

CHAPTER 6.

SOUTH CAROLINA INCOME TAX ACT

ARTICLE 1.

ADOPTION OF INTERNAL REVENUE CODE--DEFINITIONS

SECTION 12-6-10. Short title.

This chapter may be cited as the "South Carolina Income Tax Act".

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-20. Administration and enforcement of chapter.

The department shall administer and enforce the taxes imposed by this chapter. The department shall make and publish rules and regulations, not inconsistent with this chapter, necessary to enforce its provisions. These rules and regulations have the force of law.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-30. Definitions.

As used in this chapter, the following words have the meaning provided unless otherwise required by the context:

(1) "Taxpayer" includes an individual, trust, estate, partnership, association, company, corporation, or any other entity subject to the tax imposed by this chapter or required to file a return.

(2) "Resident individual" means an individual domiciled in this State. A "nonresident individual" means an individual other than a resident individual or a part-year resident.

(3) "Part-year resident" means an individual who is a resident individual for only a portion of the tax year.

(4) "Resident estate" means the estate of a decedent who was domiciled in this State at death. "Nonresident estate" means an estate other than a resident estate.

(5) "Resident trust" means a trust administered in this State. "Nonresident trust" is a trust other than a resident trust.

(6) "Resident beneficiary" means a beneficiary of an estate or trust who is a resident individual, resident estate, resident trust, resident partnership, or resident corporation. "Nonresident beneficiary" means a beneficiary other than a resident beneficiary.

(7) "Resident partner" means a partner who is a resident individual, resident estate, resident trust, or resident corporation or resident partnership during the taxable year. "Nonresident partner" means a partner other than a resident partner.

(8) "Resident corporation" means a corporation whose principal place of business, as defined in item (9), is located within this State. "Nonresident corporation" means a corporation other than a resident corporation.

(9) "Principal place of business" means the domicile of a corporation. However, when none of the business of the corporation is conducted in the state of domicile, the department shall determine the principal place of business of the corporation based upon the available evidence.

(10) "Business" includes trade, profession, occupation, or employment.

(11) "Tangible property" includes real property and corporeal personal property but does not include money, bank deposits, shares of stock, bonds, credits, evidences of debt, choses in action, or evidences of an interest in property.

(12) "Intangible property" means all property other than tangible property.

HISTORY: 1995 Act No. 76, Section 1.

[key]

SECTION 12-6-40. Application of federal Internal Revenue Code to State tax laws.

(A)(1)(a) Except as otherwise provided, "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended through January 2, 2013, and includes the effective date provisions contained in it.

(b) For purposes of sections 63 and 179 of the Internal Revenue Code, the amendments made by sections 103 and 202 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, P.L. 108-27 (May 28, 2003) are effective only for taxable years beginning after December 31, 2003.

(2)(a) ***For purposes of this title, "Internal Revenue Code" is deemed to contain all changes necessary for the State to administer its provisions. Unless a different meaning is required:***

(i) "Secretary", "Secretary of the Treasury", or "Commissioner" means the Director of the Department of Revenue.

(ii) "Internal Revenue Service" means the department.

(iii) "Return" means the appropriate state return.

(iv) "Income" includes the modifications required by Article 9 of this chapter and allocation and apportionment as provided in Article 17 of this chapter.

Other terms in the Internal Revenue Code must be given the meanings necessary to effectuate this item.

(b) For purposes of Internal Revenue Code Sections 67 (Two Percent Floor on Miscellaneous Itemized Deductions), 71 (Alimony and Separate Maintenance Payments), 85 (Unemployment Compensation), 165 (Losses), 170 (Charitable Contributions), 213 (Medical and Dental Expenses), 219 (Retirement Savings), 469 (Passive Activity Losses and Credits Limited), and 631 (Gain or Loss in the Case of Timber, Coal, or Domestic Iron Ore), ***"Adjusted Gross Income" for South Carolina income tax purposes means a taxpayer's adjusted gross income for federal income tax purposes*** without regard to the adjustments required by Article 9 and Article 17 of this chapter.

(c) For a taxpayer utilizing the provisions of Internal Revenue Code Section 1341 (Computation of Tax where Taxpayer Restores Substantial Amount Held under Claim of Right) for South Carolina tax purposes the phrase "taxes imposed by this chapter" means taxes imposed by Chapter 6 of this title.

(d) ***The terms defined in Internal Revenue Code Sections 7701, 7702, and 7703 have the same meaning for South Carolina income tax purposes, unless a different meaning is clearly required.***

(B) All elections made for federal income tax purposes in connection with Internal Revenue Code sections adopted by this State automatically apply for South Carolina income tax purposes unless otherwise provided. A taxpayer may not make an election solely for South Carolina income tax purposes except for elections not applicable for federal purposes, including filing a combined or composite return as provided in Sections 12-6-5020 and 12-6-5030, respectively.

(C) If a taxpayer complies with the provisions of Internal Revenue Code Section 367 (Foreign Corporations), it is not necessary for the taxpayer to obtain the approval of the department. A taxpayer filing a paper return shall attach a copy of the approval received from the Internal Revenue Service to his next South Carolina income tax return. A taxpayer filing an electronic return shall keep a copy of the approval with his tax records.

HISTORY: 1995 Act No. 76, Section 1; 1996 Act No. 410, Section 1; 1997 Act No. 155, Part II, Section 10A; 1998 Act No. 268, Section 1; 1999 Act No. 114, Section 3; 2000 Act No. 387, Part II,

Section 7, eff June 30, 2000; 2001 Act No. 89, Section 6, eff July 20, 2001, applicable to taxable years beginning after December 31, 2000; 2002 Act No. 220, Section 1, eff April 22, 2002; 2003 Act No. 69, Section 3.E.1, eff June 18, 2003; 2005 Act No. 145, Section 7, eff June 7, 2005; 2006 Act No. 386, Section 4, eff June 14, 2006; 2007 Act No. 9, Section 2, eff April 11, 2007, applicable to county designations beginning in 2007; 2007 Act No. 110, Sections 9, 37, eff June 21, 2007; 2007 Act No. 116, Sections 15, 43, eff June 28, 2007, applicable for tax years beginning after 2007; 2008 Act No. 311, Section 54, eff June 4, 2008; 2009 Act No. 16, Section 1, eff May 7, 2009; 2010 Act No. 142, Section 1, eff March 31, 2010; 2011 Act No. 5, Section 1, eff April 12, 2011; 2012 Act No. 126, Sections 1, 2, eff March 13, 2012; 2013 Act No. 10, Sections 1, 2, eff April 9, 2013.

SECTION 12-6-50. Internal Revenue Code sections specifically not adopted by State.

For purposes of this title and all other titles that provide for taxes administered by the department, except as otherwise specifically provided, the following Internal Revenue Code Sections *are specifically not adopted by this State*:

- (1) Sections 1(a) through 1(e), 3, 11, and 1201 relating to federal tax rates;
- (2) Sections 22 through 54, 515, 853, 901 through 908, and 960 relating to tax credits;
- (3) Sections 55 through 59A relating to minimum taxes;
- (4) **Sections 78, 85(c), 86, 87**, 168(k), 168(l), 168(m), 168(n), 196, and 280C relating to dividends received from certain foreign corporations by domestic corporations, unemployment compensation, taxation of social security and certain railroad retirement benefits, the alcohol fuel credit, bonus depreciation, deductions for certain unused business credits, and certain expenses for which credits are allowable;
- (5) Sections 72(m)(5)(B), 72(f), 72(o), 72(q), and 72(t), relating to penalty taxes on certain retirement plan distributions;
- (5A) Section 108(i) relating to the deferral and ratable inclusion of income arising from business indebtedness discharged by the reacquisition of a debt instrument;
- (5B) Section 163(e)(5)(F) relating to original issue discount on certain high yield obligations;
- (6) Section 172(b)(1) relating to net operating loss carrybacks;
- (7) Section 199 relating to the deduction attributable to domestic production activities;
- (8) Sections 531 through 564 relating to certain special taxes on corporations;
- (9) Sections 581, 582, and 585 through 596 relating to the taxation of banking institutions;
- (10) Sections 665 through 668 relating to taxation of certain accumulation distributions from trusts;
- (11) Sections 801 through 848 relating to taxation of insurance companies;
- (12) Sections 861 through 909, 912, 931 through 940, and 944 through 989 relating to the taxation of foreign income;
- (13) Sections 1352 through 1359 relating to an alternative tax on qualifying shipping activities;
- (14) Sections 1400 through 1494;
- (15) Sections 1501 through 1505 relating to consolidated tax returns; and
- (16) Sections 2001 through 7655, 7801 through 7871, and 8001 through 9602, except for Sections 6015 and 6701, and except for Sections 6654 and 6655 which are adopted as provided in Section 12-6-3910 and Section 12-54-55. However, Section 6654(d)(1)(D) relating to estimated tax payments for qualified individuals as defined in that item is not adopted.
- (17) Section 68 relating to the reduction on itemized deductions and Section 151(d)(3) relating to the reduction on the personal exemption for:
 - (a) a joint return or surviving spouse with an adjusted gross income exceeding three hundred thousand dollars or the same adjusted gross income adjusted for inflation pursuant to Section 68, whichever is higher;
 - (b) a head of household with an adjusted gross income exceeding two hundred seventy-five thousand dollars or the same adjusted gross income adjusted for inflation pursuant to Section 68, whichever is higher; and

(c) an individual who is not married and who is not a surviving spouse or head of household with an adjusted gross income exceeding two hundred fifty thousand dollars or the same adjusted gross income adjusted for inflation pursuant to Section 68, whichever is higher.

HISTORY: 1995 Act No. 76, Section 1; 1996 Act No. 431, Section 3; 1999 Act No. 114, Section 4; 2001 Act No. 89, Section 7, eff July 20, 2001, applicable to taxable years beginning after December 31, 2000; 2003 Act No. 69, Section 3.E.2, eff June 18, 2003; 2005 Act No. 145, Section 8, eff June 7, 2005; 2005 Act No. 161, Section 4, eff June 9, 2005; 2007 Act No. 110, Section 38.A, eff June 21, 2007, applicable to tax years beginning after December 31, 2005; 2007 Act No. 116, Section 44.A, eff June 28, 2007, applicable to tax years beginning after December 31, 2005; 2009 Act No. 16, Section 2, eff May 7, 2009; 2010 Act No. 142, Sections 3.A, 3.B, eff March 31, 2010; 2012 Act No. 126, Section 3, eff March 13, 2012; 2013 Act No. 10, Section 3.A, eff April 9, 2013.

SECTION 12-6-60. Role of distribution facility in determining nexus with state for income tax and corporate license fee purposes.

(A) Notwithstanding another provision of this chapter, whether or not a person has nexus with South Carolina for income tax and corporate license fee purposes, is determined without regard to whether the person:

- (1) owns or utilizes a distribution facility within South Carolina;
- (2) owns or leases property at a distribution facility within South Carolina that is used at, or distributed from, that facility; or
- (3) sells property shipped or distributed from a distribution facility within South Carolina.

(B) The distribution facility is not considered to be a fixed place of business in South Carolina for the purposes of nexus.

(C) For purposes of this section, a distribution facility is defined in Section 12-6-3360.

HISTORY: 2005 Act No. 157, Section 1, eff June 10, 2005, applicable for taxable years beginning January 1, 2006.

ARTICLE 5.

TAX RATES AND IMPOSITION

SECTION 12-6-510. Tax rates for individuals, estates, and trusts for taxable years after 1994.

(A) For taxable years beginning after 1994, a tax is imposed on the South Carolina taxable income of individuals, estates, and trusts and any other entity except those taxed or exempted from taxation under Sections 12-6-530 through 12-6-550 computed at the following rates with the income brackets indexed in accordance with Section 12-6-520:

Not over \$2,220	2.5 percent of taxable income
Over \$2,220 but not over \$4,440	\$56 plus 3 percent of the excess over \$2,220;
Over \$4,440 but not over \$6,660	\$123 plus 4 percent of the excess over \$4,440;
Over \$6,660 but not over \$8,880	\$212 plus 5 percent of the excess of \$6,660;
Over \$8,880 but not over \$11,100	\$323 plus 6 percent of the excess over \$8,880;

Over \$11,100

\$456 plus 7 percent of the excess over
\$11,100.

(B) The department may prescribe tax tables consistent with the rates set pursuant to subsection (A).

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-515. State individual income tax bracket reduction.

Notwithstanding any other provision of law, for taxable years beginning after 2006, the rate of tax imposed pursuant to Section 12-6-510(A) on the lowest bracket of South Carolina taxable income is reduced from 2.5 percent to zero percent, and the Department of Revenue shall adjust amounts due in tax tables prescribed by the department.

HISTORY: 2007 Act No. 115, Section 5, eff June 29, 2007.

[key]

SECTION 12-6-520. Annual adjustments to individual state income tax brackets; inflation adjustments.

Each December 15, the department shall cumulatively adjust the brackets in Section 12-6-510 in the same manner that brackets are adjusted in Internal Revenue Code Section (1)(f). *However, the adjustment is limited to one-half of the adjustment determined by Internal Revenue Code Section (1)(f),* may not exceed four percent a year, and the rounding amount provided in (1)(f)(6) is ten dollars. The brackets, as adjusted, apply in lieu of those provided in Section 12-6-510 for taxable years beginning in the succeeding calendar year. Inflation adjustments must be made cumulatively to the income tax brackets.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-530. Corporate income tax.

An income tax is imposed annually at the rate of five percent on the South Carolina taxable income of every corporation, other than those described in Sections 12-6-540 and 12-6-550, and any other entity taxed using the rates of a corporation for federal income tax purposes, transacting, conducting, or doing business within this State or having income within this State, regardless of whether these activities are carried on in intrastate, interstate, or foreign commerce. The terms “transacting”, “conducting”, and “doing business” include transacting or engaging in any activity for the purpose of financial profit or gain.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-535. Small business trust taxed at highest rate.

For purposes of Internal Revenue Code Section 641(c), an electing small business trust is taxed at the highest rate provided in Section 12-6-510.

HISTORY: 2003 Act No. 69, Section 3.R, eff June 18, 2003.

SECTION 12-6-540. Income tax rates for exempt organizations and cooperatives.

An income tax is imposed annually at the rate of five percent on the South Carolina taxable income of an organization described in Internal Revenue Code Sections 501 through 528 (Exempt Organizations) and 1381 (Cooperatives) as computed under Internal Revenue Code Sections 501(b) (unrelated business income), 528(d) (taxable income of homeowners' associations), and 1382 and 1383 (taxation of cooperatives). The modifications provided in Article 9 of this chapter and the allocation and apportionment provisions provided in Article 17 of this chapter apply for the taxes imposed by this section.

HISTORY: 1995 Act No. 76, Section 1; 2003 Act No. 69, Section 3.E.3, eff June 18, 2003.

SECTION 12-6-545. Income tax rates for pass-through trade and business income; determination of income related to personal services.

(A) As used in this section:

(1) "Active trade or business income or loss" means income or loss of an individual, estate, trust, or any other entity except those taxed or exempted from tax pursuant to Sections 12-6-530 through 12-6-550 resulting from the ownership of an interest in a pass-through business. Active trade or business income or loss does not include:

(a)(i) passive investment income as defined in Internal Revenue Code Section 1362(d) generated by a pass-through business and income of the same type regardless of the type of pass-through business generating it; and

(ii) expenses related to passive investment;

(b) capital gains and losses;

(c) payments for services referred to in Internal Revenue Code Section 707(c);

(d) amounts reasonably related to personal services. All amounts paid as compensation and all guaranteed payments for services, but not for the use of capital, as defined in Internal Revenue Code Section 707(c) are deemed to be reasonably related to personal services. In addition, if an owner of a pass-through entity who performs personal services for the entity is not paid a reasonable amount for those personal services as compensation or payments referred to in Internal Revenue Code Section 707(c), all of the owner's income from the entity is presumed to be amounts reasonably related to personal services. For purposes of this section, amounts reasonably related to personal services include amounts reasonably related to the personal services of the owner, the owner's spouse, and any person claimed as a dependent on the owner's income tax return.

(2) "Pass-through businesses" means sole proprietorships, partnerships, and "S" corporations, including limited liability companies taxed as sole proprietorships, partnerships, or "S" corporations.

(B)(1) Notwithstanding Section 12-6-510, a taxpayer may elect annually to have the income tax at the rate provided in item (2) of this subsection imposed annually on the active trade or business income received by the owner of a pass-through business. For joint returns, the election is effective for both spouses. The amount subject to tax pursuant to this section is not subject to tax pursuant to Section 12-6-510.

(2) The rate of the income tax imposed pursuant to this subsection is:

Taxable Year Beginning in	Rate of Tax
2006	6.5 percent
2007	6 percent
2008	5.5 percent
2008 through 2011	5 percent
2012	4.33 percent
2013	3.67 percent
after 2013	3 percent

(C) Notwithstanding any other provision of this chapter, active trade or business loss must first be deducted, dollar for dollar against active trade or business income. Any remaining active trade or business loss is deductible from income taxed under Section 12-6-510 if otherwise allowable.

(D) The department may issue guidance as to what expenses reduce active trade or business income.

(E)(1) Notwithstanding item (A)(1)(d) of this section, if a taxpayer owns an interest in one or more pass-through businesses and his total South Carolina taxable income from pass-through entities for which he performs personal services is one hundred thousand dollars or less, excluding capital gains and losses, then the taxpayer may elect, instead of determining the actual amount of active trade or business income related to his personal services, to treat fifty percent of his active trade or business income as not related to his personal services. For purposes of this item, the term “taxpayer” includes both taxpayers who file a joint return.

(2) The department may provide other methods that may be used to determine an amount that is considered to be unrelated to the owner’s personal services if it determines that the benefits to the State of taxing income from personal services at a higher rate are insufficient to justify the burdens imposed on the taxpayer.

(F) An income tax credit available to offset taxes due pursuant to Section 12-6-510 also apply against taxes imposed by this section.

HISTORY: 2005 Act No. 41, Section 1, eff April 14, 2005; 2006 Act No. 282, Section 1, eff May 23, 2006; 2006 Act No. 386, Section 5.A, eff for tax years beginning on or after January 1, 2006; 2006 Act No. 386, Section 42, eff June 14, 2006; 2007 Act No. 110, Section 10.A, eff June 21, 2007, applicable to tax years beginning after December 31, 2005; 2007 Act No. 116, Section 16.A, eff June 28, 2007, applicable for tax years beginning after December 31, 2005; 2012 Act No. 287, Section 2, eff June 28, 2012.

SECTION 12-6-550. Corporations exempt from taxes imposed by Sections 12-6-530 and 12-6-540.

The following corporations are exempt from the tax imposed by Section 12-6-530 and Section 12-6-540:

- (1) banks as defined in Section 12-11-10;
- (2) building and loan associations as defined in Section 12-13-10;
- (3) insurance companies;
- (4) nonprofit corporations organized pursuant to Chapter 36 of Title 33 for the purpose of providing water supply and sewage disposal or a combination of those services;
- (5) organizations exempt from income taxes pursuant to Section 33-49-120.

HISTORY: 1995 Act No. 76, Section 1; 2000 Act No. 404, Section 6(C), eff October 3, 2000.

SECTION 12-6-555. Persons not having nexus with state other than contract for commercial printing in state not subject to state income or sales and use taxes; conditions.

Notwithstanding any other provision of this chapter, with respect to a person that does not otherwise have a nexus with South Carolina, and that has contracted with a commercial printer for printing:

- (1) the ownership or leasing by that person of tangible or intangible property located at the South Carolina premises of the commercial printer and used in connection with printing contracts;
- (2) the sale by that person of property printed or imprinted at and shipped or distributed from the South Carolina premises of the commercial printer by the commercial printer;
- (3) the activities performed pursuant or incident to a printing contract by or on behalf of that person at the South Carolina premises of the commercial printer by the commercial printer; or
- (4) the activities performed pursuant or incident to a printing contract by the commercial printer in South Carolina for or on behalf of that person; shall not cause that person to have income derived from sources within South Carolina for purposes of the taxes imposed by this chapter, unless that person engages in other activities in South Carolina that exceed the protection of 15 U.S.C. Section 381. The person shall not be considered to have a fixed place of business in South Carolina at either the

commercial printer's premises or at any place where the commercial printer performs printing and related services on behalf of that person.

HISTORY: 1997 Act No. 155, Part II, Section 68A.

[key]

SECTION 12-6-560. Computation of resident individual's gross, adjusted gross, and taxable income.

A resident individual's South Carolina gross income, adjusted gross income, and taxable income is computed as determined under the Internal Revenue Code with the modifications provided in Article 9 of this chapter and subject to allocation and apportionment as provided in Article 17 of this chapter.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-570. Computation of nonresident individual, trust, estate, and beneficiary's gross, adjusted gross, and taxable income.

A nonresident individual, nonresident trust, nonresident estate, and nonresident beneficiary's South Carolina gross income, adjusted gross income, and taxable income is computed as provided in Section 12-6-1720.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-580. Computation of corporation's gross and taxable income.

A corporation's South Carolina gross income, taxable income, and the unrelated business income of a corporation exempt from taxation under Internal Revenue Code Section 501 et seq., is computed as determined under the Internal Revenue Code with the modifications provided in Article 9 of this chapter and subject to allocation and apportionment as provided in Article 17 of this chapter.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-590. Treatment of "S" corporations for tax purposes; shareholders.

(A) Except as provided in Section 12-6-1210(F), an "S" Corporation having a valid federal election under the Internal Revenue Code Subchapter "S" is not subject to tax under this chapter to the extent it would be exempt from federal corporate income tax. Each shareholder shall include its share of South Carolina "S" Corporation income on the shareholder's income tax return. All of the provisions of the Internal Revenue Code apply to determine the gross income, adjusted gross income, and taxable income of an "S" Corporation and its shareholders subject to the modifications provided in Article 9 of this chapter and subject to allocation and apportionment as provided in Article 17 of this chapter.

(B) A taxpayer who is a shareholder in a bank, as defined in Section 581 of the IRC, having a valid federal election under Subchapter S, is allowed a tax credit that equals the difference between: (i) the taxpayer's tax as computed pursuant to this chapter, including all credits other than the credit allowed pursuant to this section; and (ii) the tax as computed pursuant to this chapter, including all credits other than the credit allowed pursuant to this section, but excluding the taxpayer's prorata share of the net items of income and expense of the bank. The credit may not exceed the taxpayer's prorata share of the tax imposed on the bank pursuant to Section 12-11-30. These taxpayers are taxed pursuant to the provisions of this section and Section 12-6-545, notwithstanding the exception contained in Section 12-6-545(A)(1).

HISTORY: 1995 Act No. 76, Section 1; 2007 Act No. 116, Section 65.A, eff June 28, 2007, applicable to calendar years beginning January 1, 2007; 2010 Act No. 150, Section 2, eff April 27, 2010; 2010 Act No. 290, Section 37, eff June 23, 2010.

SECTION 12-6-600. Taxation of partnerships.

An entity treated as a partnership for federal income tax purposes is not subject to tax under this chapter. Each partner shall include its share of South Carolina partnership income on the partner's respective income tax return. All of the provisions of the Internal Revenue Code apply to determine the gross income, adjusted gross income, and taxable income of a partnership and its partners, subject to the modifications provided in Article 9 of this chapter and subject to allocation and apportionment as provided in Article 17 of this chapter.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-610. Computation of gross and taxable income of resident estate or trust.

A resident estate or resident trust's South Carolina gross income and taxable income is computed as determined under the provisions of the Internal Revenue Code, including the provisions of Internal Revenue Code Section 584 (Common Trust Funds), with the modifications provided in Article 9 of this chapter and subject to allocation and apportionment as provided in Article 17 of this chapter.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-620. Computation of gross, adjusted gross, and taxable income of nonresident individual, trust, and estate.

A nonresident individual, nonresident trust, and nonresident estate's South Carolina gross income, adjusted gross income, and taxable income is computed as provided in Section 12-6-1720.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-630. Taxation of entities not specified or excluded.

Entities, other than those specified in Sections 12-6-560 through 12-6-620 and those specifically excluded from income taxation under Section 12-6-550, are taxed as provided in the Internal Revenue Code with the modifications provided in Article 9 of this chapter and subject to allocation and apportionment as provided in Article 17 of this chapter.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-640. Use of monies appropriated to Commissioners of Pilotage.

Monies appropriated to the Commissioners of Pilotage must be used as a grant to the Maritime Association of the Port of Charleston for the purpose of supporting the establishment of a maritime exchange system to provide vessel information services and is not taxable income for purposes of this chapter.

HISTORY: 2000 Act No. 406, Section 3, eff June 8, 2000.

ARTICLE 9.

TAXABLE INCOME CALCULATION

[key]

SECTION 12-6-1110. *Modifications of gross, adjusted gross, and taxable income calculated under Internal Revenue Code;* federal Section 1354 elections.

(A) *For South Carolina income tax purposes, gross income, adjusted gross income, and taxable income as calculated under the Internal Revenue Code* are modified as provided in this article and subject to allocation and apportionment as provided in Article 17 of this chapter.

(B) If a taxpayer has made an election pursuant to Internal Revenue Code Section 1354 to be taxed under the provisions of Section 1352-1359 of the Internal Revenue Code, Election to Determine Taxable Income from Certain International Shipping Activities, the election is not effective for South Carolina income tax purposes, and the taxpayer is taxed in accordance with this chapter as though no federal Section 1354 election has been made.

HISTORY: 1995 Act No. 76, Section 1; 2005 Act No. 145, Section 9, eff June 7, 2005.

SECTION 12-6-1120. Gross income; computation; modifications.

South Carolina gross income is computed by making modifications to gross income provided in the Internal Revenue Code as follows:

(1) The exclusion from gross income authorized by Internal Revenue Code Section 103 (Interest on State and Local Bonds) is modified to exempt only interest on obligations of this State or any of its political subdivisions, and to exempt interest upon obligations of the United States. This modification applies to all Internal Revenue Code Sections referencing Section 103.

(2) South Carolina gross income does not include any state income tax refund included in federal gross income.

(3) Reserved.

(4) South Carolina gross income is determined without application of Internal Revenue Code Sections 78 (Gross-up of Dividends received from Certain Foreign Corporations), 86 (Social Security and Tier 1 Railroad Retirement Benefits), and 87 (Alcohol Fuel Credit).

(5) The exclusions permitted by Internal Revenue Code Sections 912 (Exemptions for Certain Allowances for Citizens or Residents of the United States Living Abroad) and 931 through 936 (Income from Possessions of the United States) are not permitted.

(6) A beneficiary of a trust shall exclude from South Carolina taxable income any excess distributions by trusts included in the beneficiary's federal taxable income by reason of Internal Revenue Code Sections 665 through 669 (Treatment of Excess Distributions by Trusts) or any comparable provisions.

(7) South Carolina gross income does not include compensation or retirement benefits received from the United States or any state for service in a state National Guard or a reserve component of the Armed Forces of the United States. This exclusion only applies to compensation and retirement benefits received for the customary annual training period not to exceed fifteen days for guard members or fourteen days plus travel time for reserve members, weekend drills, and inactive duty training. National Guard or reserve members that are called to active duty are allowed to deduct fifteen days of active duty pay if they have not excluded pay for the annual training period for the same taxable year.

(8) Each partner in the Palmetto Seed Capital Fund Limited Partnership (Fund) established pursuant to Section 41-44-60 shall exclude from South Carolina gross income seventy-five percent of the partner's proportionate share of income the fund derives from a South Carolina business which is either:

(i) established and operated in a least developed county as defined in Section 12-6-3360; or

(ii) invested in agriculture, aquaculture, or a related business or in a business created by a socially or economically disadvantaged individual as defined in 13 Code of Federal Regulations, Sections 124.105(A) and 124.106 (1987).

(9) Notwithstanding Section 12 of Act 101 of 1985, Internal Revenue Code Section 7518 applies retroactively to taxable years beginning after 1986 and applies to any taxpayer.

(10) South Carolina gross income does not include the amounts excluded by Section 59-4-100 of the South Carolina Tuition Prepayment Program.

HISTORY: 1995 Act No. 76, Section 1; 1997 Act No. 155, Part II, Section 5; 1999 Act No. 114, Section 3; 2000 Act No. 399, Section 4(A), eff August 17, 2000.

SECTION 12-6-1130. Taxable income; computation; modifications.

South Carolina taxable income is computed by making modifications to deductions provided in the Internal Revenue Code as follows:

(1) The disallowance of deductions relating to tax-exempt income required by Internal Revenue Code Section 265 applies if the related income is exempt for South Carolina income tax purposes, whether or not the income is exempt for federal purposes. If an expense or interest is disallowed under Section 265 for federal purposes, but is related to income taxed in South Carolina, that expense or interest may be deducted for South Carolina income tax purposes.

(2) The deduction for taxes permitted by Internal Revenue Code Section 164 is computed in the same manner as provided in Section 164 except there is no deduction for state and local income taxes, state and local franchise taxes measured by net income, other income taxes, or taxes measured with respect to net income. In addition, if a taxpayer elects, pursuant to Section 164, to deduct state and local sales taxes instead of state and local income taxes, the taxpayer may not deduct state and local sales and use taxes.

This modification is limited for individual taxpayers to the excess of itemized deductions over the standard deduction that would be allowed if the taxpayer had used the standard deduction for federal income tax purposes.

(3) For purposes of computing the deduction for estate taxes allowed by Internal Revenue Code Section 691(c), "estate tax" means the South Carolina Estate Tax including any South Carolina generation-skipping transfer tax.

(4) A net operating loss deduction is computed in accordance with the Internal Revenue Code except that:

(a) All items of income and deductions used in computing the net operating loss deduction are adjusted as provided in this article.

(b) No carrybacks are allowed.

(c) A federal election to carryback a net operating loss deduction does not affect the computation of this deduction for South Carolina income tax purposes.

(d) A net operating loss is subject to allocation and apportionment under Article 17 of this chapter in the year the loss is incurred.

(5) 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).

(6) In computing the depletion deduction pursuant to Internal Revenue Code Sections 611 through 613, a taxpayer who allocates or apportions income pursuant to the provisions of Article 17 of this chapter has the option of:

(a) apportioning the deduction according to the appropriate South Carolina apportionment percentage provided in Sections 12-6-2252 through 12-6-2310; or

(b) allocating the deduction to South Carolina with respect to mines, oil and gas wells, and other natural deposits located in this State. The amount allocated to South Carolina may not exceed fifty percent of the net income apportioned to South Carolina by Sections 12-6-2252 through 12-6-2310.

(7) The limiting provisions of Internal Revenue Code Section 280C for certain expenses for which credits are allowable do not apply.

(8) Adjusted gross income and taxable income are computed without the deductions for certain unused business credits authorized by Internal Revenue Code Section 196.

(9) If for federal income tax purposes a taxpayer claims a credit which requires a reduction of basis to Section 38 property under Internal Revenue Code Section 50(c), the taxpayer may deduct the amount of the basis reduction for South Carolina income tax purposes by the amount of the basis reduction in the tax year in which basis is reduced for federal income tax purposes.

(10) If for federal income tax purposes a taxpayer's mortgage interest deduction is reduced pursuant to Internal Revenue Code Section 163(g), the taxpayer may deduct the amount of the federal interest deduction reduction.

(11) A dividend from a foreign corporation is treated as a dividend from a domestic corporation for the purposes of the dividends received deduction under Section 243 of the Internal Revenue Code.

(12) The deduction for charitable contributions allowed by Section 170 of the Internal Revenue Code is determined in the same manner as provided in Section 170 of the code except that no deduction is allowed unless, in addition to the requirements of Section 170 of the Internal Revenue Code, the contribution also meets the requirements of Section 12-6-5590.

(13) Adjusted gross income and taxable income are computed without the deduction allowed pursuant to Internal Revenue Code Section 199 relating to domestic production activities.

(14)(a) A deduction is not allowed a person for the accrual of an expense or interest if the payee is a related person and the payment is not made in the taxable year of accrual or before the payer's income tax return is due, without regard to extensions, for the taxable year of accrual. Except as provided in subitem (b), deductions disallowed pursuant to this section are allowed when the payment is made. The holder shall include the payment in income in the year the debtor is entitled to take the deduction. This section does not apply to payments deemed to be made by the application of South Carolina's adoption of Internal Revenue Code Section 482, 7872, a similar provision of the Internal Revenue Code or state law.

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

(c) For purposes of this item, a related person includes a person that bears a relationship to the taxpayer as described in Section 267 of the Internal Revenue Code.

HISTORY: 1995 Act No. 76, Section 1; 2002 Act No. 334, Section 14, eff June 24, 2002; 2002 Act No. 363, Section 2, eff August 2, 2002, applicable for taxable years beginning after 2002; 2005 Act No. 145, Sections 10.A, 10.B, 43.A, eff June 7, 2005; 2005 Act No. 161, Section 22.A, eff June 9, 2005; 2007 Act No. 110, Section 55.A, eff June 21, 2007, effective for tax years after 2010; 2007 Act No. 116, Section 60.A, eff June 28, 2007, effective for tax years beginning after 2010.

SECTION 12-6-1140. Deductions from individual taxable income.

There is allowed as a deduction in computing South Carolina taxable income of an individual the following:

- (1) a net gain deduction as provided in Section 12-6-1150;
- (2) an additional deduction for dependents under six years of age as provided in Section 12-6-1160;
- (3) a deduction as provided in Section 12-6-1170;
- (4) 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 Section 12-37-250 by reason of being classified as totally and permanently disabled;

(5) expenses incurred by taxpayers as provided in Internal Revenue Code Section 162(h) without regard to limitations in Section 162(h)(4);

(6) a subsistence allowance of eight dollars a day for federal, state, and local law enforcement officers paid by a political subdivision of this State, the government of this State, or the federal government, for each regular work day in a taxable year and full-time firefighters and emergency medical service personnel may deduct as a subsistence allowance eight dollars a day for each regular work day in a taxable year;

(7)(a) Two thousand dollars for each adopted special needs child who is:

(i) dependent upon and receiving chief support from the taxpayer;

(ii) under the age of twenty-one; and

(iii) enrolled in an accredited school or college or is incapable of self-support because of mental or physical defects.

(b) For purposes of this item, a special needs child is a person who is:

(i) under eighteen at the time of adoption;

(ii) the dependent of a public or private nonprofit adoption agency prior to the adoption;

(iii) legally free for adoption; and

(iv) unlikely to be adopted without assistance as determined by the South Carolina Department of Social Services because of conditions such as ethnic minority status, age, sibling group membership, medical condition, or physical, mental, or emotional handicaps.

(c) The entire deduction is allowed for a taxable year even if the special needs child survives for only part of the taxable year.

(8) RESERVED.

(9) DELETED.

(10)(a) A deduction calculated as provided in this item for a volunteer firefighter, rescue squad member, volunteer member of a Hazardous Materials (HAZMAT) Response Team, reserve police officer, Department of Natural Resources deputy enforcement officer, or member of the State Guard not otherwise eligible for this exemption.

(b) An individual may receive only one deduction pursuant to this item. The Board of Economic Advisors annually shall estimate a maximum deduction that may be permitted under this section for a taxable year based on an individual income tax revenue loss of three million one hundred thousand dollars attributable to this deduction and shall certify that maximum deduction to the Department of Revenue and for the applicable taxable year, the maximum deduction amount must not exceed the lesser of the certified estimate or three thousand dollars.

(c)(i) Only a volunteer earning a minimum number of points pursuant to Section 23-9-190 is eligible for this deduction unless otherwise provided in this item.

(ii) In the case of a reserve police officer and in lieu of minimum points determining eligibility, this deduction is allowed only if the reserve police officer's coordinator-supervisor certifies in writing to the officer that the officer met all requirements of Chapter 28, Title 23 applicable to a reserve police officer for the entire taxable year.

(iii) In the case of a Department of Natural Resources deputy enforcement officer and in lieu of minimum points determining eligibility, this deduction is allowed only if the deputy enforcement officer's supervisor certifies in writing to the officer that the officer met all requirements of Section 50-3-315 for the entire taxable year.

(iv) In the case of a member of the State Guard and in lieu of minimum points determining eligibility, this deduction is allowed only if the State Guard member completes a minimum of sixteen hours of training or drill each month, equating to one hundred ninety-two hours a year, and the member's commanding officer certifies in writing to the member that the member met these requirements.

(d) These certifications from supervisors of taxpayers claiming the deduction must be on a form approved by the department. The department may require a copy of the certification be attached to the taxpayer's income tax return or otherwise be made available to the department.

(11) contributions to the South Carolina Tuition Prepayment Program to the extent provided in Section 59-4-100 and to the South Carolina College Investment Program to the extent provided in Section 59-2-80.

HISTORY: 1995 Act No. 76, Section 1; 1997 Act No. 70, Section 5(A); 1997 Act No. 155, Part II, Section 2A; 1998 Act No. 419, Part II, Section 49A; 1999 Act No. 100, Part II, Section 23; 2001 Act No. 72, Section 5, eff July 20, 2001; 2002 Act No. 334, Section 19E, eff June 24, 2002, applicable for taxable years beginning after 2002; 2002 Act No. 363, Section 3A, eff August 2, 2002, applicable for taxable years beginning after 2002; 2004 Act No. 278, Section 1, eff July 16, 2004, applicable for taxable years beginning after 2003; 2005 Act No. 145, Section 11, eff June 7, 2005; 2006 Act No. 242, Section 1, eff March 20, 2006, applicable to taxable years beginning after 2005; 2007 Act No. 110, Section 11.A, eff June 21, 2007, applicable for taxable years beginning after 2005; 2007 Act No. 116, Section 17.A, eff June 28, 2007, applicable for taxable years beginning after 2005; 2008 Act No. 353, Section 2, Pt 12C.1, eff July 1, 2008.

SECTION 12-6-1150. Net capital gain; deduction from taxable income for individuals, estates, and trusts.

(A) Individuals, estates, and trusts are allowed a deduction from South Carolina taxable income equal to forty-four percent of net capital gain recognized in this State during a taxable year. In the case of estates and trusts, the deduction is applicable only to income taxed to the estate or trust or individual beneficiaries and not income passed through to nonindividual beneficiaries.

(B)(1) South Carolina income includes capital gains and losses from partnerships and "S" Corporations.

(2) Net capital gain is as defined in Internal Revenue Code, Section 1222 and related sections.

HISTORY: 1995 Act No. 76, Section 1; 2000 Act No. 387, Part II, Section 40B, eff June 30, 2000 and applicable for taxable years beginning after 2000.

SECTION 12-6-1160. Dependent deduction for resident individual.

A resident individual taxpayer is allowed a deduction for each dependent claimable on the taxpayer's federal income tax return who has not yet attained the age of six years during the applicable tax year. This deduction is contingent upon the identification in the annual general appropriations act of revenues sufficient to offset the revenue loss caused by the exemption. The deduction allowed by this section is an amount equal to a percentage of the federal income tax personal exemption amount allowed for the applicable taxable year as follows:

Taxable year 1994	twenty-five percent
Taxable year 1995	fifty percent

Taxable year 1996	seventy-five percent
Taxable years after 1996	one hundred percent

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-1170. Retirement income deduction from taxable income for individual.

(A)(1) An individual taxpayer who is the original owner of a qualified retirement account is allowed an annual deduction from South Carolina taxable income of not more than three thousand dollars of retirement income received. Beginning in the year in which the taxpayer reaches age sixty-five, the taxpayer may deduct not more than ten thousand dollars of retirement income that is included in South Carolina taxable income.

(2) The term “retirement income”, as used in this subsection, means the total of all otherwise taxable income not subject to a penalty for premature distribution received by the taxpayer or the taxpayer’s surviving spouse in a taxable year from qualified retirement plans which include those plans defined in Internal Revenue Code Sections 401, 403, 408, and 457, and all public employee retirement plans of the federal, state, and local governments, including military retirement.

(3) A surviving spouse receiving retirement income that is attributable to the deceased spouse shall apply this deduction in the same manner that the deduction applied to the deceased spouse. If the surviving spouse also has another retirement income, an additional retirement exclusion is allowed.

(4) The department may require the taxpayer to provide information necessary for proper administration of this subsection.

(B) Beginning for the taxable year during which a resident individual taxpayer attains the age of sixty-five years, the resident individual taxpayer is allowed a deduction from South Carolina taxable income received in an amount not to exceed fifteen thousand dollars reduced by any amount the taxpayer deducts pursuant to subsection (A) not including amounts deducted as a surviving spouse. If married taxpayers eligible for this deduction file a joint federal income tax return, then the maximum deduction allowed is fifteen thousand dollars in the case when only one spouse has attained the age of sixty-five years and thirty thousand dollars when both spouses have attained such age.

HISTORY: 1995 Act No. 76, Section 1; 1998 Act No. 419, Part II, Section 49B; 1999 Act No. 100, Part II, Section 28; 2005 Act No. 161, Section 5, eff June 9, 2005.

SECTION 12-6-1175. Wages paid to unauthorized alien; business expense deduction disallowed.

(A) As used in this section:

(1) “Unauthorized alien” means an unauthorized alien as defined by 8 USC Section 1324A(h)(3).

(2) “Labor services” means the physical performance of services in this State.

(B) On or after January 1, 2009, no wages or remuneration for labor services to an individual of six hundred dollars or more per annum may be claimed and allowed as a deductible business expense for state income tax purposes by a taxpayer if the individual is an unauthorized alien. The provisions of this subsection shall apply whether or not an Internal Revenue Service Form 1099 is issued in conjunction with the wages or remuneration.

(C) This section shall not apply to a business domiciled in this State that is exempt from compliance with federal employment verification procedures under federal law.

(D) This section shall not apply to an individual hired by the taxpayer prior to January 1, 2009.

(E) This section shall not apply to a taxpayer where the individual being paid is not directly compensated or employed by said taxpayer.

(F) This section shall not apply to wages or remuneration paid for labor services to any individual whose employment authorization status was verified in accordance with the provisions of Section 41-8-20.

(G) A taxpayer must not be held liable for failing to comply with the provisions of this section, if, based on a reasonable investigation of the individual, the taxpayer did not know or should not have known that the individual was an unauthorized alien. For purposes of this subsection, a taxpayer shall be deemed to have conducted a reasonable investigation if the individual met the requirements of subsection (F), and the information provided by the individual to the taxpayer was facially correct.

(H) The Director of the South Carolina Department of Revenue is authorized to prescribe forms and promulgate regulations deemed necessary in order to administer and effectuate this section in accordance with the provisions of Chapter 23 of Title 1 of the South Carolina Code of Laws.

(I) The Director of the Department of Revenue shall send written notice of this section to all South Carolina employers no later than July 1, 2008.

HISTORY: 2008 Act No. 280, Section 7, eff June 4, 2008.

SECTION 12-6-1180. Repealed by 2000 Act No. 399, Section 4(B), eff August 17, 2000.

SECTION 12-6-1190. Cost recovery of retirement benefits from retirement systems maintained by the State or its political subdivisions.

Retirees receiving benefits from the various state retirement systems or any other retirement plan maintained by a political subdivision of this State who have recovered all or a part of their recoverable costs in their retirement benefits for federal income tax purposes before January 1, 1989, are considered to have recovered those costs for purposes of the state income tax. For taxable years beginning after 1988, cost recovery of these retirement benefits is the same for both state and federal income tax purposes.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-1200. Exclusion from taxable income of amounts excluded from federal income tax by United States treaty.

South Carolina taxable income does not include amounts excluded from federal income tax by reason of a treaty of the United States.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-1210. Deductions for capital expenses, depreciation, gains and losses; change in accounting method; certain elections for special tax treatment; provisions of federal law.

(A) If as of January 1, 1985, a taxpayer is for federal income tax purposes amortizing a capital expense paid or incurred before January 1, 1985, as provided in Internal Revenue Code Sections 171 (Amortization of Bond Premium), 174 (Research and Experimental Expenditures), 185 (Amortization of Railroad Grading and Tunnel Bores), 189 (Amortization of Real Property Construction Period Interest and Taxes), or 194 (Amortization of Reforestation Expenditures), the taxpayer is allowed to deduct for South Carolina income tax purposes the amount amortized and deducted for federal income tax purposes. At the expiration of the amortization for federal income tax purposes, the taxpayer may continue to amortize, for South Carolina income tax purposes, the balance of the capital expense, if any, using the same rate of amortization until the cost of the item has been fully amortized for South Carolina income tax purposes.

(B) Except as provided in subsection (C), if, as of January 1, 1985, a taxpayer is deducting the cost of personal property placed in service before 1985, or the cost of improvements to real property paid or incurred before January 1, 1985, as provided in Internal Revenue Code Section 168, the taxpayer is allowed for South Carolina income tax purposes the same annual deduction as allowed for federal tax purposes. Beginning with the year following the expiration of the deductions for federal tax purposes, the balance of the deductible cost, if any, may be deducted at the rate of fifty percent a year for personal property and twenty percent a year for real property improvements, until the entire deductible cost has been deducted for South Carolina income tax purposes. The deduction authorized by this subsection may not exceed the taxpayer's depreciable basis.

(C) If a taxpayer has a higher basis in assets for South Carolina income tax purposes, the taxpayer may continue to depreciate the assets, to the extent depreciable, in the manner in which the assets were being depreciated before January 1, 1985, if the higher basis is the result of:

(1) a taxable corporate liquidation before January 1, 1985;

(2) an exchange of property before January 1, 1985, that qualified under Internal Revenue Code Section 1031, but did not similarly qualify under Section 12-7-930, as in effect on December 31, 1984, as a result of the property received in the exchange not having a situs in South Carolina; or

(3) Internal Revenue Code Section 179 before January 1, 1985.

(D) If a taxpayer is reporting income from a corporate liquidation distribution under Internal Revenue Code Section 337 using the installment method of reporting or from an installment sale under Internal Revenue Code Section 453, and the taxpayer has previously reported all the gain for South Carolina income tax purposes, then South Carolina taxable income must be reduced by the amount of the installment gain. If a taxpayer has elected installment sale reporting for South Carolina purposes and not federal purposes, the taxpayer shall continue to report gain on the South Carolina tax return in addition to income otherwise taxable.

(E) A taxpayer reporting income or deducting expenses over a time period as a result of a change of accounting method or accounting year, shall report income or deduct expenses in the manner provided in the Internal Revenue Code and approved by the Internal Revenue Service. At the expiration of the authorized adjustment period, the balance of the income or expense must be reported or deducted in the same manner and amount for South Carolina income tax purposes until all of the income or expenses have been fully reported or deducted.

(F) If a South Carolina taxpayer had a valid "S" election in effect for federal tax purposes before January 1, 1985, but has not elected that treatment for South Carolina income tax purposes, the taxpayer may at its option continue to be subject to the tax provided in Section 12-6-530 or the taxpayer may affirmatively elect South Carolina "S" Corporation status. The election may be made by filing a statement or federal "S" Corporation election with all of the shareholders consenting to the state election or all shareholders can indicate their consent by reporting the "S" Corporation income or loss on their individual or composite South Carolina return(s).

(G) If before January 1, 1985, a taxpayer has made an election pursuant to Internal Revenue Code Section 83(b) (Election to Include Property Transferred in Connection with Performance of Services in the Year of Transfer), the election is not effective for South Carolina income tax purposes unless the taxpayer reported income in a manner consistent with the election on the South Carolina income tax return for the year of the election. Otherwise, the taxpayer is taxed under the provisions of Internal Revenue Code Section 83 when income is otherwise realized and recognized as though no Section 83(b) election had been made.

(H) An incentive stock option issued under Internal Revenue Code Section 422A is considered a qualified option or incentive stock option for South Carolina income tax purposes whether granted before or after January 1, 1985.

(I) A taxpayer may not deduct a capital loss carryover under Internal Revenue Code Section 1212 from a tax year before January 1, 1985, for South Carolina income tax purposes.

(J) A net operating loss carryforward under Section 12-7-705 as in effect on December 31, 1984, is allowed for South Carolina income tax purposes before loss carryforwards pursuant to the Internal Revenue Code Section as modified by Article 9 of this chapter, but the same loss may not be deducted more than once. A net operating loss that has not expired before January 1, 1985, expires under the rules provided in Internal Revenue Code Section 172.

(K) A taxpayer receiving an annuity before January 1, 1985, that is subject to tax pursuant to Internal Revenue Code Section 72 shall continue to report income from the annuity in the manner provided in Section 12-7-560(2) in effect on December 31, 1984.

(L) If a taxpayer is subject to the provisions of Internal Revenue Code Sections 483 (Interest on Certain Deferred Payments) or 1271 through 1288 (Special Rules for Bonds and Other Debt Instruments) as a result of a contract entered into before 1985, then no recomputation of principal and income is required.

(M) For a taxable year beginning after December 31, 1984, to the extent gross income, adjusted gross income, or taxable income of any taxpayer is affected by a provision of federal law enacted before January 1, 1985, which provision is not contained in the Internal Revenue Code, the provision is applicable in determining the South Carolina gross, adjusted gross, and taxable income of the taxpayer in the appropriate taxable year.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-1220. Individual Development Account.

Families on AFDC and those not receiving welfare but whose household income falls below one hundred eighty-five percent of the federal poverty level may own an Individual Development Account. Contributions to and interest on these accounts are tax free, and a recipient may accrue up to ten thousand dollars in the account. Withdrawals used for education or job training or to start a business or to purchase a home are tax free. Withdrawals for other purposes are not tax free.

The State shall seek a waiver from the federal government providing that no lump sum payment of ten thousand dollars or less deposited in an Individual Development Account within thirty days of receipt will make the family ineligible for receipt of AFDC.

HISTORY: 1995 Act No. 102, Part IV, Section 4.

ARTICLE 11.

CATASTROPHE SAVINGS ACCOUNT

SECTION 12-6-1610. Definitions.

As used in this article:

(1) "Qualified catastrophe expenses" mean expenses paid or incurred by reason of a major disaster that has been declared by the Governor to be an emergency by executive order.

(2) "Qualified deductible" means the deductible for the individual's homeowner's policy for a taxpayer's legal residence.

(3) "Legal residence" means the taxpayer's legal residence pursuant to Section 12-43-220(c).

HISTORY: 2007 Act No. 78, Section 2, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

SECTION 12-6-1620. "Catastrophe Savings Account" defined; exemptions allowed; contributable amount; attachment and garnishment.

(A)(1) An individual taxpayer is allowed a deduction from the tax imposed pursuant to Section 12-6-510 for amounts contributed to a Catastrophe Savings Account in accordance with subsection (B)(3); and

(2) all interest income earned by the Catastrophe Savings Account is exempt from the tax imposed pursuant to Section 12-6-510 as provided in this article.

(B)(1) As used in this article, "Catastrophe Savings Account" means a regular savings account or money market account established by an insurance policyholder for residential property in this State to cover an insurance deductible under an insurance policy for the taxpayer's legal residence property that covers hurricane, rising floodwaters, or other catastrophic windstorm event damage or by an individual to cover self-insured losses for the taxpayer's legal residence from a hurricane, rising floodwaters, or other catastrophic windstorm event. The account must be labeled as a Catastrophe Savings Account in order to qualify as a Catastrophe Savings Account as defined in this article. A taxpayer shall establish only one Catastrophe Savings Account and shall specify that the purpose of the account is to cover the amount of insurance deductibles and other uninsured portions of risks of loss from hurricane, rising floodwater, or other catastrophic windstorm event.

(2) A Catastrophe Savings Account is not subject to attachment, levy, garnishment, or legal process in this State.

(3) The total amount that may be contributed to a Catastrophe Savings Account must not exceed:

(a) in the case of an individual whose qualified deductible is less than or equal to one thousand dollars, two thousand dollars;

(b) in the case of an individual whose qualified deductible is greater than one thousand dollars, the amount equal to the lesser of fifteen thousand dollars or twice the amount of the taxpayer's qualified deductible; or

(c) in the case of a self-insured individual who chooses not to obtain insurance on his legal residence, two hundred fifty thousand dollars, but shall not exceed the value of the individual taxpayer's legal residence.

(4) If a taxpayer contributes in excess of the limits provided in item (3), the taxpayer shall withdraw the amount of the excess contributions and include that amount in South Carolina income for purposes of Section 12-6-510 in the year of withdrawal.

HISTORY: 2007 Act No. 78, Section 2, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

SECTION 12-6-1630. Taxation of distributions or at death of account owner.

(A) A distribution from a Catastrophe Savings Account must be included in the income of the taxpayer unless the amount of the distribution is used to cover qualified catastrophe expenses.

(B) No amount is included in income, pursuant to subsection (A) of this section, if the qualified catastrophe expenses of the taxpayer during the taxable year are equal to or greater than the aggregate distributions during the taxable year.

(C) If aggregate distributions exceed the qualified catastrophe expenses during the taxable year, the amount otherwise included in income must be reduced by the amount of the distributions for qualified catastrophe expenses.

(D)(1) The tax paid pursuant to Section 12-6-510 attributable to a taxable distribution must be increased by two and one-half percent of the amount which is includable in income.

(2) This additional tax does not apply if the:

(a) taxpayer no longer owns a legal residence that qualifies under Section 12-43-220(C); or

(b) distribution is from an account conforming with Section 12-6-1620(B)(3)(c) and is made on or after the date on which the taxpayer attains the age of seventy.

(E)(1) No amount is includable in taxable income, pursuant to subsection (A) of this section, if the distribution is from an account conforming with Section 12-6-1620(B)(3)(a) or (b) and is made on or after the date on which the taxpayer attains the age of seventy.

(2) If a taxpayer receives a nontaxable distribution under this subsection, the taxpayer must not make further contributions to any Catastrophe Savings Account.

(F) If a taxpayer who owns a Catastrophe Savings Account dies, his account is included in the income of the person who receives the account, unless that person is the surviving spouse of the taxpayer. Upon the death of the surviving spouse, the account is included in the income of the person who receives the account. The additional tax in subsection (D) does not apply to distribution on death of the taxpayer or the surviving spouse.

HISTORY: 2007 Act No. 78, Section 2, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

ARTICLE 13.

NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS

SECTION 12-6-1710. Taxation of part-year resident.

An individual who is a part-year resident of South Carolina may:

(1) report and compute South Carolina tax as if the individual was a resident for the entire year and use the credit provided in Section 12-6-3400; or

(2) report and compute South Carolina tax as a nonresident individual as provided in Section 12-6-1720, except that for purposes of this computation, South Carolina taxable income for that period during which the individual was a resident includes all items of income, gain, loss, or deductions that a resident would be required to include under Section 12-6-560.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-1720. Taxable income of nonresident individual, trust, estate, or beneficiary; modifications, adjustments, and allocations.

A nonresident individual, a nonresident trust, a nonresident estate, and a nonresident beneficiary shall report and compute South Carolina taxable income as a resident taxpayer of this State subject to the following modifications:

(1) South Carolina taxable income, gains, losses, or deductions include only amounts attributable to:

(a) the ownership of any interest in real or tangible personal property located in this State;

(b) a business, trade, profession, or occupation carried on in this State or compensation for services performed in this State. If a business, trade, profession, or occupation is carried on or compensation is for services performed partly within and partly without this State, the amount allocable or apportionable to this State under Article 17 of this chapter must be included in South Carolina income;

(c) income from intangible personal property, including annuities, dividends, interest, and gains that is derived from property employed in a trade, business, profession, or occupation carried on in this State. For purposes of this item, a taxpayer, other than a dealer holding property primarily for sale to customers in the ordinary course of the nonresident's trade or business, is not considered to carry on a business, trade, profession, or occupation in South Carolina solely by reason of the purchase and sale of property for the nonresident's own account;

(d) the distributive share of the South Carolina portion of partnership, "S" Corporation, estate, and trust income, gains, losses, and deductions;

(e) lottery or bingo winnings.

(2) The South Carolina taxable income of a nonresident individual, nonresident estate, or nonresident trust must be adjusted as follows:

(a)(i) For a nonresident individual, the personal exemptions and the applicable standard deduction or itemized deductions must be reduced to an amount which is the same proportion as South Carolina adjusted gross income is to federal adjusted gross income.

(ii) For a nonresident estate or nonresident trust, the personal exemption and itemized deductions must be reduced to an amount which is the same proportion as South Carolina gross income is to federal gross income.

(b) For purposes of the computation in item (2)(a), South Carolina adjusted gross income means the adjusted gross income of the taxpayer calculated as provided in Section 12-6-1720(1). Adjustments to gross income authorized by Internal Revenue Code Section 62 must be apportioned based on the ratio of South Carolina gross income to federal gross income. However, if the adjustment is directly connected with an item of gross income, the adjustment is allowed only to the extent the item of income is taxable in this State.

(3) The South Carolina taxable income of a nonresident estate or nonresident trust as determined in items (1) and (2) of this section must be allocated among the estate or trust and its beneficiaries, including solely for purposes of this allocation, resident beneficiaries, in proportion to their respective shares of federal distributable net income.

If for the taxable year the estate or trust does not have distributable net income for federal tax purposes, the South Carolina taxable income must be allocated between the estate or trust and its beneficiaries as follows:

(a) The personal representative or trustee shall recompute distributable net income in the same manner as federal distributable net income but including only those items which enter into the computation of the South Carolina taxable income of a nonresident estate or nonresident trust.

(b) The South Carolina taxable income of a nonresident estate or nonresident trust must then be allocated among the estate or trust and its beneficiaries, including solely for purposes of this allocation, resident beneficiaries, in proportion to their respective shares of this recomputed distributable net income.

HISTORY: 1995 Act No. 76, Section 1; 2005 Act No. 161, Section 6, eff June 9, 2005.

ARTICLE 17.

ALLOCATION AND APPORTIONMENT

SECTION 12-6-2210. Taxation of business; determination whether entirely or partly transacted or conducted within State.

(A) If the entire business of a taxpayer is transacted or conducted within this State, the income tax as provided in this chapter is measured by the entire net income of the taxpayer for the taxable year. The entire business of the taxpayer is transacted or conducted within the State if the taxpayer is not subject to a net income tax or a franchise tax measured by net income in another state, the District of Columbia, a territory or possession of the United States, or a foreign country, and would not be subject to a net income tax in another taxing jurisdiction if the other taxing jurisdiction adopted the net income tax laws of this State.

(B) If a taxpayer is transacting or conducting business partly within and partly without this State, the South Carolina income tax is imposed upon a base which reasonably represents the proportion of the trade or business carried on within this State. A taxpayer subject to taxation under this section is considered to have been transacting or conducting business partly within and partly without the State if the taxpayer is subject to a net income tax or a franchise tax measured by net income in another state, the District of Columbia, a territory or possession of the United States, or a foreign country, or would be subject to the net income tax in any other taxing jurisdiction if the other taxing jurisdiction adopted the net income tax laws of this State.

HISTORY: 1995 Act No. 76, Section 1; 2001 Act No. 89, Section 8, eff July 20, 2001, applicable to taxable years beginning after December 31, 2000.

SECTION 12-6-2220. Allocation of interest, dividends, rents and royalties, gains and losses, and income from personal services.

The following items of income must be directly allocated and excluded from the apportioned income and the apportionment factors:

(1) Interest received from intangible property not connected with the taxpayer's business, less all related expenses, is allocated to the state of the corporation's principal place of business as defined in Section 12-6-30(9) or the domicile of an individual taxpayer.

(2) Dividends received from corporate stocks not connected with the taxpayer's business, less all related expenses, are allocated to the state of the corporation's principal place of business as defined in Section 12-6-30(9) or the domicile of an individual taxpayer.

(3) Rents and royalties received from the lease or rental of real estate or tangible personal property, less all related expenses, are allocated to the state where the property was located at the time the income was

derived providing the property was not used in or connected with the taxpayer's trade or business during the taxable year.

(4) Gains and losses from the sale of real property less all related expenses are allocated to the state in which the real property is located except to the extent that gain represents the return of amounts deducted as depreciation. The amount of gain which represents the return of amounts deducted as depreciation is allocated to this State to the extent of depreciation previously deducted in computing South Carolina taxable income.

(5) Gains and losses from sales of intangible personal property not connected with the business of the taxpayer and not held for sale to customers in the regular course of business, less all related expenses, are allocated to the state of the corporation's principal place of business as defined in Section 12-6-30(9) or the domicile of an individual taxpayer.

(6) All income from personal services received by a resident individual is allocated to this State. All income from personal services received by a nonresident individual for services rendered in this State is allocated to this State.

HISTORY: 1995 Act No. 76, Section 1; 2005 Act No. 145, Section 12.A, eff June 7, 2005.

SECTION 12-6-2230. Allocation of income not allocated under Section 12-6-2220.

Any income, less all related expenses, which is not allocated under Section 12-6-2220 and not properly includable in the net apportionable income of taxpayers engaged in interstate commerce under the Constitution of the United States because it is unrelated to the business activity of the taxpayer conducted partly within and partly without this State, is allocated to the state in which the business situs of the investment is located. If the business situs of the investment is partly within and partly without South Carolina, the investment is apportioned using the same formula used for apportioning the net income of the corporation.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-2240. Apportionment of all income remaining after allocation.

All income remaining after allocation pursuant to Sections 12-6-2220 and 12-6-2230 is apportioned in accordance with Section 12-6-2252, or one of the special apportionment formulas provided in Sections 12-6-2290 through 12-6-2310.

HISTORY: 1995 Act No. 76, Section 1; 2007 Act No. 110, Section 55.B, eff June 21, 2007, effective for tax years after 2010; 2007 Act No. 116, Section 60.E, eff June 28, 2007, effective for tax years after 2010.

SECTION 12-6-2250. 2007 Act No. 110, Section 55.D and 2007 Act No. 116, Section 60.D, repealed this section eff for tax years after 2010.

SECTION 12-6-2252. Allocation and apportionment of business income.

(A) A taxpayer whose principal business in this State is (i) manufacturing or a form of collecting, buying, assembling, or processing goods and materials within this State, or (ii) selling, distributing, or dealing in tangible personal property within this State, shall make returns and pay annually an income tax that includes its income apportioned to this State. Its income apportioned to this State is determined by multiplying the net income remaining after allocation pursuant to Sections 12-6-2220 and 12-6-2230 by the sales factor defined in Section 12-6-2280.

(B) If a sales factor does not exist, the remaining net income is apportioned to the business's principal place of business.

HISTORY: 2007 Act No. 110, Section 50.A, eff June 21, 2007, applicable for taxable years beginning after 2006; 2007 Act No. 116, Section 55.A, eff June 28, 2007, applicable for taxable years beginning after 2006.

SECTIONS 12-6-2260, 12-6-2270. 2007 Act No. 110, Section 55.D and 2007 Act No. 116, Section 60.D, repealed this section eff for tax years after 2010.

SECTIONS 12-6-2260, 12-6-2270. 2007 Act No. 110, Section 55.D and 2007 Act No. 116, Section 60.D, repealed this section eff for tax years after 2010.

SECTION 12-6-2280. Sales factor; definitions.

(A) The sales factor is a fraction in which the numerator is the total sales of the taxpayer in this State during the taxable year and the denominator is the total sales of the taxpayer everywhere during the taxable year.

(B) The term "sales in this State" includes sales of goods, merchandise, or property received by a purchaser in this State. The place where goods are received by the purchaser after all transportation is completed is considered the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person designated by a purchaser constitutes delivery to the purchaser in this State.

(C) Sales of tangible personal property to the United States government are not included in the numerator or the denominator of the sales factor. Only sales for which the United States government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States government.

(D) For purposes of this section, items included in sales are as provided in Section 12-6-2295.

HISTORY: 1995 Act No. 76, Section 1; 2007 Act No. 110, Section 53.A, eff June 21, 2007, applicable for taxable years beginning after 2006; 2007 Act No. 116, Section 58.A, eff June 28, 2007, applicable for taxable years beginning after 2006.

SECTION 12-6-2290. Apportionment of remaining net income from 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.

HISTORY: 1995 Act No. 76, Section 1; 2007 Act No. 110, Section 54.A, eff June 21, 2007, applicable for taxable years beginning after 2006; 2007 Act No. 110, Section 55.C, eff June 21, 2007, effective for tax years after 2010; 2007 Act No. 116, Section 59.A, eff June 28, 2007, applicable for taxable years beginning after 2006; 2007 Act No. 116, Section 60.C, eff June 28, 2007, applicable for tax years after 2010.

SECTION 12-6-2295. Items included and excluded from terms "sales" and "gross receipts".

(A) The terms “sales” as used in Section 12-6-2280 and “gross receipts” as used in Section 12-6-2290 include, but are not limited to, the following items if they have not been separately allocated:

(1) receipts from the sale or rental of property maintained for sale or rental to customers in the ordinary course of the taxpayer’s trade or business including inventory;

(2) receipts from the sale of accounts receivable acquired in the ordinary course of trade or business for services rendered or from the sale or rental of property maintained for sale or rental to customers in the ordinary course of the taxpayer’s trade or business if the accounts receivable were created by the taxpayer or a related party. For purposes of this item, a related person includes a person that bears a relationship to the taxpayer as described in Section 267 of the Internal Revenue Code;

(3) receipts from the use of intangible property in this State including, but not limited to, royalties from patents, copyrights, trademarks, and trade names;

(4) net gain from the sale of property used in the trade or business. For purposes of this subsection, property used in the trade or business means property subject to the allowance for depreciation, real property used in the trade or business, and intangible property used in the trade or business which is:

(a) not property of a kind that properly would be includible in inventory of the business if on hand at the close of the taxable year; or

(b) held by the business primarily for sale to customers in the ordinary course of the trade or business;

(5) receipts from services if the entire income-producing activity is within this State. If the income-producing activity is performed partly within and partly without this State, sales are attributable to this State to the extent the income-producing activity is performed within this State;

(6) receipts from the sale of intangible property which are unable to be attributed to any particular state or states are excluded from the numerator and denominator of the factor.

(B) The terms “sales” as used in Section 12-6-2280 and “gross receipts” as used in Section 12-6-2290 do not include:

(1) repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of deposit or similar marketable instrument;

(2) the principal amount received under a repurchase agreement or other transaction properly characterized as a loan;

(3) proceeds from the issuance of the taxpayer’s stock or from sale of treasury stock;

(4) damages and other amounts received as the result of litigation;

(5) property acquired by an agent on behalf of another;

(6) tax refunds and other tax benefit recoveries;

(7) pension reversions;

(8) contributions to capital, except for sales of securities by securities dealers;

(9) income from forgiveness of indebtedness; or

(10) amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code.

HISTORY: 2007 Act No. 110, Section 51.A, eff June 21, 2007, applicable for taxable years beginning after 2006; 2007 Act No. 116, Section 56.A, eff June 28, 2007, applicable for taxable years beginning after 2006.

SECTION 12-6-2300. Apportionment of United States source income for business incorporated in foreign country.

A business incorporated in a foreign country is required to apportion only United States source income as determined for federal purposes on Form 1120F if elected. No change in the election may be made without permission of the department. Income must be apportioned using rules provided for apportionment in this chapter.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-2310. Income remaining after allocation for certain companies; factors to be used for apportionment.

The income remaining after allocation for the following companies must be apportioned using the following factors:

(1)(a) Railroad companies shall use a fraction in which the numerator is railway operating revenue from business done within this State during the taxable year and the denominator is total railway operating revenue from all business done by the taxpayer as shown by its records kept in accordance with the Uniform System of Accounts prescribed by the Interstate Commerce Commission.

(b) If the department finds that the accounting records of a taxpayer do not accurately reflect the division of revenue by state lines as to each transaction involving interstate revenue, the department may adopt rules and promulgate regulations which determine averages which approximate with reasonable accuracy the proportion of interstate revenue actually earned upon lines in this State.

(c) For purposes of this item:

(i) "Railway operating revenue from business done within this State" means railway operating revenue from business wholly within this State, plus the equal mileage proportion within this State of each item of railway operating revenue received from the interstate business of the taxpayer.

(ii) "Equal mileage proportion" means the proportion which the distance of movement of property and passengers over lines in this State bears to the total distance of movement of property and passengers over lines of the taxpayer receiving the revenues.

(iii) "Interstate business" means railway operating revenue from the interstate transportation of persons or property into, out of, or through this State.

(2) Motor carriers of property and passengers shall use a fraction in which the numerator is vehicle miles within this State during the taxable year and the denominator is total vehicle miles everywhere during the taxable year.

(3) Telephone service companies shall use a fraction in which the numerator is gross receipts in this State during the taxable year and the denominator is total gross receipts everywhere. The term "gross receipts in this State" includes gross revenues derived from services rendered wholly within this State, plus that portion of the company's interstate revenues attributable to this State in accordance with the Federal Communications Standard Classification of Accounts.

(4) Pipeline companies shall use a fraction in which the numerator is the revenue ton miles (one ton of solid property transported one mile), revenue barrel miles (one barrel of liquid property transported one mile), or revenue cubic foot miles (one cubic foot of gaseous property transported one mile) within this State during the taxable year and the denominator is the total revenue ton miles, revenue barrel miles, or revenue cubic foot miles, of the taxpayer everywhere during the taxable year.

(5) Airline companies shall use a fraction in which the numerator is revenue tons loaded and unloaded in this State during the taxable year, and the denominator is revenue tons loaded and unloaded everywhere during the taxable year. A revenue ton is a short ton (two thousand pounds) and is computed by using a standard weight of one hundred ninety pounds a passenger (including free baggage) multiplied by the number of passengers loaded and unloaded plus the tons of airmail, express, and freight loaded and unloaded within and without this State.

(6) Shipping lines. Where the income is derived principally from the operation of a shipping line, the corporation shall apportion its net apportionable income to South Carolina on the basis of the ratio of revenue tons loaded and unloaded within and without the State for such year. A revenue ton is a short ton (two thousand pounds) and must be computed using a standard weight of one hundred ninety pounds per passenger (including free baggage) multiplied by the number of passengers loaded and unloaded.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-2320. Allocation and apportionment of taxpayer's income when provisions unfairly represent taxpayer's business activity; agreement with taxpayer; provision for taxpayer constructing or operating qualified recycling facility.

(A) If the allocation and apportionment provisions of this chapter do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (1) separate accounting;
- (2) the exclusion of one or more of the factors;
- (3) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in the State; or
- (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(B)(1) For the purposes of this chapter, the department may enter into an agreement with the taxpayer establishing the allocation and apportionment of the taxpayer's income for a period not to exceed five years, if the following conditions are met:

- (a) the taxpayer is planning a new facility in this State or an expansion of an existing facility;
- (b) the taxpayer asks the department to enter into a contract under this subsection reciting an allocation and apportionment method; and
- (c) after reviewing the taxpayer's proposal and planned new facility or expansion, the Advisory Coordinating Council for Economic Development certifies that the new facility or expansion will have a significant beneficial economic effect on the region for which it is planned and that its benefits to the public exceed its costs to the public. It is within the Advisory Coordinating Council for Economic Development's sole discretion to determine whether a new facility or expansion has a significant economic effect on the region for which it is planned.

(2) For the purposes of this subsection the word "taxpayer" includes any one or more of the members of a controlled group of corporations authorized to file a consolidated return under Section 12-6-5020. Also, the word "taxpayer" includes a person who bears a relationship to the taxpayer as described in Section 267(b) of the Internal Revenue Code.

(3) Notwithstanding the provisions of item (1), the department may enter into an agreement with the taxpayer establishing the allocation and apportionment of the taxpayer's income for a period not to exceed ten years if the following conditions are met:

(a)(i) the taxpayer is planning a new facility in this State or an expansion of an existing facility and the new or expanded facility results in a total investment of at least ten million dollars and the creation of at least two hundred new full-time jobs, with an average cash compensation level for the new jobs of more than three times the per capita income of this State at the time the jobs are filled which must be within five years of the Advisory Coordinating Council for Economic Development's certification. Per capita income for the State shall be determined by using the most recent data available from the Board of Economic Advisors; or

(ii) the taxpayer is planning a new facility in this State and invests at least seven hundred fifty million dollars in real or personal property or both in a single county in this State and creates at least three thousand eight hundred full-time new jobs, as those terms are defined in Section 12-6-3360(M), within the county. The taxpayer has seven years from the date it makes the notification provided for in subitem (b) of this item to make the required investment and create the required number of jobs;

(b) the taxpayer asks the department to enter into a contract under this subsection reciting an allocation and apportionment method; and

(c) after reviewing the taxpayer's proposal and planned new facility or expansion, the Advisory Coordinating Council for Economic Development certifies that the new facility or expansion will have a significant beneficial economic effect on the region for which it is planned and that its benefits to the public exceed its costs to the public. It is within the Advisory Coordinating Council for Economic

Development's sole discretion to determine whether a new facility or expansion has a significant economic effect on the region for which it is planned.

(4) The taxpayer may begin operating under the agreement beginning with the tax year in which the agreement is executed. If the taxpayer fails to meet the requirements of subitem (3)(a)(ii), the department may assess any tax due as a result of the taxpayer's failure to meet the requirements of subitem (3)(a)(ii). For any subsequent year that the taxpayer fails to maintain three thousand eight hundred full-time new jobs, then the department may assess any tax due for that year.

(C) Notwithstanding the provisions of this section, a taxpayer who is constructing or operating a qualified recycling facility as defined in Section 12-6-3460 may petition the department for the use of separate accounting with respect to all or any part of the taxpayer's or taxpayer's subsidiaries' business activities or for the use of any other method to determine the taxpayer's or taxpayer's subsidiaries' taxable income. The department shall forward the petition with its comments concerning the economic impact of the suggested method to the Advisory Coordinating Council for Economic Development. The department may approve the petition upon certification of the Advisory Coordinating Council for Economic Development that the benefits to the public exceed the costs to the public.

HISTORY: 1995 Act No. 76, Section 1; 1996 Act No. 462, Section 8A; 1999 Act No. 100, Part II, Section 57; 2009 Act No. 124, Section 1.A, eff November 1, 2009.

ARTICLE 21.

FOREIGN TRADE RECEIPTS

SECTION 12-6-2810. Deferral of taxes on income attributable to increase in gross income from foreign trading receipts.

Payment of tax otherwise due under this chapter on income attributable to the increase in gross income from foreign trading receipts may be deferred until the taxpayer intentionally ceases exporting property, or until after three taxable years in which the taxpayer has no gross income from foreign trading receipts, whichever is earlier, provided the base amount defined in Section 12-6-2850(3) does not exceed five million dollars, and the taxpayer pays interest annually on the aggregate deferred tax at the base period T-bill rate. The interest is due on the date the taxpayer is required to file the annual return required by this chapter without regard to any extension.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-2820. Date deferred payments are due and payable; payment of taxes at accelerated rate; effect of taxpayer's failure to pay interest.

(A) All deferred tax payments attributable to a particular taxable year are due and payable no later than the annual return filing date for the fifth taxable year following the taxable year for which the payment of the tax was first deferred. A taxpayer may pay deferred taxes at an accelerated rate. Failure to pay deferred taxes as required renders the taxpayer ineligible to defer payment of taxes for a subsequent tax year.

(B) If the taxpayer fails to pay the interest as required in Section 12-6-2810, all taxes deferred pursuant to this article are due and payable on the due date of the unpaid interest and may be collected as taxes are collected. No interest is due on amounts deferred for less than an entire taxable year.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-2830. Inapplicability of time limitation on assessment and collection of taxes to taxes deferred.

The three-year limitation on assessment and collection of taxes in Sections 12-54-80 and 12-54-85 do not apply to the assessment of taxes deferred pursuant to this article. The three-year assessment period for purposes of the article begins when a return is filed under Section 12-6-2820.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-2840. Effective date of article; inapplicability of article to domestic international sales corporations or foreign sales corporations.

This article:

- (1) is effective for taxable years beginning after December 31, 1985; and
- (2) does not apply to taxpayers who form domestic international sales corporations or foreign sales corporations pursuant to the Internal Revenue Code.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-2850. Definitions.

For purposes of this article:

(1) "Export property" means property manufactured, produced, grown, or extracted to which value is added in this State for direct use, consumption, or disposition outside the United States.

(2) "Foreign trading receipts" means receipts from invoices issued by a seller directly to an unrelated purchaser outside the United States from:

- (a) the sale, exchange, or other disposition of export property outside the United States;
- (b) the lease or rental of export property that is used by the lessee outside the United States;
- (c) the performance of services that is related and subsidiary to the sale, exchange, lease, rental, or other disposition of export property outside the United States by the South Carolina taxpayer including, but not limited to, maintenance and training services;
- (d) the performance of engineering, architectural, or consulting services for projects located outside the United States.

(3) "Increase in gross income from foreign trading receipts" is the amount by which the gross income from foreign trading receipts during the applicable tax year exceeds a base amount equal to the average of annual gross income from foreign trading receipts over the three taxable years before the applicable taxable year.

(4) "Base period T-bill rate" means the annual rate of interest determined by the department to be equivalent to the average investment yield of United States Treasury bills with maturities of fifty-two weeks which were auctioned during the one-year period ending on September thirtieth of the calendar year ending with or of the most recent calendar year ending before the close of the tax year of the taxpayer.

HISTORY: 1995 Act No. 76, Section 1.

ARTICLE 25.

CREDITS

SECTION 12-6-3310. Tax credits; timeframe for use; pass through and calculation of shareholder credit; limited liability companies.

(A) Credits allowed in this article are nonrefundable and may be used only in the year generated unless otherwise provided.

(B)(1) Unless specifically prohibited, an "S" corporation, limited liability company taxed as a partnership, or partnership that qualifies for a credit pursuant to this article may pass through the credit earned to each shareholder of the "S" corporation, member of the limited liability company, or partner of the partnership.

(2) A credit earned by an "S" corporation owing corporate level income tax must first be used at the entity level. Only the remaining credit passes through to the shareholders of the "S" corporation.

(3) The amount of the credit allowed a shareholder, partner, or member is equal to the percentage of the shareholder's stock ownership, partner's interest in the partnership, or member's interest in the limited liability company for the taxable year multiplied by the amount of the credit earned by the entity and available for pass through. Limitations upon reduction of income tax liability by use of a credit are computed based on the shareholder's, partner's, or member's tax liability. The credit is allowed against the type of tax or taxes specifically provided by the credit in this article.

(C) A limited liability company not organized as a legal entity which is a taxpayer, a corporation, or other form of business entity expressly specified as qualifying for the credits allowed pursuant to this article nevertheless qualifies for such credits in a manner consistent with Section 12-2-25 as follows:

(1) Limited liability companies taxed for South Carolina income tax purposes as partnerships shall apply the credits as provided in subsection (B). If a member is an individual, the limited liability company may earn and pass through any credits allowed by this article to be applied against income tax imposed pursuant to Section 12-6-510. If a member is a corporation, the limited liability company may earn and pass through any credits allowed by this article to be applied against income tax imposed pursuant to Section 12-6-530.

(2) Limited liability companies taxed for South Carolina income tax purposes as corporations are entitled to all credits otherwise applicable to corporations.

(3) With respect to single members of limited liability companies which are not regarded as a separate entity from its owner, members who are individuals may claim any credits allowed by this article to be applied against income tax imposed pursuant to Section 12-6-510 and members which are corporations may claim any credits allowed by this article to be applied against income tax imposed pursuant to Section 12-6-530.

(4) For limited liability companies owned by limited liability companies or other pass through entities described in subsection (B), items (1) through (3) are applied at each successive stage of ownership until the credit is applied against the tax imposed pursuant to either Section 12-6-510 or Section 12-6-530, as applicable.

HISTORY: 1995 Act No. 76, Section 1; 2003 Act No. 69, Section 3.N, eff June 18, 2003; 2008 Act No. 313, Section 2.A, eff June 12, 2008; 2008 Act No. 352, Section 2.A, eff June 12, 2008.

SECTION 12-6-3320. Applicability of federal provisions to all income tax credits available to corporation for state income tax purposes.

The provisions of Internal Revenue Code Section 383 (Special Limitations on Certain Excess Credits) are applicable to all income tax credits available to a corporation for South Carolina income tax purposes.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-3330. Two wage earner credit for married individuals filing joint return; computation; definitions; when not allowed.

(A) Married individuals are allowed a two wage earner credit against South Carolina income tax if both spouses have South Carolina earned income and a joint return is filed under the provisions of Section 12-6-5000.

(B) The credit is limited to seven-tenths of one percent multiplied by the lesser of:

(1) thirty thousand dollars; or

(2) the South Carolina qualified earned income of the spouse with the lower South Carolina qualified earned income for the taxable year.

(C)(1) South Carolina qualified earned income is computed as follows:

(a) South Carolina earned income of the spouse for the taxable year as defined in subsection (C)(2); less

(b) the sum of the deductions described in Internal Revenue Code Section 62 (a) paragraphs (1) (Trade and Business Deductions), (2) (Certain Trade and Business Deductions of Employees), (6) (Pension, Profit-Sharing and Annuity Plans of Self-Employed Individuals), (7) (Retirement Savings), and (12)(Certain Required Repayments of Supplemental Unemployment Compensation Benefits) to the extent the deductions are properly allocable to or chargeable against South Carolina earned income.

(2) The term "South Carolina earned income" means income that is earned income within the meaning of Internal Revenue Code Section 911(d)(2) or 401(c)(2) and is taxable in this State, except that:

(a) it does not include an amount:

(i) received from a retirement plan or an annuity;

(ii) paid or distributed from an individual retirement plan as defined in Internal Revenue Code Section 7701(a)(37);

(iii) received as deferred compensation; or

(iv) received for services performed by an individual employed by his spouse within the meaning of Internal Revenue Code Section 3121(b)(3)(B); and

(b) Internal Revenue Code Section 911(d)(2)(B) must be applied without regard to the phrase "not in excess of thirty percent of his share of net profits of such trade or business".

(D) No credit is allowed under this section for a taxable year if either spouse claims the benefits of Internal Revenue Code Sections 911 (Citizens or Residents of the United States Living Abroad) or 931 (Income for Sources within Guam, America Samoa, or the Northern Mariana Islands) for the taxable year.

HISTORY: 1995 Act No. 76, Section 1; 2001 Act No. 89, Section 9, eff July 20, 2001, applicable to taxable years beginning after December 31, 2000.

SECTION 12-6-3340. Investment tax credit for purchase and installation of certain energy conservation and renewable energy production measures.

(A) A taxpayer may claim as a credit twenty-five percent of all expenditures paid or incurred during the taxable year for the purchase and installation of the following energy conservation and renewable energy production measures:

(1) conservation tillage equipment;

(2) drip/trickle irrigation systems to include all necessary measures and equipment including, but not limited to, dams, pipes, pumps, wells, installation charges and other related expenses; and

(3) dual purpose combination truck and crane equipment.

(B) In the case of pass-through entities, the credit is determined at the entity level and is limited to two thousand five hundred dollars. The maximum amount of credit for all taxpayers, including any credit passed through to the taxpayer from a partnership, "S" Corporation, estate, or trust, is also limited to two thousand five hundred dollars.

(C) The credit may be claimed only one time for each of the three measures.

(D) If the credit exceeds the taxpayer's tax liability for the taxable year, the excess amount may be carried forward for credit against income taxes in the next five succeeding taxable years.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-3350. Tax credit for State contractors subcontracting with socially and economically disadvantaged small business.

(A) A taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to four percent of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in Section 11-35-5010 and regulations pursuant to it.

(B) The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit.

(C) A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor.

HISTORY: 1995 Act No. 76, Section 1; 2006 Act No. 376, Section 62, eff June 13, 2006; 2006 Act No. 386, Section 6.A, eff June 14, 2006 applicable to tax years beginning after December 31, 2006.

SECTION 12-6-3360. Job tax credit.

(A) Taxpayers that operate manufacturing, tourism, processing, warehousing, distribution, research and development, corporate office, qualifying service-related facilities, agribusiness operations, extraordinary retail establishment, and qualifying technology intensive facilities, and banks as defined pursuant to this title are allowed an annual jobs tax credit as provided in this section. In addition, taxpayers that operate retail facilities and service-related industries qualify for an annual jobs tax credit in counties designated as "Tier IV". As used in this section, "corporate office" includes general contractors licensed by the South Carolina Department of Labor, Licensing and Regulation. Credits pursuant to this section may be claimed against income taxes imposed by Section 12-6-510 or 12-6-530, bank taxes imposed pursuant to Chapter 11 of this title, and insurance premium taxes imposed pursuant to Chapter 7, Title 38, and are limited in use to fifty percent of the taxpayer's South Carolina income tax, bank tax, or insurance premium tax liability. In computing a tax payable by a taxpayer pursuant to Section 38-7-90, the credit allowable pursuant to this section must be treated as a premium tax paid pursuant to Section 38-7-20.

(B) The department shall rank and designate the state's counties by December thirty-first each year using data from the South Carolina Department of Employment and Workplace and the United States Department of Commerce. The county designations are effective for taxable years that begin in the following calendar year. The counties are ranked using the last three completed calendar years of per capita income data and the last thirty-six months of unemployment rate data that are available on November first, with equal weight given to unemployment rate and per capita income as follows:

(1) The twelve counties with a combination of the highest unemployment rate and lowest per capita income are designated "Tier IV" counties. Notwithstanding any other provision of law, no more than twelve counties may be designated or classified as "Tier IV" and notwithstanding any other provision of this section, a county may be designated as "Tier IV" only by virtue of the criteria provided in this item.

(2) The twelve counties with a combination of the next highest unemployment rate and next lowest per capita income are designated "Tier III" counties.

(3) The eleven counties with a combination of the next highest unemployment rate and the next lowest per capita income are designated "Tier II" counties.

(4) The eleven counties with a combination of the lowest unemployment rate and the highest per capita income are designated "Tier I" counties.

(C)(1) Subject to the conditions provided in subsection (M) of this section, a job tax credit is allowed for five years beginning in year two after the creation of the job for each new full-time job created if the minimum level of new jobs is maintained. The credit is available to taxpayers that increase employment by ten or more full-time jobs, and no credit is allowed for the year or any subsequent year in which the net employment increase falls below the minimum level of ten. The amount of the initial job credit is as follows:

- (a) Eight thousand dollars for each new full-time job created in “Tier IV” counties.
- (b) Four thousand two hundred fifty dollars for each new full-time job created in “Tier III” counties.
- (c) Two thousand seven hundred fifty dollars for each new full-time job created in “Tier II” counties.
- (d) One thousand five hundred dollars for each new full-time job created in “Tier I” counties.

(2)(a) Subject to the conditions provided in subsection (M) of this section, a job tax credit is allowed for five years beginning in year two after the creation of the job for each new full-time job created if the minimum level of new jobs is maintained. The credit is available to taxpayers with ninety-nine or fewer employees that increase employment by two or more full-time jobs, and may be received only if the gross wages of the full-time jobs created pursuant to this section amount to a minimum of one hundred twenty percent of the county’s or state’s average per capita income, whichever is lower. No credit is allowed for the year or any subsequent year in which the net employment increase falls below the minimum level of two. The amount of the initial job credit is as described in subsection (C)(1).

(b) If the taxpayer with ninety-nine or fewer employees increases employment by two or more full-time jobs but the gross wages do not amount to a minimum one hundred twenty percent of the county’s or state’s average per capita income, whichever is lower, then the amount of the initial job credit is as follows:

- (i) Four thousand dollars for each new full-time job created in “Tier IV” counties.
- (ii) Two thousand one hundred twenty-five dollars for each new full-time job created in “Tier III” counties.
- (iii) One thousand three hundred seventy-five dollars for each new full-time job created in “Tier II” counties.
- (iv) Seven hundred fifty dollars for each new full-time job created in “Tier I” counties.

(D) If the taxpayer qualifying for the new jobs credit under subsection (C) creates additional new full-time jobs in years two through six, the taxpayer may obtain a credit for those new jobs for five years following the year in which the job is created. The amount of the credit for each new full-time job is the same as provided in subsection (C).

(E)(1) Taxpayers which qualify for the job tax credit provided in subsection (C) and which are located in a business or industrial park jointly established and developed by a group of counties pursuant to Section 13 of Article VIII of the Constitution of this State are allowed an additional one thousand dollar credit for each new full-time job created. This additional credit is permitted for five years beginning in the taxable year following the creation of the job.

(2) Taxpayers which otherwise qualify for the job tax credit provided in subsection (C) and which are located and the qualifying jobs are located on property where a response action has been completed pursuant to a nonresponsible party voluntary cleanup contract pursuant to Article 7, Chapter 56, Title 44, the Brownfields Voluntary Cleanup Program, are allowed an additional one thousand dollar credit for each new full-time job created. This additional credit is permitted for five years beginning in the taxable year following the creation of the job. No credit under this item is allowed a taxpayer that is a “responsible party” as defined in that article.

(F)(1) The number of new and additional new full-time jobs is determined by comparing the monthly average number of full-time employees subject to South Carolina income tax withholding in the applicable county for the taxable year with the monthly average in the prior taxable year. For purposes of calculating the monthly average number of full-time employees in the first year of operation in this State, a taxpayer may use the actual months in operation or a full twelve-month period. If a taxpayer’s business

is in operation for less than twelve months a year, the number of new and additional new full-time jobs is determined using the monthly average for the months the business is in operation.

(2)(a) A taxpayer who makes a capital investment of at least fifty million dollars at a single site within a three-year period may elect to have the number of new and additional new full-time jobs determined by comparing the monthly average number of full-time jobs subject to South Carolina income tax withholding at the site for the taxable year with the monthly average for the prior taxable year.

(b) For purposes of this item, "single site" means a stand-alone building whether or not several stand-alone buildings are located in one geographical location.

(c) The calculation of new and additional jobs provided for in this item is allowed for only a five-year period commencing in the year in which the fifty million dollars of capital investment is completed.

(d) For purposes of this subsection a "new job" does not include a job transferred from one site to another site by the taxpayer or a related person. A related person includes any entity or person that bears a relationship to the taxpayer as set forth in Section 267 of the Internal Revenue Code.

(G) Except for credits carried forward under subsection (H), the credits available under this section are only allowed for the job level that is maintained in the taxable year that the credit is claimed. If the job level for which a credit was claimed decreases, the five-year period for eligibility for the credit continues to run.

(H) A credit claimed pursuant to this section but not used in a taxable year may be carried forward for fifteen years from the taxable year in which the credit is earned by the taxpayer. Credits that are carried forward must be used in the order earned and before jobs credits claimed in the current year. A taxpayer who earns credits allowed by this section and who also is eligible for the moratorium provided in Section 12-6-3367 may claim the credits and may carry forward unused credits beginning after the moratorium period expires.

(I) The merger, consolidation, or reorganization of a taxpayer, where tax attributes survive, does not create new eligibility in a succeeding taxpayer, but unused job tax credits may be transferred and continued by the succeeding taxpayer subject to the limitations of Section 12-6-3320. In addition, a taxpayer may assign its rights to its jobs tax credit to another taxpayer if it transfers all or substantially all of the assets of the taxpayer or all or substantially all of the assets of a trade or business or operating division of a taxpayer related to the generation of the jobs tax credits to that taxpayer if the required number of new jobs is maintained for that amount of credit. A taxpayer is not allowed a jobs tax credit if the net employment increase for that taxpayer falls below two. The appropriate agency shall determine if qualifying net increases or decreases have occurred and may require reports, adopt rules or promulgate regulations, and hold hearings needed for substantiation and qualification.

(J) For a taxpayer which plans a significant expansion in its labor forces at a location in this State, the appropriate agency shall prescribe certification procedures to ensure that the taxpayer can claim credits in future years even if a particular county is removed from the list of "Tier IV", "Tier III", or "Tier II" counties.

(K)(1) An "S" corporation, limited liability company taxed as a partnership, or partnership that qualifies for a credit under this section may pass through the credit earned to each shareholder of the "S" corporation, partner of the partnership, or member of the limited liability company. For purposes of this subsection, limited liability company means a limited liability company taxed as a partnership.

(2)(a) The amount of the credit allowed a shareholder, partner, or member by this subsection is equal to the shareholder's percentage of stock ownership, partner's interest in the partnership, or member's interest in the limited liability company for the taxable year multiplied by the amount of the credit earned by the entity. This nonrefundable credit is allowed against taxes due under Section 12-6-510 or 12-6-530 and bank taxes imposed pursuant to Chapter 11 of this title and may not exceed fifty percent of the shareholder's, partner's, or member's tax liability under Section 12-6-510 or 12-6-530 or bank tax liability imposed pursuant to Chapter 11 of this title.

(b) Notwithstanding subitem (a), the credit earned pursuant to this section by an “S” corporation owing corporate level income tax must be used first at the entity level. Only the remaining credit passes through to each shareholder.

(3) A credit claimed pursuant to this subsection but not used in a taxable year may be carried forward by each shareholder, partner, or member for fifteen years from the close of the tax year in which the credit is earned by the “S” corporation, partnership, or limited liability company. The entity earning the credit may not carry over credit that passes through to its shareholders, partners, or members.

(L) Reserved.

(M) As used in this section:

(1) “Taxpayer” means a sole proprietor, partnership, corporation of any classification, limited liability company, or association taxable as a business entity that is subject to South Carolina taxes as contained in Section 12-6-510, Section 12-6-530, Chapter 11, Title 12, or Chapter 7, Title 38.

(2) “Appropriate agency” means the Department of Revenue, except that for taxpayers subject to the premium tax imposed by Chapter 7, Title 38, it means the Department of Insurance.

(3) “New job” means a job created in this State at the time a new facility or an expansion is initially staffed. Except as otherwise provided in this item, the term does not include a job created when an employee is shifted from an existing location in this State to a new or expanded facility whether the transferred job is from, or to, a facility of the taxpayer or a related person. A related person includes any entity or person that bears a relationship to the taxpayer as described in Section 267 of the Internal Revenue Code. However, this exclusion of a new job created by employee shifting does not extend to a job created at a new or expanded facility located in a county in which is located an “applicable federal facility” as defined in Section 12-6-3450(A)(1)(b). The term “new job” also includes an existing job at a facility of an employer which is reinstated after the employer has rebuilt the facility due to:

(a) its destruction by accidental fire, natural disaster, or act of God;

(b) involuntary conversion as a result of condemnation or exercise of eminent domain by the State or any of its political subdivisions or by the federal government.

Destruction for purposes of this provision means that more than fifty percent of the facility was destroyed. For purposes of this section, involuntary conversion as a result of condemnation or exercise of eminent domain includes a legally binding agreement for the purchase of a facility of an employer entered into between an employer and the State of South Carolina or a political subdivision of the State under threat of exercise of eminent domain by the State or its political subdivision.

The year of reinstatement is the year of creation of the job. All reinstated jobs qualify for the credit pursuant to this section, and a comparison is not required to be made between the number of full-time jobs of the employer in the taxable year and the number of full-time jobs of the employer with the corresponding period of the prior taxable year.

(4) “Full-time” means a job requiring a minimum of thirty-five hours of an employee’s time a week for the entire normal year of company operations or a job requiring a minimum of thirty-five hours of an employee’s time for a week for a year in which the employee was hired initially for or transferred to the South Carolina facility. For the purposes of this section, two half-time jobs are considered one full-time job. A “half-time job” is a job requiring a minimum of twenty hours of an employee’s time a week for the entire normal year of the company’s operations or a job requiring a minimum of twenty hours of an employee’s time a week for a year in which the employee was hired initially for or transferred to the South Carolina facility.

(5) “Manufacturing facility” means an establishment where tangible personal property is produced or assembled.

(6) “Processing facility” means an establishment that prepares, treats, or converts tangible personal property into finished goods or another form of tangible personal property. The term includes a business engaged in processing agricultural, aquacultural, or maricultural products and specifically includes meat, poultry, and any other variety of food processing operations. It does not include an establishment in which retail sales of tangible personal property are made to retail customers.

(7) “Warehousing facility” means an establishment where tangible personal property is stored but does not include any establishment where retail sales of tangible personal property are made to retail customers.

(8) “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 twelve days a year except for a facility which processes customer sales orders by mail, telephone, or electronic means, if the facility also processes shipments of tangible personal property to customers and if at least seventy-five percent of the dollar amount of goods sold through the facility are sold to customers outside of South Carolina. Retail sales made inside the facility to employees working at the facility are not considered for purposes of the twelve-day and seventy-five percent limitation. For purposes of this definition, “retail sale” and “tangible personal property” have the meaning provided in Chapter 36 of this title.

(9) “Research and development facility” means an establishment engaged in laboratory, scientific, or experimental testing and development related to new products, new uses for existing products, or improving existing products. The term does not include an establishment engaged in efficiency surveys, management studies, consumer surveys, economic surveys, advertising, promotion, banking, or research in connection with literary, historical, or similar projects.

(10) “Corporate office facility” means a corporate headquarters that meets the definition of a “corporate headquarters” contained in Section 12-6-3410(J)(1). The corporate headquarters of a general contractor licensed by the South Carolina Department of Labor, Licensing and Regulation qualifies even if it is not a regional or national headquarters as those terms are defined in Section 12-6-3410(J)(1).

(11) The terms “retail sales” and “tangible personal property” for purposes of this section are defined in Chapter 36 of this title.

(12) “Tourism facility” means an establishment used for a theme park; amusement park; historical, educational, or trade museum; botanical garden; cultural center; theater; motion picture production studio; convention center; arena; auditorium; or a spectator or participatory sports facility; and similar establishments where entertainment, education, or recreation is provided to the general public. Tourism facility also includes new hotel and motel construction, except that to qualify for the credits allowed by this section and regardless of the county in which the facility is located, the number of new jobs that must be created by the new hotel or motel is twenty or more. It does not include that portion of an establishment where retail merchandise or retail services are sold directly to retail customers.

(13) “Qualifying service-related facility” means:

(a) an establishment engaged in an activity or activities listed under the North American Industry Classification System Manual (NAICS) Section 62, subsectors 621, 622, and 623; or

(b) a business, other than a business engaged in legal, accounting, banking, or investment services (including a business identified under NAICS Section 55) or retail sales, which has a net increase of at least:

(i) one hundred seventy-five jobs at a single location;

(ii) one hundred fifty jobs at a single location comprised of a building or portion of building that has been vacant for at least twelve consecutive months prior to the taxpayer’s investment;

(iii) one hundred jobs at a single location and the jobs have an average cash compensation level of more than one and one-half times the lower of state per capita income or per capita income in the county where the jobs are located;

(iv) fifty jobs at a single location and the jobs have an average cash compensation level of more than twice the lower of state per capita income or per capita income in the county where the jobs are located; or

(v) twenty-five jobs at a single location and the jobs have an average cash compensation level of more than two and one-half times the lower of state per capita income or per capita income in the county where the jobs are located.

A taxpayer shall use the most recent per capita income data available as of the end of the taxable year in which the jobs are filled. Determination of the required number of jobs is in accordance with the monthly average described in subsection (F).

(14) "Technology intensive facility" means:

(a) 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. Included in this definition are the following North American Industrial Classification Systems Codes, NAICS, published by the Office of the Management and Budget of the federal government:

- (i) 5114 database and directory publishers;
- (ii) 5112 software publishers;
- (iii) 54151 computer systems design and related services;
- (iv) 541511 custom computer programming services;
- (v) 541512 computer systems design services;
- (vi) 541711 research and development in biotechnology; 2007 NAICS;
- (vii) 541712 research and development in physical, engineering, and life sciences; 2007 NAICS;
- (viii) 518210 data processing, hosting, and related services;
- (ix) 9271 space research and technology; or

(b) 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).

(15) "Extraordinary retail establishment" as defined in Sections 12-21-6520 and 12-21-6590.

(N) Except for employees employed in "Tier IV" counties, the maximum aggregate credit that may be claimed in any tax year for a single employee pursuant to this section and Section 12-6-3470(A) is five thousand five hundred dollars.

HISTORY: 1995 Act No. 76, Section 1; 1996 Act No. 231, Section 7A; 1996 Act No. 462, Section 9A; 1997 Act No. 143, Sections 1, 2; 1997 Act No. 149, Section 10; 1997 Act No. 151, Section 6; 1998 Act No. 432, Section 3A; 1999 Act No. 93, Section 19; 1999 Act No. 114, Section 4G; 1999 Act No. 114, Section 4H; 2000 Act No. 277, Section 2, eff May 19, 2000; 2000 Act No. 283, Section 5(A) and (B), eff for taxable years beginning after June 30, 2001; 2000 Act No. 399, Section 3(A)(1), eff August 17, 2000; 2001 Act No. 89, Section 66, eff July 20, 2001; 2002 Act No. 280, Section 5, eff May 28, 2002; 2002 Act No. 332, Sections 1A, 1B, 1C, eff June 18, 2002; 2003 Act No. 69, Section 3.M.1, eff June 18, 2003; 2003 Act No. 69, Section 3.VV, eff January 1, 2005; 2004 Act No. 168, Section 1; 2005 Act No. 145, Section 13, eff June 7, 2005; 2005 Act No. 157, Section 3, eff June 10, 2005, applicable for taxable years beginning January 1, 2006; 2005 Act No. 161, Sections 7, 32.A, eff June 9, 2005; 2006 Act No. 335, Sections 1.A, 1.B, 1.C, 1.D, 1.E, 4.A, eff June 6, 2006; 2006 Act No; 384, Sections 4.A, 5, 18.A, 21, 22.A, 22.B, eff June 14, 2006; 2006 Act No. 386, Section 7.A, eff June 14, 2006 applicable to taxable years beginning on and after January 1, 2006; 2006 Act No; 386, Sections 8, 48.A, 48.B, 53, eff June 14, 2006; 2006 Act No. 389, Sections 1, 5.A, eff June 14, 2006; 2006 Act No. 390, Section 1, eff June 14, 2006; 2006 Act No; 394, Section 1, eff June 14, 2006; 2007 Act No. 9, Section 1, eff April 11, 2007, applicable to county designations beginning in 2007; 2007 Act No. 110, Sections 12.A, 14.A, eff June 21, 2007, applicable to taxable years beginning after 2005; 2007 Act No. 110, Sections 13.A, 39, eff June 21, 2007; 2007 Act No. 116, Sections 8, 45, eff June 28, 2007, applicable for tax years beginning after 2007; 2007 Act No; 116, Section 19.A, eff June 28, 2007; 2007 Act No. 116, Section 20.A, eff June 28, 2007, applicable to tax years beginning after December 31, 2005; 2010 Act No. 290, Section 16, eff January 1, 2011; 2012 Act No. 187, Section 1, eff June 7, 2012.

SECTION 12-6-3362. Small business jobs tax credit; alternate method.

(A) A taxpayer eligible, pursuant to Section 12-6-3360(C)(2), for the jobs tax credits allowed pursuant to Section 12-6-3360 may elect to claim the applicable credit in the manner provided pursuant to subsection (B) of this section rather than as provided in Section 12-6-3360(C)(2).

(B) Beginning with the year the new full-time jobs are created, the taxpayer is allowed a jobs tax credit in an amount equal to the credit amount calculated pursuant to Section 12-6-3360(C)(2) for not more than five consecutive years. A credit is not allowed for a year in which the new full-time job increase falls below the minimum level of two.

(C) Except where altered by subsection (B) of this section, the provisions of Section 12-6-3360 are incorporated into this section.

HISTORY: 2006 Act No. 389, Section 3, eff June 14, 2006; 2007 Act No. 110, Section 40.A, eff June 21, 2007, applicable to tax years beginning after December 31, 2005; 2007 Act No. 116, Section 46.A, eff June 28, 2007, applicable to tax years beginning after December 31, 2005.

SECTION 12-6-3365. Repealed by 2000 Act No. 277, Section 3, eff July 1, 2005.

SECTION 12-6-3367. Moratorium on corporate income and insurance premium taxes for certain companies investing and creating jobs in State.

(A) A taxpayer creating and maintaining at least one hundred full-time new jobs, as defined in Section 12-6-3360(M), at a facility of a type identified in Section 12-6-3360(M) may petition, utilizing the procedure in Section 12-6-2320(B), for a moratorium on state corporate income taxes imposed pursuant to Section 12-6-530 or insurance premium taxes imposed pursuant to Title 38 for the ten taxable years beginning the first full taxable year after the taxpayer qualifies and ending either ten years from that year or the year when the taxpayer's number of full-time new jobs falls below one hundred, whichever is earlier. For purposes of insurance premium taxes, the petition pursuant to Section 12-6-2320(B) must be made to and approved by the Director of the Department of Insurance.

(B)(1) To qualify for the moratorium pursuant to subsection (A), a taxpayer shall:

(a)(i) create at least one hundred full-time new jobs at a facility in a county with an average annual unemployment rate of at least twice the state average during each of the last two completed calendar years, based on the most recent unemployment rates available, or that is one of the three lowest per capita income counties, based on the average of the three most recent years of available average per capita income data; and

(ii) invest at least ninety percent of its total investment in this State in the moratorium county;

or

(b)(i) create at least one hundred full-time new jobs, and invest at least one hundred fifty million dollars, at a manufacturing facility in a county with an average annual unemployment rate of at least twice the state average during each of the last two completed calendar years, based on the most recent unemployment rates available, or that is one of the three lowest per capita income counties, based on the average of the three most recent years of available average per capita income data;

(ii) create at least one hundred full-time new jobs, and invest at least one hundred fifty million dollars, at a manufacturing facility in a second county which is designated as distressed, least developed, or underdeveloped pursuant to Section 12-6-3360; and

(iii) invest at least ninety percent of its total investment in this State in one or both of the counties specified in subsubitems (i) and (ii) of subsection (B)(1)(b).

(2) Taxpayers qualifying pursuant to subsection (B)(1)(b) are entitled to the moratorium for separate ten-year periods pursuant to subsection (A) for income attributable to facilities in each county, beginning with the first full taxable year after the taxpayer qualifies in the respective county and ending with respect to the income attributable to facilities in that county either ten years from that year or the year when the taxpayer's number of full-time new jobs in that county falls below one hundred, whichever is earlier.

Loss of the moratorium in one county due to job reduction does not impact the moratorium for income attributable to facilities in the other county.

(C) During the applicable moratorium period, the moratorium applies to that portion of the taxpayer's corporate income or premium tax that represents the ratio of the taxpayer's new investment in the qualifying county or counties to its total investment in this State.

(D) The department shall prescribe certification procedures to ensure that the taxpayer may claim the moratorium in future years even if a particular county is removed from the list of qualifying counties.

(E)(1) If the taxpayer creates and maintains at least two hundred full-time new jobs at the facility specified in subsection (B)(1)(a) within five years from the date the taxpayer creates the first full-time new job at the facility, the moratorium period is fifteen taxable years, beginning the first full taxable year after the taxpayer qualifies and ending either fifteen years from that year or the year when the taxpayer's number of full-time new jobs falls below two hundred, whichever is earlier.

(2) If the taxpayer creates and maintains at least two hundred full-time new jobs at facilities in either or both of the counties specified in subsection (B)(1)(b) within five years from the date the taxpayer creates the first full-time new job in either of the counties, the moratorium period is fifteen taxable years with respect to income attributable to facilities in the county or counties where the taxpayer qualifies, beginning the first full taxable year after the taxpayer qualifies in a respective county and ending either fifteen years from that year or the year when the taxpayer's number of full-time new jobs in the respective county fall below two hundred, whichever is earlier.

(3) Notwithstanding any other provision of this section, if the taxpayer qualifies in one or more counties for the fifteen-year period specified in this subsection and subsequently within the ten-year period specified in subsection (A) reduces the number of jobs at any such facility to fewer than two hundred but more than one hundred, the taxpayer is entitled to the moratorium with respect to such facility for the balance of the ten-year period. Loss of the fifteen-year period in one county described in subsection (B)(1)(b) due to job reduction does not impact the fifteen-year period for income attributable to facilities in the other county.

(F) The taxpayer must create the one hundred full-time new jobs within five years from the date it creates the first full-time new job in the county specified in subsections (B)(1)(a)(i).

(G) Any moratorium allowed under subsection (B)(1)(b) is not affected if the taxpayer changes its form of business organization within the ten- or fifteen-year moratorium period.

(H) For purposes of qualification under subsection (B)(1)(b) and all related provisions, the term "taxpayer" means a single taxpayer or, collectively, a group of one or more affiliated taxpayers.

HISTORY: 2006 Act No. 297, Section 1, eff May 31, 2006.

SECTION 12-6-3370. Tax credits for construction, installation or restoration of water impoundments and water control structures.

(A) A taxpayer may claim a credit for twenty-five percent of all expenditures for the construction, installation, or restoration of ponds, lakes, other water impoundments, and water control structures designed for the purposes of water storage for irrigation, water supply, sediment control, erosion control or aquaculture and wildlife management, providing these items are not located in or adjacent to and filled primarily by coastal waters of the State.

(B) In the case of pass-through entities, the credit is determined at the entity level and is limited to two thousand five hundred dollars. The maximum amount of credit for all taxpayers, including any credit passed through to the taxpayer from a partnership, "S" Corporation, estate, or trust, is also limited to two thousand five hundred dollars.

(C) If the credit exceeds the taxpayer's tax liability for the taxable year, the excess amount may be carried forward for credit against income taxes in the next five succeeding taxable years.

(D) To qualify for the credit the taxpayer must obtain a construction permit issued by the Department of Health and Environmental Control or proof of exemption from permit requirements issued by the department, the Natural Resources Conservation Service, or a local Soil and Water Conservation District.

HISTORY: 1995 Act No. 76, Section 1; 1998 Act No. 432, Section 4.

SECTION 12-6-3375. Tax credit for port cargo volume increase; application to council; definitions; excess credits; taxpayers without distribution centers in the State; failure to meet requirements.

(A)(1) A taxpayer engaged in any of the following: manufacturing, warehousing, freight forwarding, freight handling, goods processing, cross docking, transloading, wholesaling of goods, or distribution, exported or imported through port facilities in South Carolina and which increases its port cargo volume at these facilities by a minimum of five percent in a single calendar year over its base year port cargo volume is eligible to claim an income tax credit or a credit against employee withholding in the amount determined by the Coordinating Council for Economic Development (council).

(2) The maximum amount of tax credits allowed to all qualifying taxpayers pursuant to this section may not exceed eight million dollars for each calendar year. The credits may be claimed against the taxes imposed pursuant to Sections 12-6-530 and 12-6-545 and against employee withholdings. The council has sole discretion in allocating the credits provided by this section and must consider the following factors:

- (a) the amount of base year port cargo volume;
- (b) the total and percentage increase in port cargo volume; and
- (c) factors related to the economic benefit of the State or other factors.

(3)(a) If the income tax credit exceeds the taxpayer's income tax liability for the taxable year, the excess amount may be carried forward and claimed against income taxes in the next five succeeding taxable years.

(b) If the credit against withholding taxes exceeds the taxpayer's withholding tax liability for the taxable quarter that is not otherwise refunded under Title 12 of the 1976 Code, the excess amount may be carried forward and claimed against withholding liability that is not otherwise refunded under Title 12 of the 1976 in the next twenty succeeding taxable quarters.

(B)(1) For every year in which a taxpayer claims the credit, the taxpayer shall submit an application to the council after the calendar year in which the increase in port cargo volume occurs. Allocations of the credit may be made on a monthly, quarterly, or annual basis. The taxpayer shall attach a schedule to the taxpayer's application to the council with the following information and information requested by the council or the department:

- (a) a description of how the base year port cargo volume and the increase in port cargo volume was determined;
- (b) the amount of the base year port cargo volume;
- (c) the amount of the increase in port cargo volume for the taxable year stated both as a percentage increase and as a total increase in net tons of non-containerized cargo, measurement of cargo, and TEUs of cargo, including information which demonstrates an increase in port cargo volume in excess of the minimum amount required to claim the tax credits pursuant to this section;
- (d) any tax credit utilized by the taxpayer in prior years; and
- (e) the amount of tax credit carried over from prior years.

(2) To receive the credit the taxpayer shall claim the credit on its income tax or withholding return in a manner prescribed by the department. The department may require a copy of the certification form issued by the council be attached to the return or otherwise provided.

(C) As used in this section:

(1) "TEU" means a twenty-foot equivalent unit; a volumetric measure based on the size of a container twenty feet long by eight feet wide by eight feet, six inches high. A "weighted TEU" is equal to seven and one-half tons. A "measured TEU" is equal to thirty-eight and one-half cubic meters.

(2) "Base year port cargo volume" initially means the total amount of net tons of non-containerized cargo, measured equivalent of non-cargo or TEUs of cargo actually transported by way of a waterborne ship through a port facility during the period from January first through December thirty-first of the same year. Base year port cargo volume must be at least seventy-five net tons of non-containerized cargo, three hundred eighty-five cubic meters, or ten TEUs for a taxpayer to be eligible for the credits provided in this section. For a taxpayer that does not ship that amount in the year ending December thirty-first of the previous year, including a taxpayer who locates in South Carolina after December thirty-first of the previous year, its base cargo volume will be measured by the initial January first through December thirty-first calendar year in which it meets the requirements of seventy-five net tons of non-containerized cargo, three hundred eighty-five cubic meters, or ten loaded TEUs. Base year port cargo volume must be recalculated each calendar year after the initial base year.

(3) "Port facility" means any publicly or privately owned facility located within this State through which cargo is transported by way of a waterborne ship or vehicle to or from destinations outside this State and which handles cargo owned by third parties in addition to cargo owned by the port facility's owner.

(4) "Port cargo volume" means the total amount of net tons of non-containerized cargo or containers measured in twenty-foot equivalent units (TEUs) of cargo transported by way of a waterborne ship or vehicle through a port facility, or measured cubic meters of cargo.

(D) The council annually may award up to one million dollars of the eight million dollars of credits against employee withholdings that are not otherwise refundable pursuant to this title to a new warehouse or distribution facility which commits to expending at least forty million dollars at a single site and creating one hundred new full-time jobs, and the base year cargo shall not be less than five thousand TEUs or its non-containerized equivalent. The council may make the award in the year the facility is announced provided that it may not tender the certificate until it has received satisfactory proof that the capital investment and job creation requirements have, or will be, satisfied. Any credit certificate expires three years after issuance if satisfactory proof has not been received. If the credit exceeds the taxpayer's withholding tax liability for the taxable quarter that is not otherwise refundable pursuant to this title, the excess amount may be carried forward and claimed against withholding liability that is not otherwise refundable pursuant to this title in the next twenty succeeding taxable quarters.

(E)(1) A taxpayer engaged in the movement of goods imported or exported through South Carolina's port facilities may be eligible for the port volume tax credit if the cargo supports a presence in the State and the taxpayer does not have a distribution center in the State at the time of initial approval of the port volume tax credit, so long as:

(a) the taxpayer employs at least two hundred and fifty full-time or full-time equivalent South Carolinians in operations statewide;

(b) the taxpayer completes the construction of the distribution facility in South Carolina, and is operational, within five years of the initial approval of the port volume tax credit; and

(c) the base year for the taxpayer shall be not less than five thousand TEUs or its non-containerized equivalent.

(2) Any credit certificate expires three years after issuance if satisfactory proof has not been received.

(F) The council has discretion to award the credits pursuant to either subsection (D) or (E).

(G) Notwithstanding Section 12-54-240, the department and the Department of Commerce may exchange information submitted by a taxpayer pursuant to this section.

(H)(1) If a taxpayer receives the credit under subsection (D) but fails to meet the requirements of subsection (D) at the end of the three-year period, the taxpayer must repay the department a pro rata portion of the credits claimed.

(2) If a taxpayer receives the credit under subsection (E) but fails to meet the requirements of subsection (E)(1) at the end of the five-year period, the taxpayer must repay the department a pro rata portion of the credits claimed.

HISTORY: 2005 Act No. 124, Section 1, eff June 3, 2005; 2006 Act No. 384, Section 6, eff June 14, 2006; 2006 Act No. 386, Section 10.A, eff June 14, 2006 applicable to tax years beginning after December 31, 2004; 2010 Act No. 290, Section 17, eff January 1, 2011; 2013 Act No. 81, Section 1, eff June 13, 2013.

SECTION 12-6-3376. Income tax credit for plug-in hybrid vehicle.

(A) For taxable years beginning in 2012 and before 2017, a taxpayer is allowed a tax credit against the income tax imposed pursuant to this chapter for the in-state purchase or lease of a new plug-in hybrid vehicle.

A plug-in hybrid vehicle is a vehicle that:

- (1) shares the same benefits as an internal combustion and electric engine with an all-electric range of no less than nine miles;
- (2) has four or more wheels;
- (3) draws propulsion using a traction battery;
- (4) has at least four kilowatt hours of battery capacity; and
- (5) uses an external source of energy to recharge the battery.

Qualified plug-in hybrid vehicles also must be manufactured primarily for use on public streets, roads, highways, and not be classified as low or medium speed vehicles. Low-speed vehicles are vehicles capable of a speed of at least twenty but not more than twenty-five miles per hour, is used primarily for short trips and recreational purposes, and has safety equipment such as lights, reflectors, mirrors, parking brake, windshield, and safety belts. Medium-speed vehicles are vehicles capable of a speed of at least thirty but not more than forty-six miles per hour and has safety equipment such as lights, reflectors, mirrors, parking brake, windshield, and safety belts.

The credit is equal to six hundred sixty-seven dollars, plus one hundred eleven dollars if the vehicle has at least five kilowatt hours of battery capacity, plus an additional one hundred eleven dollars for each kilowatt hour of battery capacity in excess of five kilowatt hours. The maximum credit allowed by this section is two thousand dollars. The credit allowed by this section is nonrefundable and if the amount of the credit exceeds the taxpayer's liability for the applicable taxable year, any unused credit may be carried forward for five years.

(B) To claim the credit allowed by this section, the taxpayer must provide the department with a certification from the vehicle manufacturer, or in the case of a foreign vehicle manufacturer, its domestic distributor, stating that the vehicle is a qualified plug-in hybrid as described in subsection (A), and the vehicle's number of kilowatt hours of battery capacity.

(C) Notwithstanding the credit amount allowed pursuant to this section, for a calendar year all claims made pursuant to this section must not exceed two hundred thousand dollars and must apply to eligible claimants on a first-come, first-served basis as determined by the Department of Revenue in a manner it prescribes until the total allowable credits for that calendar year are exhausted.

HISTORY: 2007 Act No. 83, Section 11, eff June 19, 2007; 2012 Act No. 161, Section 1, eff May 14, 2012.

SECTION 12-6-3377. Hybrid, fuel cell, alternative fuel or lean burn motor vehicle tax credit.

(A) A South Carolina resident taxpayer who is eligible for and claims the new qualified fuel cell motor vehicle credit, the new advanced lean burn technology motor vehicle credit, the new qualified hybrid motor vehicle credit based on the combined city/highway metric or standard set by federal Internal Revenue Code Section 30B, and the new qualified alternative fuel motor vehicle credit allowed pursuant to Internal Revenue Code Section 30B is allowed a credit against the income taxes imposed pursuant to this chapter in an amount equal to twenty percent of that federal income tax credit. The credit allowed by this section is nonrefundable and if the amount of the credit exceeds the taxpayer's liability for the

applicable taxable year, any unused credit may be carried forward and claimed in the five succeeding taxable years.

(B) The credit amount allowed by this section must be calculated without regard to the phaseout period limits of Internal Revenue Code Section 30B(f) and for purposes of the credits allowed pursuant to this section, the provisions of Internal Revenue Code Section 30B are deemed permanent law.

HISTORY: 2006 Act No. 312, Section 1, eff June 1, 2006 applicable for taxable years beginning after 2005.

SECTION 12-6-3380. Tax credit for child and dependent care expenses.

An individual may claim an income tax credit for child and dependent care expenses. The credit is computed as provided in Internal Revenue Code Section 21, except that the term “applicable percentage” means seven percent and is not reduced, and only expenses that are directly attributable to items of South Carolina gross income qualify for the credit.

If a nonresident taxpayer is a resident of a state which does not allow a resident of this State credit for child and dependent care expenses, the nonresident taxpayer is not allowed credit on the South Carolina income tax return for child and dependent care expenses.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-3381. Premarital preparation course tax credit; form.

There is allowed as a credit against the tax imposed pursuant to Section 12-6-510 an amount equal to fifty dollars for taxpayers who married during the taxable year and completed the requirements of Section 20-1-230. The credit must be claimed by means of a form prescribed by the South Carolina Department of Revenue containing that information required by the department for the accurate and efficient administration of this credit. Regardless of federal filing statutes, each spouse may only receive one non-refundable income tax credit of twenty-five dollars, for a maximum tax credit of fifty dollars per couple under this section.

HISTORY: 2006 Act No. 291, Section 2, eff May 31, 2006.

SECTION 12-6-3385. Income tax credit for tuition; definitions.

(A)(1) A student is allowed a refundable individual income tax credit equal to twenty-five percent, not to exceed eight hundred fifty dollars in the case of four-year institutions and twenty-five percent, not to exceed three hundred fifty dollars in the case of two-year institutions for tuition paid an institution of higher learning or a designated institution as provided in this section during a taxable year. The amount of the tax credit claimed up to the limits authorized in this section for any taxable year may not exceed the amount of tuition paid during that taxable year.

(2)(a) Tuition credits may not be claimed for more than four consecutive years after the student enrolls in an eligible institution.

(b) The credit period is suspended for a qualifying student required to withdraw from an institution of higher learning to serve on active military duty if the service member re-enrolls in an eligible institution within twelve months upon demobilization and provides official documentation from the Armed Forces to verify the dates of active duty military service.

(c) An extension of the credit period may be granted due to medical necessity as defined by the Commission on Higher Education.

(3) The credit may be claimed by the student or by an individual eligible to claim the student as a dependent on his federal income tax return, whoever actually paid the tuition. The department shall prescribe a form for claiming the credit.

(B) As used in this section:

(1) "Institution of higher learning" means a South Carolina public institution defined in Section 59-103-5 and an independent institution as defined in Section 59-113-50.

(2) A "designated institution" means a public or independent bachelor's level institution chartered before 1962 whose major campus and headquarters are located within South Carolina; or an independent bachelor's level institution which has attained 501(c)(3) tax status and is accredited by the Southern Association of Colleges and Secondary Schools or the New England Association of Colleges and Schools; or a public or independent two-year institution which has attained 501(c)(3) tax status. Institutions whose sole purpose is religious or theological training, or the granting of professional degrees do not meet the definition of "institution of higher learning" or "designated institution" as defined in this section.

(3) "Student" means an individual enrolled in an institution of higher learning:

(a) eligible for in-state tuition and fees as determined pursuant to Chapter 112 of Title 59 and applicable regulations;

(b) who at the end of the taxable year for which the credit is claimed has completed at least thirty credit hours each year, or its equivalent, as determined by the Commission on Higher Education, and who is admitted, enrolled, and classified as a degree seeking undergraduate or enrolled in a certificate or diploma program of at least one year;

(c) who, within twelve months before enrolling:

(i) graduated from a high school in this State;

(ii) successfully completed a high school home school program in this State in the manner required by law; or

(iii) graduated from a preparatory high school outside this State while a dependent of a parent or guardian who is a legal resident of this State and has custody of the dependent;

(d) not in default on a Federal Title IV or State of South Carolina educational loan, nor who owes a refund on a Federal Title IV or a State of South Carolina student financial aid program;

(e) who has not been adjudicated delinquent or been convicted or pled guilty or nolo contendere to any felonies or any alcohol or drug related offenses under the laws of this State, any other state or comparable jurisdiction, or the United States; except that a student who has been adjudicated delinquent or has been convicted or pled guilty or nolo contendere to an alcohol or drug related misdemeanor offense is ineligible only for the taxable year in which the adjudication, conviction, or plea occurred;

(f) who is in good standing at the institution attended;

(g) who is not a Palmetto Fellowship recipient;

(h) who is not a LIFE Scholarship recipient.

(4) "Tuition" means the amount charged, including required fees, necessary for enrollment. Higher education tuition at an independent institution means the average tuition at the four-year public institutions of higher learning as defined in Section 59-103-15(B)(2), but not more than the actual tuition charged. Before calculating the credit, there must be deducted from tuition any amounts received toward its payment by any other scholarship grants.

HISTORY: 1998 Act No. 418, Section 2; 1999 Act No. 100, Part II, Section 73; 2006 Act No. 386, Section 11.A, eff June 14, 2006.

SECTION 12-6-3390. Credit for expenses paid to institution providing nursing facility level, in-home, or community care.

An individual taxpayer may claim an income tax credit for twenty percent 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 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 three hundred dollars each taxable year. However, no credit is allowed for expenses paid from public source funds.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-3400. Credit for income tax paid by South Carolina resident to another state.

(A)(1) Resident individuals are allowed a credit against the taxes imposed by this chapter for income taxes paid to another state on income from sources within that state which is taxed under both this chapter and the laws of that state regardless of the taxpayer's residence.

(2) The credit allowed is the lesser of:

(a) the product of the fraction in which the numerator is total South Carolina income which is subject to income tax in another state and the denominator is total federal income adjusted by the modifications provided in Article 9 of this chapter and subject to allocation and apportionment as provided in Article 17 of this chapter, multiplied by South Carolina income tax before the credit allowed by this section; or

(b) the income tax actually paid to the other state on income taxed under this chapter.

(3) A copy of the income tax return filed with the other state must be filed with the South Carolina tax return at the time credit is claimed. If the credit is claimed because of a deficiency assessment notice, a copy of the notice and a receipt showing the payment must be filed.

(B) If a taxpayer is refunded or credited taxes paid to another state for which a credit has been allowed under this section, then a tax equal to that portion of the credit allowed is due and payable from the taxpayer within sixty days from the date the refund or the notice of the credit is received. If the amount of the tax is not paid within sixty days of receipt or notice, the taxpayer is subject to penalties and interest for failure to pay provided in Chapter 54 of this title.

(C) When a taxpayer is considered a resident of this State and is also considered a resident of another state under the laws of the other state, the department may, at its discretion, allow a credit against South Carolina income taxes for those taxes paid to the other state on income taxed under this chapter.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-3410. Corporate income tax credit for corporate headquarters.

(A) A corporation establishing a corporate headquarters in this State, or expanding or adding to an existing corporate headquarters, is allowed a credit against any tax due pursuant to Section 12-6-530, Section 12-11-20, or Section 12-20-50 as set forth in this section.

(B) In order to qualify for this credit, each of the following criteria must be satisfied:

(1) The qualifying real property costs of the corporate headquarters establishment, expansion, or addition must be at least fifty thousand dollars. Qualifying real property costs are:

(a) costs incurred in the design, preparation, and development of establishing, expanding, or adding to a corporate headquarters; and

(b)(i) direct construction costs; or

(ii) with respect to leased facilities, direct lease costs during the first five years of operations for the corporate headquarters.

(2) The headquarters establishment, expansion, or addition must result in the creation of:

(a) at least forty new jobs performing headquarters related functions and services or research and development related functions and services. These jobs must be permanent, full-time positions located in this State; and

(b) at least twenty of the above-referenced new jobs must be classified as headquarters staff employees.

(C) The amount of the credit is equal to twenty percent of the qualifying real property costs listed in subsection (B)(1).

(D) A headquarters establishment, expansion, or addition which meets the criteria of subsection (B) of this section is entitled to an additional credit equal to twenty percent of cost for tangible personal property if the following conditions are met:

(1) the personal property is:

(a) capitalized as personal property for income tax purposes under the Internal Revenue Code; and

(b) purchased for the establishment, expansion, or addition of a corporate headquarters, or for the establishment, expansion, or addition of a research and development facility which is part of the same corporate project as the headquarters establishment, addition, or expansion; and

(c) used for corporate headquarters related functions and services or research and development related functions and services in South Carolina.

(2) The establishment, expansion, or addition of a corporate headquarters or research and development facility must result in the creation of at least seventy-five new full-time jobs performing either:

(a) headquarters related functions and services; or

(b) research and development related functions and services.

The seventy-five required jobs must have an average cash compensation level of more than twice the per capita income of this State based on the most recent per capita income data available as of the end of the taxpayer's taxable year in which the jobs are filled.

(E)(1)(a) For facilities which are constructed, the credit can only be claimed for the taxable year when the headquarters establishment, expansion, or addition, and the research and development facility establishment, expansion, or addition, in the case of corporations qualifying under subsection (D), is placed in service for federal income tax purposes. For construction projects completed in phases and placed in service for federal income tax purposes in more than one taxable year, the corporation can claim the credit on the South Carolina income tax return for the taxable year in which property, which qualifies for the credit, is placed in service. Credits cannot be obtained for costs incurred more than three taxable years after the taxable year in which the first property for which the credit is claimed is placed in service. Notwithstanding any other provisions of this subsection, if the entire project is not completed by the end of the three taxable years, the corporation may claim the credit for all property placed in service within the time limitation set forth in the preceding sentence. The credit may not be claimed for personal property which is replacing personal property for which the credit can be claimed. The department may for good cause extend the time for incurring additional costs and for claiming the credit if the project is not completed within the time period allowed by this subsection. For purposes of this subsection the term "property" includes qualifying real property and, where the conditions of subsection (D) are met, personal property.

(b) for leased real property the credit must be claimed in the taxable year in which the first direct lease costs are incurred.

(2) The corporation must meet the staffing requirements of subsections (B)(2) and, if applicable, (D)(2), by the end of the second taxable year following the last taxable year for which the credit is claimed. The corporation must have documented plans to meet the initial staffing requirements at the time the credit is claimed. If the corporation fails to meet the staffing requirements within the time required by this subsection, the corporation must increase its tax liability for the current taxable year by an amount equal to the amount of credit, or any portion of the credit for which the corporation would not qualify, which was used to reduce tax in the earlier years.

(F) The credit provided in this section is nonrefundable, but an unused credit may be carried forward for ten years. An unused credit may be carried forward fifteen years if the criteria set forth in subsection (D)(2) are met. In addition, a taxpayer may assign its rights to the unused credit to a succeeding taxpayer if the taxpayer transfers all or substantially all of the assets of the taxpayer or all or substantially all of the assets of a trade, business, or operating division of a taxpayer to the succeeding taxpayer, and the

succeeding taxpayer maintains the corporate headquarters of the taxpayer. No credit may be claimed for a taxable year during which the taxpayer or succeeding taxpayer fails to meet the qualifying employment requirements provided in this section and the carry forward period is not extended for any year in which the credit may not be claimed for failure to meet the employment requirements. The credit may be claimed for a taxable year in the unextended carry forward period if the taxpayer or succeeding taxpayer requalifies for the credit by meeting the employment requirements during that taxable year.

(G) If a fee-in-lieu arrangement under Section 4-29-67 is entered into with respect to all or part of property involving a corporate headquarters, and the corporation claiming the credit provided under this section is treated as the owner of the property for federal income tax purposes, then the corporation must be treated as the owner of the property for purposes of the credit provided by this section.

(H) To the extent that this credit applies to the cost of certain property, the basis of the property for South Carolina income tax purposes must be reduced by the amount of the credit claimed with respect to the property. This basis reduction does not reduce the basis or limit or disallow any depreciation allowable under the law of this State for other than income tax purposes, even if the depreciation is based upon or otherwise relates to income tax depreciation including, without limitation, basis or depreciation which is allowable under this title for property tax purposes. If the corporation fails to meet the staffing requirements of subsection (E)(2), the corporation may increase the basis of the property by the amount of the original basis reduction with regard to that property in the year in which the credit is recaptured.

(I) The amount of a credit allowed under this section must be reduced by the amount of any past-due debt owed this State by the taxpayer.

(J) As used in this section:

(1) "Corporate headquarters" means the facility or portion of a facility where corporate staff employees are physically employed, and where the majority of the company's or company business unit's financial, personnel, legal, planning, information technology, or other headquarters-related functions are handled either on a regional, national, or global basis. A corporate headquarters must be a regional corporate headquarters, a national corporate headquarters, or global corporate headquarters as defined below; provided, however, for taxpayers which are subject to tax under Chapter 11 of Title 12, a corporate headquarters must be a regional corporate headquarters:

(a) National corporate headquarters must be the sole corporate headquarters in the nation and handle headquarters-related functions at least on a national basis. A national headquarters is considered to handle headquarters-related functions on a national basis from this State if the corporation has a facility in this State from which the corporation engages in interstate commerce by providing goods or services for customers outside of this State in return for compensation.

(b) Regional corporate headquarters must be the sole corporate headquarters within the region and must handle headquarters-related functions on a regional basis. For purposes of this section, "region" or "regional" means a geographic area comprised of either:

(i) at least five states, including this State; or

(ii) two or more states, including this State, if the entire business operations of the corporation are performed within fewer than five states; provided, however, that with respect to taxpayers which are subject to tax under Chapter 11 of Title 12, the requirement that "the entire business operations of the corporation are performed within fewer than five states", is replaced with "if all branches of the taxpayer, as defined below, are physically located in fewer than five states". For taxpayers which are subject to tax under Chapter 11 of Title 12, such taxpayer must have two or more branches, as that term is defined in Section 34-25-10(8), in each state within its region.

(c) A "company business unit" is an organizational unit of a corporation or bank and is defined by the particular product or category of products it sells.

(2) "New job" means a job created by an employer in this State at the time a new facility, expansion, or addition is initially staffed, but does not include a job created when an employee is shifted from an existing location in this State to work in a new or expanded facility. An employee may be employed at a temporary location in this State pending completion of the new facility, expansion, or addition.

(3) "Full-time" means a job requiring a minimum of thirty-five hours of an employee's time a week for the entire normal year of corporate operations or a job requiring a minimum of thirty-five hours of an employee's time for a week for a year in which the employee was initially hired for or transferred to the corporate headquarters or research and development facility in this State.

(4) "Headquarters-related functions and services" are those functions involving financial, personnel, administrative, legal, planning, information technology, or similar business functions.

(5) "Headquarters staff employees" means executive, administrative, or professional workers performing headquarters related functions and services.

(a) An executive employee is a full-time employee in which at least eighty percent of his business functions involve the management of the enterprise and directing the work of at least two employees. An executive employee has the authority to hire and fire or has the authority to make recommendations related to hiring, firing, advancement, and promotion decisions, and an executive employee must customarily exercise discretionary powers.

(b) An administrative employee is a full-time employee who is not involved in manual work and whose work is directly related to management policies or general headquarters operations. An administrative employee must customarily exercise discretion and independent judgment.

(c) A professional employee is an employee whose primary duty is work requiring knowledge of an advanced type in a field of science or learning. This knowledge is characterized by a prolonged course of specialized study. The work must be original and creative in nature, and the work cannot be standardized over a specific period of time. The work must require consistent exercise of discretion and the employee must spend at least eighty percent of the time performing headquarters related functions and services.

(6) "Research and development" means laboratory, scientific, or experimental testing and development related to new products, new uses for existing products, or improving existing products, but "research and development" does not include efficiency surveys, management studies, consumer surveys, economic surveys, advertising, promotion, banking, or research in connection with literary, historical, or similar projects.

(7) "Research and development facility" means the building or buildings or portion of a building where research and development functions and services are physically located.

(8) "Direct lease costs" are cash lease payments. The term does not include any accrued, but unpaid, costs.

HISTORY: 1995 Act No. 76, Section 1; 1999 Act No. 114, Section 3; 2001 Act No. 89, Section 3, eff July 20, 2001, applicable to taxable years beginning after December 31, 2000; 2001 Act No. 89, Section 10, eff July 1, 2001; 2006 Act No. 335, Sections 2.A, 2.B, 2.C, eff June 6, 2006; 2006 Act No. 384, Section 7, eff June 14, 2006; 2006 Act No. 386, Section 54, eff June 14, 2006; 2008 Act No. 313, Sections 2.B.1, 2.B.2, eff June 12, 2008; 2008 Act No. 352, Section 2.B.1, eff June 12, 2008.

SECTION 12-6-3415. Tax credit for research and development expenditures.

(A) A taxpayer that claims a federal income tax credit pursuant to Section 41 of the Internal Revenue Code for increasing research activities for the taxable year is allowed a credit against any tax due pursuant to this chapter or Section 12-20-50 equal to five percent of the taxpayer's qualified research expenses made in South Carolina. For the purposes of this credit, qualified research expenses has the same meaning as provided for in Section 41 of the Internal Revenue Code.

(B) The credit taken in any one taxable year pursuant to this section may not exceed fifty percent of the taxpayer's remaining tax liability after all other credits have been applied. Any unused credit may be carried over to the immediately succeeding taxable years, except that the credit carry-over may not be used for a taxable year that begins on or after ten years from the date of the qualified research expenses.

HISTORY: 2000 Act No. 283, Section 5(C), eff for taxable years beginning after June 30, 2001; 2003 Act No. 69, Section 3.M.2, eff June 18, 2003; 2007 Act No. 110, Sections 1.B, 58.A, eff June 21, 2007 applicable for taxable years beginning after 2006; 2007 Act No. 116, Section 5, eff June 28, 2007, applicable for tax years beginning after 2006.

SECTION 12-6-3420. Tax credit for construction or improvement of infrastructure project.

(A) A corporation may claim a credit for the construction or improvement of an infrastructure project against taxes due under Section 12-6-530 or Section 12-11-20 for:

- (1) expenses paid or accrued by the taxpayer;
- (2) contributions made to a governmental entity; or
- (3) contributions made to a qualified private entity in the case of water or sewer lines and their related facilities in areas served by a private water and sewer company.

(B) For expenses paid or accrued by the taxpayer in building or improving any one infrastructure project:

- (1) the credit is equal to fifty percent of the expenses or contributions;
- (2) the credit is limited to ten thousand dollars annually; and
- (3) any unused credit, up to a total amount of thirty thousand dollars, may be carried forward three years.

(C) For purposes of this section:

(1) An infrastructure project includes water lines or sewer lines, their related facilities, and roads that:

- (a) do not exclusively benefit the taxpayer;
- (b) are built to applicable standards; and
- (c) are dedicated to public use or, in the case of water and sewer lines and their related facilities in areas served by a private water and sewer company, the water and sewer lines are deeded to a qualified private entity.

(2) A qualified private entity is an entity holding the required permits, certifications, and licenses from the South Carolina Department of Health and Environmental Control, the South Carolina Public Service Commission, and any other state agencies, departments, or commissions, from which approvals must be obtained in order to operate as a utility furnishing water supply services or sewage collection or treatment services, or both, to the public.

(D) If an infrastructure project benefits more than the taxpayer, the expenses of the taxpayer must be allocated to the various beneficiaries and only those expenses not allocated to the taxpayer's benefit qualify for the credit.

(E) The credit may be claimed before dedication or conveyance if the taxpayer submits with its tax return a letter of intent signed by the chief operating officer of the appropriate governmental entity or qualified private entity stating that upon completion the governmental entity or qualified private entity shall accept the infrastructure project for the appropriate use.

(F) A qualifying private entity is not allowed the credit provided by this section for expenses it incurs in building or improving facilities it owns, manages, or operates.

(G) If a road qualifying for the credit is subsequently removed from the state highway or public road system, the amount of the credit allowed for the construction of the road must be added to any corporate income tax due from the taxpayer in the first taxable year following the removal of the road from public use. The department may implement the provisions of this subsection by rules or regulation.

(H) A corporation which files or is required to file a consolidated return is entitled to the income tax credit allowed by this section on a consolidated basis. The tax credit may be determined on a consolidated basis regardless of whether or not the corporation entitled to the credit contributed to the tax liability of the consolidated group.

(I) 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. In addition, a corporation may assign its rights to its unused credit to another corporation if it transfers all, or substantially all, of the assets of the corporation or all, or substantially all, of the assets of a trade or business or operating division of a corporation to another corporation.

HISTORY: 1995 Act No. 76, Section 1; 2006 Act No. 335, Section 3, eff June 6, 2006.

SECTION 12-6-3430. Tax credit for qualified investments in Palmetto Seed Capital Corporation or Palmetto Seed Capital Fund Limited Partnership.

(A) Taxpayers who make qualified investments in the Palmetto Seed Capital Corporation (corporation) or the Palmetto Seed Capital Fund Limited Partnership (fund), as defined in Section 41-44-10, are allowed a credit against income or bank taxes imposed under Title 12 or insurance premium taxes imposed under Chapter 7 of Title 38.

(B) The amount of the credit for each taxable year is the lesser of:

(1) all qualified investments during the tax year multiplied by thirty percent, plus any credit carryover; or

(2) fifty percent of all qualified investments during all tax years multiplied by thirty percent.

(C) To receive the credit the taxpayer shall:

(1) claim the credit on the tax return in a manner prescribed by the appropriate agency; and

(2) attach to the return a copy of the form, provided in subsection (F) and issued by the corporation, indicating the taxpayer's qualified investment.

(D) The use of the credit is limited to the taxpayer's tax liability for the year after the application of all other credits. An unused credit may be carried forward ten years from the date of the qualified investment.

(E)(1) If a qualified investment is redeemed by the fund or the corporation within five years of the date it is purchased, the taxpayer shall report the redemption to the appropriate agency. The credit allowed for the current year by this section is disallowed and a credit previously taken must be paid to the appropriate agency on the return filed for the period in which the redemption occurred.

(2) Neither a distribution by the fund nor dividends or other distributions by the corporation are considered to be redemption of the qualified stock or the qualified interest of the taxpayer unless the amount of qualified stock owned by the taxpayer or the qualified interest held by the taxpayer after the distribution or dividend is less than the amount of qualified stock or qualified interest held by the taxpayer immediately before the distribution or dividend.

(F) The corporation shall complete forms prescribed by the department which must show as to each qualified investment in the fund the following:

(1) the name, address, and identification number of the taxpayer who purchased a qualified investment; and

(2) the nature and amount paid for the qualified investment purchased by the taxpayer.

These forms must be filed with the appropriate department on or before the fifteenth day of the third month following the month in which the qualified investment is purchased. Copies of these forms must be mailed to the investor on or before the fifteenth day of the second month following the month in which the qualified investment is purchased.

(G) The total amount of credits allowed for all taxpayers in all taxable years may not exceed in the aggregate, five million dollars, excluding any allowable tax credits of the Palmetto Seed Capital Corporation. The credit must be allowed to taxpayers in the order of the time of the purchase of the qualified investments.

(H) For purposes of this section:

(1) "The fund" means the Palmetto Seed Capital Fund Limited Partnership and is established and operated as described in Section 41-44-60.

(2) "The corporation" means the Palmetto Seed Capital Corporation which is the general partner of the fund.

(3) "Qualified investment" means qualified stock or qualified interest purchased for cash. Qualified stock means authorized but unissued shares of stock in the corporation. Qualified interest means a general partnership interest in the fund for the corporation and a limited partnership interest for all other persons.

(4) "Taxpayer" means an individual, corporation, partnership, trust, or other entity having a state income, bank or insurance premium tax liability who has made a qualified investment.

(5) "Appropriate agency" is the Department of Revenue for taxpayers subject to tax under Chapter 6 or Chapter 11 of this title and the Department of Insurance for corporations subject to the premium tax under Chapter 7 of Title 38.

(I) A corporation which files or is required to file a consolidated return is entitled to the income tax credit allowed by Section 12-6-3420 or this section on a consolidated basis. The tax credit may be determined on a consolidated basis regardless of whether or not the corporation entitled to the credit contributed to the tax liability of the consolidated group.

(J) 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. In addition, a corporation may assign its rights to its unused credit to another corporation if it transfers all, or substantially all, of the assets of the corporation or all, or substantially all, of the assets of a trade or business or operating division of a corporation to another corporation.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-3440. Tax credit for employee child care programs.

(A) A taxpayer who employs persons who are residents of this State in any capacity may claim a credit against its state income tax, bank tax, or premium tax liability an amount equal to fifty percent of its capital expenditures in this State but no more than one hundred thousand dollars for costs incurred in establishing a child care program for its employees' children.

(B) For purposes of this section, "expenditures for costs incurred in establishing a child care program" include, but are not limited to, expenditures, including mortgage or lease payments, for playground and classroom equipment, kitchen appliances, cooking equipment, real property, including improvements in this State, and donations to a nonprofit corporation as defined in Internal Revenue Code Section 501(c)(3) for purposes of establishing a child care program. If credit is taken for donations by a corporation, a deduction to arrive at the net income of the corporation is not allowed. The program and operation of the program must meet the licensing, registration, or certification standards prescribed by law.

(C)(1) The taxpayer under subsection (A) is allowed as a credit against his state income tax, bank tax, or premium tax liability an amount not exceeding fifty percent of the child care payments incurred by the taxpayer to operate a child care program for his employees in this State, or made directly to licensed or registered independent child care facilities in the name of and for the benefit of an employee in this State of the taxpayer, which employee's children are kept at the facility during the employee's working hours. The payment may not exceed the amount charged to other children of like age and abilities of individuals not employed by the taxpayer. In addition, a taxpayer is allowed to include in the amount of the payment for calculation of the credit any administrative cost associated with payment to licensed or registered independent child care facilities not to exceed two percent. The credits allowed may not exceed three thousand dollars for each participating employee a year.

(2) Where an employee in this State chooses to utilize the provisions of this subsection which authorize direct payments to licensed child care facilities not operated by the employer, expenses incurred in organizing and administering the direct payment program in the first year are also considered start-up expenses or expenditures for establishing a child care program and qualify for credit allowed by subsection (A).

(3) For purposes of the credits allowed by this subsection, the taxpayer is required to retain information concerning the child care facility's federal identification number, license or registration number, payment amount, and in whose name and for whose benefit the payments were made.

(D) The credits established by this section taken in any one tax year are also limited to an amount not greater than fifty percent of a taxpayer's state income tax, bank tax, or premium tax liability for that year.

(E) A credit claimed under this section, but not used or available for use in a taxable year, may be carried forward for the next ten taxable years from the close of the tax year in which the expenditures are made until the amount of the credit is taken.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-3450. Repealed by 2010 Act No. 290, Section 38, eff June 23, 2010.

SECTION 12-6-3460. Definitions.

(A) As used in this section:

(1) "Investment" means the total cost of acquisition, construction, erection, and installation of all real and personal property, whether owned or leased including, but not limited to, all realty, improvements, leasehold improvements, buildings, machinery, and office equipment, which is at any time incorporated into or associated with a qualified recycling facility.

(2) "Recycling property" means all real and personal property, whether owned or leased including, but not limited to, all realty, improvements, leasehold improvements, buildings, machinery, and office equipment, incorporated into or associated with a qualified recycling facility.

(3) "Qualified recycling facility" means a facility certified as a qualified recycling facility by a duly authorized representative of the department which includes all real and personal property incorporated into or associated with the facility located or to be located within this State that will be used by the taxpayer to manufacture products for sale composed of at least fifty percent postconsumer waste material by weight or by volume. The minimum level of investment for a qualified recycling facility must be at least three hundred million dollars incurred by the end of the fifth calendar year after the year in which the taxpayer begins construction or operation of the facility.

(4) "Postconsumer waste material" means any product generated by a business or consumer which has served its intended end use and which has been separated from the solid waste stream for the purpose of recycling and includes, but is not limited to, scrap metal and iron, and used plastics, paper, glass, and rubber.

(B) A taxpayer who is constructing or operating a qualified recycling facility is allowed a credit in the amount of thirty percent of the taxpayer's investment in recycling property during the taxable year. This credit may be used to reduce any corporate income tax imposed by Section 12-6-530, sales or use tax imposed by the State or any political subdivision of the State, or corporate license fees imposed by Section 12-20-50 or any tax similar to these taxes. Any unused credit for a taxable year may be carried forward to subsequent taxable years until the credit is exhausted. If the recycling facility fails to meet the minimum investment within the time required by subsection (A)(3) of this section, the taxpayer shall increase its tax liability for the current taxable year by an amount equal to the amount of credit which was used to reduce any tax liability in earlier years.

HISTORY: 1995 Act No. 32, Section 1.

SECTION 12-6-3465. Recycling facility tax credits.

A taxpayer who is constructing or operating a qualified recycling facility as defined in Section 12-6-3460 is entitled to credits in the amount of all funds collected as permitted in Section 12-10-80, which credits can be used to reduce the taxpayer's corporate income tax imposed by Section 12-6-530,

sales or use tax imposed by the State or any political subdivision of the State, corporate license fees imposed by Section 12-20-50 or any tax similar to these taxes. Any unused credits may be carried forward to subsequent taxable years until such credits are exhausted.

HISTORY: 1995 Act No. 32, Section 5; 1999 Act No. 114, Section 3.

SECTION 12-6-3470. Employer tax credit.

(A)(1) An employer who employs a person who received Family Independence payments within this State for three months immediately preceding the month the person becomes employed is eligible for an income tax credit of:

(a) twenty percent of the wages paid to the employee for each full month of employment for the first twelve months of employment;

(b) fifteen percent of the wages paid to the employee for each full month of employment during the second twelve months of employment;

(c) ten percent of the wages paid to the employee for each full month during the third twelve months of employment.

(2) Except for employees employed in distressed counties, the maximum aggregate credit that may be claimed in a tax year for a single employee pursuant to this subsection and Section 12-6-3360 is five thousand five hundred dollars.

(B) In addition to the credits provided for in subsection (A) and Section 12-6-3360, an employer who employs a person who received Family Independence payments within this State for three months immediately preceding the month the person becomes employed and employs that person to work full time in a distressed county or a least developed county, as defined in Section 12-6-3360, is allowed a credit in an amount equal to one hundred seventy-five dollars for each full month during the first thirty-six months of employment.

(C) In order to claim the credit provided in subsection (A) an employer must make health insurance available to the qualified employee. All conditions including employer contributions and employer imposed waiting periods for the qualified employee must be on the same basis and under the same conditions as that of any other employee employed by the employer claiming the credit. The credit is allowed from the date of hire for each full month of employment notwithstanding an employer imposed waiting period which must not exceed twelve months.

Nothing in this section may be construed to require employers to pay for all or part of any health insurance coverage for a qualified employee in order to claim the credit if an employer does not pay for all or part of health insurance coverage for his other employees.

(D) The Department of Social Services and the South Carolina Department of Employment and Workforce must make information available to employers interested in hiring Family Independence recipients. An employer shall submit an employee release and shall request in writing certification of Family Independence eligibility from the Department of Social Services by the fifteenth day of the first month after the end of the taxable year in which the employer hires the Family Independence recipient. The department has thirty days from the date the employer submits the employee release and request in which to approve or deny in writing certification of Family Independence eligibility.

(E) No income tax credit provided for in subsection (A) may be taken under this section if the position filled by the former AFDC recipient was made available due to the termination or forced resignation of an employee for the purpose of obtaining the tax credit. Nothing in this section creates a private cause of action which does not otherwise exist at law.

(F) A credit claimed under this section but not used in a taxable year may be carried forward fifteen years from the taxable year in which the credit is earned.

(G) For purposes of this section, "Family Independence payments" means financial assistance provided under Title IV, Part A of the Social Security Act.

HISTORY: 1995 Act No. 102, Part III, Section 6; 1996 Act No. 462, Section 11A; 1997 Act No. 109, Section 2A; 1997 Act No. 133, Section 2; 2002 Act No. 332, Section 5, eff June 18, 2002; 2003 Act No. 69, Section 3.M.3, eff June 18, 2003, applicable to tax years beginning after 2003.

SECTION 12-6-3477. Apprentice income tax credit.

A taxpayer who employs an apprentice pursuant to an apprentice agreement registered with the Office of Apprenticeship of the Employment and Training Administration of the United States Department of Labor is allowed a credit against an income tax imposed pursuant to this chapter equal to one thousand dollars for each apprentice employed. A credit is not allowed unless the apprentice was in the employ of the taxpayer for at least seven full months of the taxable year and a credit is not allowed for an individual apprentice for more than four taxable years. The department shall prescribe a form to claim this credit that provides information to the department sufficient for the proper administration of this credit.

HISTORY: 2007 Act No. 94, Section 1, eff June 14, 2007, applicable for employees beginning apprenticeships after 2007.

SECTION 12-6-3480. Tax credits.

Notwithstanding any other provision of law:

(1) Any credits under Title 38 may be applied against any taxes imposed under this chapter or license fees imposed under Chapter 20 of this title.

(2) Any credits under this chapter or Chapter 14 of this title which are earned by a corporation included in a consolidated corporate income tax return under Section 12-6-5020 must be used and applied against the consolidated tax, unless otherwise specifically provided.

(3) Any limitations upon the amount of liability for taxes or license fees that can be reduced by the use of a credit must be computed one credit at a time before another credit is used to reduce any remaining tax or license fee liability under this chapter or Chapter 20 of this title. The taxpayer may apply any credits arising under this chapter or Chapter 14 of this title in any order the taxpayer elects, and may apply a credit that is allowed for use against both taxes and license fees in any order, unless otherwise specifically provided, and against either one or both taxes and license fees in any given year, subject to specific limitations in the applicable credit statute and this item.

(4) No credit amount may be used more than once. Unless otherwise provided by law, a tax credit administered by the department must be used to the extent possible in the year it is generated and cannot be refunded.

(5) As used in this section, the term "tax credit" or "credit" means a statutorily directed or authorized reduction in the tax liability made after any applicable tax rates are applied.

HISTORY: 1996 Act No. 231, Section 3A; 2005 Act No. 145, Section 15.A, eff June 7, 2005.

SECTION 12-6-3500. Retirement plan credits.

If the right to receive retirement income by a taxpayer allowed the deduction pursuant to Section 12-6-1170 was earned by the taxpayer while residing in another state which imposed state income tax on the employee's contributions, a credit is allowed against the taxpayer's South Carolina income tax liability in an amount sufficient to offset the taxes paid the other state. This credit must be claimed over the taxpayer's lifetime. The department shall prescribe the amount of the annual credit based on the taxpayer's life expectancy at the time the taxpayer first claims the retirement income deduction pursuant to Section 12-6-1170, and may require the documentation it determines necessary to verify the amount of income tax paid the other state on the contributions. Regardless of the tax rates applicable on the contributions in the other state, the total of the 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.

HISTORY: 1998 Act No. 394, Section 1; 2001 Act No. 89, Section 11, eff July 20, 2001, applicable to taxable years beginning after December 31, 2000.

SECTION 12-6-3510. Repealed by 2004 Act No. 299, Section 6, eff July 1, 2004.

SECTION 12-6-3515. Credit for conservation or qualified conservation contribution of real property; lands eligible; transfer of credits; definitions.

(A) A taxpayer who has qualified for and claimed on the taxpayer's federal income tax return a charitable deduction for a gift of land for conservation or for a qualified conservation contribution donated after May 31, 2001, on a qualified real property interest located in this State may elect to claim a credit against a tax imposed by this chapter for the applicable tax year in an amount equal to twenty-five percent of the total amount of the deduction attributable to the gift of land for conservation or to the qualified real property interest located in this State; provided, however, that the credit is subject to the caps provided in subsection (C). If the amount of the credit exceeds the taxpayer's tax liability under this chapter for the taxable year, or if it exceeds the maximum credit that may be used in any particular taxable year as provided in subsection (C)(2), the excess credit may be carried forward to succeeding taxable years until all the credit is claimed. In addition to the carry forward of unused credit, unused credit may be transferred, devised, or distributed, with or without consideration, by an individual, partnership, limited liability company, corporation, trust, or estate. To be effectual, such a transfer, devise, or distribution requires written notification to and approval by the department with the unused credit maintaining all its original attributes in the hands of the recipient. With regard to the sale or exchange of a credit allowed under this section, general income tax principles apply for purposes of the state income tax. In the hands of the original donor of a qualified conservation contribution of a qualified real property interest, or of a gift of land for conservation, and of any subsequent transferee, devisee, or distributee, the credit allowed by this section that may be used to offset state income tax liability in any one taxable year is limited to an amount that, when combined with all other state income tax credits of the taxpayer, does not exceed the taxpayer's total state income tax liability for the taxable year. The fair market value of qualified donations made pursuant to this section must be substantiated by a "qualified appraisal" prepared by a "qualified appraiser" as those terms are defined under applicable federal law and regulations applicable to charitable contributions.

(B)(1) For purposes of this section:

(a) "Qualified conservation contribution" and a "qualified real property interest" are defined as provided in Internal Revenue Code Section 170(h);

(b) "Gift of land for conservation" means a charitable contribution of fee simple title to real property conveyed for conservation purposes as defined in Internal Revenue Code Section 170(h)(4)(A) to a qualified conservation organization as described in Internal Revenue Code Section 170(h)(3); and

(c) No credit is allowed pursuant to this section unless the contribution meets the requirements of Section 170 of the Internal Revenue Code, this section, and Section 12-6-5590. Property used for or associated with the playing of golf, or is planned to be so used or associated, is not eligible for the credits allowed by this section.

(2) Notwithstanding the provisions of Internal Revenue Code Section 170(h) and applicable regulations pertaining to forestry and silviculture practices, a taxpayer is not disqualified for the tax credit allowed in this section because of silvicultural and forestry practices permitted by or undertaken pursuant to a conservation contribution on a real property interest if:

(a) the forestry and silvicultural practices permitted by or undertaken pursuant to the conservation contribution conform to Best Management Practices established by the South Carolina Forestry

Commission existing either at the time the conservation contribution is made, or at the time a particular forestry or silvicultural practice is undertaken;

(b) the conservation contribution on a real property interest in all other respects conforms to the requirements of Internal Revenue Code Section 170(h) and applicable regulations for a “qualified conservation contribution” of a “qualified real property interest”; and

(c) the taxpayer provides the Department of Revenue with the information the department considers necessary to determine that the taxpayer would otherwise be eligible for the deduction allowed under Section 170(h).

The amount of the credit allowable under this item is equal to twenty-five percent of the deduction that would otherwise be allowable under Section 170(h) but for the silvicultural and forestry activities performed on the real property interest, subject to the same conditions and limitations as the credit allowed by this section.

(C)(1) The credit provided for in this section may not exceed two hundred fifty dollars per acre of property to which the qualified conservation contribution or gift of land for conservation applies. For the purpose of calculating the per acre tax credit cap of this subsection, all upland and wetland acreage subject to the qualified conservation contribution shall be taken into account, except for property lying within the intertidal zone. All other wetland acreage subject to the qualified conservation contribution including, but not limited to, ponds, wetland impoundments, hardwood bottomlands, and Carolina Bays shall be taken into account when calculating the two hundred fifty dollar per acre tax credit cap.

(2) Regardless of the amount of the credit allowed by this section, the total credit a taxpayer may use under this section for any particular taxable year may not exceed fifty-two thousand five hundred dollars.

(3) For purposes of applying the per acre limitation and per taxpayer limitation on the credit allowed by this section, the attribution rules of Section 267 of the Internal Revenue Code apply.

(D) The South Carolina Department of Revenue shall report to the Governor, the House Ways and Means Committee, and Senate Finance Committee the activity generated on taxable year 2001 and 2002 state income tax returns by the credit allowed by this item.

HISTORY: 2000 Act No. 283, Section 1(C), eff June 1, 2001; 2005 Act No. 145, Section 43.B, eff June 7, 2005; 2006 Act No. 386, Section 43, eff June 14, 2006.

SECTION 12-6-3520. Income tax credit for habitat management and construction and maintenance of critical habitat improvements.

(A) There is allowed as a tax credit against the income tax liability of a taxpayer an amount equal to fifty percent of the costs incurred by the taxpayer for habitat management or construction and maintenance of improvements on real property that are made to land as described in Section 50-15-55(A) and which meet the requirements of regulations promulgated by the Department of Natural Resources pursuant to Section 50-15-55(A). For purposes of this section, “costs incurred” means those monies spent or revenue foregone for habitat management or construction and maintenance, but does not include revenue foregone as increases in land values or speculative costs related to development.

(B) All costs must be incurred on land that has been designated as a certified management area for endangered species enumerated in Section 50-15-40 or for nongame and wildlife species determined to be in need management under Section 50-15-30.

(C) The tax credit allowed by this section must be claimed in the year that the costs, as provided in subsection (B), are incurred. This credit taken in one year may not exceed fifty percent of the taxpayer’s income tax liability due pursuant to Section 12-6-510 or 12-6-530 for that year. If the amount of the credit exceeds the taxpayer’s income tax liability for that taxable year, the taxpayer may carry forward the excess for up to ten years.

(D) If the landowner voluntarily chooses to leave the agreement made concerning the certified areas during any taxable year after taking the tax credit, then the taxpayer’s tax liability for the current taxable

year must be increased by the full amount of any credit claimed in previous years with respect to the property.

HISTORY: 1999 Act No. 100, Part II, Section 95; 2001 Act No. 89, Section 12, eff July 20, 2001, applicable to taxable years beginning after December 31, 2000; 2008 Act No. 313, Section 2.C, eff June 12, 2008; 2008 Act No. 352, Section 2.C, eff June 12, 2008.

SECTION 12-6-3525. Tax credits for vehicle or scrap recyclers participating in End-of-Life Vehicle Solutions (ELVS) Program.

A vehicle recycler or scrap recycling facility, as defined in Section 44-96-185, participating in the End-of-Life Vehicle Solutions (ELVS) Program, authorized pursuant to Section 44-96-185, is entitled to a credit in the amount of two dollars and fifty cents for each mercury switch collected and submitted for disposal in accordance with the ELVS program. These credits may be used to reduce the taxpayer's corporate income tax liability imposed pursuant to Section 12-6-530 or corporate license fees imposed pursuant to Section 12-20-50. Any unused credits may be carried forward to subsequent taxable years until these credits are exhausted.

HISTORY: 2006 Act No. 296, Section 2, eff May 31, 2006.

SECTION 12-6-3530. Community development tax credits.

<Section repealed effective June 30, 2015 by 2000 Act No. 314, Section 4, amended by 2003 Act No. 95, Section 1, and 2010 Act No. 248, Section 1.>

(A) A taxpayer may claim as a credit against his state income tax, bank tax, or premium tax liability thirty-three percent of all amounts invested in a community development corporation or in a community development financial institution, as defined in Section 34-43-20(2) or (3).

To qualify for this credit the taxpayer must obtain a certificate from the South Carolina Department of Commerce certifying that the entity into which the funds are invested is a community development corporation or a community development financial institution within the meaning of Section 34-43-20(2) or (3) and certifying that the credit taken or available to that taxpayer will not exceed the aggregate five million dollar limitation of all those credits as provided in subsection (B) when added to the credits previously taken or available to other taxpayers making similar investments. A taxpayer who invested in good faith in a certified corporation or institution may claim the credit provided in this section, notwithstanding the fact that the certification is later revoked or not renewed by the department.

(B) The total amount of credits allowed pursuant to this section may not exceed in the aggregate five million dollars for all taxpayers and all calendar years and one million dollars for all taxpayers in one calendar year.

(C) A single community development corporation or community development financial institution may not receive more than twenty-five percent of the total tax credits authorized pursuant to this section in any one calendar year.

(D) The department shall monitor the investments made by taxpayers in community development corporations and community development financial institutions as permitted by this section and shall perform the functions as provided in subsection (A) above.

(E) If the amount of the credit determined, pursuant to subsection (A), exceeds the taxpayer's state tax liability for the applicable taxable year, the taxpayer may carry over the excess to the immediately succeeding taxable years. However, the credit carry-over may not be used for a taxable year that begins on or after ten years from the date of the acquisition of stock or other equity interest that is the basis for a credit pursuant to this section. The amount of the credit carry-over from a taxable year must be reduced to the extent that the carry-over is used by the taxpayer to obtain a credit provided for in this section for a later taxable year.

(F) Notwithstanding the provisions of subsections (A), (B), (C), (D), and (E) above, if on April 1, 2001, or as soon after that as the department is able to determine, the total amount of tax credits which may be claimed by all taxpayers exceeds the total amount of tax credits authorized by this section, the credits must be determined on a pro rata basis. For purposes of this subsection, a community development corporation or community development financial institution for which an investment may be claimed as a tax credit pursuant to this section must report all investments made before April 1, 2001, to the department by April 1, 2001, which shall inform, as soon as reasonably possible, all community development corporations and community development financial institutions of the total of all investments in all institutions and corporations as of April 1, 2001.

(G) If stock or another equity interest that is the basis for a credit provided for in this section is redeemed by the community development corporation or the community development financial institution within five years of the date it is acquired, the credit provided by this section for the stock or other equity interest is disallowed, and credit previously claimed and allowed with respect to the redeemed stock or other equity interest must be paid to the Department of Revenue with the appropriate return of the taxpayer covering the period in which the redemption occurred. When payments are made to the Department of Revenue pursuant to this section, the amount collected must be handled as if no credit had been allowed.

(H) To receive the credit provided by this section, a taxpayer shall:

(1) claim the credit on his annual state income or premium tax return as prescribed by the Department of Revenue; and

(2) file with the Department of Revenue and with his annual state income or premium tax return a copy of the form issued by the department as to the stock or other equity interest that is the basis for a credit claimed pursuant to this section, by the taxpayer, including an undertaking by the taxpayer to report to the Department of Revenue a redemption of the stock or other equity interest by the community development corporation or the community development financial institution.

(I) The department shall complete forms prescribed by the Department of Revenue which must show as to each stock or other equity interest in a community development corporation or a community development financial institution that is the basis for a credit pursuant to this section:

(1) the name, address, and identification number of the taxpayer who acquired the stock or other equity interest; and

(2) the nature of the stock or other equity interest acquired by the taxpayer and the amount advanced for it.

These forms must be filed with the Department of Revenue on or before the fifteenth day of the third month following the month in which the stock or other equity interest is acquired. Copies of the forms to be provided to the Department of Revenue must be mailed to the taxpayer on or before the fifteenth day of the second month following the month in which the acquisition is made.

(J) A taxpayer may not claim the tax credit provided in this section unless the community development corporation or community development financial institution in which the investment is made has been certified at the time the investment is made.

(K) If the community development financial institution in which the investment is made is a tax-exempt nonprofit corporation, the tax credit provided in this section is not allowed if the taxpayer claims the investment as a deduction pursuant to Section 170 of the Internal Revenue Code.

(L) Banks and financial institutions chartered by the State of South Carolina may invest in community development corporations and community development financial institutions incorporated pursuant to the laws of this State, up to a maximum of ten percent of a chartered bank or financial institution's total capital and surplus.

HISTORY: 2000 Act No. 314, Section 2, eff May 30, 2000, applicable to tax years beginning after 2000; 2001 Act No. 89, Section 52, eff July 20, 2001.

SECTION 12-6-3535. Income tax credit for making qualified rehabilitation expenditures for a certified historic structure.

(A) A taxpayer who is allowed a federal income tax credit pursuant to Section 47 of the Internal Revenue Code for making qualified rehabilitation expenditures for a certified historic structure located in this State is allowed to claim a credit against income taxes and license fees imposed by this title. For the purposes of this section, “qualified rehabilitation expenditures” and “certified historic structure” are defined as provided in the Internal Revenue Code Section 47 and the applicable treasury regulations. The amount of the credit is ten percent of the expenditures that qualify for the federal credit. To claim the credit allowed by this subsection, a taxpayer filing a paper return must attach a copy of the section of the federal income tax return showing the credit claimed, along with other information that the Department of Revenue determines is necessary for the calculation of the credit provided by this subsection.

(B) A taxpayer who is not eligible for a federal income tax credit under Section 47 of the Internal Revenue Code and who makes rehabilitation expenses for a certified historic residential structure located in this State is allowed to claim a credit against the tax imposed by this chapter. The amount of the credit is twenty-five percent of the rehabilitation expenses. To claim the credit allowed by this subsection, a taxpayer filing a paper return must attach a copy of the certification obtained from the State Historic Preservation Officer verifying that the historic structure has been rehabilitated in accordance with this subsection, along with all information that the Department of Revenue determines is necessary for the calculation of the credit provided by this subsection. A taxpayer filing an electronic return shall keep a copy of the certification with his tax records.

For the purposes of subsections (B) through (F):

(1) “Certified historic residential structure” means an owner-occupied residence that is:

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

(2) “Certified rehabilitation” means 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. To qualify for the credit, the taxpayer shall receive documentation from the State Historic Preservation Officer verifying that the completed project was rehabilitated in accordance with the standards for rehabilitation. The rehabilitation expenses must, within a thirty-six-month period, exceed fifteen thousand dollars. A taxpayer shall not take more than one credit on the same certified historic residential structure within ten years.

(3) “Rehabilitation expenses” means 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.

“Rehabilitation expenses” do 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.

(4) “State Historic Preservation Officer” means the Director of the Department of Archives and History or the director’s designee who administers the historic preservation programs within the State.

(5) "Owner-occupied residence" means 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.

(C)(1) The entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in equal installments over a five-year period beginning with the year in which the property is placed in service. "Placed in service" means the rehabilitation is completed and allows for the intended use. Any unused portion of any credit installment may be carried forward for the succeeding five years.

(2) The credit earned pursuant to this section by an "S" corporation owing corporate level income tax must be used first at the entity level. Remaining credit passes through to each shareholder in a percentage equal to each shareholder's percentage of stock ownership. The credit earned pursuant to this section by a general partnership, limited partnership, limited liability company, or other entity taxed as a partnership must be passed through to its partners and may be allocated among partners, including without limitation, an allocation of the entire credit to one partner, in a manner agreed by the partners that is consistent with Subchapter K of the Internal Revenue Code. As used in this item the term "partner" means a partner, member, or owner of an interest in the pass-through entity, as applicable.

(D) Additional work done by the taxpayer while the credit is being claimed, for a period of up to five years, must be consistent with the Secretary of the Interior's Standards for Rehabilitation. During this period the State Historic Preservation Officer may review additional work to the certified historic structure or certified historic residential structure and has the right to inspect certified historic structures and certified historic residential structures. If additional work is not consistent with the Standards for Rehabilitation, the taxpayer and Department of Revenue must be notified in writing and any unused portion of the credit, including carry forward, is forfeited.

(E) The South Carolina Department of Archives and History shall develop an application and may promulgate regulations, including the establishment of fees, needed to administer the certification process. The Department of Revenue may promulgate regulations, including the establishment of fees, to administer the tax credit.

(F) A taxpayer may appeal a decision of the State Historic Preservation Officer to a committee of the State Review Board appointed by the chairperson.

HISTORY: 2002 Act No. 229, Section 2, eff May 1, 2002; 2003 Act No. 69, Section 3.GG.1, eff June 18, 2003; 2005 Act No. 138, Sections 1, 2, eff June 7, 2005, applicable to tax periods beginning after 2004; 2006 Act No. 386, Sections 12.A, 12.B, eff June 14, 2006 applicable to tax years beginning in 2006; 2007 Act No. 110, Sections 15, eff June 21, 2007; 2007 Act No. 116, Section 21, eff June 28, 2007, applicable for tax years beginning after 2007.

SECTION 12-6-3550. Voluntary cleanup activity tax credit; eligibility requirements.

(A) A taxpayer is allowed a credit against taxes due for costs of voluntary cleanup activity by a nonresponsible party pursuant to Article 7, Chapter 56 of Title 44, the Brownfields/Voluntary Cleanup Program, in the manner provided in this section.

(B) For expenses paid or accrued by the taxpayer in cleaning up a site under the applicable article, the credit is equal to fifty percent of the expenses of the cleanup or cash contributions to the cleanup but not more than fifty thousand dollars in a taxable year. The credit is available only for site rehabilitation conducted during the taxable year in which the tax credit application is submitted. Any unused credit, up to a total of one hundred thousand dollars, may be carried forward five years. Multiple taxpayers working jointly to clean up a single site are allowed the credit in the same proportion as their contribution to payment of cleanup costs.

(C) The taxpayer is allowed an additional ten percent of the total cleanup costs, not to exceed fifty thousand dollars, in the final year of clean up as evidenced by the Department of Health and Environmental Control issuing a certificate of completion for that site.

(D) To be eligible for the tax credit the applicant must have entered into a nonresponsible party voluntary cleanup contract with the Department of Health and Environmental Control (DHEC) pursuant to Section 44-56-750.

(E) To obtain the tax credit certificate, an applicant must annually file an application for certification, which must be received by DHEC by December thirty-first. The applicant shall provide all pertinent information requested on the tax credit application form including, at a minimum, the name and address of the applicant and the address and tracking identification of the eligible site. Along with the application form, the applicant shall submit the following:

(1) copies of contracts and documentation of contract negotiations, accounts, invoices, sales tickets, or other payment records for purchases, sales, leases, or other transactions involving the actual costs incurred for that taxable year related to site rehabilitation under the voluntary cleanup contract; and

(2) proof that the documentation submitted pursuant to item (1) has been reviewed and verified by an independent certified public accountant who must attest to the accuracy and validity of the costs incurred and paid by conducting an independent review of the data presented by the applicant. A copy of the accountant's report must be submitted to DHEC with the tax credit application.

(F) If upon review of the tax credit application and any supplemental documentation submitted by each applicant, DHEC determines that the applicant has met all requirements for the tax credit, it shall issue a tax credit certificate before April first. The applicant shall pay the administrative costs of this review pursuant to the provisions of Section 44-56-750(D).

(G) DHEC may prescribe the necessary forms required to claim the credit under this section and to provide the administrative guidelines and procedures required to administer this section.

(H) DHEC may revoke or modify any written decision granting eligibility for partial tax credits under this section if it is discovered that the tax credit applicant submitted any false statement, representation, or certification in any application, record, report, plan, or other document filed in an attempt to receive the credit under this section. DHEC shall immediately notify the Department of Revenue of any revoked or modified orders affecting previously granted tax credits. Additionally, the taxpayer shall notify the Department of Revenue of any change in tax credit claimed.

(I) This section applies for eligible cleanup expenses incurred after 2001.

HISTORY: 2002 Act No. 280, Section 4, eff May 28, 2002; 2008 Act No. 342, Section 2, eff June 11, 2008.

SECTION 12-6-3560. Credit against state income tax for motion picture and advertisement production companies.

(A)(1) This section authorizes a tax credit against state income tax for production companies that produce a commercial production being an advertisement, composed of moving images and words, that is recorded on film, videotape, or digital medium in South Carolina for multi-market distribution by way of television networks, cable, satellite, or motion picture theaters. This credit is not available to companies that produce industrial videos, television broadcasts, cable and satellite networks, and news sporting events. The tax credit may be earned by a production company at the time of its investment in a state-certified production and must be calculated as a percentage of the investment according to the total base investment dollars certified. If total base investment is greater than five hundred thousand dollars in the aggregate during the calendar year, the production company is allowed a tax credit of ten percent of the actual South Carolina investment made by that production company. The State has annually one million dollars in total tax credits to disburse to all eligible production companies. This tax credit must be distributed to the eligible production company in the same order that the eligible production company's application for the tax credit is approved by the Department of Parks, Recreation and Tourism.

(2) If the entire credit is not used in the year earned, the remaining credit may be carried forward and applied against income tax liabilities for the next ten years. An entity taxed as a corporation for South Carolina income tax purposes shall claim the credit allowed pursuant to this section on its corporation income tax return. An entity not taxed as a corporation shall claim the credit on the returns of the partners or members as follows:

(a) corporate partners or members shall claim their shares of the credit on their corporate income tax returns;

(b) individual partners or members shall claim their shares of the credit on their individual income tax returns; and

(c) partners or members that are estates or trusts shall claim their shares of the credit on their fiduciary income tax returns.

(B)(1) The Director of the Department of Parks, Recreation and Tourism and the South Carolina Film Commission shall determine, through adoption of rules and promulgation of regulations, the criteria for qualification of a project according to this section. Promulgation of these regulations are subject to the Administrative Procedures Act.

(2) Certification by the Department of Parks, Recreation and Tourism must be submitted to both the production company and to the Director of the Department of Revenue.

(3) A production company applying for the credit must reimburse the Department of Revenue for any audits required in relation to granting the credit.

(4) The Director of the Department of Parks, Recreation and Tourism, in consultation with the Director of the South Carolina Film Commission, shall adopt rules and promulgate regulations otherwise necessary to carry out the intent and purposes of this section.

HISTORY: 2004 Act No. 299, Section 3.B, eff July 1, 2004.

SECTION 12-6-3570. Motion picture related income tax credit claims.

(A) A taxpayer may claim an income tax credit of an amount equal to twenty percent, but not more than one hundred thousand dollars, of the taxpayer's cash investment in a company that develops or produces a qualified South Carolina motion picture project. A taxpayer may claim no more than one credit in connection with the production of a single qualified South Carolina motion picture project. This credit is allowed over more than one taxable year but a taxpayer's total credit in all years, toward any such project, may not exceed one hundred thousand dollars. Any unused credit may be carried forward to fifteen succeeding taxable years.

(B) A taxpayer may claim a credit in an amount equal to twenty percent of the amount of a taxpayer's investment in the company that constructs or converts or equips, or any combination of these activities, of a motion picture production facility or post-production facility in this State. No credit is allowed unless the total amount invested in the motion picture production facility is at least two million dollars, exclusive of land costs, or the total amount invested in a post-production facility is at least one million dollars, exclusive of land costs. Documentation to the Department of Parks, Recreation and Tourism sufficient to provide confirmation of this threshold must accompany the application for the credit. Any unused credit may be carried forward to fifteen succeeding taxable years. The total amount of credit, which may be claimed by all taxpayers with respect to the construction or conversion or equipping, or any combination of these activities, of a single motion picture production facility or post-production facility may not exceed five million dollars. A taxpayer may claim the credit allowed by this section only one time in connection with a single motion picture production facility and one time in a single post-production facility.

(C) The credit is earned when the cash is spent or when qualifying real property is dedicated for use as part of a South Carolina motion picture production facility or South Carolina post-production facility. If a South Carolina motion picture project, South Carolina motion picture production facility, or South Carolina post-production facility fails to meet the requirements of the section within three years from the

end of the taxpayer's tax year when the credit was first claimed, then any taxpayer which claimed the credit shall increase its income tax liability in the fourth year by an amount equal to the amount of credits claimed in prior tax years with respect to the motion picture project, motion picture production facility, or post-production facility.

(D) Notwithstanding the amount of the credits allowed by this section, these credits, when combined with any other state income tax credits allowed the taxpayer for a particular taxable year, cannot reduce the taxpayer's South Carolina income tax liability more than fifty percent.

(E) All documentation provided by investors and their agents to the Department of Revenue in connection with claiming the credits allowed by this section is considered a tax return and subject to the penalty provisions in Chapter 54 of Title 12.

(F) As used in this section:

(1) "Investment" means cash with respect to subsection (A) of this section, and with respect to subsection (B) of this section cash or the fair market value of real property with any improvements thereon, or any combination of these. To qualify as "investment", cash must have been expended for services performed in this State, for tangible personal property dedicated to first use in this State, or for real property in this State. Investments in the form of real property must be real property located in this State on which facilities are located and can include the fair market value of a lease with a term in excess of thirty-six months of real property minus the fair market value of any consideration paid for the lease.

(2) "Motion picture production facility" means a site in this State that contains soundstages designed for the express purpose of film and television production for both theatrical and video release. Production includes, but is not limited to, motion pictures, made-for-television movies, and episodic television to a national or regional audience. The motion picture production facility site must include production offices, construction shops/mills, prop and costume shops, storage areas, parking for production vehicles, all of which complement the production needs and orientation of the overall facility purpose. The term does not include television stations, recording studios, or facilities predominately used to produce videos, commercials, training films, or advertising films.

(3) "Motion picture project" means a product intended for commercial exploitation that incurs at least two hundred fifty thousand dollars of costs directly in this State to produce a master negative motion picture, whether film, tape, or other medium, for theatrical or television exhibition in the United States and in which at least twenty percent of total filming days of principal photography, but not fewer than ten filming days, is filmed in this State. Upon the recommendation of the South Carolina Film Commission, the Department of Parks, Recreation and Tourism shall certify the motion picture project as a project eligible for purposes of this article.

(4) "Post-production facility" means a site in this State designated for the express purpose of accomplishing the post-production stage of film and television production for both theatrical and video release including the creation of visual effects, editing, and sound mixing. A post-production facility site is not required to contain a soundstage or be physically located at or near soundstages.

(5) "Qualified South Carolina motion picture project" means a motion picture project which has registered by submitting its record of allocation of credits and documentation to the Department of Revenue. Before registration all documentation of a motion picture project required to meet the credit requirements must be received by the Department of Parks, Recreation and Tourism.

(6) Taxpayer means:

(a) in subsection (A), the person who invests in a qualified motion picture project;

(b) in subsection (B), the person who invests in the company that constructs, converts, or equips a "qualified South Carolina motion picture production facility"; and

(c) with respect to a motion picture equity fund created for the sole, expressed purpose of facilitating a slate of qualified South Carolina motion picture projects, the person who invests in the motion picture equity fund. Credits allowed under this subitem are allocated to the fund based upon twenty percent of the cash value of its investment in a qualified South Carolina motion picture project and distributed to equity fund members based upon the percentage of their interest in the equity fund.

HISTORY: 2004 Act No. 299, Section 3.C, eff July 1, 2004; 2005 Act No. 161, Section 8, eff June 9, 2005.

SECTION 12-6-3575. Health insurance tax credits.

(A) An individual taxpayer meeting the eligibility requirements of subsection(B) of this section may claim as a nonrefundable credit against the income tax imposed pursuant to Section 12-6-510 an amount equal to fifty percent of the premium costs the individual paid during the taxable year for health insurance coverage as defined in Section 38-74-10(5), that offers coverage to the individual, his spouse, or a person he was eligible to claim as a dependent on his federal income tax return, or any combination of these people, for the taxable year. The credit allowed by this section may not exceed three thousand dollars for each qualifying individual covered by a policy for which a credit is claimed. A nonresident who claims the credit allowed by this section shall reduce the amount of the credit in the same manner as nonresident individuals reduce personal exemptions and applicable standard deduction or itemized deductions pursuant to Section 12-6-1720(2).

(B) The credit allowed by this section is available only to an individual taxpayer who held a policy of health insurance covering the taxpayer, the taxpayer's spouse, or a person the taxpayer was eligible to claim as a dependent on his federal income tax return, or any combination of these people from an insurance company which has withdrawn from writing health insurance policies in this State and the taxpayer, in replacing the insurance with a policy having substantially the same coverage, has been assigned to the South Carolina Health Insurance Pool established pursuant to Chapter 74 of Title 38 with a higher premium than the former policy.

(C) A credit is not allowed for premium payments that are deducted or excluded from the taxpayer's income for the taxable year, whether the deduction or exclusion was due to a South Carolina modification pursuant to Article 9 of this chapter or was due to an exclusion or deduction, which resulted in a reduction of the taxpayer's federal taxable income.

(D) A taxpayer who claims the credit allowed by this section shall provide information required by the department to demonstrate that the taxpayer is eligible for the credit and that the amount paid for premiums for which the credit is claimed was not excluded from the taxpayer's gross income for the taxable year.

HISTORY: 2005 Act No. 145, Section 59.A, eff June 6, 2005 and by 2005 Act No. 161, Section 43.A, eff June 9, 2005.

SECTION 12-6-3580. South Carolina Quality Forum participants; tax credits for registration fee and participation in organizational performance excellence assessment process; limitation.

(A) Taxpayers that pay an annual fee to the South Carolina Quality Forum to participate in quality programs are allowed a tax credit equal to the annual registration fee.

(B) Taxpayers also are allowed a tax credit equal to fifty percent of any fees charged to participate in the organizational performance excellence assessment process.

(C) Credits earned are limited to the amount of tax liability on the return and are not refundable.

HISTORY: 2005 Act No. 161, Section 39.A, eff June 9, 2005.

SECTION 12-6-3582. Income tax credits; agricultural use of anhydrous ammonia.

(A) A resident taxpayer engaged in the business of farming is allowed a refundable income tax credit equal to the amount expended by the taxpayer to obtain the additive required to comply with the provisions of Section 44-53-375(E)(2)(a)(ii) for the agricultural use of anhydrous ammonia. The credit may be claimed against the taxes due pursuant to Section 12-6-510 or 12-6-530.

(B) If no taxes are due, or the credit exceeds the tax liability of the taxpayer for the taxable year, the amount of the credit or excess over the tax liability must be refunded to the taxpayer.

(C) The department may require the documentation it determines necessary for the proper administration of this credit.

HISTORY: 2005 Act No. 127, Section 8.A, eff June 7, 2005, applicable for taxable years beginning after 2004.

SECTION 12-6-3585. Industry Partnership Fund tax credit.

(A) A taxpayer may claim as a credit against state income tax imposed by Chapter 6, Title 12, bank tax imposed by Chapter 11, Title 12, license fees imposed by Chapter 20 of Title 12, or insurance premiums imposed by Chapter 7, Title 38, or any combination of them, one hundred percent of an amount contributed to the Industry Partnership Fund at the South Carolina Research Authority (SCRA), or an SCRA-designated affiliate, or both, pursuant to Section 13-17-88(E), up to a maximum credit of six hundred fifty thousand dollars for a single taxpayer, not to exceed an aggregate credit of two million dollars for all taxpayers in tax year 2006; up to a maximum credit of one million three hundred thousand dollars for a single taxpayer, not to exceed an aggregate credit of four million dollars for all taxpayers in tax year 2007; and up to a maximum credit of two million dollars for a single taxpayer, not to exceed an aggregate credit of six million dollars for all taxpayers for each tax year beginning after December 31, 2007. For purposes of determining a taxpayer's entitlement to the credit for qualified contributions for a given tax year in which more than the applicable aggregate annual limit on the credit is contributed by taxpayers for that year, taxpayers who have made contributions that are intended to be qualified contributions earlier in the applicable tax year than other taxpayers must be given priority entitlement to the credit. The SCRA shall certify to taxpayers who express a bona fide intention of making one or more qualified contributions as to whether the taxpayer is entitled to that priority.

(B) The amount of the credit is equal to one hundred percent of the amount of the taxpayer's qualified contributions to the Industry Partnership Fund, subject to the limitations in this section. The credit is nonrefundable.

(C) The use of the credit is limited to the taxpayer's applicable income or premium tax or license fee liability for the tax year of the taxpayer after the application of all other credits. An unused credit may be carried forward ten tax years after the tax year of the taxpayer during which the qualified contribution was made.

(D) A contribution is not a qualified contribution if it is subject to conditions or limitations regarding the use of the contribution.

(E) "Taxpayer" means an individual, corporation, partnership, trust, bank, insurance company, or other entity having a state income or insurance premium tax or license fee liability who has made a qualified contribution.

(F) To qualify for the credit, the taxpayer shall retain a form provided by SCRA identifying the taxpayer and the year and amount of credit for which the taxpayer qualifies. The Department of Revenue may require a copy of the form be attached to the taxpayer's income tax return or be provided otherwise to the department.

(G) The department may require information and submissions by the taxpayer as it considers appropriate in relation to a taxpayer's claim of entitlement to the credit.

(H) 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. In addition, 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 all, or substantially all, of the assets of the trade or business or operating division of the corporation or partnership to another corporation or partnership.

(I) A taxpayer who claims the credit may not take a deduction in relation to the qualified contribution which gives rise to such credit.

HISTORY: 2006 Act No. 319, Section 3.A, eff June 1, 2006; 2007 Act No. 110, Section 16.A, eff June 21, 2007, applicable to tax years beginning after December 31, 2005; 2007 Act No. 110, Section 41, eff June 21, 2007; 2007 Act No. 116, Section 22.A, eff June 28, 2007, applicable to tax years beginning after December 31, 2005.

SECTION 12-6-3587. Purchase and installation of solar energy system for heating water, space heating, air cooling, or generating electricity.

(A) There is allowed as a tax credit against the income tax liability of a taxpayer imposed by this chapter an amount equal to twenty-five percent of the costs incurred by the taxpayer in the purchase and installation of a solar energy system or small hydropower system for heating water, space heating, air cooling, energy-efficient daylighting, heat reclamation, energy-efficient demand response, or the generation of electricity in or on a facility in South Carolina and owned by the taxpayer. The tax credit allowed by this section must not be claimed before the completion of the installation. The amount of the credit in any year may not exceed three thousand five hundred dollars for each facility or fifty percent of the taxpayer's tax liability for that taxable year, whichever is less. If the amount of the credit exceeds three thousand five hundred dollars for each facility, the taxpayer may carry forward the excess for up to ten years.

(B) "System" includes all controls, tanks, pumps, heat exchangers, and other equipment used directly and exclusively for the solar energy system. The term "system" does not include any land or structural elements of the building such as walls and roofs or other equipment ordinarily contained in the structure. A credit may not be allowed for a solar system unless the system is certified for performance by the nonprofit Solar Rating and Certification Corporation or a comparable entity endorsed by the State Energy Office.

(C) For purposes of this section, "small hydropower system" means new generation capacity on a nonimpoundment or on an existing impoundment that:

- (1) meets licensing standards as defined by the Federal Energy Regulatory Commission (FERC);
- (2) is a run-of-the-river facility with a capacity not to exceed 5MW; or
- (3) consists of a turbine in a pipeline or in an irrigation canal.

HISTORY: 2006 Act No. 386, Section 37.A, eff June 14, 2006 applicable to installation costs incurred in taxable years beginning on or after January 1, 2006; 2007 Act No. 83, Section 13, eff June 19, 2007; 2007 Act No. 110, Section 17.A, eff June 21, 2007, applicable to installation costs incurred after December 31, 2005; 2007 Act No. 116, Section 23.A, eff June 28, 2007, applicable to installation costs incurred after December 31, 2005; 2008 Act No. 354, Section 3, eff July 1, 2009.

SECTION 12-6-3588. South Carolina Renewable Energy Tax Incentive Program; definitions; requirements to receive tax credit.

(A) The General Assembly has determined to enact the "South Carolina Renewable Energy Tax Incentive Program" as contained in this section to encourage business investment that will produce high quality employment opportunities and enhance this State's position as a center for production and use of renewable energy products. The program accomplishes this goal by providing tax incentives to companies in the solar, wind, geothermal, and other renewable energy industries who are expanding or locating in South Carolina.

(B) As used in this section:

(1) "Capital investment" means an expenditure to acquire, lease, or improve property that is used in operating a business, including land, buildings, machinery, and fixtures.

(2) "Manufacturing" means fabricating, producing, or manufacturing raw or unprepared materials into usable products, imparting new forms, qualities, properties, and combinations. Manufacturing does not include generating electricity for off-site consumption.

(3) "Qualifying investment" means investment in land, buildings, machinery, and fixtures for expansion of an existing facility or establishment of a new facility in this State. Qualifying investment does not include relocating an existing facility in this State to another location in this State without additional capital investment.

(4) "Renewable energy operations" are limited to manufacturers of systems and components that are used or useful in manufacturing renewable energy equipment for the generation, storage, testing and research and development, and transmission or distribution of electricity from renewable sources, including specialized packaging for the renewable energy equipment manufactured at the facility.

(C) A business or corporation meeting the requirements of this section beginning in 2010 is eligible to receive a ten percent nonrefundable income tax credit of the cost of the company's total qualifying investments in plant and equipment in this State for renewable energy operations.

(D) The business or corporation must:

(1) manufacture renewable energy systems and components in South Carolina for solar, wind, geothermal, or other renewable energy uses in order to be eligible for the tax credit authorized by this section;

(2) invest at least five hundred million dollars in the year the tax credit is claimed in new qualifying plant and equipment; and

(3) have created one and one-half full-time jobs for every five hundred thousand dollars of capital investment qualifying for the credit that each pays at least one hundred twenty-five percent of this State's average annual median wage as defined by the Department of Commerce.

(E) The income tax credit program is for a five-year period beginning January 1, 2010, and ending December 31, 2015.

(F) A taxpayer may separately qualify for new facilities in separate locations or for separate expansions of existing facilities located in this State.

(G) A taxpayer's total credit for all expenditures allowed pursuant to this section must not exceed five hundred thousand dollars for any year and five million dollars total for all years. Unused credits may be carried forward for fifteen years after the tax year in which a qualified expenditure was made. The credit is nonrefundable.

(H) Expenditures qualifying for a tax credit allowed by this section must be certified by the State Energy Office. The State Energy Office may consult with appropriate state and federal officials on standards for certification.

(I) To obtain the amount of the credit available to a taxpayer, each taxpayer must submit a request for the credit to the State Energy Office by January thirty-first for qualifying expenses incurred in the previous calendar year and the State Energy Office must notify the taxpayer that the submitted expenditures qualify for the credit and the amount of credit allocated to such taxpayer by March first of that year. A taxpayer may claim the maximum amount of the credit for its taxable year which contains the December thirty-first of the previous calendar year. The Department of Commerce must certify to the State Energy Office that the taxpayer has met the job creation requirements of subsection (D).

(J) The credits authorized by this section are in lieu of any other applicable income tax credits or abatements allowed by state law, and in the event of an overlap or conflict in available credits or abatements to a taxpayer, the taxpayer must select the credit or abatement he desires in the manner prescribed by the Department of Revenue to the extent the credits or abatements conflict or overlap.

HISTORY: 2010 Act No. 290, Section 23, eff January 1, 2011.

SECTION 12-6-3589. Tax credit for effluent toxicity testing.

(A) A manufacturing facility may claim a tax credit equal to twenty-five percent for costs it incurs in complying with whole effluent toxicity testing. The credit is allowed only against taxes imposed by Section 12-6-530. Unused credits may be carried forward for ten years.

(B) For purposes of this section, "manufacturing facility" is as defined in Section 12-6-3360(M)(5).

HISTORY: 2006 Act No. 384, Section 2, eff June 14, 2006.

SECTION 12-6-3590. Credit for milk producer; promulgation of regulations.

(A) A resident taxpayer engaged in the business of producing milk for sale is allowed a refundable income tax credit based on the amount of milk produced and sold. The credit may be claimed against the taxes due pursuant to Section 12-6-510 or 12-6-530. The credit is allowed when the USDA Class I price of fluid milk in South Carolina drops below the production price anytime during the taxable year.

(B) The Department of Agriculture shall promulgate regulations to implement the provisions of this section, including the establishment of the production price, which must consider the following factors, including but not limited to:

- (1) the average price of milk in the top five states where milk is imported to South Carolina;
- (2) the average transportation cost of importing milk from those five states; and
- (3) the cost of production in South Carolina.

(C)(1) Each qualifying taxpayer is eligible for a ten thousand dollar tax credit based on the production and sale of the first five hundred thousand pounds of milk sold below the production price over a calendar year. The credit must be prorated on a quarterly basis.

(2) For each additional five hundred thousand pounds of milk sold below the production price, there is allowed an additional credit of five thousand dollars, also prorated on a quarterly basis.

(D) If no taxes are due, or the credit exceeds the tax liability of the taxpayer for the taxable year, the amount of the credit or excess over the tax liability must be refunded to the taxpayer. The South Carolina Commissioner of Agriculture shall certify to the Department of Revenue that producers claiming credits have met the eligibility requirements provided in this section.

(E) The credit allowed pursuant to this section must be reviewed after it has been in place for two taxable years.

HISTORY: 2005 Act No. 161, Section 41.A, eff June 9, 2005.

SECTION 12-6-3600. Credit for ethanol and biodiesel facilities.

(A)(1) For taxable years beginning after 2006, and before 2017, there is allowed a credit against the tax imposed pursuant to this chapter for any corn-based ethanol or soy-based biodiesel facility which is in production at the rate of at least twenty-five percent of its name plate design capacity for the production of corn-based ethanol or soy-based biodiesel, before denaturing, on or before December 31, 2011. The credit equals twenty cents a gallon of corn-based ethanol or soy-based biodiesel produced and is allowed for sixty months beginning with the first month for which the facility is eligible to receive the credit and ending not later than December 31, 2016. The taxpayer is eligible to claim the credit after the facility has six consecutive months of operation at an average production rate of at least twenty-five percent of its name plate design capacity. In the first taxable year in which the taxpayer is eligible to claim the credit, the taxpayer may claim the credit for the first six months it met the requirements in addition to qualifying production during its current taxable year.

(2) For taxable years beginning after 2006, and before 2017, there is allowed a credit against the tax imposed pursuant to this chapter for an ethanol facility using a feedstock other than corn or a biodiesel facility using a feedstock other than soy oil which is in production at the rate of at least twenty-five percent of its name plate design capacity for the production of ethanol or biodiesel, before denaturing, on or before December 31, 2011. The credit equals thirty cents a gallon of noncorn ethanol or nonsoy oil

biodiesel produced and is allowed for up to sixty months beginning with the first month for which the facility is eligible to receive the credit and ending no later than December 31, 2016. The taxpayer is eligible to claim the credit after the facility has six consecutive months of operation at an average production rate of at least twenty-five percent of its name plate design capacity. In the first taxable year in which the taxpayer is eligible to claim the credit, the taxpayer may claim the credit for the first six months it met the requirements in addition to qualifying production during its current taxable year.

(3) Any unused credit may be carried forward for ten years.

(B) As used in this section:

(1) "Ethanol facility" means a plant or facility primarily engaged in the production of ethanol or ethyl alcohol derived from renewable and sustainable bioproducts used as a substitute for gasoline fuel.

(2) "Biodiesel facility" means a plant or facility primarily engaged in the production of plant- or animal-based fuels used as a substitute for diesel fuel.

(3) "Name plate design capacity" means the original designed capacity of an ethanol or biodiesel facility. Capacity may be specified as bushels of grain ground or gallons of ethanol or biodiesel produced a year.

(C)(1) Beginning January 1, 2017, an ethanol or biodiesel facility must receive a credit against the tax imposed by this chapter in the amount of seven and one-half cents a gallon of ethanol or biodiesel, before denaturing, for new production for a period not to exceed thirty-six consecutive months.

(2) For purposes of this subsection, "new production" means production which results from a new facility, a facility which has not received credits before 2017, or the expansion of the capacity of an existing facility by at least two million gallons first placed into service after 2016, as certified by the design engineer of the facility to the State Energy Office.

(3) For expansion of the capacity of an existing facility, "new production" means annual production in excess of twelve times the monthly average of the highest three months of ethanol or biodiesel production at an ethanol or biodiesel facility during the twenty-four-month period immediately preceding certification of the facility by the design engineer.

(4) Credits are not allowed pursuant to this subsection for expansion of the capacity of an existing facility until production is in excess of twelve times the three-month average amount determined pursuant to this subsection during any twelve-consecutive-month period beginning no sooner than January 1, 2017.

(5) The amount of a credit granted pursuant to this section based on new production must be approved by the State Energy Office based on the ethanol or biodiesel production records as may be necessary to reasonably determine the level of new production.

(D)(1) The credits described in this section are allowed only for ethanol or biodiesel produced at a plant in this State at which all fermentation, distillation, and dehydration takes place. Credit is not allowed for ethanol or biodiesel produced or sold for use in the production of distilled spirits.

(2) Not more than twenty-five million gallons of ethanol or biodiesel produced annually at an ethanol or biodiesel facility is eligible for the credits in subsections (A) and (B) of this section, and the credits only may be claimed by a producer for the periods specified in subsections (A) and (B) of this section.

(3) Not more than ten million gallons of ethanol or biodiesel produced during a twelve-consecutive-month period at an ethanol or biodiesel facility is eligible for the credit described in subsection (C) of this section, and the credit only may be claimed by a producer for the periods specified in subsection (C) of this section.

(4) Not more than one hundred twenty-five million gallons of ethanol or biodiesel produced at an ethanol or biodiesel facility by the end of the sixty-month period set forth in subsection (A) or (B) of this section is eligible for the credit under the subsection. An ethanol or biodiesel facility which receives a credit for ethanol or biodiesel produced under subsection (A) or (B) of this section may not receive a credit pursuant to subsection (C) of this section until its eligibility to receive a credit under subsection (A) or (B) of this section has been completed.

(E) The State Energy Office shall prescribe an application form and procedures for claiming credits under this section.

(F) For purposes of ascertaining the correctness of the credit allowed pursuant to this section, the State Energy Office or the department may examine or cause to have examined, by any agent or representative designated for that purpose, any books, papers, records, or memoranda bearing upon these matters.

(G) Notwithstanding the credit amount allowed by this section, for Fiscal Year 2008-2009, all claims made pursuant to this section must not exceed eight hundred thousand dollars and must apply proportionately to all eligible claimants.

(H)(1) To obtain the maximum amount of the credit available to a taxpayer, each taxpayer must submit a request for credit to the State Energy Office by January thirty-first for all gallons of qualifying fuel produced in the previous calendar year and the State Energy Office must notify the taxpayer that it qualifies for the credit and the amount of credit allocated to the taxpayer by March first of that year. A taxpayer may claim the maximum credit for its taxable year which contains the December thirty-first of the previous calendar year. The Department of Revenue may require any documentation that it deems necessary to administer the credit.

(2) For the state's fiscal year beginning July 1, 2008, the maximum amount of credit is to be determined based on an eighteen-month period beginning July 1, 2008, through December 31, 2009. Applications are to be made by January 31, 2010, for the previous eighteen-month period commencing July 1, 2008, and ending December 31, 2009. A taxpayer allocated a credit for this eighteen-month period may claim the credit for its tax year which contains December 31, 2009.

(3) To the extent the maximum amount of the credit contained in this section is repealed, the elimination of the maximum amount shall be seen as the last expression of the legislature and to the extent any language in this act conflicts with that repeal, it shall be considered null and void.

HISTORY: 2006 Act No. 386, Section 36.A, eff June 14, 2006; 2007 Act No. 83, Sections 14.A and 14.B, eff June 19, 2007; 2008 Act No. 261, Section 3.A, eff May 29, 2008.

SECTION 12-6-3610. Credit for property used for distribution or dispensing renewable fuel.

(A)(1) A taxpayer that purchases or constructs and installs and places in service in this State property that is used for distribution or dispensing renewable fuel specified in this subsection, at a new or existing commercial fuel distribution or dispensing facility, is allowed a credit equal to twenty-five percent of the cost to the taxpayer of purchasing, constructing, and installing the property against the taxpayer's liability for a tax imposed pursuant to this chapter.

(2) Eligible property includes pumps, storage tanks, and related equipment that is directly and exclusively used for distribution, dispensing, or storing renewable fuel. A taxpayer is qualified for a tax credit provided pursuant to this subsection if the equipment used to store, distribute, or dispense renewable fuel is labeled for this purpose and clearly identified as associated with renewable fuel.

(3) The entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in three equal annual installments beginning with the taxable year in which the property is placed in service. If, in one of the years in which the installment of a credit accrues, property directly and exclusively 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.

(4) The unused portion of an unexpired credit may be carried forward for not more than ten succeeding taxable years.

(5) For purposes of this subsection, "renewable fuel" means 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 nonpetroleum liquids with gasoline fuel or diesel fuel for use in motor vehicles.

(B)(1) A taxpayer that constructs and places in service in this State a commercial facility for the production of renewable fuel is allowed a credit equal to twenty-five percent of the cost to the taxpayer of constructing or renovating a building and equipping the facility for the purpose of producing renewable

fuel. Production of renewable fuel includes intermediate steps such as milling, crushing, and handling of feedstock and the distillation and manufacturing of the final product.

(2) The entire credit may not be taken for the taxable year in which the facility is placed in service but must be taken in seven equal annual installments beginning with the taxable year in which the facility is placed in service. If, in one of the years in which the installment of a credit accrues, the facility with respect to which the credit was claimed is disposed of or taken out of service, the credit expires and the taxpayer may not take any remaining installment of the credit.

(3) The unused portion of an unexpired credit may be carried forward for not more than ten succeeding taxable years.

(4) As used in this subsection, "renewable fuel" means liquid nonpetroleum-based fuels that may be placed in motor vehicle fuel tanks and used as a fuel in a highway vehicle. It includes all forms of fuel commonly or commercially known or sold as biodiesel and ethanol.

(5) A taxpayer that claims any other credit allowed under this article with respect to the costs of constructing and installing a facility may not take the credit allowed in this section with respect to the same costs.

(C)(1) To obtain the amount of credit available to a taxpayer, the taxpayer must submit a request for credit to the State Energy Office by January thirty-first for all qualifying property or a qualifying facility, as applicable, placed in service in the previous calendar year and the State Energy Office must notify the taxpayer that it qualifies for the credit and the amount of credit allocated to the taxpayer by March first of that year. A taxpayer may claim the credit for its taxable year which contains the December thirty-first of the previous calendar year. The Department of Revenue may require any documentation that it deems necessary to administer the credit.

(2) For the state's fiscal year beginning July 1, 2008, the credit is to be determined based on an eighteen-month period beginning July 1, 2008, through December 31, 2009. Applications are to be made by January 31, 2010, for the previous eighteen-month period commencing July 1, 2008, and ending December 31, 2009. A taxpayer allocated a credit for this eighteen-month period may claim the credit for its tax year which contains December 31, 2009.

(D) To claim the credits allowed in this section, the taxpayer must place the property or facility in service prior to January 1, 2020.

HISTORY: 2006 Act No. 386, Section 36.B.1, eff June 14, 2006 applicable for facilities placed in service after 2006; 2007 Act No. 83, Section 15.A, eff January 1, 2008; 2008 Act No. 261, Section 3.B, eff May 29, 2008.

SECTION 12-6-3620. Purchase and installation of equipment to produce energy from biomass resources.

(A) For taxable years beginning after 2007, and ending before taxable year 2020, there is allowed a credit against the income tax imposed pursuant to Section 12-6-530 or license fees imposed pursuant to Section 12-20-50, or both, for twenty-five percent of the costs incurred by a taxpayer for the purchase and installation of equipment used to create heat, power, steam, electricity, or another form of energy for commercial use from a fuel consisting of no less than ninety percent biomass resource. Costs incurred by a taxpayer and qualifying for the credit allowed by this section must be certified by the State Energy Office. The State Energy Office may consult with the Department of Agriculture and the South Carolina Institute for Energy Studies on standards for certifying the costs incurred by the taxpayer. The credit may be claimed in the year in which the equipment is placed in service and may be claimed for all expenditures incurred for the purchase and installation of the equipment.

(B) A taxpayer may use up to six hundred fifty thousand dollars of credit for a single taxable year. The tax credit is nonrefundable but unused credits may be carried forward for fifteen years.

(C) For purposes of this section:

(1) "Biomass resource" means noncommercial wood, by-products of wood processing, demolition debris containing wood, agricultural waste, animal waste, sewage, landfill gas, and other organic materials, not including fossil fuels.

(2) "Commercial use" means a use intended for the purpose of generating a profit.

(3) If the equipment ceases to use biomass resources as its primary fuel source before the entire credit has been utilized, the taxpayer is ineligible to utilize any remaining credit until it resumes using biomass resources as its primary fuel source (at least ninety percent). The fifteen-year carry forward period must not be extended due to periods of noncompliance.

(D)(1) To obtain the maximum amount of credit available to a taxpayer, a taxpayer must submit a request for credit to the State Energy Office by January thirty-first for all qualifying equipment placed in service in the previous calendar year and the State Energy Office must notify the taxpayer that it qualifies for the credit and the amount of credit allocated to the taxpayer by March first of that year. A taxpayer may claim the maximum amount of the credit for its taxable year which contains the December thirty-first of the previous calendar year. The Department of Revenue may require any documentation that it deems necessary to administer the credit.

(2) For the state's fiscal year beginning July 1, 2008, the maximum amount of the credit is to be determined based on an eighteen-month period beginning July 1, 2008, through December 31, 2009. Applications are to be made by January 31, 2010, for the previous eighteen-month period commencing July 1, 2008, and ending December 31, 2009. A taxpayer allocated a credit for this eighteen-month period may claim the credit for its tax year which contains December 31, 2009.

(3) To the extent the maximum amount of the credit contained in this section is repealed, the elimination of the maximum amount shall be seen as the last expression of the legislature and to the extent any language in this act conflicts with that repeal, it shall be considered null and void.

HISTORY: 2006 Act No. 386, Section 38, eff June 14, 2006; 2007 Act No. 83, Section 16, eff June 19, 2007; 2007 Act No. 110, Section 57, eff June 21, 2007; 2008 Act No. 261, Section 3.C, eff May 29, 2008.

SECTION 12-6-3622. Fire sprinkler system tax credits.

(A)(1) Subject to the terms and conditions of this section, a taxpayer who installs a fire sprinkler system in a commercial or residential structure, whether the structure or fire sprinkler is new or existing, when such installation is not required by law, regulation, or code is eligible for a credit against real property taxes levied by a local taxing entity equal to twenty-five percent of the direct expenses, not including any type of fee charged by the publicly or privately owned utility, incurred by the taxpayer if the local taxing entity has consented to the tax credit.

(2) In any year in which the local taxing entity consents to a tax credit, the taxpayer also may claim an income tax credit equal to the amount of the credit against real property taxes.

(3) The credit earned pursuant to this subsection by an "S" corporation owing corporate level income tax must be used first at the entity level. Any remaining credit passes through to each shareholder in a percentage equal to each shareholder's percentage of stock ownership.

(4) The credit earned pursuant to this subsection by a general partnership, limited partnership, limited liability company, or any other entity taxed as a partnership must be passed through to its partners and may be allocated among any of its partners, including without limitation, an allocation of the entire credit to one partner, in a manner agreed by the partners that is consistent with Subchapter K of the Internal Revenue Code. As used in this subsection, the term "partner" means a partner, member, or owner of an interest in the pass-through entity, as applicable.

(B) The Department of Revenue shall develop a form on which a taxpayer may claim the credit against real property taxes. The taxpayer may claim the credit against real property taxes by submitting the form with the payment of real property taxes to the local taxing entity. The taxpayer may claim the credit against income taxes by submitting the form with the taxpayer's return.

(C) 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.

(D) For purposes of this section, fire sprinkler system has the same meaning as in Section 40-10-20.

(E)(1) The General Assembly shall appoint a study committee to develop new strategies to increase participation in the tax credit program by all local taxing entities, and to review and make recommendations for increasing the installation of interconnected hard-wired smoke alarms. The study committee shall make a report of its findings to the General Assembly no later than January 30, 2011. The committee shall dissolve upon the date of its report.

(2) The study committee shall be composed of six members. Three members shall be appointed by the President Pro Tempore of the Senate and three members appointed by the Speaker of the House of Representatives. The study committee must be composed of a representative of the South Carolina Fire Sprinkler Association, a representative of the South Carolina Home Builders Association, a representative of the South Carolina Association of Counties, and a representative of the Municipal Association of South Carolina.

(3) Members of the study committee shall serve without any compensation for per diem, mileage, and subsistence.

HISTORY: 2008 Act No. 357, Section 2.A, eff June 25, 2008, applicable for taxable years beginning after 2007; 2010 Act No. 232, Section 1, eff June 7, 2010.

SECTION 12-6-3630. Income tax credits; hydrogen research contributions.

(A) For taxable years beginning after 2007, and before 2012, a taxpayer is allowed a credit against the income tax imposed pursuant to Chapter 6 or 11 of this title, license fees imposed pursuant to Chapter 20 of this title, or insurance premium tax imposed pursuant to Chapter 7, Title 38, or a combination of them, for a qualified contribution made by a taxpayer to the South Carolina Hydrogen Infrastructure Development Fund established pursuant to Chapter 46, Title 11. A contribution is not a qualified contribution if it is subject to a condition or limitation regarding the use of the contribution.

(B) The credit is equal to twenty-five percent of a qualified contribution made by a taxpayer to the fund. The credit must be used against the taxpayer's liability on income taxes, premium insurance taxes, or license fees after the application of all other credits applicable to the taxpayer's tax liability. Unused credits may be carried forward for ten years after the tax year in which a qualified contribution was made. The credit is nonrefundable.

(C) A taxpayer who claims a credit for a qualified contribution pursuant to this section may not claim a deduction for the same qualified contribution.

(D) A taxpayer who claims a credit pursuant to this section must attach to his tax return a copy of a form provided by the authority identifying the taxpayer's qualified contribution. The Department of Revenue may require from the taxpayer additional information identifying the taxpayer's qualified contribution as it considers appropriate.

HISTORY: 2007 Act No. 83, Section 3, eff June 19, 2007.

SECTION 12-6-3631. Biodiesel expenditures tax credit.

(A) For taxable years beginning after 2007, and before 2012, a taxpayer is allowed a credit against the income tax imposed pursuant to this chapter for qualified expenditures for research and development.

(B) For purposes of this section:

(1) "Qualified expenditures for research and development" means expenditures to develop feedstocks and processes for cellulosic ethanol, waste grease-derived biodiesel, and for algae-derived biodiesel, including:

(a) enzymes and catalysts involving cellulosic ethanol, waste grease-derived biodiesel, and algae-derived biodiesel;

(b) best and most cost efficient feedstocks for South Carolina; or

(c) product and development, including cellulosic ethanol, waste grease-derived biodiesel, or algae-derived biodiesel products.

(2) "Cellulosic ethanol" means fuel from ligno-cellulosic materials, including wood chips derived from noncommercial sources, corn stover, and switchgrass.

(C) The credit is equal to twenty-five percent of qualified expenditures for research and development, except for expenditures related to waste grease-derived biodiesel, which credit is equal to ten percent. A taxpayer's total credit in all years, for all expenditures allowed pursuant to this section, must not exceed one hundred thousand dollars. Unused credits may be carried forward for five years after the tax year in which a qualified expenditure was made. The credit is nonrefundable.

(D) Expenditures qualifying for a tax credit allowed by this section must be certified by the State Energy Office. The State Energy Office may consult with the Department of Agriculture and the South Carolina Institute for Energy Studies on standards for certification.

(E)(1) To obtain the maximum amount of the credit available to a taxpayer, each taxpayer must submit a request for the credit to the State Energy Office by January thirty-first for qualifying research expenses incurred in the previous calendar year and the State Energy Office must notify the taxpayer that the submitted expenditures qualify for the credit and the amount of credit allocated to such taxpayer by March first of that year. A taxpayer may claim the maximum amount of the credit for its taxable year which contains the December thirty-first of the previous calendar year. The Department of Revenue may require any documentation that it deems necessary to administer the credit.

(2) For the state's fiscal year beginning July 1, 2008, the maximum amount of the credit is to be determined based on an eighteen-month period beginning July 1, 2008, through December 31, 2009. Applications are to be made by January 31, 2010, for the previous eighteen-month period commencing July 1, 2008, and ending December 31, 2009. A taxpayer allocated a credit for this eighteen-month period may claim the credit for its tax year which contains December 31, 2009.

(3) To the extent the maximum amount of the credit contained in this section is repealed, the elimination of the maximum amount shall be seen as the last expression of the legislature and to the extent any language in this act conflicts with that repeal, it shall be considered null and void.

HISTORY: 2007 Act No. 83, Section 12, eff June 19, 2007; 2008 Act No. 261, Section 3.D, eff May 29, 2008; 2010 Act No. 290, Section 22, eff January 1, 2011.

SECTION 12-6-3660. Tax credit for costs of retrofitting to make residence more hurricane resistant.

(A) An individual taxpayer is allowed a credit against the tax imposed pursuant to Section 12-6-510 for costs incurred to retrofit, as specified in subsection (B), a structure qualifying as the taxpayer's legal residence pursuant to Section 12-43-220(c) to make it more resistant to loss due to hurricane, rising floodwater, or other catastrophic windstorm event.

(B) In order to qualify for the state income tax credit allowed pursuant to this section, costs must not include ordinary repair or replacement of existing items, and must be associated with those fortification measures defined in subsection (C), and must increase the residence's resistance to hurricane, rising floodwater, or catastrophic windstorm event damage, as defined by the director or his designee by regulation.

(C) The fortification measures qualifying for the state income tax credit allowed pursuant to this section must be promulgated by the Department of Insurance in regulations pursuant to the Administrative Procedures Act.

(D) The tax credit allowed pursuant to this section for any taxable year must not exceed the lesser of:

(1) twenty-five percent of the cost incurred; or

(2) one thousand dollars.

(E) The cost of items that otherwise qualify for the credit that are purchased with grant funds awarded pursuant to Section 38-75-485 are not eligible for this credit if the grants are not included in the income of the taxpayer.

HISTORY: 2007 Act No. 78, Section 3, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

SECTION 12-6-3665. Credit for sales tax paid on purchases of tangible personal property to retrofit residence.

(A) An individual taxpayer is allowed a credit from the income tax imposed pursuant to Section 12-6-510 for South Carolina state sales or use taxes paid on purchases of tangible personal property used to retrofit the individual's legal residence pursuant to Section 12-6-3660. The credit amount is calculated by multiplying by six percent the purchase price of tangible personal property for which the individual may claim the income tax credit in Section 12-6-3660. The maximum credit allowed under this section is one thousand five hundred dollars.

(B) The cost of items that otherwise qualify for the credit that are purchased with grant funds awarded pursuant to Section 38-75-485 are not eligible for this credit if the grants are not included in the income of the taxpayer.

HISTORY: 2007 Act No. 78, Section 3, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

SECTION 12-6-3670. Credit for excess premium paid for property and casualty insurance.

(A) An individual taxpayer may claim a credit against the income tax imposed pursuant to Section 12-6-510 for excess premium paid during the applicable tax year for property and casualty insurance, as defined in Articles 1, 3, and 5 of Chapter 75, Title 38, providing coverage on the taxpayer's legal residence pursuant to Section 12-43-220(c).

(B) For the purposes of computing the credit allowed by this section, excess premium paid is the amount by which the premium paid exceeds five percent of the taxpayer's adjusted gross income.

(C)(1) The credit allowed pursuant to this section for any taxable year may not exceed one thousand two hundred fifty dollars.

(2) If the credit allowed under this section exceeds the state income tax liability for the taxable year, any unused credit may be carried forward for five succeeding taxable years.

HISTORY: 2007 Act No. 78, Section 3, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

SECTION 12-6-3750. Nonrefundable tax credit for processing donated deer for charitable distribution.

(A) Beginning with the year 2008, there shall be allowed a nonrefundable credit against taxes imposed by this chapter for a meat packer, butcher, or processing plant licensed or permitted by this State or the United States Department of Agriculture that, during the tax year for which the credit is claimed, had a valid contract with any nonprofit organization to process deer for donation to any charitable organization engaged in distributing food to the needy. No portion of the donated deer shall be used by a commercial enterprise. The amount of the credit shall be fifty dollars for each carcass processed and donated. The credit must be claimed in the year earned and may not be carried to any other taxable year.

(B) For the purposes of this section, "process" means to skin, cut, bone, grind, package, or perform any butchering tasks necessary to prepare the meat for distribution and consumption. The processing must take place in a licensed or permitted establishment.

HISTORY: 2008 Act No. 229, Section 1, eff May 22, 2008.

ARTICLE 29.

ESTIMATED TAX PAYMENTS

SECTION 12-6-3910. Estimated tax payments form; due dates; treatment of excess where estimated payments or withholdings more than tax liability; waiver of penalties.

(A) South Carolina estimated tax payments must be made in a form prescribed by the department in accordance with Internal Revenue Code Sections 6654 and 6655 except that:

(1) the small amount provisions in Internal Revenue Code Sections 6654(e)(1) and 6655(f) are one hundred dollars;

(2) income for the first installment for corporations is annualized using the first three months of the taxable year;

(3)(a) The due dates of the installment payments for calendar year taxpayers other than corporations are:

First quarter:	April 15
Second quarter:	June 15
Third quarter:	September 15
Fourth quarter:	January 15 of the following taxable year.

(b) The due dates of the installment payments for calendar year corporations are:

First quarter:	April 15
Second quarter:	June 15
Third quarter:	September 15
Fourth quarter:	December 15.

(c) In applying the estimated tax payment provisions to a taxable year beginning on a date other than January 1, the month that corresponds to the months specified above must be substituted.

(B) Payments required by this section are considered payments on account of income taxes imposed by this chapter and license fees imposed by Chapter 20 for the taxable year designated.

(C) To the extent that estimated tax payments and withholdings are in excess of the taxpayer's income tax and license fee liability as shown on the income tax return, the taxpayer may claim a:

- (1) refund; or
- (2) credit for estimated tax for the succeeding taxable year.

(D) For corporate taxpayers, estimated tax payments will be deemed to apply first to income taxes and then apply to license fees.

(E) The department may waive estimated tax payment penalties for corporations that calculate South Carolina estimated tax payments based on a federal law that increases estimated tax payments in one estimated tax payment period and decreases estimated tax payments for one estimated tax payment period, or changes the dates estimated tax payments are due for not more than one month.

HISTORY: 1995 Act No. 76, Section 1; 2002 Act No. 334, Section 8A, eff June 24, 2002; 2002 Act No. 363, Section 1B eff August 2, 2002; 2010 Act No. 142, Section 4, eff March 31, 2010.

SECTION 12-6-3920. Extension for filing and paying estimated taxes.

In the case of sickness, absence, or other disability or good cause, the department may in its discretion allow further time for filing and paying estimated taxes.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-3930. Imposition of interest and penalties on National Guard and Reserve members activated as a result of Iraq conflict or war on terrorism.

No interest, penalties, or other sanctions may be imposed on the active duty income of members of the National Guard and Reserves activated as a result of the conflict in Iraq and the war on terrorism with regard to underpayment of state estimated individual income tax payments of the active duty income if the federal government is unable to withhold state income taxes due on such pay.

HISTORY: 2008 Act No. 353, Section 2, Pt 21G, eff July 1, 2009.

ARTICLE 33.

TAX YEARS, ACCOUNTING METHODS, AND "S" CORPORATION ELECTIONS

SECTION 12-6-4410. Taxable years.

(A) A taxpayer's taxable year under this chapter must be the same as the taxpayer's taxable year for federal income tax purposes.

(B) If a taxpayer's taxable year is changed for federal income tax purposes, then the taxable year for South Carolina income tax purposes is changed. The taxpayer shall provide the department with a copy of the written permission received from the Internal Revenue Service.

(C) A change in the taxable year of an "S" Corporation is not mandated for South Carolina income tax purposes under Internal Revenue Code Section 1378 unless mandated for federal purposes.

(D) If a change in taxable year results in a taxable year of less than twelve months, South Carolina income tax must be computed in the manner provided in Internal Revenue Code Sections 443(b) (Computation of Tax on Change of Annual Accounting Period) and 443(c) (Adjustment in Deduction for Personal Exemption).

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-4420. Method of accounting.

(A) A taxpayer's method of accounting under this chapter must be the same as for federal income tax purposes.

(B) If a taxpayer's method of accounting is changed for federal income tax purposes:

(1) The method of accounting for South Carolina income tax purposes is changed. The taxpayer shall provide the department with a copy of the written permission received from the Internal Revenue Service. When written permission is not required to change a method of accounting, the taxpayer shall provide the department with a copy of the election or statement provided to the Internal Revenue Service.

(2) Additional South Carolina income or deductions which result from adjustments that are necessary because of a change in the method of accounting are included in or deducted from income as provided in the Internal Revenue Code.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-4430. "S" corporation elections.

(A) A taxpayer should provide the department notice of its intent to be an “S” Corporation by filing with the department a copy of the election filed with the Internal Revenue Service.

(B)(1) The approval or termination of an “S” election by the Internal Revenue Service is approval or termination for South Carolina income tax purposes as of the effective date of the federal election or termination except as provided in Section 12-6-1210(F).

(2) No termination occurs under the Internal Revenue Code Section 1362(d)(3) for South Carolina income tax purposes unless a termination occurs for federal purposes.

HISTORY: 1995 Act No. 76, Section 1.

ARTICLE 37.

TAX RETURNS

SECTION 12-6-4910. Persons, corporations, and other entities required to make tax returns.

Income tax returns must be filed by the following:

(1)(a) an individual not listed in subitem (c) who has a gross income for the taxable year of at least the federal exemption amount plus the applicable basic standard deduction, plus any deduction the taxpayer qualifies for pursuant to Section 12-6-1170(B), without regard to a reduction for the retirement income deduction, and whose filing status is:

- (i) single, surviving spouse, or head of household; or
- (ii) married, filing separately, and whose spouse does not itemize deductions.

(b) an individual not listed in (c) who files a joint return and whose combined gross income for the taxable year, is more than the sum of twice the exemption amount plus the applicable basic standard deduction if the individual and spouse had the same household at the close of the taxable year, plus any deduction the taxpayer qualifies for pursuant to Section 12-6-1170(B). If the individual or spouse is sixty-five or older, the standard deduction is increased as provided in Internal Revenue Code Section 63(c)(3) and 63(f)(1).

(c) an individual listed below whose gross income exceeds the federal personal exemption amount:

- (i) an individual making a return under Internal Revenue Code Section 443(a)(1) for less than twelve months because of a change in the individual’s annual accounting period;
- (ii) an individual described in Internal Revenue Code Section 63(c)(5) (Certain Dependents) who has unearned income in excess of the amount provided in Internal Revenue Code Section 63(c)(5)(A), or who has total gross income in excess of the standard deduction;
- (iii) an individual for whom the standard deduction is zero.

(d) a nonresident individual with South Carolina gross income greater than the personal exemption amount provided in Internal Revenue Code Section 151(d).

(e) for purposes of this subsection:

- (i) “basic standard deduction” is as defined in Internal Revenue Code Section 63(c);
- (ii) “exemption amount” is as defined in Internal Revenue Code Section 151(d). In the case of an individual described in Internal Revenue Code Section 151(d)(2), the exemption amount is zero.

(2) a corporation subject to taxation under this chapter.

(3) an “S” Corporation conducting business in South Carolina, having South Carolina gross income, or subject to the license fee requirements of Chapter 20 of this title, or having an interest in any partnership conducting business in this State.

(4) a partnership conducting business in this State, having South Carolina gross income or having an interest in any partnership conducting business in this State.

(5) an estate with a nonresident beneficiary or with gross income for the taxable year of six hundred dollars or more.

(6) a trust with a nonresident beneficiary, any taxable income, or with gross income of six hundred dollars or more regardless of the amount of taxable income.

(7) an estate of an individual under Chapters 7 or 11 of Title 11 of the United States Code relating to bankruptcy with gross income for the taxable year of two thousand seven hundred dollars or more.

(8) Every exempt organization operating in this State subject to tax under Section 12-6-540.

(9) a political organization within the meaning of Internal Revenue Code Section 527(e)(1), and every fund treated under Internal Revenue Code Section 527(g) as if it constituted a political organization, which has political organization taxable income within the meaning of Internal Revenue Code Section 527(c)(1) for the taxable year.

(10) a homeowners association within the meaning of Internal Revenue Code Section 528(c)(1) which has homeowners association taxable income within the meaning of Internal Revenue Code Section 528(d) for the taxable year.

(11) an entity other than those described in items (1) through (10) having South Carolina taxable income during the taxable year.

HISTORY: 1995 Act No. 76, Section 1; 1999 Act No. 114, Section 4; 2000 Act No. 399, Section 3(D)(3), eff August 17, 2000; 2005 Act No. 145, Section 16.A, eff June 7, 2005.

SECTION 12-6-4920. Interstate motor carrier required to file return.

An interstate motor carrier which within a taxable year (1) owns or rents real or personal property in this State except mobile property; or (2) travels more than twenty-five thousand mobile property miles within this State; or (3) makes more than twelve pickups or deliveries in this State shall file an income tax return and remit the amount of tax due. The provisions of items (2) and (3) of this section apply to the holder of the operating authority issued by the Interstate Commerce Commission, not to the interstate motor carrier's agents.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-4930. Tax return of estate or trust; by whom to be made.

The income tax return of a trade or business carried on by an estate or trust must be made by the fiduciary and must show the taxable income of the estate or trust and the distribution of income to the beneficiaries. Under rules or regulations prescribed by the department, one of two or more joint fiduciaries may file a single return.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-4940. Trust institutions maintaining common trust fund must make tax return; contents.

Every trust institution maintaining a common trust fund shall make a return under oath for each taxable year. The return shall contain the items of gross income and the deductions allowed by law, the names and addresses of the participants, and the proportionate share of taxable income for each participant.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-4950. Information returns.

(A) An information return must be filed by all individuals, corporations, and partnerships acting in any capacity who make payments to another individual, corporation, or partnership in the amount of:

(1) two hundred dollars or more of interest or dividends; or

(2) eight hundred dollars or more of rent, salaries, wages, emoluments, or determinable gain, profit, or income.

(B) The return shall provide the recipient's name, address, and the amount of the payments.

(C) Providing the department with information required to be provided to the Internal Revenue Service or participating in the department agreement with the Internal Revenue Service to allow combined federal and state reporting of information returns constitutes compliance with this section.

(D) The provisions of this section do not apply to personal service compensation paid to individuals on which withholding taxes are required and reported as provided in Article 13 of Chapter 8.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-4960. Form of tax return; department to furnish blank forms; effect on taxpayer of failure to receive form.

Returns must be in a form prescribed by the department. The department shall prepare blank forms for the returns to be furnished upon request. Failure to receive or secure the form does not relieve a taxpayer from the obligation to make a return.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-4970. Time to file returns.

(A) Returns of taxpayers, except as otherwise provided, must be filed on or before the fifteenth day of the fourth month following the taxable year.

(B) Returns of corporations must be filed on or before the fifteenth day of the third month following the taxable year. Returns for foreign corporations that do not maintain an office or place of business in the United States must be filed on or before the fifteenth day of the sixth month following the taxable year.

(C) Returns of organizations exempt under Internal Revenue Code Section 501 reporting unrelated business income pursuant to Section 12-6-4910(8), must be filed on or before the fifteenth day of the fifth month following the taxable year.

(D) Information returns provided in Section 12-6-4950 must be filed on or before March 15 of each year.

(E) Returns filed electronically have the same due dates as provided in this section.

HISTORY: 1995 Act No. 76, Section 1; 1998 Act No. 432, Section 5.

SECTION 12-6-4980. Extension of time for filing return.

(A) The department may allow an extension of time not to exceed six months for filing returns under this chapter or the annual report under Chapter 20 of this title. A taxpayer requesting an extension of time for filing, on or before the date the return or annual report is due, shall submit a tentative return and pay the full amount of the tax and license fee due.

(B) When a taxpayer is not required to make a payment of tax at the time of the extension, and the taxpayer has been granted an extension of time to file a federal income tax return, the taxpayer is not required to apply to the department for an extension of time to file the South Carolina return. The department shall accept a copy, if applicable, of a properly filed federal extension attached to the South Carolina return when filed. Taxes shown to be due on a return required pursuant to this chapter must be paid at the time the return is due to be filed, without regard to an extension of time granted for filing the return.

(C) An extension must not be granted to a taxpayer who has been granted an extension for a previous period and has not fulfilled the requirements of the previous period.

HISTORY: 1995 Act No. 76, Section 1; 2002 Act No. 334, Section 8B, eff June 24, 2002; 2002 Act No. 363, Section 1C, eff August 2, 2002; 2007 Act No. 110, Section 18, eff June 21, 2007; 2007 Act No. 116, Section 24, eff June 28, 2007.

SECTION 12-6-4990. Payment of tax due upon filing return; effect of extension; requirement of making estimated tax payment.

When an income tax return is required under this chapter, the taxpayer shall pay the tax due with the return to the department at the time for filing the return determined without regard to any extensions of time for the filing. Nothing in this section eliminates the requirement for making estimated tax payments as provided in Article 29 of this chapter.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-5000. Filing of separate or joint federal returns by husband and wife; same status required on state return; nonresidents; where no federal return filed.

(A) If the federal taxable income of a husband and wife are determined on separate federal returns, their South Carolina taxable income must be separately reported and taxed.

(B) If both a husband and wife are residents, and if their federal taxable income is determined on a joint federal return, their South Carolina taxable income must be reported and taxed on the basis of a joint South Carolina income tax return.

(C)(1) If both husband and wife are nonresidents or if the husband or wife is a resident and the other is a nonresident, and if their federal taxable income is determined on a joint federal return, their South Carolina taxable income must be reported and taxed on the basis of a joint South Carolina income tax return except as provided in subitem (2).

(2) If a nonresident taxpayer is a resident of a state which does not allow a resident of South Carolina to file a joint return with a spouse, the nonresident taxpayer shall file a separate South Carolina income tax return from the spouse. The nonresident taxpayer shall calculate taxable income on a federal return as a married person filing separately to determine how the separate federal taxable income is calculated.

(D) If neither a husband nor wife files a federal return, their South Carolina taxable income must be determined on a separate basis unless both elect to have their South Carolina taxable income determined on a joint basis by filing a joint South Carolina tax return.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-5010. Release of claim to personal exemption by custodial parent.

If a custodial parent releases claim to the personal exemption authorized in Internal Revenue Code Section 152, then the noncustodial parent's South Carolina income tax return must include a copy of the written declaration of the custodial spouse releasing the exemption as provided in Internal Revenue Code Section 152(e)(2).

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-5020. Authorized filing of consolidated corporate income tax return; terms and conditions.

(A) A consolidated return may be filed for the following corporations:

(1) a parent and substantially controlled subsidiary or subsidiaries;

(2) two or more corporations under substantially the entire control of the same interest.

However, a corporation that has elected to be taxed under Subchapter S of the Internal Revenue Code may not join in the filing of a consolidated income tax return under this section.

The terms “substantially controlled” and “substantially the entire control” mean the ownership of at least eighty percent of the total combined voting power of all classes of stock of all corporations that are a party to a consolidated return.

(B) All corporations included in a consolidated return must be subject to tax under Section 12-6-530.

(C) A corporation doing business entirely within this State may consolidate with a corporation doing a multistate business. Two or more corporations doing a multistate business may file a consolidated return.

(D) A consolidated return means a single return for two or more corporations in which income or loss is separately determined as follows:

(1) South Carolina taxable income or loss is computed separately for each corporation;

(2) allocable income is allocated separately for each corporation;

(3) apportionable income or loss is computed utilizing separate apportionment factors for each corporation;

(4) income or loss computed in accordance with items (1) through (3) of this subsection is combined and reported on a single return for the controlled group.

(E) All corporations included in a consolidated return or a combined return must use the same accounting year.

(F) If a corporation which files or is required to file a consolidated return is entitled to one or more income tax credits, including the carryover of unused credits from prior years, the income tax credits must be determined on a consolidated basis. Limitations on credits which refer to the income or the income tax liability of a corporation are deemed to refer to the income or income tax liability of the consolidated group, and credits shall reduce the consolidated group’s tax liability regardless of whether or not the corporation entitled to the credit contributed to the tax liability or of the consolidated group.

(G) The election to file a consolidated return or separate returns must be made on an original and timely return and may not be changed after the return is filed.

(H) Once an election is made to file a consolidated return, this election must be adhered to until permission is granted by the department to file separate returns.

HISTORY: 1995 Act No. 76, Section 1; 2003 Act No. 69, Section 3.S, eff June 18, 2003; 2005 Act No. 145, Section 17.A, eff June 7, 2005.

SECTION 12-6-5030. Composite returns for partnership or “S” corporation.

(A) A partnership or “S” Corporation may file a composite individual income tax return on behalf of the nonresident partners or shareholders that are individuals, trusts, or estates in which the income is taxed to the trust or estate, or the department may require that a partnership or “S” Corporation file a composite individual income tax return on behalf of the nonresident partners or shareholders that are individuals, or trusts and estates in which the income is taxed to the trust or estate.

(B)(1) A composite return is a single return for two or more taxpayers having the same tax year in which each participant’s share of the partnerships or “S” Corporation’s tax is computed separately and added together to arrive at the total tax due on the composite return. The partnership or “S” Corporation may elect to determine each participant’s tax due by one of the following methods:

(a) for a participant who provides an affidavit to the department through the entity stating that he has no income other than the income from the entity:

(i) compute the participant’s South Carolina income tax using the pro rata share of the standard deduction or itemized deductions and personal exemptions for each participant pursuant to Section 12-6-1720(2) in the same manner as if it were being separately reported; or

(ii) compute the participant’s South Carolina income tax without regard to any deductions or exemptions in the same manner as if it were being separately reported; or

(b) for a participant who does not provide an affidavit to the department through the entity stating that he has no income other than the income from the entity, compute each participant's share of South Carolina income tax without regard to deductions or exemptions by using the active trade or business income rate provided in Section 12-6-545 on his active trade or business income, and using the highest marginal rate in Section 12-6-510 for other income.

(2) The composite return is signed by an authorized partner, an authorized officer of the "S" Corporation, or an authorized member of a limited liability company taxed as a partnership or "S" Corporation.

(C)(1) A composite return may be filed even if some of the nonresident fiduciary and individual shareholders and partners eligible to participate in filing a composite return choose not to participate. Corporate taxpayers may not participate in a composite return.

(2) A nonresident participating in the composite return that has South Carolina income from sources other than the entity filing the composite return is required to file appropriate returns and make payment of all South Carolina taxes required by law. Taxes paid for the nonresident with the composite return shall reduce taxes due at the time the nonresident subject to this subitem files a separate return for the tax year reporting South Carolina income from all sources. The entity shall furnish to each nonresident a written statement as required by Section 12-8-1540(A) as proof of the amount that has been paid by the partnership or "S" corporation as estimated payments for the nonresident and the amount paid for the nonresident with the composite return.

(D) The department may establish procedures or rules and promulgate regulations necessary to carry out the provisions of this section.

HISTORY: 1995 Act No. 76, Section 1; 2005 Act No. 145, Section 18.A, eff June 7, 2005; 2006 Act No. 386, Section 13.A, eff June 14, 2006 applicable for taxable years beginning after 2005.

SECTION 12-6-5050. Tax preparer's taxpayer identification number.

A person who is an income tax preparer as defined in Internal Revenue Code Section 7701(a)(36) and who performs the same services with respect to South Carolina income tax returns or claims for refund shall include with his signature on the South Carolina return or claim for refund his taxpayer identification number as prescribed by Internal Revenue Code Section 6109 and applicable regulations.

Failure to comply with the provisions of this section results in a penalty as provided in Section 12-54-47.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-5060. Voluntary contribution to certain funds may be designated on return; reporting of contributions annually by department.

(A) Each taxpayer required to file a state individual income tax return may contribute to the War Between the States Heritage Trust Fund established pursuant to Section 51-18-115, the Nongame Wildlife and Natural Areas Program Fund established pursuant to Section 50-1-280, the Children's Trust Fund of South Carolina established pursuant to Section 63-11-910, the Eldercare Trust Fund of South Carolina established pursuant to Section 43-21-160, or the First Steps to School Readiness Fund established pursuant to Section 63-11-1750, the South Carolina Military Family Relief Fund established pursuant to Article 3, Chapter 11, Title 25, the Donate Life South Carolina established pursuant to Section 44-43-1310, the Veterans' Trust Fund of South Carolina established pursuant to Chapter 21 of Title 25, the South Carolina Litter Control Enforcement Program (SCLCEP) and used by the Governor's Task Force on Litter only for the SCLCEP Program, the South Carolina Law Enforcement Assistance Program (SCLEAP) and used as provided in Section 23-3-65, the South Carolina Department of Parks, Recreation and Tourism for use in the South Carolina State Park Service in the manner the General Assembly

provides, the South Carolina Forestry Commission for use in the state forest system, the South Carolina Department of Natural Resources for use in its programs and operations, K-12 public education for use in the manner the General Assembly provides by law, South Carolina Conservation Bank Trust Fund established pursuant to Section 48-59-60, or the Financial Literacy Trust Fund as established pursuant to Section 59-29-510, by designating the contribution on the return. The contribution may be made by reducing the income tax refund or by remitting additional payment by the amount designated.

(B) All South Carolina individual income tax return forms must contain a designation for the above contributions. The instructions accompanying the income tax form must contain a description of the purposes for which the funds were established and the use of monies from the income tax contribution.

(C) The department shall determine and report at least annually to the appropriate agency administering the fund or in the case of the Children's Trust Fund to the fund the total amount of contributions designated to the above funds. The department shall transfer the appropriate amount to each fund at the earliest possible time. The incremental cost of administration of the contribution must be retained by the department from the contributions before any funds are expended as provided in this section.

(D) The Department of Natural Resources shall make a report to the General Assembly as early in January of each year as may be practicable, which must include the amount of revenue produced by the contributions and a detailed accounting of expenditures from the Nongame Wildlife and Natural Areas Fund.

(E) For purposes of this section, the South Carolina Department of Revenue is not subject to provisions of the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56, Title 33.

(F) Revenues from the South Carolina Litter Control Enforcement Program Fund and the South Carolina Law Enforcement Assistance Program Fund carry forward into succeeding fiscal years and earnings of the funds must be credited to them.

HISTORY: 1995 Act No. 76, Section 1; 1999 Act No. 99, Section 4; 1999 Act No. 114, Section 4; 2000 Act No. 387, Part II, Section 52B, eff July 1, 2000; 2004 Act No. 308, Section 2, eff September 17, 2004; 2005 Act No. 161, Section 21.A, eff June 9, 2005; 2006 Act No. 382, Section 3, eff June 14, 2006; 2010 Act No. 274, Section 1, eff June 16, 2010.

SECTION 12-6-5065. Repealed by 2005 Act No. 161, Section 21.B, eff June 9, 2005.

SECTION 12-6-5070. Repealed by 2005 Act No. 161, Section 21.B, eff June 9, 2005.

SECTION 12-6-5080. Repealed by 2005 Act No. 161, Section 21.B, eff June 9, 2005.

SECTION 12-6-5085. Repealed by 2005 Act No. 161, Section 21.B, eff June 9, 2005.

SECTION 12-6-5090. Repealed by 2005 Act No. 161, Section 21.B, eff June 9, 2005.

SECTION 12-6-5095. Rounding to nearest whole dollar on tax returns.

For purposes of a return filed pursuant to this chapter, all amounts may be rounded by the department or the taxpayer to the nearest whole dollar. An amount of fifty cents or more may be rounded to the next dollar. An amount of less than fifty cents may be eliminated.

HISTORY: 2000 Act No. 399, Section 3(E), eff August 17, 2000.

ARTICLE 41.

MISCELLANEOUS PROVISIONS

SECTION 12-6-5510. Certificate of compliance as prima facie evidence.

A certificate of compliance from the department to the effect that a tax has been paid, that a return has been filed, or that information has been supplied as required by the provisions of this chapter is prima facie evidence that the tax has been paid, that the return has been filed, or that the information has been supplied.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-5520. Notification to domestic or foreign corporation of failure to file return; penalty upon continued failure to comply.

(A) The department shall notify a domestic or foreign corporation, as defined in Section 12-20-10(3) and (4), of its failure to comply with the provisions of this chapter and Chapter 20 of this title requiring the filing of returns. If the corporation fails to file the required return within sixty days of the notice, the department may provide the taxpayer's name to the Secretary of State. The department may not make an estimated assessment or issue any warrant based on an estimated assessment against a taxpayer prior to referring such taxpayer to the Secretary of State for administrative dissolution or revocation.

(B) After referral from the department, the Secretary of State shall administratively dissolve a domestic corporation or revoke a foreign corporation's authority to transact business in this State.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-5530. Income taxes payable by check; taxpayer liable for tax and penalties when check dishonored by bank.

Income taxes may be paid with an uncertified check, but if a check is not paid by the bank on which it is drawn, the taxpayer remains liable for the payment of the tax and for all legal penalties as if the check had not been tendered.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-5540. Copies of returns; verification of information on returns.

The department may require a taxpayer to provide copies of returns filed with the Internal Revenue Service and verify the information contained on the returns.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-5550. State income tax refund as belonging to surviving spouse.

(A) A federal or state income tax overpayment due to a person who is deceased at the time of the refund is the sole and separate property of the surviving spouse irrespective of the deceased's filing status on the return.

(B) A refund by the United States or any state directly to the surviving spouse operates as a complete acquittal and discharge of liability from suit, claim, or demand of any nature by any heir, distributee, or creditor of the decedent, or by any other person.

HISTORY: 1995 Act No. 76, Section 1; 1998 Act No. 432, Section 6.

SECTION 12-6-5560. Repealed by 2005 Act No. 161, Section 26.E, eff June 9, 2005.

SECTION 12-6-5570. Authority to make expenditures.

The department, with the approval of the State Budget and Control Board, may expend from the revenue collected under this chapter additional money necessary to ensure the adequate administration and enforcement of this chapter.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-5580. Failure to do an act deemed committed in person's county of residence.

The failure to do an act required by or under the provisions of this chapter is deemed an act committed in the county of residence of the person failing to do the act.

HISTORY: 1995 Act No. 76, Section 1.

SECTION 12-6-5590. Donative intent; requirements; determining factors.

(A) No credit under Section 12-6-3515 or deduction under Section 170 of the Internal Revenue Code and Section 12-6-1130(12) shall be allowed for a contribution unless the donor has the donative intent required by Section 170 of the Internal Revenue Code and the regulations and cases interpreting Section 170 of the Internal Revenue Code.

(B) In addition to the donative intent required by Section 170 of the Internal Revenue Code, no credit under Section 12-6-3515 or deduction under Section 170 of the Internal Revenue Code and Section 12-6-1130(12) shall be allowed for any noncash charitable contribution in the claimed amount of \$100,000.00 or more unless the donor has the requisite donative intent required by this section.

(C) The requisite donative intent includes the requirement that the donor be motivated by detached and disinterested generosity benefiting a charitable purpose rather than expected economic benefit.

(D) A noncash charitable contribution by a donor given to comply with any state or federal environmental or other regulatory requirement; for the purpose of obtaining road, water, or sewer services; or in conjunction with obtaining a grant, subdivision, building, zoning, environmental, mitigation, or similar permit or approval from any government, shall be deemed not to have the requisite donative intent absent extraordinary circumstances.

(E) The department shall examine the substance, rather than merely the form, of the contribution and related and surrounding transactions, and may use the step transaction, economic reality, quid pro quo, personal benefit, and other judicially developed doctrines in determining whether the requisite donative intent is present.

HISTORY: 2005 Act No. 145, Section 43.D, eff June 7, 2005; 2006 Act No. 386, Section 31, eff June 14, 2006.

SECTION 12-6-5595. Timber deeds as real property conveyances.

For purposes of the nonrecognition of gain under Section 1031 of the Internal Revenue Code and comparable provisions of state law, the conveyance by timber deed of the right to cut standing timber for a period of time exceeding thirty years is considered a conveyance of a real property interest, and as such, under the laws of this State, is a like-kind exchange with other similar conveyances of a real property interest or with conveyances of similar investment real property owned in fee simple.

HISTORY: 2006 Act No. 248, Section 1, eff March 17, 2006.

