



South Carolina Taxation and Economic Tax Incentives

Tuesday, December 3, 2013

presented by
The South Carolina Bar
Continuing Legal Education Division

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13-53

AGENDA

- 8:30 a.m. Registration**
- 8:50 a.m. Welcome and Opening Remarks**
- 9 a.m. Income (Individual and Corporate): Emphasizing S.C. Differences**
Robert M. Baldwin
John C. von Lehe
- 10:15 a.m. Break**
- 10:30 a.m. Sales and Use Tax Including Manufacturing Exemptions**
C.E. "Ed" Poore Jr.
- 11:30 a.m. Property with Emphasis on Assessable Transfers of Interest**
Sanford "Sandy" Houck
Amelia F. Ruple
- 12:30 p.m. Lunch**
- 1:45 p.m. FILOT and Economic Tax Incentives**
John von Lehe
George B. Wolfe
- 2:45 p.m. Business License Tax**
Robert M. Baldwin
John C. von Lehe
- 3:45 p.m. Break**
- 4 p.m. Tax Planning Panel: Questions and Answers**
Robert M. Baldwin
Sanford "Sandy" Houck
Amelia F. Ruple
John C. von Lehe
- 5 p.m. Adjourn**

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SPEAKER BIOGRAPHIES

John C. von Lehe

John C. von Lehe, Jr. is a partner of Nelson Mullins Riley & Scarborough in Charleston where he practices in taxation, estate planning and appellate law. A member of the South Carolina Bar and Certified Public Accountant in South Carolina, Mr. von Lehe's practice includes local, state and federal tax issues, the preparation of wills and trusts, and matters of probate. He concentrates a significant portion of his practice in matters of property tax (including fee-in-lieu of property tax), sales tax, state income tax and economic and tax incentives for new and existing businesses. Mr. von Lehe is a Certified Specialist in Estate Planning and Probate Law, and a Certified Specialist in Taxation Law, distinctions awarded by the Supreme Court of South Carolina.

Mr. von Lehe's positions of leadership for the South Carolina Bar include chairmanship of the Estate Planning and Probate Certification Board (1988) and president of the Section of Taxation (1991). He was a trustee of the South Carolina Bar Foundation and served as its president in 1994. He served as a member of the Commission on Legal Education.

Mr. von Lehe is a member of the American Bar Association and a fellow of the American College of Trusts and Estate Counsel. He is a fellow of the American College of Tax Counsel and a member of the South Carolina Association of Certified Public Accountants.

Mr. von Lehe currently serves as a member of the board of trustees of the University of South Carolina, having been first elected by the South Carolina House of Representatives in 1996. Previously, he served as a gubernatorial appointee to the Tax Study Commission and the South Carolina State Museum board of directors, for which he served as chairman. Mr. von Lehe currently serves as President of the Charleston Museum. He is listed in The Best Lawyers in America (1989-2006 editions).

Prior to joining Nelson Mullins, Mr. von Lehe was in practice with another leading South Carolina firm. From 1970-7, he was in-home counsel with the Rulings Division of the Internal Revenue Service. From 1971-78, he was Assistant Attorney General for the State of South Carolina, where he served as counsel to the South Carolina Tax Commission.

Mr. von Lehe earned a Master of Laws in Taxation from Washington University in 1969. In 1968, he earned a Juris Doctor from the University of South Carolina School of Law where he was a member of South Carolina Law Review. In 1965, he earned a Bachelor of Science from the University of South Carolina where he was named to Beta Alpha Psi, the national accounting honor society.

Robert M. Baldwin

Robert M. Baldwin is a member of Baldwin and Associates LLC, a Charleston Certified Public Accounting Firm. Robert M. Baldwin is a Personal Financial Specialist (American Institute of Certified Public Accountants), an Accredited Estate Planner (National Association of Estate Planners and Councils), and a Certified Public Accountant (State of South Carolina).

Mr. Baldwin has formally worked at Ernst & Whinney from 1978 in the Tax Division of the Greenville office through December 1984 before transferring to the Spartanburg Office in 1985 and was Senior Tax Manager at time of departure. From 1987 to 2003 Mr. Baldwin was advisor manager of the family office of the Barkley Family of Charleston, SC.

Mr. Baldwin won the Silver Antelope from the National Council, Boy Scouts of America, and Silver Beaver from the Coastal Carolina Council, Boy Scouts of America. He has also received the 2009 Service to the Profession Award and the Presidents Award from the South Carolina Association of Certified Public Accountants.

Mr. Baldwin is a member of the American Institute of Certified Public Accountants, the Personal Financial Planning Division of the Tax Division of the American Institute of Certified Public Accountants, and the Southern Region Board for the Boy Scouts of America. He serves as a current Board Member of the Lowcountry Open Land Trust, and has served as Past Vice Chairman and Past Member of the South Carolina Board of Accountancy. He is a past Trustee of the Charleston Library Society, former Director of the Disabilities Foundation of Charleston County, former member of the State Board Relevance and Effectiveness Committee for the National Association of State Boards of Accountancy, past President and past Member of the Board of Directors for the South Carolina Association of Certified Public Accountants (SCACPA), and past President and Member of the Estate Planning Council of Charleston.

Mr. Baldwin earned a Masters in Accounting with a concentration in taxation in 1978, and a Bachelors of Arts in 1977 from the University of Georgia.

C.E. "Ed" Poore, Jr.

C.E. "Ed" Poore, Jr. is a partner with PPM & Associates, LLC, tax consultants in Greenville. Mr. Poore is a retired audit supervisor, formerly with the Greenville District Office of the South Carolina Department of Revenue. He was formerly deputy manager of audits with the Field Services Division, Columbia, and prior to that, he held numerous supervisory positions with the Sales and Use Tax Division, including state chief auditor. Mr. Poore has had more than 37 years' experience with the South Carolina Department of Revenue, primarily devoted to sales and use taxes. He has co-written the South Carolina Sales and Use Tax Audit Manual and Advanced Sales and Use Tax Manual, as well as other manuals related to sales and use taxes. Mr. Poore has participated in numerous sales and use tax seminars over the past 49 years sponsored by Lorman Educational Services, National Business Institute as well as other sponsors. Mr. Poore received his B.A. degree in business administration from Erskine College. PPM's website is www.sctaxconsultants.com

Sanford “Sandy” Houck, Jr.

Mr. Houck has been working part time with the Department of Revenue as Special Projects Coordinator since 2006. He retired as the Administrator of the Property Division, South Carolina Department of Revenue with 37 years of service.

Mr. Houck career includes appointed Administrator of the Property Division (2003); Office Manager of the Property Division (1995-2003); Property Analyst with the Property Division (1969-1995); and State Certified General Real Estate Appraiser (CG 723). He graduated from Clemson University in 1969

Memberships (now and formerly) include South Carolina Association of Assessing Officials (President 1995); International Association of Assessing Officers (Served as Chair, State and Provincial Council Section). He is the 2002 Recipient of South Carolina Auditors, Treasurers and Tax Collectors (SCATT) L. H. (Sonny) Siau Award, and 2009 Recipient of South Carolina Association of Assessing Officials (SCAAO) Max G. Rush Award. He is also an approved Instructor by Real Estate Appraisers Board (Instructor # 187). His hobbies includee the “grands” and Harley Davidson motorcycles.

Amelia F. Ruple

Amelia was born and raised in Lancaster, SC, and graduated from Lancaster High School. She graduated from Randolph-Macon Woman’s College in Lynchburg VA with a BA in American History and American Politics, and then received a JD degree from Emory University School of Law in Atlanta, GA.

Following law school, she returned to South Carolina in 1988 and was in private practice in Columbia for several years with a general practice litigation firm. After taking a few years off from the practice of law to engage in the practice of raising children, Amelia returned to work for RBMG as a loan reviewer. She then worked at the SC Administrative Law Court as a law clerk to Judge Carolyn Matthews from 2002 – 2007.

In March 2007, Amelia moved to the SC Department of Revenue in the Litigation section. Her litigation experience was varied in that she tried tax matters including property, sales and admissions tax cases, as well as regulatory matters including bingo and alcohol applications and violations.

In October 2011, Amelia took a job in the Local Government/Property section of SC Department of Revenue as the Coordinator of Training and Research, with the responsibility of advising counties on questions which arise on property tax and the administrative process, as well as helping to plan the annually required training for county officials.

She is married with three children: Anna is a senior at Agnes Scott College in Decatur GA, Macy is a sophomore at Winthrop University, and Thomas is a senior at Lexington High School. In her “spare time,” Amelia enjoys travelling, cooking and reading, as well as lying on the couch with her two dogs.

George B. Wolfe

George Wolfe is a partner at Nelson Mullins Riley & Scarborough, LLP where he practices in the areas of economic development, governmental, and corporate law. His practice is focused on representing foreign and domestic companies establishing or expanding operations in South Carolina. He chairs the Firm's Economic Development Practice Group.

Mr. Wolfe is a graduate of Washington and Lee University, cum laude, and of the University of Pennsylvania School of Law, where he was a member of the Law Review and Order of the Coif.

Mr. Wolfe joined Nelson Mullins in 1983, and has practiced with the firm since then, except for a stint as Deputy General Counsel at the U.S. Treasury Department from 2001 to 2004.

Mr. Wolfe has participated in drafting and amending many of South Carolina's tax incentive and other economic development laws. He has twice been awarded the Order of the Palmetto and the South Carolina Department of Revenue Public Service Award for his work in economic development.

He currently serves on the Board and Executive Committee of the South Carolina Chamber of Commerce, where he also serves on the Tax Committee. Mr. Wolfe also serves on the Board and Executive Committee of New Carolina. He is a Board member and immediate Past President of the South Carolina Economic Developers Association.



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*Property with Emphasis on Assessable
Transfers of Interest*

LEGAL RESIDENCE AND ASSESSABLE TRANSFERS OF INTEREST,
A GUIDE FOR TAX PRACTITIONERS

Amelia Furr Ruple

Sanford Houck

South Carolina Department of Revenue, Columbia, SC¹

I. SCOPE NOTE

This article addresses the issues that individuals and tax practitioners may encounter in dealing with recent legislation on legal residences in South Carolina. Owner-occupied property in South Carolina is taxed at 4%; non-owner occupied property (rental properties, second homes, etc.) is taxed at 6%. There is a substantial penalty for paying the owner-occupied rate if the property owner is not entitled to the same. The primary statute dealing with legal residence was extensively amended in 2012. Each section that follows will also address these recent amendments and county practices. Part II will cover the basics of the taxation statutes. Part III will then address the requirements for applying and receiving the owner-occupied rate, Part IV will cover penalties and Part V will address specific situations including military personnel, fractional ownership, rentals, among others. Finally, Part VI will address “Assessable Transfers of Interest” (“ATIs”) and the implications thereof.

II. BASICS OF OWNER-OCCUPIED PROPERTY TAXATION

Owner-occupied property, also known as “legal residence,” is taxed at 4%, while non-owner-occupied property is taxed at 6%. The statute is specific with the requirements for the 4% rate and penalties for improperly claiming the 4% rate.

A. Legal Residence § 12-43-220 (c)

1. Statutory Requirements

S.C. Code Ann. § 12-43-220 (c) contains the specific requirements for property to qualify for the owner-occupied “legal residence” rate of 4%. Specifically, the following requirements must be met:

a. Basic requirements:

- i. Legal residence, domicile
- ii. Not more than 5 acres contiguous to the legal residence
- iii. Owned totally or in part in fee or by life estate
- iv. Occupied by the owner of the interest for at least part of the year as the domicile
- v. Includes additional dwellings located on the same property and occupied by immediate family members of the owner of the interest.
- vi. Must complete application and certification
- vii. Burden of proof is on applicant
- viii. Must provide proof required by assessor

¹ The views expressed in this presentation are those of the authors solely and should not be construed as representing policy, procedures or interpretations of the SC Department of Revenue, nor any publications not affiliated with the SC DOR.

- b. Trust:
 - i. Residential property held in trust, domicile
 - ii. The income beneficiary of the trust occupies the property as a residence
 - iii. If the trustee certifies to the assessor that the property is occupied as a residence by the beneficiary of the trust, then the property may be classified at 4%.

III. APPLICATION AND CERTIFICATION 12-43-220 (c)(2)(ii)

A. Application filed prior to first penalty date with the assessor's office

B. Certification included with application:

"Under penalty of perjury I certify that:

(A) [sic] the residence which is the subject of this application is my legal residence and where I am domiciled at the time of this application and that neither I, nor any member of my household, claim to be a legal resident of a jurisdiction other than South Carolina for any purpose; and

(B) [sic] that neither I, nor a member of my household, claim the special assessment ratio allowed by this section on another residence."

C. Definition of "Member of my household": "For purposes . . . of this item, 'a member of my household' means:

(A) [sic] the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant; and

(B) [sic] any child under the age of eighteen years of the owner-occupant claimed or eligible to be claimed as a dependent on the owner-occupant's federal income tax return."

1. Currently the definition of "member of my household" is limited to 12-43-220 (c)(2)(ii)(B).

D. "In addition to the certification, the burden of proof for eligibility for the four percent assessment ratio is on the owner-occupant and the applicant must provide proof the assessor requires including, but not limited to:

(A) [sic] a copy of the owner-occupant's most recently filed South Carolina individual income tax return;

(B) [sic] copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner-occupant;

(C) [sic] other proof required by the assessor necessary to determine eligibility for the assessment ratio allowed by this item."

1. "Other proof" may include: Driver's license, W-2 forms, utility bills, insurance policies, voter registration, school registrations, etc.

E. No additional applications needed as long as the current owner continues to meet the requirements.

1. If a change of ownership occurs, the owner who qualified shall notify the assessor of the change within 6 months of the transfer.

2. A new application is required for the new owner to qualify.

3. Failure to file within the prescribed timeframe is an abandonment of the right for the legal residence classification for this year, but the local taxing authority may extend the time for reasonable cause.
- F. The SC Department of Revenue may provide information to the County Auditor or Assessor from the Taxpayer's income tax return to aid in the county's verification. 12-54-240 (B)(12)
1. Resident or non-resident return filed
 2. Joint or individual return
 3. Name of taxpayer filing jointly with taxpayer
 4. Taxpayer's address shown on return
 5. County code of residence shown on return.
- IV. PENALTIES: 12-43-220 (c)(2)(vii)
- A. 100% of the tax paid
 - B. Interest at the rate of $\frac{1}{2}$ of 1% a month (must be at least 30 dollars) and cannot be more than current year's taxes. Interest is assessed on the 4% amount.
 - C. Penalty and interest are considered ad valorem taxes for purposes of collection and enforcement.
 - D. Then the assessor will issue tax bill at the 6% rate, under 12-43-220 (e).
- V. SPECIFIC SITUATIONS
- A. Fractional ownership:
1. Can qualify for the entire 4% legal residence rate if:
 - a. Own at least a 25% share with an immediate family member which is defined as a parent, child or sibling
 - b. Not a member of household currently receiving 4% on another property
 - c. Otherwise qualify for the 4% (domicile, certification, etc.) 12-43-220 (c)(8)(ii)
 - d. Problems: Ownership with step-parent or step-child or grandparent? How to verify "parent, child or sibling"?
 2. Apportioned ownership:
 - a. Ownership interest must be created by deed and not transferred by operation of law.
 - b. Ownership interest by individual less than 50% in fee simple
 - c. Value of residence allowed the 4% ratio is a percentage of that value equal to the individual's ownership interest, but not less than \$100.
 - d. Does not apply to married couples
 - e. Does not apply to a residence which remains occupied by a spouse "legally separated from a spouse who has abandoned the residence." 12-43-220 (c)(8)(i)
 - i. Problems: What is "legally separated" in SC?
 - ii. Who determines whether the spouse has "abandoned the residence" and what does that mean?

B. Military

1. If on active duty and assigned to a permanent duty station in SC, service member can qualify for legal residence, even if legal resident of and domiciled in another state.
2. Must file orders with assessor as proof. 12-43-220 (c)(2)(v)

C. Rentals

1. Cannot rent a legal residence for more than 15 days and still qualify for the 4% legal residence rate. 12-43-220 (c)(7) and Ford v. Beaufort Co. Assessor, 398 SC 508, 730 SE2d 335 (Ct. App. 2012).
2. (Note: Legislation has been introduced to allow rentals of 100 days.)
3. Legislation has also been introduced to allow military personnel and their spouses to rent a legal residence without loss of classification.

D. Nursing Home

1. Granny leaves the family homestead and moves into nursing home to allow for rehabilitation following surgery on her broken hip. What is the status of her legal residence classification?
 - a. Look at the intent. Does Granny intend to return to the homestead, or does she recognize that she needs additional, long-term care?
 - b. Many counties say as long as Granny intends to return to her home, then leave the legal residence assessment on the property.
 - c. Some counties say that most people “intend” to return to the homestead, but it is not practical. They remove the classification.

E. Contract for Sale 12-43-220 (c)(5)

1. Contracts for sale may receive legal residence designation
2. Contract must be recorded.
3. Assessors are scrutinizing these contracts to verify that they are actually contracts for sale and not glorified rental agreements.
 - a. Look at default provision. Does it go through the Master’s office, or the Magistrate (Master would indicate a sale, Magistrate would indicate a rental.)
 - b. The assessors may ask for the “seller’s” Federal Income Tax return 6252 to see if the payments are being credited. May also ask for “purchaser’s” return to see if interest is being claimed.
 - c. May ask for an amortization schedule to verify sale vs. rental.
 - d. Terms should be reasonable to avoid red flags

F. LLC

1. A single member LLC can qualify for the 4% legal residence classification under the terms of CFRE v. Greenville Co. Assessor, 395 SC 67, 715 SE 2d 877. (2011) and SC Code Ann. § 12-2-25. (Note: Legislation introduces to codify this ruling.)

G. Fractional interests by non-individuals:

1. What if an LLC or a non-grantor trust owns a fractional interest in a residence of less than 50% with a person? 12-43-220 (c)(8)(i) refers to an “individual” claiming the special 4% ratio. Under 12-2-20 (2) an “individual” means a human being.” Should this application be denied since it does not meet the

specific terms of the statute? Likewise, how can an LLC or trust, etc. have a spouse or be legally separated as described in the rest of the subsection? Language is not clear in statute, but not known how SC assessors are treating “non-human” ownership.

VI. ASSESSABLE TRANSFERS OF INTEREST (“ATI”), 12-37-3110 *et seq.*, part of the SC Real Property Valuation Reform Act, aka “Act 388” of 2006

A. Basic definitions:

1. “Assessable transfer of interest” means a transfer of an existing interest in real property that subjects the real property to appraisal. For purposes of this definition, an existing interest in real property includes life estates.” 12-37-3130 (4).
2. For definitions of various types of fair market values (“FMV”), see: 12-37-3135, includes: ATI FMV, Current FMV, Exemption Value, FMV and Property Tax Value. These terms are used extensively throughout this Act.

B. Fair Market Value

1. How to determine: 12-37-3140: “(A)(1) For property tax years beginning after 2006, the fair market value of real property is its fair market value applicable for the later of:
 - (a) the base year, as defined in subsection (C) of this section;
 - (b) December thirty-first of the year in which an assessable transfer of interest has occurred;
 - (c) as determined on appeal; or
 - (d) as it may be adjusted as determined in a countywide reassessment program conducted pursuant to Section 12-43-217, but limited to increases in such value as provided in subsection (B) of this section.(2) To the fair market value of real property as determined at the time provided in item (1) of this subsection, there must be added the fair market value of subsequent improvements and additions to the property.”
2. 15% Cap, 12-37-3140(B): “Any increase in the fair market value of real property attributable to the periodic countywide appraisal and equalization program implemented pursuant to Section 12-43-217 is limited to fifteen percent within a five-year period to the otherwise applicable fair market value. This limit must be calculated on the land and improvements as a whole. However, this limit does not apply to the fair market value of additions or improvements to real property in the year those additions or improvements are first subject to property tax, nor do they apply to the fair market value of real property when an assessable transfer of interest occurred in the year that the transfer value is first subject to tax.”
 - a. NOTE: Does not apply to property valued by the unit valuation method per 12-37-3140 (D).

C. Exemption, 12-37-3135 (B):

1. If there is property assessed at 6% which is currently subject to tax, an exemption is allowed from property tax of an amount of the ATI FMV of the

- parcel as determined below. The calculation is based on the exemption value and applies at the time the ATV FMV first applies.
2. The exemption allowed is 25% of the ATI FMV, but it may not be less than the current FMV. If the ATI FMV is less than the current FMV, then the exemption otherwise allowed does not apply and the ATI FMV applies as provided in 12-37-3140 (A)(1)(b).
 3. This exemption does NOT apply unless the owner of the parcel, or his agent, notifies the county assessor that the property will be subject to the 6% assessment ratio provided pursuant to 12-43-220 (e) (the general “all other property is subject to taxation at 6%” section) before January 31 for the tax year in which the owner first claims eligibility for the exemption. No further notifications are necessary as long as the ownership does not change and the property continues to be assessed at 6%.
- D. When to Appraise Property
1. ATI includes, 12-37-3150 (A):
 - a. Conveyance by deed,
 - b. Conveyance by land contract,
 - c. Conveyance to a trust, except if:
 - i. The settlor or settlor’s spouse, or both, conveys the property to the trust and the sole present beneficiary or beneficiaries are the settlor or the spouse, or both; or
 - ii. The settlor or the settlor’s spouse, or both, conveys the property subject to the special 4% ratio pursuant to 12-43-220 (c) and the sole present beneficiary or beneficiaries is the child or children of the settlor or spouse, but a subsequent conveyance of this real property by the beneficiary child or children is not exempt from the provisions of this section.
 - d. A conveyance by distribution from a trust, except if the distributee is the sole present beneficiary or the spouse of the sole present beneficiary, or both;
 - e. a change in the sole present beneficiary or beneficiaries of a trust, except a change that adds or substitutes the spouse of the sole present beneficiary;
 - f. a conveyance by distribution under a will or by intestate succession, except if:
 - i. the distributee is the decedent's spouse; or
 - ii. the distributee is the child or children of the decedent, the decedent did not have a spouse at the time of the decedent's death, and the property is subject to the special four percent assessment ratio pursuant to Section 12-43-220(c), but a subsequent conveyance of this real property by the distributee child or children is not exempt from the provisions of this section;

- g. a conveyance by lease if the total duration of the lease, including the initial term and all options for renewal, is more than twenty years or the lease grants the lessee a bargain purchase option. As used in this item, "bargain purchase option" means the right to purchase the property at the termination of the lease for not more than eighty percent of the property's true cash value at the termination of the lease. This item does not apply to personal property or that portion of the property not subject to the leasehold interest conveyed;
 - h. a transfer of an ownership interest in a single transaction or as a part of a series of related transactions within a twenty-five year period in a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity if the ownership interest conveyed is more than fifty percent of the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity. This provision does not apply to transfers that are not subject to federal income tax, as provided in subsection (B)(1), including, but not limited to, transfers of interests to spouses. The corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity shall notify the applicable property tax assessor on a form provided by the Department of Revenue not more than forty-five days after a conveyance of an ownership interest that constitutes an assessable transfer of interest or transfer of ownership under this item. Failure to provide this notice or failure to provide accurate information of a transaction required to be reported by this subitem subjects the property to a civil penalty of not less than one hundred nor more than one thousand dollars as determined by the assessor. This penalty is enforceable and collectible as property tax and is in addition to any other penalties that may apply. Failure to provide this notice is a separate offense for each year after the notice was required;
 - i. a change of use of agricultural real property which subjects it to the rollback tax;
 - j. a change of use of real property when classification of property changes as a result of a local zoning ordinance change; or
 - k. the passage of twenty years since the later of the base year or the last assessable transfer of interest for real property owned by a publicly-held entity whose stock, shares, or other ownership interests are traded on a regulated exchange, a pension fund, or other similar entity.
2. ATI does NOT include, 12-37-315(B):
- a. transfers not subject to federal income tax in the following circumstances:

- i. 1033 (Conversions-Fire and Insurance Proceeds to Rebuild);
- ii. 1041 (Transfers of Property Between Spouses or Incident to Divorce);
- iii. 351 (Transfer to a Corporation Controlled by Transferor);
- iv. 355 (Distribution by a Controlled Corporation);
- v. 368 (Corporate Reorganizations); or
- vi. 721 (Nonrecognition of Gain or Loss on a Contribution to a Partnership).

(Number references above are to the IRC of 1986, as defined in SC Code 12-6-40.)

- b. a transfer of that portion of property subject to a life estate or life lease retained by the transferor, until expiration or termination of the life estate or life lease;
- c. transfer through foreclosure or forfeiture of a recorded instrument or through deed or conveyance in lieu of a foreclosure or forfeiture, until the redemption period has expired;
- d. a transfer by redemption by the person to whom taxes are assessed of property previously sold for delinquent taxes;
- e. a conveyance to a trust if the settlor or the settlor's spouse, or both, convey the property to the trust and the sole present beneficiary of the trust is the settlor or the settlor's spouse, or both;
- f. a transfer for security or an assignment or discharge of a security interest;
- g. a transfer of real property or other ownership interests among members of an affiliated group. As used in this item, "affiliated group" is as defined in Section 1504 of the Internal Revenue Code as defined in Section 12-6-40. Upon request of the applicable property tax assessor, a corporation shall furnish proof within forty-five days that a transfer meets the requirements of this item. A corporation that fails to comply with this request is subject to a civil penalty as provided in Section 12-37-3160(B);
- h. a transfer of real property or other ownership interests among corporations, partnerships, limited liability companies, limited liability partnerships, or other legal entities if the entities involved are commonly controlled. Upon request by the applicable property tax assessor, a corporation, partnership, limited liability company, limited liability partnership, or other legal entity shall furnish proof within forty-five days that a transfer meets the requirements of this item. A corporation, partnership, limited liability company, limited liability partnership, or

other legal entity that fails to comply with this request is subject to a civil penalty as provided in Section 12-37-3160(B);

- i. a transfer of an interest in a timeshare unit by deed or lease;
 - j. a transfer of an undivided, fractional ownership interest in real estate in a single transaction or as a part of a series of related transactions, if the ownership interest or interests conveyed, or otherwise transferred, in the single transaction or series of related transactions within a twenty-five year period, is not more than fifty percent of the entire fee simple title to the real estate;
 - k. a transfer to a single member limited liability company, not taxed separately as a corporation, by its single member or a transfer from a single member limited liability company, not taxed separately as a corporation, to its single member, as provided in Section 12-2-25(B)(1);
 - l. a conveyance, assignment, release, or modification of an easement, including, but not limited to:
 - i. a conservation easement, as defined in Chapter 8, Title 27;
 - ii. a utility easement; or
 - iii. an easement for ingress, egress, or regress;
 - m. a transfer or renunciation by deed, release, or agreement of a claim of interest in real property for the purpose of quieting and confirming title to real property in the name of one or more of the existing owners of the real property or for the purpose of confirming or establishing the location of an uncertain or disputed boundary line; or
 - n. the execution or recording of a deed to real property for the purpose of creating or terminating a joint tenancy with rights of survivorship, provided the grantors and grantees are the same.
 - o. a transfer of a fractional interest between family members for zero monetary consideration, or a de minimis monetary consideration, whereby both the grantor and the grantee owned an interest in the property prior to the transfer. For purposes of this item, a family member includes a spouse, parent, brother, sister, child, grandparent, or grandchild.
3. NOTE: An ATI occurs at the time the documents are executed which effects the transfer, it is not required that the documents be recorded. Failure to record the documents gives no rise to an inference as to whether or not an ATI has occurred.

E. ALC Cases:

1. Charleston County Assessor v. 4 Cousins, LLC, 09-ALJ-17-0359-CC (May 27, 2009, J. Robinson) Does conveyance from a trust to individuals who are also purported members of an LLC constitute an ATI? ALC says yes.

2. Charleston County Assessor v. Goldbug Properties, LLC, 09-ALJ-17-0469-CC, April 19, 2009, J. Durden) Did transfer from LLC to member's spouse and daughter constitute an ATI? ALC said no.
3. Howard Boyd v. Fairfield County Assessor, 11-ALJ-17-0637-AP [*sic*, s/b CC] (Sept. 6, 2012, J. Robinson) Issue turns on "base year" definition for valuing property under 12-37-3140 (A)(1) and whether the purchase at an auction of foreclosed properties constitutes an ATI. ALC ruled that the sale was an ATI, but that the county had used the wrong base year. The ALC remanded the case to the Board of Assessment Appeals for determination of the FMV.
4. Landrum Fisher v. Georgetown County Assessor, 09-ALJ-17-0337-CC, (November 9, 2009, J. Durden) Issue turns on "base year" definition for valuing property under 12-37-3140 (A)(1). ALC said that the year that an ATI occurred was the proper date of assessment.
5. Lisa W. Shuler v. Horry County Assessor, 09-ALJ-17-0195-CC, (August 17, 2009, J. Durden) Issues included whether a transfer from parent to child constituted an ATI and whether the fact that the Petitioner, a North Carolina resident who had a NC attorney close the loan, was prejudiced because the attorney failed to notify her that the transfer would be an ATI. ALC ruled that the transfer was an ATI and that the Petitioner is presumed to have knowledge of the law and must exercise reasonable care to protect her interests.
6. Ronald A. and June C. Seymour v. Newberry County Assessor, 11-ALJ-17-0519-CC (April 4, 2012, J. Matthews) Deals with valuation including a capped value. ALC ruled that Petitioners failed to carry their burden of showing that the Assessor was wrong.
7. Minoes, LLC v Richland County Assessor, 12-ALJ-17-0513-CC, (May 28, 2013, J. Matthews) Issues included proper method of valuation and inclusion of improvements in the ATI valuation. In addition, the Petitioner alleged an inequitable assessment because the property next door was taxed significantly lower. ALC ruled for the Assessor, finding that the Petitioner failed to carry its burden and that the adjacent property was taxed less due to the 15% cap and the lack of sales of that property.

F. AG Opinions:

1. June 9, 2010 to Rep. Alan Clemmons, calculation of FMV
2. Oct. 20, 2011 to Rep. Tom Young, appraisal methods and 15% cap



South Carolina Taxation and Economic Tax Incentives

Tuesday, December 3, 2013

FILOT and Economic Tax Incentives

ECONOMIC DEVELOPMENT PROPERTY TAX INCENTIVES (INCLUDING FEE-IN-LIEU OF TAXES AND SPECIAL SOURCE REVENUE CREDITS)

December 3, 2013

George Wolfe
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SC PROPERTY TAX

- Property tax = Fair Market Value x Assessment Ratio x Millage.
- Assessment Ratios:
 - Residential property at 4%.
 - Commercial real property at 6%.
 - Commercial personal property and manufacturing real and personal property at 10.5%.

SC PROPERTY TAX EXAMPLE

PROPERTY TAX ON \$1 MILLION OF FAIR MARKET VALUE

- Assuming 300 mills, the property tax on \$1 million of fair market value would be:
 - Commercial real property: $\$1,000,000 \times 6\% \times .300 = \$18,000$.
 - Manufacturing real property: $\$1,000,000 \times 10.5\% \times .300 = \$31,500$.

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METHODS OF DETERMINING FAIR MARKET VALUE

- Real property is typically valued based on an appraisal method that includes three approaches to value: (a) cost, (b) market (comparable sales) and (c) income.
- Commercial personal property is valued based on federal income tax cost less income tax depreciation, with no items being depreciated more than 90%.
- Manufacturing personal property is valued based on gross capitalization cost less statutorily specified straight line depreciation, with no item being depreciated more than 90%.

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VALUATION OF REAL PROPERTY

- Generally, counties must conduct a reassessment program every five years and implement the program with new real property values in the fifth year.
- After 2006 legislation, property is still reassessed every five years, but it cannot increase in value by more than 15% unless there is an "assessable transfer" (i.e., a sale) during that period.
- In the event of a sale, the property is reassessed at market value in the next year.
- 2011 legislation reduced the reassessed value of real property resulting from a sale by 25%, but in no event lower than such property's value based on the previous periodic reassessment.

FEE-IN-LIEU OF TAXES ("FILOT")

WHAT IS FEE-IN-LIEU?

- Property tax incentive (reduction mechanism) that a county may provide to a company making a new or additional investment in a county.
- One of two discretionary mechanisms – the other one being the special source revenue credit – for reducing property taxes on business investments.

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THREE DIFFERENT PILOT STATUTES (1 of 2)

- Big fee statute (1988) (S.C. Code § 4-29-67) -- \$85 million (now \$45 million) minimum investment; bond issuance required; project title must be transferred to county. Upheld by the State Supreme Court in 1990.
- Little Fee Act (1995) (Chapter 12 of Title 4 of S.C. Code)-- \$5 million (now \$2.5 million; \$1 million in counties with twice state unemployment average or on qualified brownfields project) minimum investment; no bonds required; project title must be transferred to county.
- Simple Fee Act (1997) (Chapter 44 of Title 12 of S.C. Code) -- \$5 million (now \$2.5 million; \$1 million in counties with twice state unemployment average or on qualified brownfields project) minimum investment; no bonds required; project title not required to be transferred to county.

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THREE DIFFERENT FILOT STATUTES (2 of 2)

- Virtually all companies making new investments now use the Simple Fee Act because companies can retain project title.
- Substance of Simple Fee Act is essentially the same as the substance of the earlier two Acts.
- Transitional provision for moving from one Act to another Act.
- Will focus on Simple Fee Act.

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PRINCIPAL FEATURES OF "REGULAR" FILOT AGREEMENT

- Assessment ratio as low as 6%.
- Millage rate fixed or adjusted every five years.
- Valuation of real property is set for the term of the FILOT Agreement at original income tax cost basis. 2010 Amendment allows companies and counties to agree to reappraise real property periodically to determine value. Existing fee agreements may be amended to provide for revaluation. Can be helpful to projects with buildings that have declined or will decline in value.
- Investment Period of 5 years, with possible 5-year extension.
- Property placed in service during the Investment Period is eligible for reduced FILOT payments during the Benefit Period.
- Benefit Period of up to 30 years, per 2010/2012 Amendments (increase from 20-years). Subject to a possible 10-year extension.
- For investments greater than \$45 million, a net present value payment method (e.g., equal annual payments) is available.
- Exemption from rollback taxes.

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COMPANIES AND INVESTMENTS QUALIFYING FOR FILOT TREATMENT

- Any company can make a qualifying investment.
- Any "project" can potentially qualify for FILOT treatment, so long as certain conditions are met. A "project" is defined as any real property, improved real property, and/or tangible personal property that is useful to the company making the investment. Airplanes can qualify under certain circumstances, but rolling stock usually cannot.

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PROPERTY ELIGIBLE FOR A FEE

- Land (excluding improvements) is eligible.
- Any property not previously subject to South Carolina property tax is eligible.
- Property previously subject to South Carolina property tax is eligible if unrelated purchaser of such property invests an additional \$45 million at the project.
- Expansions of buildings previously taxed are eligible; however, repairs, alterations and modifications to previously taxed buildings are not eligible (unless invest an additional \$45 million).
- Per 2010 Amendment, property placed in service "pursuant to" an inducement resolution or agreement is eligible.

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COMPANIES CAN COMBINE TO MAKE AN INVESTMENT THAT QUALIFIES FOR FILOT BENEFITS

- Single company (sponsor) can join together with additional companies (sponsor affiliates), whether related or unrelated, to make investments.
- Each sponsor/sponsor affiliate must separately make the minimum statutory investment (usually \$2.5 million) to qualify its investment for FILOT benefits.
- However, if a project consists of a manufacturing, research and development, corporate office, or distribution facility, as defined in SC Code 12-6-3360(M), it can qualify based on a total multi-company investment of at least \$5 million (reduced from \$10 million by the 2010 Amendment).

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"ENHANCED FEE" – ADDITIONAL QUALIFICATION REQUIREMENTS AND BENEFITS

- Qualification requirements:
 - Invest at least \$400 million at the project site; or
 - Invest at least \$150 million and create at least 125 new full-time jobs at the project site.
 - Note: Can in some circumstances count investments by other companies, e.g., a developer or financing entity, towards the minimum investment requirement.
- Assessment ratio as low as 4%.
- Investment Period of 8 years, with possible 5-year extension.
- Benefit Period of up to 40 years, per 2010/2012 Amendments (increase from 30 years). Subject to a possible 10-year extension.
- For the largest projects (statewide investment greater than \$500 million and statewide employment of more than 1,000 people), the Investment Period is 10 years with a possible 5-year extension.

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PROCESS FOR ENTERING INTO A FEE AGREEMENT

- Commitment phase: Inducement Resolution or Inducement Agreement.
- Implementation phase: Fee Agreement.
- Fee Agreement must be approved by ordinance, which requires 3 different readings (votes) by county council and a public hearing.

TIMING ISSUES RELATING TO A FILOT TRANSACTION (1 of 2)

STATUTORY TIMING ISSUES

- A county has two years from the date it takes action reflecting or identifying a proposed project to adopt an Inducement Resolution relating to that project.
- A county has five years from the date of the reflecting or identifying action (usually the Inducement Resolution) to execute a Fee Agreement.
- The first piece of property subject to the FILOT must be placed in service no later than the last day of the property tax year that is three years from the end of the year in which the county and the sponsor entered into the Fee Agreement.
- The minimum \$2.5 million investment required by the FILOT Act must be made within the Investment Period without regard to any extensions thereof.
- Any property that is to benefit from the Fee Agreement must be placed in service by the end of the Investment Period, including any extensions thereof. Ongoing SCDOR audits of same. There is an exception for "replacement property" (discussed below).
- Extensions of the Investment Period must be applied for before the end of the Investment Period.

TIMING ISSUES RELATING TO A FILOT TRANSACTION (2 of 2)

OTHER TIMING ISSUES

- For a company, timely negotiation with a county.
- Timing of adoption of Inducement Resolution or Agreement.
- Ensure Fee Agreement is approved and entered into before the end of the property tax year in which the project is first placed in service. 2010 Amendment provides additional flexibility if project is placed in service "pursuant to" an Inducement Resolution or Agreement.
- Maximize investments placed in service during Investment Period.
- Timely explore possible extension of Investment Period.
- Timely explore possible extension of the Benefit Period.
- Coordinate timing of replacement property vs. disposition of property (discussed below).

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17

DISPOSAL OF PROPERTY AND REPLACEMENT PROPERTY (1 of 3)

- FILOT Payment is reduced by amount of Fee applicable to property scrapped, sold or removed from project, the same as with property taxes.
- Property removed from project but remaining in South Carolina is subject to property tax.
- Fee Agreement may provide that property placed in service after the end of the Investment Period can "replace" property that is disposed of and can receive FILOT benefits, subject to certain rules:

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18

DISPOSAL OF PROPERTY AND REPLACEMENT PROPERTY (2 of 3)

- Replacement Property does not have to serve the same function as the property it is replacing.
- More than one piece of Replacement Property can replace a single piece of Disposed Property and vice versa.
- Replacement Property is entitled to receive continued FILOT benefits for the period of time remaining on the Fee term for the property which it is replacing.

DISPOSAL OF PROPERTY AND REPLACEMENT PROPERTY (3 of 3)

- Replacement Property qualifies for FILOT benefits only up to the original income tax basis of the FILOT property being disposed of in the same property tax year. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the property that it is replacing, the excess is not entitled to continued FILOT benefits.
- If payments on Disposed Property have been made using the Net Present Value Method, the sponsor must pay the county the difference, if any, between the FILOT payments that the sponsor has made on such Disposed Property and the FILOT payments the sponsor would have made on such Disposed Property if the Net Present Value Method had not been used.

SPECIAL SOURCE REVENUE CREDIT

(S.C. Code Sections 4-1-175 and 4-29-68)

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21

SPECIAL SOURCE REVENUE CREDIT (SSRC)

- A Special Source Revenue Credit (SSRC) provides another way that a county can reduce property taxes on business investments.
- Through an SSRC, a county can:
 - Provide a property tax reductions in addition to those provided pursuant to a FILOT transaction; or
 - Provide a property tax reduction where no such reduction is authorized under the FILOT Act.
 - Example: County can use an SSRC to incentivize a company to purchase an existing building that is ineligible for FILOT treatment.

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22

MULTI-COUNTY INDUSTRIAL PARKS (MCIP)

- County revenues applied to a Special Source Revenue Credit (SSRC) must be generated from property located within a multi-county industrial park (Multi-County Park).
- Requirements to establish a Multi-County Park:
 - Must be formed by two or more contiguous counties.
 - The participating counties must agree to the allocation of revenue generated from property located within the Park.
 - A Park may not include municipal property without the consent of the municipality.
 - All payments on property in a Multi-County Park are "FILOT" payments – "Park FILOT Payments" -- whether or not the property is subject to FILOT payments under a Fee Agreement ("Negotiated FILOT Payments").
 - A county can distribute revenue received from property within a Multi-County Park – Park FILOT Payments – differently than it can distribute property taxes or Negotiated FILOT Payments on property located outside of a Multi-County Park. This flexibility enables a county to provide an SSRC.

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23

SPECIAL SOURCE REVENUE CREDIT (SSRC)

(1 of 2)

- Unlike the highly structured FILOT mechanism, the SSRC mechanism is very flexible.
- Through an SSRC a county can, subject to certain limitations, provide a company with whatever property tax reduction the parties may agree upon.
- The SSRC is provided as a credit against a company's annual "Park FILOT Payments" in the amount of a specified percentage or dollar amount, for a specified number of years.
- The amount of the SSRC is statutorily limited to the amount of money spent by a company on project-related infrastructure or on real property or personal property used in the operation of a manufacturing or commercial enterprise. (The 2010 Amendment added personal property.)
- SSRC may be granted for property located in a Multi-County Park even though there is no negotiated FILOT Agreement.

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24

SPECIAL SOURCE REVENUE CREDIT

(2 of 2)

- The 2010 Amendment provides that, if the cost of personal property is used as part of the basis for an SSRC, and such property is removed during the "life of the fee" and not replaced, the company must make FILOT payments on the removed personal property for two additional years after it is removed.
- Accordingly, if a company obtaining an SSRC plans to have sufficient infrastructure, real property and real property improvement expenditures as the basis for the SSRC, the Agreement should make clear that personal property is not included in that basis, to avoid any subsequent penalty payment.

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SSRC EXAMPLES

- 30% SSRC -- or 50% or 70% -- for 10 years.
 - Provided, total SSRC cannot exceed a certain dollar amount.
- \$3 million SSRC.
 - Provided, that the annual SSRC percentage cannot exceed 30% -- or 50% or 70%.
- 30% SSRC for years 1-5; 20% for years 6-10; and 10% for years 11-15.
- Whatever SSRC is necessary to provide a flat FILOT payment of \$250,000 for years 1-5; \$500,000 dollars for years 6-10; \$1 million for years 11-15; and whatever the normal FILOT payment would be thereafter.

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26

SPECIAL SOURCE REVENUE BOND (SSRB)

- If third-party financing is needed at the front end of a project, the sponsor and the county may agree that the county will issue a Special Source Revenue Bond (SSRB) to fund the infrastructure or unimproved or improved real property in question.
- The Park FILOT payments from the project can then be used to service the debt on the SSRB.
- The SSRB is payable solely from the designated revenue source -- often, the sponsor's FILOT payment, or sometimes from other sources in a Multi-County Park.
- Not a general obligation of the County.

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PROPERTY TAX EXEMPTIONS

- Manufacturing exemption.
- Research & development exemption.
- Corporate headquarters, office, and distribution facilities exemption.
- Note: Cannot take these exemptions on property that is subject to a FILOT Agreement.

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MANUFACTURING EXEMPTION

- New manufacturing or \$50,000 plus addition for existing manufacturer.
- Five-year exemption from county non-school property taxes.
- Machinery and equipment included.

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29

RESEARCH AND DEVELOPMENT EXEMPTION

- New facilities and additions of \$50,000 or more.
- Five-year exemption from county non-school property taxes.
- Facility must be devoted directly and primarily to R&D in the experimental or laboratory sense for new products, new uses for existing products or improving existing products.

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30

CORPORATE HEADQUARTERS, OFFICE, AND DISTRIBUTION FACILITIES EXEMPTIONS

- New corporate headquarters, corporate office facilities, distribution facilities and additions to existing facilities.
- Five-year exemption from county non-school property taxes.
- \$50,000 and 75 new full-time jobs.

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31

EXEMPTION FOR PURCHASERS

- Manufacturing, corporate headquarters and research and development exemptions are extended to an unrelated purchaser that acquires a facility and maintains existing jobs.
- Discretionary -- county approval required.
- Exemption applies for 5 years from date of purchase.

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32

CLAIMING EXEMPTIONS

- Generally, claim economic development exemptions by listing on property tax return (PT-300).

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JOB DEVELOPMENT CREDITS

December 3, 2013

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JOB DEVELOPMENT CREDIT (JDC)

PRINCIPAL FEATURES OF JOB DEVELOPMENT CREDIT (OVERVIEW)

(1 of 2)

- Qualifying companies may receive a quarterly rebate of 1.1% to 5% of taxable employee wages for new employees at a new or expanded operation for up to 10 years (in some circumstances 15 years) through the Job Development Credit.
- This rebate may be used to offset the employer's project-related eligible expenditures, which can include, among other things, real property, infrastructure, and pollution control equipment.
- The total JDC taken by a company cannot exceed eligible expenditures.

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PRINCIPAL FEATURES OF JOB DEVELOPMENT CREDIT (OVERVIEW)

(2 of 2)

- To qualify for the JDC, a company must:
 - be a qualifying business;
 - provide employees with a benefits package that includes healthcare; and
 - meet a contractually negotiated minimum level of capital investment and employment set forth in the JDC Application and the resulting Revitalization Agreement.
- The JDC is performance-based. A company does not receive any benefits unless and until it meets its minimum investment and job requirements.
- A company must maintain those minimums in order to continue to receive the JDC.

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QUALIFYING BUSINESS TYPES

OFTEN

- Manufacturing and processing
- Distribution and warehousing

SELDOM

- Qualified service related (e.g., call centers)
- Corporate office (headquarters)
- Research & Development
- Technology intensive
- Banking
- Tourism
- Agribusiness (effective 1/1/11)
- Extraordinary retail

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APPLYING FOR JDC BENEFITS

- To apply for JDC benefits, a company must be working with a South Carolina Department of Commerce project manager.
- The JDC Application must set forth, among other things:
 - the minimum investment to be made and the minimum number of jobs to be created by the company in connection with the project.
 - the eligible expenditures that the company plans to make at the project.
- Multiple JDC Applications may be an option for mega projects.
- There is a \$4,000 nonrefundable application fee.
- The project must be “competitive” with at least one location outside of South Carolina.
- The JDC Application must be submitted and approved by the Coordinating Council prior to any official announcement by a company of its South Carolina project location or expansion.

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JDC APPLICATION APPROVAL; COMMITMENT LETTER

- After the JDC Application is approved, the company must commit in writing to locate or expand in South Carolina within 30 days. Otherwise, the approval is revoked. Extensions are granted in appropriate circumstances.
- A sample “commitment letter” might contain a statement along the following lines: “This letter is to inform you that Company X intends to locate a new facility in _____ County, South Carolina. Over the first five years of operation of this facility, we intend that our project will involve a capital investment of \$ _____, and the creation of ____ new jobs.”

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REVITALIZATION AGREEMENT (RVA)

(1 of 3)

- The JDC Application, together with the Coordinating Council approval letter, becomes the preliminary "Revitalization Agreement" (RVA). The date on which the Application is approved is the effective date of the Revitalization Agreement.
- The final RVA must be executed by the company and the Coordinating Council within 12 months of the date of the Coordinating Council approval of the JDC Application.
- The RVA provides that the company must certify that it has satisfied its minimum job creation and investment requirements within a specified number of years – usually five – after the effective date of the RVA.

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REVITALIZATION AGREEMENT (RVA)

(2 of 3)

- The RVA sets forth the types and amounts of eligible expenditures. The total JDC benefit cannot exceed the total eligible expenditures, as set forth in the RVA.
- The company that is to collect the JDCs must be the same company that is making the eligible expenditures that provide the basis for the JDCs.
- Typically, only jobs paying at or above county per capita hourly income are eligible for JDCs. Lower wage rates can sometimes be negotiated.
- Usually, hourly wage rates will be adjusted every five years to equal county average wage rates at the time of adjustment. Sometimes, the RVA will instead provide for a periodic increase of the minimum wage rate at a stated percentage level.

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9

REVITALIZATION AGREEMENT (RVA)

(3 of 3)

- Typically, a company may not claim a JDC of more than \$3,250 per employee per year.
- The term of an RVA is usually ten years. Sometimes shorter terms are negotiated in return for a state grant or for an increase in the amount of a state grant. The JDC statute allows for a term of up to 15 years, which may be provided in exceptional circumstances.
- A company subject to an RVA must file an annual and quarterly report with the Coordinating Council and the S.C. Department of Revenue.
- Companies claiming over \$10,000 in a calendar year will be audited by the SCDOR at least once every three years. Companies must pay the SCDOR \$1,000 each year they claim over \$10,000.

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ELIGIBLE EXPENDITURES

(1 of 2)

- JDCs claimed by a company cannot exceed “Eligible Expenditures” made by the company at the project.
- “Eligible Expenditures” include:
 - Acquiring and improving real estate, whether by purchase or lease.
 - Leases are reviewed on case-by-case basis. Typically, the cost of leases for terms of less than 10 years are not allowed. The Council is usually looking for a lease that drives a new building.
 - Upfits made to existing buildings by lessees are sometimes approved as eligible expenditures. Generally speaking, additions that become part of a building may be approved. Examples: walls, floors, heating and cooling systems, wiring. Example of nonqualifying addition: cubicles.

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ELIGIBLE EXPENDITURES

(2 of 2)

- Pollution control equipment .
- Training costs and facilities.
- Improvements to public and private utility systems.
- Fixed transportation facilities (e.g., highway, rail, water, air).
- Employee relocation, but only for employees with wages at least two times the lower of the state or county per capita income.
- Apprenticeship programs.
- Quality improvement (SC Quality Forum).
- Eligible Expenditures must be set forth in the JDC Application and the RVA.
- Limitation – Eligible Expenditures incurred more than 60 days prior to the filing of the JDC Application do not qualify as a basis for JDCs.

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ELIGIBLE JOBS

- Net new jobs are counted from the beginning of the company's tax year during which the JDC Application was approved.
- Generally, JDCs may only be claimed on jobs with wage rates greater than or equal to the county per capita income. Other wage rates can occasionally be negotiated between the company and the Coordinating Council.
- A company must pay at least 50% of the project employees' premiums for comprehensive health care plan and must offer equivalent health care coverage for spouses and dependents in order for its employees to qualify for JDC benefits.
- The company can only take the JDC with respect to its own employees. Contract workers and temporary workers do not count.

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13

VALUE OF JOB DEVELOPMENT CREDIT

(1 of 2)

- The maximum value to a company ranges from 1.1% to 5% of the payroll of the new employees, up to the minimum job number set forth in the RVA.
- A company's actual JDC percentage for a particular job depends upon (1) the cash compensation paid and (2) the classification of the county in which the project is located.
- The total JDCs taken by a company cannot exceed the total amount of the company's Eligible Expenditures.
- The minimum is the maximum. The minimum job requirement represents both (1) the minimum number of jobs that must be created to qualify and (2) the maximum number of jobs for which the JDC may be claimed.

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VALUE OF JOB DEVELOPMENT CREDIT

(2 of 2)

- As an informal matter, the Coordinating Council will typically allow a 10% adjustment of minimum jobs and investment requirements, and Eligible Expenditures, at two points in the process.
 - First, the Coordinating Council usually allows a company to adjust the numbers set forth in its JDC Application by up to 10% at the time that the final RVA is entered into.
 - Second, the Coordinating Council usually allows another 10% adjustment of the numbers set forth in the RVA at the time that a company certifies that it has met the minimum job and investment requirements set forth in the RVA.

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JDC HOURLY WAGE RATES AND PERCENTAGES; COUNTY CLASSIFICATIONS

- The percentage of taxable hourly wages which a company may collect is determined by the amount of cash compensation paid to each employee. The applicable numbers for 2013 are:

<u>2012 Hourly Cash Compensation</u> <small>(Subject to annual adjustment)</small>	<u>Maximum % claimed</u>
\$9.33 to \$12.41	2%
\$12.42 to \$15.51	3%
\$15.52 to \$23.28	4%
\$23.29 and over	5%

- The above-referenced 2% to 5% figures are adjusted based on a county's classification for purposes of the state jobs tax credit, as follows:

<u>County classification</u> <small>(Tier IV is least prosperous; Tier I is most prosperous.)</small>	<u>Percent of JDC company may claim*</u>
Tier IV	100% (5% x 100% = 5%, the maximum)
Tier III	85%
Tier II	70%
Tier I	55% (2% x 55% = 1.1%, the minimum)

* Note: If qualify for FILOT "Enhanced Fee," can retain 95% of JDC regardless of county classification.

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16

ILLUSTRATION OF JDC BENEFITS

- The following illustration shows the estimated value of Job Development Credits assuming (1) the creation of 300 new jobs with (2) an average hourly wage of \$16.00 per hour for (3) a company located in a Tier II county that (4) has eligible expenditures of \$3,000,000.

Jobs	300
Average Cash Compensation	\$16.00/hr (\$32,000 annually)
Total Payroll in Year 1	\$9,600,000
x Job Development Credit Percentage	x 4%
x Tier II County Multiplier	x 70%
Annual Job Development Credit to Company	\$268,800
Total 10-Year Value to Company	\$2,688,000

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17

RETRAINING CREDIT

- A retraining credit is available to assist with retraining of production and technology employees if necessary to remain competitive and/or introduce new technologies.
- The retraining credit is provided in the form of withholding of \$500 per year for 5 years, not to exceed \$2,000 per employee.
- A company can receive JDCs or retraining credit, but not both on same employee.
- This is a discretionary incentive requiring the approval of both the local Technical College and the Coordinating Council.

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19