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CHAPTER 2.

GENERAL PROVISIONS

**SECTION 12‑2‑5.** Duties and powers of commissioners of Department of Revenue transferred to director; commission changed to department.

On February 1, 1995, the duties and powers given to the commissioners of the Department of Revenue must be transferred to the director of the Department of Revenue. When this transfer takes place, the Code commissioner is directed to change all code references from commissioners of the Department of Revenue to the director of the Department of Revenue and to change references of "commission" to "department".

HISTORY: 1993 Act No. 181, Section 100.

**SECTION 12‑2‑10.** "Department" defined.

As used in this title "department" means the South Carolina Department of Revenue.

HISTORY: 1991 Act No. 50, Section 1; 1993 Act No. 181, Section 101.

**SECTION 12‑2‑15.** "Department of Revenue and Taxation" to mean "Department of Revenue".

Whenever the term "Department of Revenue and Taxation" appears in the Acts and Joint Resolutions of the General Assembly or the 1976 Code of Laws of South Carolina, it shall mean the "Department of Revenue." The Code commissioner is directed to change all such references at such time and in such manner as may be timely and cost‑effective.

HISTORY: 1996 Act No. 458, Part II, Section 88.

**SECTION 12‑2‑20.** "Person" and "Individual" defined.

As used in this title and in other titles that provide for taxes administered by the department, and unless otherwise required by the context, the term:

(1) "person" includes any individual, trust, estate, partnership, receiver, association, company, limited liability company, corporation, or other entity or group; and

(2) "individual" means a human being.

HISTORY: 1991 Act No. 50, Section 1; 1995 Act No. 60, Section 2A; 2003 Act No. 69, Section 3.B, eff June 18, 2003; 2007 Act No. 110, Section 8, eff June 21, 2007; 2007 Act No. 116, Section 14, eff June 28, 2007, applicable for tax years beginning after 2007.

**SECTION 12‑2‑25.** Definitions pertaining to limited liability companies; single‑member limited liability companies.

(A) As used in this title and in other titles which provide for taxes administered by the department and unless otherwise required by the context:

(1) "partnership" includes a limited liability company taxed for South Carolina income tax purposes as a partnership;

(2) "partner" includes a member of a limited liability company taxed for South Carolina income tax purposes as a partnership;

(3) "corporation" includes a limited liability company or professional or other association taxed for South Carolina income tax purposes as a corporation; and

(4) "shareholder" includes a member of a limited liability company taxed for South Carolina income tax purposes as a corporation.

(B) For South Carolina tax purposes:

(1) a single‑member limited liability company, which is not taxed for South Carolina income tax purposes as a corporation, is not regarded as an entity separate from its owner;

(2) a "qualified subchapter S subsidiary", as defined in Section 1361( b)(3)(B) of the Internal Revenue Code, is not regarded as an entity separate from the "S' corporation that owns the stock of the qualified subchapter 'S' subsidiary; and

(3) a grantor trust, to the extent that it is a grantor trust, is not regarded as an entity separate from its grantor.

(C) For purposes of this section, the Internal Revenue Code reference is as provided in Section 12‑6‑40(A).

HISTORY: 1994 Act No. 448, Section 2; 1997 Act No. 91, Section 1; 2001 Act No. 89, Section 5, eff July 20, 2001, applicable to taxable years beginning after December 31, 2000; 2003 Act No. 69, Section 3.C, eff June 18, 2003.

**SECTION 12‑2‑30.** Repealed or amended act or code section remaining in force for limited purposes.

The repeal or amendment of a code section or act does not release or extinguish any tax, interest, penalty, forfeiture, or liability incurred, unless the repealing section or act expressly so provides. The repealed or amended code section or act must be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the tax, interest, penalty, forfeiture, or liability.

HISTORY: 1991 Act No. 50, Section 1.

**SECTION 12‑2‑40.** Contracts intended to evade payment of tax or in fraud of tax laws against public policy.

All contracts that are entered into with intent to evade payment of taxes or in fraud of the tax laws of this State are against public policy. The courts of this State may not lend their aid to enforce a contract entered into as a substitute for, or having as its consideration, a previous contract declared to be against public policy. Nothing in this section limits the power of an individual to administer his property by contract or donation so as to manage or avoid the impact of this or other tax laws on his personal property.

HISTORY: 1991 Act No. 50, Section 1.

**SECTION 12‑2‑50.** Governmental bonds, notes, and certificates of indebtedness tax exempt.

(A) Both the principal and interest of all bonds, notes, and certificates of indebtedness, by or on behalf of the United States government, the State, or an authority, agency, department, or institution of the State, and all counties, school districts, municipalities, and other political subdivisions of the State, and all agencies thereof, are exempt from all state, county, municipal, school district, and all other taxes or assessments, except estate or other transfer taxes, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise. This exemption extends to all recipients of all interest paid on the obligation, whether paid directly or paid indirectly through a trustee, guardian, or other fiduciary.

(B) "Bonds" as used in this section applies to general obligation bonds and bonds payable wholly or in part from any special fund or from the revenues of a project or undertaking of the issuer.

HISTORY: 1991 Act No. 50, Section 1.

**SECTION 12‑2‑60.** Extension of time to perform duties of county auditor, county treasurer and collector of delinquent taxes.

The department may extend the time for the performance of the duties imposed upon the county auditors for the preparation of the duplicate and upon the county treasurer and delinquent tax collector for the collection of taxes.

HISTORY: 1991 Act No. 50, Section 1; 2006 Act No. 386, Section 55.A, eff June 14, 2006.

**SECTION 12‑2‑70.** Unlawful conduct by county auditor or treasurer or member of county board of tax appeals.

(A) It is unlawful for a person, contrary to the statutes of this State regulating the appointment of the county auditor and county treasurer, to:

(1) accept, hold, or exercise, or attempt to hold or exercise the office of county auditor or treasurer; or

(2) fail to turn over all books, papers, and property when application is made to him by his successor pertaining to either office.

(B) It is unlawful for a county treasurer, county auditor, or member of a county board of equalization to neglect, refuse, or evade the performance of the duties regulating the assessment and collection of taxes imposed upon him by law.

(C) It is unlawful for a county auditor to neglect or refuse to comply with the requirements of the law in the making up of his duplicate or fail to file with the Comptroller General the abstracts, vouchers, and settlement sheets within the time required by law.

(D) It is unlawful for a county treasurer, after being notified of his removal or suspension from office, to fail to settle with the county auditor and the Comptroller General and pay over all state and county monies in his hands to the officers entitled by law to receive them, within ten days after being notified.

(E) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than three years, or both.

HISTORY: 1991 Act No. 50, Section 1; 1993 Act No. 184, Section 154.

**SECTION 12‑2‑75.** Signatories to tax returns.

(A) Returns filed by taxpayers with the department must be signed by the following:

(1) corporate returns by an authorized officer of the corporation;

(2) partnership returns by its manager or an authorized general partner of the partnership;

(3) trust and estate returns by the trustee, personal representative, executor, or administrator, whichever is applicable;

(4)(a) except as provided in subitems (b) and (c), individual returns must be signed by the individual;

(b) deceased individual returns for individuals who would have been required to file a state tax return while living by the personal representative, administrator, or executor of the decedent's estate and the tax must be levied upon and collected from the estate;

(c) if an individual is unable to make a return or payment, including an estimated tax payment, it must be made by an authorized agent, a guardian, or other person charged with the conduct of the business of the taxpayer;

(5) returns for any other person by an authorized officer or owner.

(B) In the instructions to a return, or otherwise, the department may authorize taxpayers to sign returns by other means, including electronically, and may authorize the signature to be filed or deposited with and be kept or forwarded by a third party. To the extent that a tax return preparer, as that term is defined in Internal Revenue Code Section 7701(a)(36), is required or permitted to sign a return, the department in the instructions to a return, or otherwise, may authorize the tax return preparer to sign the return by other means, including electronically.

HISTORY: 1996 Act No. 431, Section 1; 1997 Act No. 114, Section 5; 2000 Act No. 399, Section 3(D)(1), eff August 17, 2000; 2005 Act No. 161, Section 1, eff June 9, 2005.

**SECTION 12‑2‑85.** Taxpayer immune from late payments due to "Year 2000" related computer billing delays.

Notwithstanding any other provision of law, if a failure of a computer, software program, network, or database resulting from a "Year 2000" date change causes any kind of notice or bill, issued by the State or a political subdivision of the State, requiring payment to be made by a taxpayer to be mailed or forwarded late or otherwise untimely provided to the taxpayer, the taxpayer may not be penalized or assessed any penalties or interest for making a late payment.

HISTORY: 1999 Act No. 100, Part II, Section 107.

**SECTION 12‑2‑90.** Fee‑in‑lieu of tax; collection and enforcement.

(A) As used in this section, "fee‑in‑lieu of tax" means the amount required to be paid by the owners or lessees of any property in an industrial or business park pursuant to the provisions of Section 13(D) of Article VIII of the Constitution of this State and its implementing statutes.

(B) For purposes of the collection and enforcement of the fee‑in‑lieu of tax:

(1) Owners and lessees of any property in an industrial or business park shall file returns and other information as if the property were taxable.

(2) Returns are due at the same time as property tax returns would be due if the property were taxable.

(3) The fee‑in‑lieu of tax is due at the same time as property tax payments would be due if the property were taxable.

(4) Failure to make a timely fee‑in‑lieu of tax payment or to file required returns shall result in penalties being assessed as if the payment or return were a property tax payment or return.

(5) The provisions of this title which are applicable to the collection and enforcement of property taxes apply to the collection and enforcement of the fee‑in‑lieu of tax and, for purposes of applying those provisions, the fee‑in‑lieu of tax is considered a property tax. The provisions of Section 12‑54‑155 do not apply to this section.

(C) The provisions of this section are in addition to and do not affect any other provision of law relating to the collection and enforcement of other forms of payments in‑lieu of taxes.

HISTORY: 2002 Act No. 334, Section 17, eff June 24, 2002.

**SECTION 12‑2‑100.** Tax credits; timeframe for use; refunds.

Unless otherwise provided by law, a tax credit administered by the department must be used in the year it is generated and must not be refunded.

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