002%	0.0000%	0.0000%
SC PROPORTION	129,835,029	(13,791,198)	-	9	-	-
ALLOCABLE TO SC	-					
SUBTOTAL	129,835,029	(13,791,198)	-	9	-	-
GROSS RECEIPTS PHASE-IN ADJUSTMENT (4)	(24,266,054)					
SC NET INCOME	\$ 105,568,975	\$ (13,791,198)	\$ -	\$ 9	\$ -	\$ -

**SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF NET INCOME & TAX**

AUDIT AMENDED 11/20/2013

TAXPAYER: Duke Enegy Corporation & Affiliates
FILE #: 21057418-1
PERIOD: 12/31/2008 - 12/31/2011

SCHEDULE: A-2
AUDITOR: Sharpe
Golebiowski
11/19/2013
DATE:

	56-0891274	56-0891283	31-1503859	26-3038228	26-3038228	20-2777218
	Greenville Gas and Electric Light and Power Company	Southern Power Company	Duke Energy Generation Services Holding Company, Inc.	Duke Corporate Services, Inc. (2)	DukeNet VentureCo, Inc. (2)	Combined
APPORTIONABLE INCOME PER RETURN:	\$ -	\$ -	\$ (281,023,491)	\$ (19,529,896)	\$ 84,877,671	\$ (84,330,062)
ADJUSTMENTS:						
Increase in taxable base for EIZ Credit (5)						296,616
Equitable apportionment (1)						135,868,781
APPORTIONABLE INCOME AS ADJUSTED	-	-	(281,023,491)	(19,529,896)	84,877,671	51,835,335
SC APPORTIONMENT RATIO (2)/(3)	0.0000%	0.0000%	0.0020%	3.2118%	15.0290%	
SC PROPORTION	-	-	(5,620)	(627,266)	12,756,229	128,167,183
ALLOCABLE TO SC						-
SUBTOTAL	-	-	(5,620)	(627,266)	12,756,229	128,167,183
GROSS RECEIPTS PHASE-IN ADJUSTMENT (4)	-	-	-	-	-	(24,266,054)
SC NET INCOME	\$ -	\$ -	\$ (5,620)	\$ (627,266)	\$ 12,756,229	\$ 103,901,129
LESS: SC NOL CARRYOVER						(24,570,026)
TAXABLE NET INCOME						79,331,103
TAX RATE						5.0000%
TAX DUE						3,966,555
TAX CREDIT: EIZ (Schedule C)						(1,275,728)
BALANCE						2,690,827
TAX PREVIOUSLY PAID						-
UNDERPAYMENT (OVERPAYMENT)						\$ 2,690,827

EXPLANATIONS:

(1) MATCHING PRINCIPAL VIOLATED. EXPENSES MUST BE MATCHED WITH RELATED REVENUE.

Refer to **Note 3** on **Schedule A** for details.