**South Carolina General Assembly**

119th Session, 2011-2012

**H. 3993**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Taylor, Bedingfield, Edge, Herbkersman, Merrill, Quinn, Forrester, Viers, McCoy, Huggins, Loftis, Erickson, J.R. Smith, Norman, Hardwick, Hamilton, Atwater, Bikas, Parker, Spires, Corbin, Barfield, Bingham, Allison, Gambrell, Patrick, Frye, Brannon, Sottile, G.R. Smith, Bannister, Chumley, Clemmons, Cole, Cooper, Crosby, Daning, Delleney, Harrell, Harrison, Hearn, Henderson, Hixon, Horne, Limehouse, Long, Lowe, Lucas, D.C. Moss, Murphy, Nanney, Owens, Pinson, Pitts, Pope, Simrill, G.M. Smith, Tallon, Thayer, Toole, White, Whitmire, Young, V.S. Moss, Brady, Putnam and Southard

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Companion/Similar bill(s): 274

Introduced in the House on March 30, 2011

Currently residing in the House Committee on **Ways and Means**

Summary: Fair Tax Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/30/2011 House Introduced and read first time ([House Journal‑page 19](file:///h:\hj%20archive\2011\03-30-11.docx))

3/30/2011 House Referred to Committee on **Ways and Means** ([House Journal‑page 19](file:///h:\hj%20archive\2011\03-30-11.docx))

3/30/2011 House Member(s) request name added as sponsor: Clyburn, Hosey, V.S.Moss

3/31/2011 House Member(s) request name added as sponsor: Brady

4/5/2011 House Member(s) request name removed as sponsor: Clyburn

4/13/2011 House Member(s) request name removed as sponsor: Hosey

1/24/2012 House Member(s) request name added as sponsor: Putnam, Southard

**VERSIONS OF THIS BILL**

[3/30/2011](file:///p:\pprever\2011-12\3993_20110330.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 34 TO TITLE 12 SO AS TO ENACT THE “SOUTH CAROLINA FAIR TAX ACT”, TO PROVIDE FOR THE PURPOSES OF THE ACT AND DEFINITIONS, TO PROVIDE FOR JUDICIAL GUIDANCE FOR INTERPRETATION OF THE ACT AND THE IMPOSITION OF THE TAX, TO PROVIDE FOR CREDITS AND REFUNDS, TO PROVIDE FOR A FAMILY CONSUMPTION ALLOWANCE, TO PROVIDE FOR THE ADMINISTRATION OF THE TAX BY THE DEPARTMENT OF REVENUE, TO PROVIDE FOR PENALTIES FOR VIOLATIONS OF THE ACT, AND TO PROVIDE FOR COLLECTIONS, APPEALS, AND TAXPAYER RIGHTS; TO PROVIDE FOR SPECIAL RULES RELATED TO INTERMEDIATE SALES, TAXABLE GAMING SERVICES, PURCHASES BY THE FEDERAL GOVERNMENT, GOVERNMENT ENTERPRISES, MIXED-USE PROPERTY OR SERVICES, AND NOT‑FOR‑PROFIT ORGANIZATIONS; TO PROVIDE FOR TAXATION OF FINANCIAL INTERMEDIATION SERVICES, TO PROVIDE FOR ADDITIONAL MATTERS RELATED TO THE SALE OF A COPYRIGHT OR TRADEMARK, CERTAIN EXCLUSIONS FROM TAXATION, TAXATION RELATED TO THE PURCHASE OF TAXABLE PROPERTY OR SERVICES SUBJECT TO AN EMPLOYEE DISCOUNT, TAXABLE PROPERTY OR SERVICES GIVEN AS A GIFT, PRIZE, REWARD, OR AS REMUNERATION FOR EMPLOYMENT BY A REGISTERED PERSON, AND TO PROVIDE FOR TAX TREATMENT FOR INVENTORY HELD BY A TRADE OR BUSINESS ON THE CLOSE OF BUSINESS ON DECEMBER THIRTY‑FIRST OF THE YEAR THAT THIS ACT IS ENACTED; TO PROVIDE FOR FUNDING TO THE HOMESTEAD EXEMPTION FUND, THE STATE PUBLIC SCHOOL BUILDING FUND, THE SOUTH CAROLINA EDUCATION IMPROVEMENT ACT OF 1984 FUND, FUNDING FOR MUNICIPALITIES AND COUNTIES, AND THE TOURISM EXPENDITURE REVIEW COMMITTEE; TO PROVIDE FOR A SPECIAL VOTE TO AMEND OR REPEAL THIS ACT WITHIN THREE YEARS OF ITS ENACTMENT AND REFERENDUM FOR CHANGES AFTER THE FOURTH YEAR; AND TO REPEAL CHAPTERS 6, 8, 11, 13, 16, 36, 58, AND 62 OF TITLE 12.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 12 of the 1976 Code is amended by adding:

“CHAPTER 34

South Carolina Fair Tax Act

Article 1

Citations, Purposes, and Definitions

Section 12‑34‑101. This chapter may be cited as the ‘South Carolina Fair Tax Act’.

Section 12‑34‑102. (A) Any court, the director, and the department shall consider the purposes of this chapter as stated in subsection (B) of this section as the primary aid in statutory construction.

(B) The purposes of this chapter are to:

(1) raise revenue needed by the state government in a manner consistent with the other purposes of this chapter;

(2) tax all non federal government consumption of goods and services in this State without exception, but only once;

(3) prevent double, multiple, or cascading taxation;

(4) simplify the tax law and reduce the administrative costs of, and the costs of compliance with, the tax law; and

(5) provide for the administration of the tax law in a manner that respects privacy, due process, individual rights when interacting with the government, the presumption of innocence in criminal proceedings, and the presumption of lawful behavior in civil proceedings.

(C) As a secondary aid in statutory construction, any court, the director, and the department shall consider:

(1) the common law canons of statutory construction;

(2) the meaning and construction of concepts and terms used in the 1976 Code in effect before the effective date of this chapter; and

(3) any ambiguities in this chapter in favor of reserving powers to the people.

Section 12‑34‑103. (A) For purposes of this chapter:

(1) A firm is affiliated with another if one of the firms owns fifty percent or more of:

(a) the voting shares of the other firm, when the other firm is a corporation; or

(b) the capital interests of the other firm, when the other firm is not a corporation.

(2) ‘Designated commercial private courier service’ means a firm designated as such by the director or the department, upon application by the firm, if the firm:

(a) provides its services to the general public;

(b) records electronically to its data base kept in the regular course of its business the date on which an item was given to such firm for delivery; and

(c) has been operating as a courier service for at least one year.

(3) ‘Director’ means the Director of the Department of Revenue.

(4) ‘Education and training’ means primary, secondary, or postsecondary level education and job‑related training courses for which one incurs costs for tuition, books, or laboratory or other class related direct fees. Such term does not include room, board, sports activities, recreational activities, hobbies, games, arts or crafts, or cultural activities.

(5) ‘Gross payment means payment for taxable property or services, including the taxes imposed by this chapter.

(6) ‘Intangible property’ includes copyrights, trademarks, patents, goodwill, financial instruments, securities, commercial paper, debts, notes and bonds, and other property deemed intangible at common law. Intangible property does not include tangible personal property, or rents or leaseholds of any term, real property, or rents or leaseholds of any term, and computer software.

(7) ‘Net payment’ means the total amount charged for taxable property or services, excluding the taxes imposed by this chapter.

(8) ‘Person’ means any natural person, and unless the context clearly does not allow it, any corporation, partnership, limited liability company, trust, estate, government, agency, organization, association, or other legal entity, foreign or domestic.

(9) ‘Produce, provide, render, or sell a taxable property or service’ means a taxable property or service purchased by a person engaged in a trade or business for the purpose of employing or using such taxable property or service in the production, provision, rendering, or sale of other taxable property or services in the ordinary course of that trade or business. Taxable property or services used in a trade or business for the purpose of research, experimentation, testing, and development shall be treated as used to produce, provide, render, or sell taxable property or services. Taxable property or services purchased by an insurer on behalf of an insured shall be treated as used to produce, provide, render, or sell taxable property or services if the premium for the insurance contract giving rise to the insurer’s obligation was subject to tax pursuant to Section 12‑34‑801. Education and training shall be treated as services used to produce, provide, render, or sell taxable property or services.

(10) ‘Registered seller’ means a person registered pursuant to Section 12‑34‑502.

(11) ‘Taxable employer’ includes:

(a) any household employing domestic servants; and

(b) any government, except for government enterprises.

The term ‘taxable employer’ does not include any employer which is engaged in a trade or business, a qualified not‑for‑profit organization, a government enterprise, or an educational or training institution. The term also does not include federal government and its agencies, until such time as federal law allows state taxation of the federal government.

(12) ‘Taxable property or service’ means:

(a) any property, including leaseholds of any term or rents with respect to the property, except for:

(i) intangible property; and

(ii) used property; and

(b) any service, including any financial intermediation services.

(13) ‘Service’ shall include, but not be limited to, any service performed by an employee for which the employee is paid wages or a salary by a taxable employer, but shall not include any service performed by an employee for which the employee is paid wages or a salary:

(a) by an employer in the regular course of the employer’s trade or business;

(b) by an employer that is a qualified not‑for‑profit organization;

(c) by an employer that is a government enterprise;

(d) by taxable employers to employees directly providing education and training; or

(e) by the federal government and its agencies.

(14) ‘Tax inclusive fair market value’ means the fair market value of taxable property or services plus the tax imposed by this chapter.

(15) ‘Used property’ means:

(a) property on which the tax imposed by Section 12‑34‑201 has been collected and for which no credit has been allowed under Section 12‑34‑301, 12‑34‑303, or 12‑34‑305; or

(b) property that was held other than for a business purpose on December thirty‑first of the year in which this chapter was enacted.

(16) ‘Wages’ and ‘salary’ mean all compensation paid for employment service including cash compensation, employee benefits, disability insurance, wage replacement insurance payments, unemployment compensation insurance, workers’ compensation insurance, and the fair market value of any other consideration paid by an employer to an employee in consideration for employment services rendered.

Article 2

Judicial Interpretation and Imposition of Tax

Section 12‑34‑201. (A) There is imposed a tax on the use or consumption of taxable property or services in this State.

(B)(1) The rate of tax is six percent of the net payments for the taxable property or service.

(2) The tax rate may be reduced to less than six percent by a majority vote of the members of the Senate and the members of the House of Representatives and approval by the Governor.

(C)(1) The person using or consuming taxable property or services in this State is liable for the tax imposed by this section, except as provided in item (2).

(2) A person using or consuming a taxable property or service in this State is not liable for the tax imposed by this section if the person pays the tax to a person selling the taxable property or service and receives from the person a purchaser’s receipt within the meaning of Section 12‑34‑531.

Section 12‑34‑202. (A) For the purposes of this section:

(1) ‘Purchased for a business purpose in a trade or business’ means purchased by a person engaged in a trade or business and used in that trade or business:

(a) for resale;

(b) to produce, provide, render, or sell taxable property or services; or

(c) in furtherance of other bona fide business purposes.

(2) ‘Purchased for an investment purpose’ means property purchased exclusively for purposes of appreciation or the production of income but not entailing more than minor personal efforts.

(B)(1) No tax shall be imposed under Section 12‑34‑201 on any taxable property or service purchased for a business purpose in a trade or business or for export from the State of South Carolina for use or consumption outside the State.

(2) No tax shall be imposed under Section 12‑34‑201 on any taxable property or service purchased for an investment purpose and held exclusively for an investment purpose.

(3) No tax shall be imposed on a government enterprise as described and defined in Section 12‑34‑704.

Section 12‑34‑203. (A) Except as otherwise provided in this section, any tax imposed by this chapter shall be collected and remitted by the seller of taxable property or services, including financial intermediation services.

(B)(1) In the case of taxable property or services purchased outside of the State and imported into the State for use or consumption in the State, the purchaser shall remit the tax imposed by Section 12‑34‑201.

(2) In the case of wages or salary paid by a taxable employer for taxable services, the employer shall remit the tax imposed by Section 12‑34‑201.

(C) Property or services purchased for a business purpose in a trade or business or for export that were sold untaxed pursuant to Section 12‑34‑202(B)(1) that were subsequently converted to personal use shall be deemed purchased at the time of conversion and shall be subject to the tax imposed by Section 12‑34‑201 at the fair market value of the converted property as of the date of conversion. The tax shall be due as if the property had been sold at the fair market value during the month of conversion. The person using or consuming the converted property is liable for and shall remit the tax.

(D) If gross payment for taxable property or services is made in other than money, then the person responsible for collecting and remitting the tax shall remit the tax to the department in money as if gross payment had been made in money at the tax inclusive fair market value of the taxable property or services purchased.

Article 3

Credits and Refunds

Section 12‑34‑301. (A) Each person shall be allowed a credit with respect to the taxes imposed by Section 12‑34‑201 for each month in an amount equal to the sum of:

(1) the person’s business use conversion credit pursuant to Section 12‑34‑302 for the month;

(2) the person’s intermediate and export sales credit pursuant to Section 12‑34‑303 for the month;

(3) the administration credit pursuant to Section 12‑34‑304 for the month;

(4) the bad debt credit pursuant to Section 12‑34‑305 for the month;

(5) the insurance proceeds credit pursuant to Section 12‑34‑306 for the month;

(6) the transitional inventory credit pursuant to Section 12‑34‑910; or

(7) any amount paid in excess of the amount due.

(B) Only one credit allowed by subsection (A) may be taken with respect to any particular gross payment.

Section 12‑34‑302. (A) For purposes of Section 12‑34‑301(A)(1), a person’s business use conversion credit for any month is the amount determined under subsection (B) with respect to taxable property and services:

(1) on which tax was imposed by Section 12‑34‑201 and actually paid; and

(2) which commenced to be ninety‑five percent or more used during the month for business purposes.

(B) The amount determined pursuant to this section with respect to any taxable property or service is the lesser of:

(1) the product of:

(a) the rate imposed by Section 12‑34‑201; and

(b) the fair market value of the property or service when its use commences to be ninety‑five percent or more used for business purposes; or

(2) the amount of tax paid with respect to the taxable property or service, including the amount, if any, determined in accordance with Section 12‑34‑705.

Section 12‑34‑303. For purposes of Section 12‑34‑301(A)(2), a person’s intermediate and export sales credit is the amount of sales tax paid on the purchase of any taxable property or service purchased for:

(1) a business purpose in a trade or business; or

(2) export from the State for use or consumption outside the United States of America.

Section 12‑34‑304. (A) Every person filing a timely monthly report, with regard to extensions, in compliance with Section 12‑34‑501 shall be entitled to a taxpayer administrative credit equal to the greater of:

(1) two hundred dollars; or

(2) one‑quarter of one percent of the tax remitted.

(B) The credit allowed pursuant to this section shall not exceed twenty percent of the tax due to be remitted prior to the application of any credit or credits permitted by Section 12‑34‑301.

Section 12‑34‑305. (A) For the purposes of this section:

(1) ‘Bad debt’ means, for purposes of subsection (A), the portion of a business debt that becomes wholly or partially worthless to the payee.

(2) ‘Business debt’ means a bona fide loan or debt made for a business purpose that both parties intended be repaid.

(3) ‘Related parties’ means affiliated firms and family members as defined in Section 12‑34‑402(B).

(B)(1) No business debt shall be considered wholly or partially worthless unless it has been in arrears for one hundred eighty days or more, except that if a debt is discharged wholly or partially in bankruptcy before one hundred eighty days have elapsed, then it shall be deemed wholly or partially worthless on the date of discharge.

(2) A business debt that has been in arrears for one hundred eighty days or more may be deemed wholly or partially worthless by the holder, unless a payment schedule has been entered into between the debtor and the lender and payments under the payment schedule are current.

(C) Any person who has experienced a bad debt, other than unpaid invoices, shall be entitled to a credit equal to the product of:

(1) the rate imposed by Section 12‑34‑201; and

(2) the amount of the bad debt.

(D) Any person electing the accrual method pursuant to Section 12‑34‑503(B) that has with respect to a transaction:

(1) invoiced the tax imposed by Section 12‑34‑201;

(2) remitted the invoiced tax;

(3) actually delivered the taxable property or performed the taxable services invoiced; and

(4) not been paid one hundred eighty days after the date the invoice was due to be paid;

shall be entitled to a credit equal to the amount of tax remitted and unpaid by the purchaser.

(E) Any payment made with respect to a transaction subsequent to taking a credit pursuant to this section, that transaction shall be subject to tax in the month the payment was received as if a tax inclusive sale of taxable property and services in the amount of the payment had been made.

(F) Partial payments shall be treated as pro rata payments of the underlying obligation and shall be allocated proportionately:

(1) for fully taxable payments, between payment for the taxable property and service and tax; and

(2) for partially taxable payments, among payment for the taxable property and service, tax, and other payment.

(G) The credit provided by this section shall not be available with respect to sales made to related parties.

Section 12‑34‑306. (A)(1) A person receiving a payment from an insurer by virtue of an insurance contract shall be entitled to a credit in an amount determined by subsection (B), less any amount paid to the insured by the insurer pursuant to subsection (C), if the entire premium, except that portion allocable to the investment account of the underlying policy, for the insurance contract giving rise to the insurer’s obligation to make a payment to the insured was subject to the tax imposed by Section 12‑34‑201 and the tax was paid.

(2) For purposes of this subsection, the term ‘insurance contract’ shall include a life insurance contract, a health insurance contract, a property and casualty loss insurance contract, a general liability insurance contract, a marine insurance contract, a fire insurance contract, an accident insurance contract, a disability insurance contract, a long‑term care insurance contract, and an insurance contract that provides a combination of these types of insurance.

(B) The amount of the credit shall be the product of:

(1) the rate imposed by Section 12‑34‑201; and

(2) the amount of the payment made by the insurer to the insured.

(C) The credit determined pursuant to subsection (B) shall be paid by the insurer to the insured and the insurer shall be entitled to the credit in lieu of the insured, except that the insurer may elect, in a form prescribed by the director, to not pay the credit and require the insured to make application for the credit. In the event of an election, the insurer shall provide to the director and the insured the name and tax identification number of the insurer and of the insured and indicate the proper amount of the credit.

(D) If taxable property or services purchased by an insurer on behalf of an insured are purchased free of tax by virtue of Section 12‑34‑103(A)(9), then the credit provided by this section shall not be available with respect to that purchase.

Section 12‑34‑320. (A) If a registered seller files a monthly tax report with an overpayment, then, upon application by the registered seller in a form prescribed by the department, the overpayment shown on the report shall be refunded by the department to the registered seller within sixty days of receipt of the application. In the absence of the application, the overpayment may be carried forward, without interest, by the person entitled to the credit.

(B) If a person other than a registered seller has an overpayment for any month, then, upon application by the person in a form prescribed by the department, the overpayment shown on the report shall be refunded by the department to the person within sixty days of receipt of the application.

(C) No interest shall be paid on any overpayment due from the department under this section for any month if the overpayment due is paid within sixty days after the application for refund is received by the department. Overpayments due, but not paid within sixty days after the application for refund is received by the department, shall bear interest from the date of application. Interest shall be paid by the department at the federal short‑term rate as defined in Section 12‑34‑550.

(D) The sixty‑day periods in subsections (A) and (B) shall be suspended with respect to a purported overpayment, or portion of an overpayment, only during any period that there is in effect a temporary or preliminary injunction or other ruling from a federal or state court that there is reasonable cause to believe that the overpayment may not actually be due, or a permanent injunction or other final ruling from a federal or state court that orders the department not to refund the overpayment.

Article 4

Family Consumption Allowance

Section 12‑34‑401. Each qualified family shall be eligible to receive a sales tax rebate each month. The sales tax rebate shall be in an amount equal to the product of:

(1) the rate of tax imposed by Section 12‑34‑201; and

(2) the monthly poverty level.

Section 12‑34‑402. (A) For purposes of this article, the term ‘qualified family’ shall mean one or more family members sharing a common residence. All family members sharing a common residence shall be considered as part of one qualified family.

(B)(1) To determine the size of a qualified family for purposes of this article, family members shall mean:

(a) an individual;

(b) the individual’s spouse;

(c) all lineal ancestors and descendants of the individual and the individual’s spouse;

(d) all legally adopted children of the individual and the individual’s spouse; and

(e) all children under legal guardianship of the individual and the individual’s spouse.

(2) In order for a person to be counted as a family member for purposes of determining the size of the qualified family, the person must:

(a) have a bona fide Social Security number; and

(b) be a lawful resident of the United States.

(C)(1) Any person, who is a registered student during not fewer than five months in a calendar year while living away from the common residence of a qualified family but who receives over fifty percent of his support during a calendar year from members of the qualified family, shall be included as part of the qualified family whose members provided that support.

(2) If a child’s parents are divorced or legally separated, a child for purposes of this article shall be included as part of the qualified family of the custodial parent. In cases of joint custody, the custodial parent for purposes of this article shall be the parent that has custody of the child for more than one‑half of the time during a given calendar year. A parent entitled to be treated as the custodial parent pursuant to this paragraph may release this claim in writing to the other parent.

(D) In order to receive the sales tax rebate provided by Section 12‑34‑401, a qualified family must register annually with the department in a form prescribed by the director. The annual registration form shall provide:

(1) the name of each family member who shared the qualified family’s common residence on the family determination date;

(2) the Social Security number of each family member who shared the qualified family’s common residence on the family determination date;

(3) the family member or family members to whom the sales tax rebate should be paid;

(4) a certification that all listed family members are lawful residents of the United States;

(5) a certification that all family members sharing the common residence are listed;

(6) a certification that no family members were incarcerated on the family determination date; and

(7) the address of the qualified family.

The annual registration form shall be signed by all members of the qualified family that have attained the age of eighteen years as of the date of filing.

(E) Registration is not mandatory for any qualified family.

(F) Any qualified family that fails to register in accordance with this section within thirty days of the family determination date shall cease receiving the monthly sales tax rebate in the month beginning ninety days after the family determination date.

(G) Any qualified family that failed to timely make its annual registration in accordance with this section, but subsequently registers, shall be entitled to up to six months of lapsed sales tax rebate payments. No interest on lapsed payment amount shall be paid.

(H) Annual registrations shall take effect for the month beginning ninety days after the family determination date.

(I) A revised registration made pursuant to Section 12‑34‑420 shall take effect for the first month beginning sixty days after the revised registration was filed. The existing registration shall remain in effect until the effective date of the revised registration.

(J) An annual or revised registration shall be deemed filed when:

(1) deposited in the United States mail, postage prepaid, to the address of the department;

(2) delivered and accepted at the offices of the department; or

(3) provided to a designated commercial private courier service for delivery within two days to the department at the address of the department.

(K) Thirty or more days before the family determination date, the department shall mail to the address shown on the most recent annual or revised registration form, or change of address notice filed pursuant to Section 12‑34‑420(D), a proposed annual registration form that may be simply signed by the appropriate family members if family circumstances have not changed.

(L) An individual shall not be eligible under this article to be included as a family member of any qualified family if that individual:

(1) is incarcerated in a local, state, or federal jail, prison, mental hospital, or other institution on the family determination date; and

(2) is scheduled to be incarcerated for six months or more in the twelve‑month period following the effective date of the applicable annual registration of the qualified family.

(M) The family determination date is a date assigned to each family by the director for purposes of determining qualified family size and other information necessary for the administration of this article. The director shall promulgate regulations regarding the issuance of family determination dates. In the absence of any regulations, the family determination date for all families shall be July first. The director may assign family determination dates for administrative convenience. Permissible means of assigning family determination dates include, but are not limited to, a method based on the birthdates of family members.

Section 12‑43‑403. (A) For purposes of this section:

(1) ‘Annual poverty level’ shall be the sum of:

(a) the annual poverty guideline for a particular family size as determined by the United States Department of Health and Human Services under sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981; and

(b) in the case of families that include a married couple, the annual marriage penalty elimination amount.

(2) ‘Annual marriage penalty elimination amount’ shall be:

(a) the amount that is two times the annual poverty guideline for a family of one as determined by the United States Department of Health and Human Services under sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981; less

(b) the annual poverty guideline for a family of two as determined by the United States Department of Health and Human Services under sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981.

(B) The monthly poverty level for any particular month shall be one‑twelfth of the annual poverty level.

Section 12‑34‑410. (A) The department shall provide a monthly sales tax rebate to duly registered qualified families in an amount determined pursuant to Section 12‑34‑401.

(B) The payments shall be made to the persons designated by the qualifying family in the annual or revised registration form for each qualified family in effect with respect to the month for which payment is being made. Payments may only be made to persons eighteen years of age or older. If more than one person is designated on a registration form to receive the rebate, then the rebate payment shall be divided evenly between or among those persons designated.

(C) Rebate payments shall be made on or before the first business day of the month for which the rebate is being provided. Payment is made when a check or other form of payment is deposited in the mail or when an electronic payment is complete.

(D) The department may provide rebates in the form of smartcards that carry cash balances in their memory for use in making purchases at retail establishments or by direct electronic deposit.

Section 12‑34‑420. (A) In the absence of the filing of a revised registration in accordance with this article, the common residence of the qualified family, marital status, and number of persons in a qualified family on the family determination date shall govern determinations required to be made under this article for purposes of the following twelve calendar months.

(B) In no event shall any person be considered part of more than one qualified family.

(C) A qualified family may file a revised registration form for purposes of Section 12‑34‑402 to reflect a change in family circumstances. A revised registration form shall provide:

(1) the name of each family member who shared the qualified family’s common residence on the filing date of the revised registration;

(2) the Social Security number of each family member who shared the qualified family’s common residence on the filing date of the revised registration;

(3) the family member or family members to whom the sales tax rebate should be paid;

(4) a certification that all listed family members are lawful residents of the United States;

(5) a certification that all family members sharing the common residence are listed;

(6) a certification that no family members were incarcerated on the filing date of the revised registration; and

(7) the address of the qualified family.

The revised registration form shall be signed by all members of the qualified family that have attained the age of eighteen years as of the filing date of the revised registration.

(D) A change of address for a qualified family may be filed with the department at any time and shall not constitute a revised registration.

(E) Revised registrations reflecting changes in family status are not mandatory.

Article 5

Other Administrative Provisions

Section 12‑34‑501. (A) For purposes of this section, the term ‘week’ shall mean the seven‑day period ending on Friday.

(B)(1) On or before the twentieth day of each month, each person who is:

(a) liable to collect and remit the tax imposed by this chapter pursuant to Section 12‑34‑203(A) or (D); or

(b) liable to remit the tax imposed by this chapter which is not collected pursuant to Section 12‑34‑203(B) or (C);

shall submit to the department in a form prescribed by the director a report relating to the previous calendar month.

(2) Regarding taxable property and services, the report required pursuant to subsection (B)(1) shall set forth:

(a) the net payments referred to in Section 12‑34‑201;

(b) the tax collected under this chapter in connection with the payments;

(c) the amount and type of any credit claimed; and

(d) other information reasonably required by the director or the department for the administration, collection, and remittance of the taxes imposed by this chapter.

(3) Regarding taxable gaming services, the report required under subsection (B)(1) shall set forth:

(a) the gross receipts, total gaming payoffs, and gaming specific taxes referred to in Section 12‑34‑702(E);

(b) other information reasonably required by the director of the department for the administration, collection, and remittance of the taxes imposed by this chapter.

(C) The tax imposed by this chapter during any calendar month is due and shall be paid to the department on or before the twentieth day of the succeeding month.

(D)(1) Upon application, an extension of not more than thirty days to file reports under subsection (B) shall be automatically granted.

(2) Upon application, extensions of thirty to sixty days to file reports shall be liberally granted by the department for reasonable cause. Extensions greater than sixty days may be granted by the department to avoid hardship.

(3) Notwithstanding items (1) and (2), no extension shall be granted with respect to the time for paying or remitting the taxes under subsection (C).

(E) The director shall establish a toll free telephone system by which an alleged violation of this chapter can be reported to the department for investigation.

(F) A report filed pursuant to subsection (B) shall be deemed filed when it is:

(1) deposited in the United States mail, postage prepaid, addressed to the department;

(2) delivered and accepted at the offices of the department;

(3) provided to a designated commercial private courier service for delivery within two days to the department at the address of the department; or

(4) delivered by other means permitted by the director.

(G) The director is authorized to create and maintain a rewards program to remunerate individuals that assist the department in discovering or prosecuting sales tax fraud.

Section 12‑34‑502. (A) Any person liable to collect and remit taxes pursuant to Section 12‑34‑203(A) and (D) who is engaged in a trade or business shall register as a seller with the department.

(B) Affiliated firms shall be treated as one person for purposes of this section. Affiliated firms may elect, upon giving notice to the director in a form prescribed by the director, to treat separate firms as separate persons for purposes of this chapter.

(C) Every person registered pursuant to subsection (A) or Section 12‑34‑702(A) shall designate, in a manner prescribed by the director, a tax matters person who shall be an individual whom the department may contact regarding tax matters. Each person registered must provide notice of a change, in a manner prescribed by the director, in the identity of the tax matters person within thirty days of the change.

(D) Any person that is required to register under subsection (A) or Section 12‑34‑702(A) who fails to register is prohibited from selling taxable property or services or engaging in gaming services, respectively. The director or the department may bring an action seeking a temporary restraining order, an injunction, or such other order as may be appropriate to enforce this subsection.

Section 12‑34‑503. (A) Registered sellers, gaming sponsors, and other persons shall file reports under this article using the cash method of accounting, unless an election to use the accrual method of accounting is made pursuant to subsection (B).

(B) Registered sellers, gaming sponsors, and other persons may elect, in a manner prescribed by the director, with respect to a calendar year to remit taxes and file reports under this article with respect to the month where a sale was invoiced and accrued. Once elected, use of the accrual method is permanent, unless the director provides otherwise by regulation.

Section 12‑34‑510. (A) Each person who is required to register pursuant to Section 12‑34‑502 or Section 12‑34‑702, but fails to do so, prior to notification by the department, shall be liable for a penalty not to exceed five hundred dollars.

(B)(1) Each person who is required to and recklessly or willfully fails to collect taxes imposed by this chapter shall be liable for a penalty not to exceed five hundred dollars.

(2) Each person who is required to and willfully fails as part of a trade or business to collect taxes imposed by this chapter is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed ten thousand dollars or imprisoned for a period of not more than five years, or both.

(C)(1) Each person who recklessly or willfully asserts an invalid intermediate or export sales exemption from the taxes imposed by Section 12‑34‑201 shall be liable for a penalty of five hundred dollars or twenty percent of the taxes not collected or remitted, whichever is greater.

(2) Each person who willfully asserts an invalid intermediate or export sales exemption from the taxes imposed by Section 12‑34‑201 is guilty of a misdemeanor and, upon conviction, may be fined an amount not to exceed ten thousand dollars or imprisoned for a period of not more than one year, or both.

(D)(1) Each person who is required to and recklessly or willfully fails to remit taxes imposed by this chapter shall be liable for a penalty equal to one thousand dollars or fifty percent of the taxes not remitted, whichever is greater.

(2) Each person who willfully fails to remit taxes imposed by this chapter is guilty of a misdemeanor and, upon conviction, may be fined an amount not to exceed ten thousand dollars or imprisoned for a period of not more than two years, or both.

(E) Each person who is required to and recklessly or willfully fails to pay taxes imposed by this chapter shall be liable for a penalty equal to the greater of five hundred dollars or twenty percent of the taxes not paid.

(F)(1) In the case of a failure by any person who is required to and fails to file a report required by Section 12‑34‑501 on or before the due date, including timely extensions, for the report, the person shall pay a penalty for each month or fraction thereof that said report is late equal to the greater of:

(a) fifty dollars; or

(b) one half of one percent of the tax collected required to be shown on the report.

(2) The amount of the penalty imposed pursuant to item (1) shall be doubled with respect to any report filed after a written inquiry with respect to the report is received by the taxpayer from the department.

(3) The penalty imposed pursuant to this subsection shall not exceed twelve percent of the tax collected required to be shown on the report.

(4)(a) No penalty shall be imposed under this subsection with respect to any failure to timely file a report if it is shown that such failure is due to reasonable cause.

(b) The department, on application, shall waive the penalty imposed by subsection (F)(1) once per registered person per twenty‑four month period. The preceding sentence shall not apply to a penalty determined under subsection (F)(2).

(G) A person who willingly or recklessly accepts a false intermediate or export sales certificate shall pay a penalty equal to one thousand dollars or twenty percent of the tax not collected by reason of the acceptance, whichever is greater.

(H)(1) A person who is required to remit taxes imposed by this chapter and remits taxes after the taxes are due shall pay a penalty from the due date equal to one percent per month, or fraction of a month, of the taxes required to be remitted.

(2) The penalty imposed under this subsection shall not exceed twenty‑four percent of the taxes required to be remitted.

(3) No penalty shall be imposed under subsection (H)(1) with respect to any late remittance if it is shown that such late remittance is due to reasonable cause.

(I)(1) A person who willingly or recklessly files a materially false annual or revised registration form under Sections 12‑34‑402 or 12‑34‑420 or other materially false information regarding a sales tax rebate shall:

(a) pay a penalty of five hundred dollars or fifty percent of the claimed annual sales tax rebate amount not actually due, whichever is greater; and

(b) repay any amounts received as a result of filing false information regarding a sales tax rebate, with interest.

(2) A person who willingly files a materially false annual or revised registration form under Sections 12‑34‑402 or 12‑34‑420 or other materially false information regarding a sales tax rebate is guilty of a misdemeanor and, upon conviction, must be fined an amount up to five hundred dollars or fifty percent of the claimed annual sales tax rebate amount not actually due, whichever is greater, or imprisoned for a period not more than one year, or both.

(J) If any check, money order, or other form of payment of any amount receivable under this chapter is not duly paid, in addition to other penalties provided by law, the person who tendered the payment shall pay a penalty equal to the greater of:

(1) twenty five dollars; or

(2) two percent of the amount of such payment.

(K) The tax matters person or the tax representative and responsible officers, members and managers of a limited liability company, or partners of a firm shall be jointly and severally liable for the tax imposed by this chapter and penalties imposed by this article.

(L) If more than one person is liable with respect to any tax or penalty imposed by this chapter, each person who paid the tax or penalty shall be entitled to recover from other persons who are liable for the tax or penalty an amount equal to the excess of the amount paid by such person over the person’s proportionate share of the tax or penalty.

(M)(1)The fact that a civil penalty has been imposed shall not prevent the imposition of a criminal fine.

(2) The fact that a criminal sanction has been imposed shall not prevent the imposition of a civil penalty.

(N) Any person who violates the requirements relating to confidentiality of tax information is guilty of a misdemeanor and, upon conviction, may be fined up to ten thousand dollars or imprisoned for a period of not more than one year, or both.

Section 12‑34‑511. In all disputes concerning taxes imposed by this chapter, the person engaged in a dispute with the department or the director, as the case may be, shall have the burden of production of documents and records, but the department or the director shall have the burden of persuasion. In all disputes concerning an exemption claimed by a purchaser, if the seller has on file an intermediate sale or export sale certificate from the purchaser and did not have reasonable cause to believe that the certificate was improperly provided by the purchaser with respect to the purchase, then the burden of production of documents and records relating to that exemption shall rest with the purchaser and not with the seller.

Section 12‑34‑512. In all disputes concerning taxes imposed by this chapter, the person engaged in a dispute with the department or the director, as the case may be, shall be entitled to reasonable attorneys’ fees, accountants’ fees, and other reasonable professional fees incurred in direct relation to the dispute, unless the department or the director establishes that its position was substantially justified.

Section 12‑34‑530. (A) Any person liable to collect or remit taxes pursuant to this chapter shall keep records sufficient to determine the amounts reported, collected, and remitted for a period of six years after the latter of the filing of the report for which the records formed the basis or when the report was due to be filed. These records shall include, but are not limited to:

(1) a record of all Section 12‑34‑531 receipts provided;

(2) complete records of intermediate and export sales, including purchasers’ intermediate and export sales certificates and tax numbers; and

(3) documentation of net payments.

(B) Any purchaser who purchased taxable property or services, but did not pay tax by reason of asserting an intermediate and export sales exemption, shall keep records sufficient to determine whether the exemption was valid for a period of seven years after the purchase of taxable property or services.

Section 12‑34‑531. (A) For each purchase of taxable property or services for which a tax is imposed by Section 12‑34‑201, the seller shall charge the tax imposed by Section 12‑34‑201 separately from the net payment. For each purchase of taxable property or services for which a tax is imposed by Section 12‑34‑201, the seller shall provide to the purchaser a receipt for each transaction that includes:

(1) the property or services price exclusive of tax;

(2) the amount of tax paid;

(3) the property or services price inclusive of tax;

(4) the tax rate divided by the property or services price exclusive of tax;

(5) the date that the property or service was sold;

(6) the name of the seller; and

(7) the seller’s registration number provided by the department.

(B) The requirements of subsection (A) shall not apply to sales through vending machines. Vending machines for purposes of this subsection are machines:

(1) that dispense taxable property in exchange for coins or currency; and

(2) that sell no single item exceeding ten dollars per unit in price.

(C) The requirements of subsection (A) in the case of sales of financial intermediation services shall apply when the tax is imposed. Receipts shall be issued when the tax is imposed in accordance with Section 12‑34‑810.

Section 12‑34‑540. No penalties shall be assessed pursuant to Section 12‑34‑510 with respect to a period during which a case is pending under Title 11, United States Code, against a person who is otherwise subject to a penalty:

(1) if the tax was incurred by the estate and the failure occurred pursuant to an order of the court finding probable insufficiency of funds of the estate to pay administrative expenses; or

(2) if:

(a) the tax was incurred by the debtor before the earlier of the order for relief or, in the involuntary case, the appointment of a trustee; and

(b) the petition was filed before the due date prescribed by law, including extensions, for filing a return of the tax, or the date for making the addition to tax occurs on or after the date the petition was filed.

Section 12‑34‑550. (A) For underpayments, overpayments, and refunds, interest shall be calculated at the rates stipulated in Chapter 54, Title 12.

(B) For all other purposes in this chapter:

(1) In the case of a debt instrument, investment, financing lease, or account with a term of not more than three years, the applicable interest rate is the federal short‑term rate.

(2) In the case of a debt instrument, investment, financing lease, or account with a term of more than three years but less than nine years, the applicable interest rate is the federal mid‑term rate.

(3) In the case of a debt instrument, investment, financing lease, or account with a term more than nine years, the applicable interest rate is the federal long‑term rate.

(C)(1) The federal short‑term rate shall be the rate determined by the director based on the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or fewer. The outstanding marketable obligations selected by the director to determine the federal short‑term rate must end during the calendar month in which the determination is made during any one month.

(2) The federal mid‑term rate shall be the rate determined by the director based on the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of more than three years and less than nine years. The outstanding marketable obligations selected by the director to determine the federal mid‑term rate must end during the calendar month in which the determination is made during any one month.

(3) The federal long‑term rate shall be the rate determined by the director based on the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of more than nine years. The outstanding marketable obligations selected by the director to determine the federal long‑term rate must end during the calendar month in which the determination is made during any one month.

(F) During each calendar month, the director shall determine the federal short‑term rate, the federal mid‑term rate, and the federal long‑term rate which shall apply during the following calendar month. The director must publish the rates on the department’s Internet website.

Article 6

Collections, Appeals, Taxpayer Rights

Section 12‑34‑601. The department shall collect the taxes and penalties imposed by this chapter.

Section 12‑34‑610. (A) The department shall establish an independent Problem Resolution Office and appoint an adequate number of problem resolution officers. The head of the Problem Resolution Office must be appointed by, and serve at the pleasure of, the Governor, upon the advice and consent of the Senate.

(B) Problem resolution officers shall have the authority to investigate complaints and issue Taxpayer Assistance Orders to administratively enjoin any collection activity if, in the opinion of the problem resolution officer, the collection activity is reasonably likely to not be in compliance with law, or to impose an undue hardship other than by reason of having to pay taxes lawfully due. Problem resolution officers shall also have the authority to issue Taxpayer Assistance Orders releasing or returning property that has been levied upon or seized or ordering that a lien be released and that garnished wages be returned. A Taxpayer Assistance Order may only be rescinded or modified by the problem resolution officer that issued it, by the director, or by the general counsel of the department upon a finding that the collection activity is justified by clear and convincing evidence. The authority to rescind or modify a Taxpayer Assistance Order may not be delegated.

(C) The director shall establish a form and procedure to aid persons requesting the assistance of the Problem Resolution Office and to aid the Problem Resolution Office in understanding the needs of the person seeking assistance. The use of this form, however, shall not be a prerequisite to a problem resolution officer taking action, including issuing a Taxpayer Assistance Order.

(D) A Taxpayer Assistance Order shall contain the name of the problem resolution officer, any provision relating to the running of any applicable statute of limitations, the name of the person that the Taxpayer Assistance Order assists, the government office to whom it is directed, and the action or cessation of action that the Taxpayer Assistance Order requires of said government office. The Taxpayer Assistance Order need not contain findings of fact or its legal basis; however, the problem resolution officer must provide findings of fact and the legal basis for the issuance of the Taxpayer Assistance Order to the department upon the request of an officer of said government office within two weeks of the receipt of such request.

(E) Problem resolution officers shall not be disciplined or adversely affected for their investigative activities unless a pattern of issuing Taxpayer Assistance Orders that are manifestly unreasonable is proven in an administrative hearing by a preponderance of the evidence.

(F) Nothing in this section shall limit the authority of the department, the registered person, or other person from pursuing any legal remedy in any court with jurisdiction over the dispute at issue.

(G) The running of any applicable statute of limitations shall be suspended for eight weeks following the issuance of a Taxpayer Assistance Order or, if specified, for a longer period as set forth in the Taxpayer Assistance Order provided the suspension does not exceed six months.

Section 12‑34‑630. (A) The department shall provide a document setting forth in plain English the rights of the person to any person against whom it has:

(1) commenced an audit or investigation;

(2) issued a final notice of amount due;

(3) filed an administrative lien, levy, or garnishment;

(4) commenced other collection action;

(5) commenced an action for civil penalties; or

(6) any other legal action.

(B) The document shall explain the administrative appeals process, the authority of the Problem Resolution Office and how to contact the office, the burden of production and persuasion that the person and the department bear, the right of the person to professional fees, the right to record interviews, and any additional rights as the person may possess pursuant to this chapter. The document will also set forth the procedures for entering into an installment agreement.

(C) In all dealings with the department, a person shall have the right to assistance, at their own expense, subject to Section 12‑34‑512, of one or more professional advisors.

(D) Any person who is interviewed by an agent of the department shall have the right to video or audio tape the interview at the person’s own expense.

(E) No collection or enforcement action will be commenced against a person until thirty days after that person has been provided with a final notice of amount pursuant to this article. The final notice of amount due shall set forth the amount of tax due, along with any interest and penalties, and the factual and legal basis for the amounts being due with sufficient specificity that the basis can be understood by a reasonable person, who is not a tax professional, reading the notice. The final notice of amount due shall be sent by certified mail, return receipt requested, to:

(1) the address last provided by a registered seller; or

(2) the best available address to a person who is not a registered seller.

(F)(1) All reports and report information submitted to the department under this chapter shall be confidential and, except as authorized by this title. No officer or employee, including former officers and employees, of the United States; no officer or employee, including former officers and employees, of any State or local agency who has had access to reports or report information; or no other person who has had access to reports or report information shall disclose any report or report information obtained by him in any manner in connection with his service as such officer or employee or otherwise.

(2) The department may disclose the report and report information of a person to that person or persons as that person may designate to receive said information or report.

(3) The department may disclose the report and report information to other state tax administering authorities for official use.

(4) The department may disclose the report and report information to the committee, trustee, or guardian of a person who is incompetent.

(5) The department may disclose the report and report information to the decedent’s:

(a) administrator, executor, estate trustee; or

(b) heir at law, next of kin, or beneficiary under a will who has a material interest that will be affected by the information.

(6) The department may disclose the report and report information to a person’s trustee in bankruptcy.

(7) A person may waive confidentiality rights provided by this section. Such waiver must be in writing.

(8) Disclosure of the report or report information by officers or employees of the department to other officers or employees of the department in the ordinary course of tax administration activities shall not constitute unlawful disclosure of the report or report information.

(9) Upon request in writing by the Secretary of Commerce, the director shall furnish summarized or aggregated tax information to officers and employees of the Department of Commerce as the director may prescribe by regulation. The director shall not furnish individual taxpayer information pursuant to this subsection.

Section 12‑34‑640. (A) The department is authorized to enter into a written agreement with any person under which the person is allowed to satisfy its liability for payment of any tax, including penalties and interest, pursuant to this chapter in installment payments. As a prerequisite for entering into an agreement, the department must determine that the agreement will facilitate the collection of the liability. The agreement shall remain in effect for the term of the agreement, unless the information that the person provided to the department was materially inaccurate or incomplete.

(B) As an alternative to an installment agreement, the department may take a partial payment in settlement of the liability for any amounts alleged to be due, if the department finds good cause to do so.

Article 7

Special Rules

Section 12‑34‑701. (A) Neither the exemption afforded by Section 12‑34‑202 for intermediate sales nor the credits available pursuant to Section 12‑34‑302 or 12‑34‑303 shall be available for any taxable property or service purchased for use in an activity if that activity is not engaged in for profit.

(B) If the activity has received gross payments for the sale of taxable property or services that exceed the sum of:

(1) taxable property and services purchased;

(2) wages and salary paid; and

(3) taxes of any type paid,

in two or more of the most recent three calendar years during which it operated, then the business activity shall be conclusively deemed to be engaged in for profit.

(C) This section does not apply to qualified not‑for‑profit organizations.

Section 12‑34‑702. (A) For purposes of this section, the term ‘taxable gaming services’ means:

(1) gross receipts of the gaming sponsor from the sale of chances, minus;

(2) the sum of:

(a) total gaming payoffs by the gaming sponsor on chances; and

(b) gaming specific taxes, other than the tax imposed by this section, imposed by a federal, state, or local government and paid by the gaming sponsor.

(B) Any person selling one or more chances is a gaming sponsor and shall register, in a form prescribed by the director, with the department as a gaming sponsor.

(C) For purposes of this section, the term ‘chance’ means a lottery ticket, a raffle ticket, chips, other tokens, a bet or bets placed, a wager or wagers placed, or any similar device where the purchase of the right gives rise to an obligation by the gaming sponsor to pay upon the occurrence of:

(1) a random or unpredictable event; or

(2) an event over which neither the gaming sponsor nor the person purchasing the right has control over the outcome.

(D) Notwithstanding any other provision in this article, a chance is not taxable property or services for purposes of Section 12‑34‑201.

(E) A six percent tax is imposed on the taxable gaming services of a gaming sponsor. This tax shall be paid and remitted by the gaming sponsor. The tax shall be remitted to the department by the fifteenth day of each month with respect to the taxable gaming services during the previous calendar month.

Section 12‑34‑703. (A) Purchases by the federal government of taxable property and services shall not be subject to the tax imposed by Section 12‑34‑201, until such time as federal law is amended to allow taxation of purchases by the federal government and its agencies.

(B) Purchases by state governments and their political subdivisions of taxable property and services shall be subject to the tax imposed by Section 12‑34‑201.

Section 12‑34‑704. (A) Any division, department, or component unit of a state or local government or political subdivision or any entity owned or operated by a state or local government or political subdivision that receives gross payments from private persons from the sale of taxable property and services is a government enterprise, except that any division, department, or component unit or government‑owned or government‑operated entity shall not become a government enterprise for purposes of this section unless in any quarter it has revenues from selling taxable property or services that exceed two thousand five hundred dollars.

(B) Nothing in this chapter shall be construed to exempt any state or local government or political subdivision owning or operating a government enterprise from collecting and remitting taxes imposed by this chapter on any sale of taxable property or services. Government enterprises shall comply with all duties imposed by this chapter and shall be liable for penalties and subject to enforcement actions in the same manner as private persons that are not government enterprises.

(C)(1) Except as provided in item (2), government enterprises shall not be subject to tax on its purchases that would not be subject to tax pursuant to Section 12‑34‑202 if the government enterprise were a private enterprise.

(2) Government enterprises may not use the exemption afforded by Section 12‑34‑202 to serve as a conduit for tax‑free purchases by governmental units that would otherwise be subject to taxation on purchases pursuant to Section 12‑34‑703. Transfers of taxable property or services, which were purchased pursuant to an exemption from tax under this chapter, from a government enterprise to a nonexempt governmental unit shall be taxable.

(D) Government enterprises must maintain books and records that are adequate to fully document sales of taxable property and services and to demonstrate that the government enterprise has fully complied with the requirements of this chapter. The director may prescribe by regulation the nature and extent of the required books and records.

(E) A government enterprise shall be treated as a trade or business for purposes of this chapter.

(F) A transfer of funds to a government enterprise by a governmental unit, which is not a government enterprise, without full consideration shall constitute a taxable government purchase within the meaning of Section 12‑34‑703 to the extent that the transfer of funds exceeds the fair market value of the consideration.

Section 12‑34‑705. (A)(1) For purposes of this section:

(a) ‘Mixed-use property or service’ means a taxable property or service used for both taxable use or consumption and for a purpose that would not be subject to tax pursuant to Section 12‑34‑202.

(b) ‘Business use ratio’ means the ratio of business use to total use for a particular calendar month, or portion of a month if the property was owned for only part of said calendar month. For vehicles, the ‘business use ratio’ means the ratio of business purpose miles to total miles in a particular calendar month. For real property, ‘business use ratio’ means the ratio of floor space used primarily for business purposes to total floor space in a particular calendar month. For tangible personal property other than vehicles, ‘business use ratio’ means the ratio of total time used for business purposes to total time used in a particular calendar month. For other property or services, ‘business use ratio’ shall be calculated using a reasonable method. Reasonable records must be maintained to support a person’s business use of the mixed use property or service.

(2) A mixed-use property or service shall be subject to tax notwithstanding Section 12‑34‑202, unless the property or service is used more than ninety‑five percent for purposes that would give rise to an exemption pursuant to Section 12‑34‑202 during each calendar year, or portions of a year, it is owned.

(3) A person registered pursuant to Section 12‑34‑502 is entitled to a monthly business use conversion credit equal to the product of:

(a) the mixed-use property or service amount for the applicable month;

(b) the business use ratio for the applicable month; and

(c) the rate of tax imposed by section 12‑34‑201.

(4) The mixed-use property or service amount for each month, or fraction of a month, in which the property was owned shall be:

(a) one‑three‑hundred‑sixtieth of the net payments for real property for three hundred sixty months or until the property is sold;

(b) one‑eighty‑fourth of the net payments for tangible personal property, other than vehicles, for eighty‑four months or until the property is sold;

(c) one‑sixtieth of the net payments for vehicles for sixty months or until the property is sold; or

(d) for other types of taxable property or services, a reasonable amount or in accordance with regulations promulgated by the department.

(B) A person entitled to a credit pursuant to subsection (A)(4) arising out of the ownership or use of mixed-use property or service must account for the mixed-use on a calendar‑year basis, and may file for the credit with respect to mixed-use property in any month following the calendar year giving rise to the credit.

Section 12‑34‑706. (A) For purposes of this section, the term ‘qualified not‑for‑profit organization’ means a not‑for‑profit organization organized and operated exclusively:

(1) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(2)(a) for religious, charitable, scientific, testing for public safety, literary, or educational purposes;

(b) as civic leagues or social welfare organizations;

(c) as labor, agricultural, or horticultural organizations;

(d) as chambers of commerce, business leagues, or trade associations; or

(e) as fraternal beneficiary societies, orders, or associations.

(B) Dues, contributions, and similar payments to qualified not‑for‑profit organizations shall not be considered gross payments for taxable property or services for purposes of this chapter.

(C) Upon application in a form prescribed by the director, the department shall provide qualification certificates to qualified not‑for‑profit organizations.

(D) If a qualified not‑for‑profit organization provides taxable property or services in connection with contributions, dues, or similar payments to the organization, then it shall be required to treat the provision of the taxable property or services as a purchase taxable pursuant to this chapter at the fair market value of the taxable property or services.

(E) Taxable property and services purchased by a qualified not‑for‑profit organization shall be eligible for the exemptions provided in Section 12‑34‑202(A).

Article 8

Financial Intermediation Services

Section 12‑34‑801. For purposes of this chapter:

(1) ‘Financial intermediation services’ means the sum of:

(a) explicitly charged fees for financial intermediation services; and

(b) implicitly charged fees for financial intermediation services.

(2) ‘Explicitly charged fees for financial intermediation services’ means:

(a) brokerage fees;

(b) explicitly stated banking, loan origination, processing, documentation, credit check fees, or other similar fees;

(c) safe‑deposit box fees;

(d) insurance premiums, to the extent such premiums are not allocable to the investment account of the underlying insurance policy;

(e) trustees’ fees; and

(f) other financial services fees.

(3) ‘Implicitly charged fees for financial intermediation services’ means the gross imputed amount in relation to any underlying interest‑bearing investment, account, or debt.

(4) ‘Gross imputed amount’ means:

(a) with respect to any underlying interest‑bearing investment or account, the product of:

(i) the excess of the basic interest rate over the rate paid on such investment; and

(ii) the amount of the investment or account; and

(b) with respect to any underlying interest‑bearing debt, the product of:

(i) the excess of the rate paid on such debt over the basic interest rate; and

(ii) the amount of the debt.

(5) For purposes of Section 12‑34‑203(A), the seller of financial intermediation services shall be:

(a) in the case of explicitly charged fees for financial intermediation services, the person who receives the gross payments for the charged financial intermediation services;

(b) in the case of implicitly charged fees for financial intermediation services with respect to any underlying interest‑bearing investment or account, the person making the interest payments on the interest‑bearing investment or account; and

(c) in the case of implicitly charged fees for financial intermediation services with respect to any interest‑bearing debt, the person receiving the interest payments on the interest‑bearing debt.

Section 12‑34‑810. The tax on financial intermediation services provided by Section 12‑34‑201 with respect to an underlying investment account or debt shall be imposed and collected with the same frequency that statements are rendered by the financial institution in connection with the investment account or debt, but not less frequently than quarterly.

Section 12‑34‑820. (A) For purposes of this section, the term ‘financing lease’ means any lease under which the lessee has the right to acquire the property for fifty percent or less of its fair market value at the end of the lease term.

(B) Financing leases shall be taxed in the method set forth in this chapter.

(C) The department shall promulgate regulations for disaggregating the principal and interest components of a financing lease. The principal amount shall be determined to the extent possible by examination of the contemporaneous sales price or prices of property the same or similar as the leased property.

(D) In the event that contemporaneous sales prices or property the same or similar as the leased property is not available, the principal and interest components of a financing lease shall be disaggregated using the applicable interest rate plus four percent.

(E) The principal component of the financing lease shall be subject to tax as if a purchase in the amount of the principal component had been made on the day on which the lease was executed.

(F) The financial intermediation services amount with respect to the interest component of the financing lease shall be subject to tax under this chapter.

(G) If the principal component and financial intermediation services amount with respect to the interest component of a lease have been taxed pursuant to this chapter, then the gross lease or rental payments shall not be subject to additional tax.

Section 12‑34‑830. For purposes of this chapter, the basic interest rate with respect to a debt instrument, investment, financing lease, or account shall be the applicable interest rate as determined in Section 12‑34‑550. For debt instruments, investments, or accounts of contractually fixed interest, the applicable interest rate of the month of issuance shall apply. For debt instruments, investments, or accounts of variable interest rates and which have no referenced interest rate, the applicable interest shall be the federal short‑term interest rate for each month. For debt instruments, investments, or accounts of variable interest rates and which have a referenced interest rate, the applicable interest shall be the applicable interest rate for the referenced interest rate for each month.

Section 12‑34‑840. (A) Financial intermediation services shall be deemed as used or consumed within the State if the person, or any related party, purchasing the services is a resident of this State.

(B) Any person that provides financial intermediation services to state residents must, as a condition of lawfully providing such services, register with the department, including appointing a tax matters person, pursuant to Section 12‑34‑502. The director may require that foreign persons which provide financial intermediation services to state residents obtain a reasonable surety bond and provide the bond to the department.

(C) The director or the department may bring an action seeking a temporary restraining order, an injunction, or other order as may be appropriate to enforce this section.

Article 9

Additional Matters

Section 12‑34‑901. (A) Notwithstanding the definition of taxable property or service contained in Section 12‑34‑103(A)(12)(a)(i), the sale of a copyright or trademark shall be treated as the use or consumption of taxable services if the substance of the sale of a copyright or trademark constituted the sale of the services that produced the copyrighted material or the trademark.

(B) Up to four hundred dollars of net payments per calendar year shall be exempt from the tax imposed by Section 12‑34‑201 if the payments were:

(1) made by a person not in connection with a trade or business at any time during such calendar year prior to making said net payments; and

(2) made to purchase any taxable property or service which was imported into the United States by the person for use or consumption by the person in the United States.

(C) Up to one thousand two hundred dollars per calendar year of net payments shall be exempt from the tax imposed by Section 12‑34‑201 if received:

(1) by a person not in connection with a trade or business during such calendar year prior to the receipt of the net payments; and

(2) in connection with a casual or isolated sale.

(D) Up to ten thousand dollars per calendar year of net payments received by a person from the sale of financial intermediation services shall be exempt from the tax imposed by Section 12‑34‑201. The exemption provided by this subsection is in addition to other exemptions afforded by this chapter.

(E) The director shall calculate during January of each year the inflation adjusted amounts that will be the de minimis limits established in subsections (B), (C), and (D) for the then current calendar year. The director shall use the CPI‑U Consumer Price Index as established by the Bureau of Labor Statistics of the U.S. Department of Labor for the latest twelve‑month period available, or its successor index, as the basis for calculating the inflation adjusted amounts.

(F) If a registered person provides taxable property or services to a person either as a gift, prize, reward, or as remuneration for employment, and such taxable property or services were not previously subject to tax pursuant to Section 12‑34‑201, then the provision of such taxable property or services by the registered person shall be deemed the conversion of such taxable property or services to personal use and subject to tax pursuant to Section 12‑34‑203(C) at the tax exclusive fair market value of such taxable property or services.

(G) The substance of a transaction will prevail over its form if the transaction has no bona fide economic purpose and is designed to evade taxes imposed by this chapter.

(H)(1) For purposes of this subsection, the term ‘employee discount’ means an employer’s offer of taxable property or services for sale to its employees or their family members for less than the offer of such taxable property or services to the general public.

(2) For purposes of this subsection, the employee discount amount is the amount by which taxable property or services are sold pursuant to an employee discount below the amount for which the taxable property or services would have been sold to the general public.

(3) If the employee discount amount exceeds twenty percent of the price that the taxable property or services would have been sold to the general public, then the sale of the taxable property or services by the employer shall be deemed the conversion of such taxable property or services to personal use and tax shall be imposed on the taxable employee discount amount. The taxable employee discount amount shall be:

(a) the employee discount amount, minus;

(b) twenty percent of the amount for which said taxable property or services would have been sold to the general public.

(I) When the last day prescribed for performing any act required by this chapter falls on a Saturday, Sunday, or legal holiday observed by the State, the performance of the act shall be considered timely if it is performed on the next day which is not a Saturday, Sunday, or legal holiday observed by the State.

Section 12‑34‑910. (A)(1) Inventory held by a trade or business on the close of business on December thirty‑first of the year that this chapter is enacted shall be qualified inventory if it is sold:

(a) before December thirty‑first for the subsequent calendar year;

(b) by a registered person; and

(c) subject to the tax imposed by Section 12‑34‑201.

(2) For purposes of this section, qualified inventory shall have the cost that it had for federal income tax purposes for the trade or business as of December thirty‑first of the year that this chapter is adopted.

(3) The trade or business which held the qualified inventory on the close of business on December thirty‑first of the year that this chapter was adopted shall be entitled to a transitional inventory credit equal to the cost of the qualified inventory multiplied by the rate of tax imposed by Section 12‑34‑201.

(4) The credit provided under subsection (A)(3) shall be taken in the month when the inventory is sold subject to the tax imposed by this chapter. The credit shall be reported as an intermediate and export sales credit and the person claiming said credit shall attach supporting schedules in the form that the director may prescribe.

(B) For purposes of this section, inventory shall include work‑in‑process.

(C)(1) Qualified inventory held by businesses that sell said qualified inventory not subject to tax pursuant to Section 12‑34‑202(A) shall be eligible for the transitional inventory credit only if that business, or a business that has successor rights pursuant to subsection (C)(2), receives certification in a form satisfactory to the director that the qualified inventory was subsequently sold subject to the tax imposed by this chapter.

(2) The business entitled to the transitional inventory credit may sell the right to receive the transitional inventory credit to the purchaser of the qualified inventory that gave rise to the credit entitlement. Any purchaser of the qualified inventory, or property or services into which the qualified inventory has been incorporated, may sell the right to the transitional inventory credit to a subsequent purchaser of said qualified inventory, or property or services into which the qualified inventory has been incorporated.

Section 12‑34‑940. (A) The General Assembly shall allocate an amount deemed appropriate to the Homestead Exemption Fund, established pursuant to Section 11‑11‑155, as part of the annual general appropriations act.

(B) The General Assembly shall allocate the amount described in Section 59‑21‑320 to the State Public School Building Fund, as described in Section 59‑21‑1010(A), as part of the annual general appropriations act.

(C) The General Assembly shall allocate an amount deemed appropriate to the South Carolina Education Improvement Act of 1984 Fund, as described in Section 59‑21‑1010(B), as part of the annual general appropriations act.

(D) The General Assembly shall allocate to municipalities and counties an amount deemed appropriate to be allocated and used in a manner described in Section 6‑4‑10 as part of the annual general appropriations act. The State Treasurer shall remit this amount to each municipality and county in quarterly installments.

(E) The General Assembly shall allocate an amount deemed appropriate to fund the expenses of the Tourism Expenditure Review Committee, created pursuant to Section 6‑4‑35, as part of the annual general appropriations act.

Section 12‑34‑960. (A) For the first three calendar years after this chapter is enacted, its provisions may not be amended or repealed, except by special vote as provided in subsection (B) or except as permitted in Section 12‑34‑201(B)(2).

(B) A special vote means an affirmative two‑thirds vote of the total membership of the Senate and an affirmative two‑thirds vote of the total membership of the House of Representatives and approval by the Governor.

(C) Beginning on January first of the fourth calendar year after this chapter is enacted, any changes to this chapter shall not be enacted until the proposed changes are approved verbatim by a majority affirmative vote by all voters in a statewide referendum included on the ballot in a general election in which members of the South Carolina House of Representatives are elected.”

SECTION 2. Chapters 6, 8, 11, 13, 16, 36, 58, and 62 of Title 12 of the 1976 Code are repealed on January first of the year immediately following approval by the Governor.

SECTION 3. The provisions in the bill become effective on January first of the year immediately following approval by the Governor.

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