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.

RESEARCH REFERENCES

Forms

South Carolina Legal and Business Forms Section 6:147 , Seller’s Affidavit‑Corporation.

South Carolina Legal and Business Forms Section 6:148 , Seller’s Affidavit‑Individual.

**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.

Cross References

Treatment of deeds transferring realty to and from a limited liability company under the deed recording fee law, see S.C. Code of Regulations R. 117‑1350.

Laws governing foreign limited liability companies, single‑member limited liability company exception, see Section 33‑44‑1001.

Limited liability company as legal entity, single‑member limited liability company exception, see Section 33‑44‑201.

NOTES OF DECISIONS

Single member limited liability company 1

1. Single member limited liability company

Real estate owned by single‑member limited liability company (LLC) qualified for the legal residence ratio for purposes of property tax assessment; LLC qualified for all tax benefits its member qualified for pursuant to statute that disregarded the corporate form for single‑member LLCs that were not taxed as corporations, thereby merging the existence of the company and its member for all tax purposes. CFRE, LLC v. Greenville County Assessor (S.C. 2011) 395 S.C. 67, 716 S.E.2d 877. Taxation 2161

Tax statute that stated that a single‑member limited liability company (LLC), which was not taxed for South Carolina income tax purposes as a corporation, was not regarded as an entity separate from its owner applied to all forms of taxation, not just income tax. CFRE, LLC v. Greenville County Assessor (S.C. 2011) 395 S.C. 67, 716 S.E.2d 877. Taxation 2230; Taxation 3485; Taxation 3660

Administrative Law Court (ALC) erred in relying on unenacted pieces of legislation specifically incorporating single‑member limited liability companies within statute regarding residential tax ratio for purposes of property tax assessments as demonstrative of the General Assembly’s intent with respect to the current version of statute regarding tax implications of single‑member limited liability companies. CFRE, LLC v. Greenville County Assessor (S.C. 2011) 395 S.C. 67, 716 S.E.2d 877. Taxation 2088

**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.

Library References

Taxation 3440.

Westlaw Topic No. 371.

C.J.S. Taxation Section 1830.

NOTES OF DECISIONS

In general 1

1. In general

Repeal of statute governing the willful failure to file a state income tax return and its replacement with a new statutory scheme, placing civil penalties in one statute and unmodified criminal penalties in another, did not impair prosecution for the enforcement of the criminal liability under the repealed statute, even though repealing act did not specifically include a savings clause, where the new statutes were unchanged from the repealed statute in wording and enforcement, and new scheme specifically provided that the repealed statute remained in force for the purpose of enforcing the liability. State v. Charron (S.C.App. 2002) 351 S.C. 319, 569 S.E.2d 388, rehearing denied, certiorari denied. Criminal Law 15; Taxation 3563

**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.

Library References

Contracts 104 to 108.

Westlaw Topic No. 95.

C.J.S. Contracts Sections 26 to 28, 271 to 275, 278 to 282, 347 to 349, 354, 356, 1030.

**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.

CROSS REFERENCES

Bonds, and interest thereon, issued for improvements to the Dawson Football Stadium, S.C. State University, as having tax exempt status pursuant to this section, see Section 59‑127‑370.

Principal of, and interest on, bonds issued by SC Edisto Development Authority exempt from taxation, see Section 13‑21‑80.

Principal of, and interest on, bonds issued by Trident Economic Development Finance Authority exempt from taxation, see Section 13‑12‑140.

South Carolina Research University Infrastructure Act, general obligation debt exempt from taxation, see Section 11‑51‑130.

State school facilities bonds exempt from taxation, see Section 59‑146‑100.

Library References

Taxation 2314, 2316, 3410, 3519.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 311, 315, 1841, 1879 to 1881.

Attorney General’s Opinions

A private foundation linked to a State college may not issue tax exempt bonds. 1976‑77 Op Atty Gen, No 77‑224, p 171 (July 18, 1977) 1977 WL 24566.

**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.

Library References

Taxation 2807, 3560, 3705.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1130, 1824, 1926, 2212.

Attorney General’s Opinions

Former Section 12‑1‑20 was authority to extend the time for the assessment of property for tax purposes when such is necessary. An extension of the assessment dates necessarily includes an extension of time for timely payment and the granting of discounts allowed by Act 202, Acts of 1973. 1979 Op Atty Gen, No 79‑115, p 163 (September 24, 1979) 1979 WL 29118.

**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.

Library References

Taxation 2452.

Westlaw Topic No. 371.

C.J.S. Taxation Section 529.

**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.

Editor’s Note

2000 Act No. 399, Section 3.Z., provides, in pertinent part, as follows:

“This section takes effect upon approval by the Governor, or as otherwise stated, except that ... subsection D. applies to taxable years beginning after December 31, 2000 ....”

CROSS REFERENCES

Civil penalties and damages applicable to certain return or statement filings, see Section 12‑54‑43.

Criminal penalties applicable to certain return or statement filings, see Section 12‑54‑44.

Library References

Taxation 3540, 3541, 3686.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1834, 1903, 2189, 2191 to 2193.

**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.

Library References

Taxation 2462, 2800, 3214.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 541 to 549, 1109, 1721 to 1723, 1725 to 1727, 1824.

**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.

Library References

Taxation 3517, 3672.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2186 to 2187.

**SECTION 12‑2‑110.** Out‑of‑state business performing disaster or emergency‑related work exempt from certain licensing and taxing requirements.

 (A) For purposes of this section:

 (1) “Registered business in this State” or “registered business” means a business entity that is registered to do business in this State before the declared state disaster or emergency.

 (2) “Out‑of‑state business” means a business entity that has no presence in the State and conducts no business in this State whose services are requested by a registered business or by a state or local government for purposes of performing disaster or emergency‑related work in this State. This term includes a business entity that is affiliated with the registered business in this State solely through common ownership. The out‑of‑state business must have no registrations or tax filings or nexus in the State before the declared state disaster or emergency.

 (3) “Out‑of‑state employee” means an employee who does not reside in or work in the State, except for disaster or emergency‑related work during the disaster period.

 (4) “Infrastructure” means property and equipment owned or used by communications networks, electric generation, transmission and distribution systems, gas distribution systems, water pipelines, and public roads and bridges and related support facilities that services multiple customers or citizens including, but not limited to, real and personal property such as buildings, offices, lines, poles, pipes, structures, and equipment.

 (5) “Declared state disaster or emergency” means a disaster or emergency event:

 (a) for which a Governor’s state of emergency proclamation has been issued;

 (b) for which a presidential declaration of a federal major disaster or emergency has been issued; or

 (c) other disaster or emergency event within this State for which a good faith response effort is required, and for which the Director of the South Carolina Department of Revenue designates the event as a disaster or emergency and thereby invokes this section.

 (6) “Disaster period” means a period that begins within ten days of the first day of the Governor’s proclamation, the President’s declaration, or designation by the Director of the Department of Revenue, whichever occurs first, and that extends for a period of sixty calendar days after the end of the declared state disaster or emergency period, or any longer period authorized by the designated state official or agency.

 (7) “Disaster or emergency‑related work” means repairing, renovating, installing, building, rendering services or other business activities that relate to infrastructure that has been damaged, impaired, or destroyed by the event precipitating the declared state disaster or emergency.

 (B)(1)(a) An out‑of‑state business that performs disaster or emergency‑related work within this State related to a declared state disaster or emergency during a disaster period must not be considered to have established a level of presence that would require that business to register, file, and remit state or local taxes or that would require that business or its out‑of‑state employees to be subject to any state licensing or registration requirements or any combination of these actions. Except as provided in subsection (B)(1)(b), this exemption includes all state or local business licensing or registration requirements or state and local taxes or fees including, but not limited to, unemployment insurance, state or local occupational licensing fees, sales and use tax, or property tax on equipment used or consumed during the disaster period, and includes South Carolina Public Service Commission and Secretary of State licensing and regulatory requirements. For purposes of a state or local tax on or measured by, in whole or in part, net or gross income or receipts, all activity of the out‑of‑state business resulting from its performance of disaster or emergency‑related work within this State related to a declared state disaster or emergency during a disaster period, must be disregarded with respect to any filing requirements for that tax including the filing required for a unitary or combined group of which the out‑of‑state business may be a part.

 (b) An out‑of‑state employee is not considered to have established residency or a presence in the State that would require that person or that person’s employer to file and pay income taxes or to be subjected to tax withholdings or to file and pay any other state or local tax or fee resulting from his performance of disaster or emergency‑related work within this State related to a declared state disaster or emergency during a disaster period. This includes any related state or local employer withholding and remittance obligations.

 (2) Out‑of‑state businesses and out‑of‑state employees are not exempted by this section from transaction taxes and fees including, but not limited to, fuel taxes and fuel user fees or sales and use taxes on materials or services subject to sales and use tax, accommodations taxes, car rental taxes or fees that the out‑of‑state affiliated business or out‑of‑state employee purchases for use or consumption in this State during the disaster period, unless the taxes or fees are otherwise exempted during a disaster period.

 (3) An out‑of‑state business or out‑of‑state employee that remains in the State after the disaster period becomes subject to the state’s normal standards for establishing presence, residency, or doing business in this State and the resulting requirements.

 (C)(1)(a) The out‑of‑state business that enters this State upon request, shall provide to the Department of Revenue a notification statement that it is in this State for purposes of responding to the disaster or emergency, which statement must include the business’ name, state of domicile, principal business address, federal tax identification number, date of entry, and contact information.

 (b) A registered business in this State, upon request, shall provide the information required in item (1)(a) for an affiliate that enters this State that is an out‑of‑state business. The notification also must include contact information for the registered business in this State.

 (2) An out‑of‑state business or an out‑of‑state employee that remains in this State after the disaster period shall notify the Department of Revenue and shall comply with state and local registration, licensing, and filing requirements that ensue as a result of establishing the requisite business presence or residency in this State.

HISTORY: 2014 Act No. 220 (S.1033), Section 1, eff June 2, 2014.

**SECTION 12‑2‑115.** New jobs or investments not created; boundary clarification.

 For purposes of all South Carolina tax credits or other tax incentives, “new jobs” are not created in South Carolina by employees whose work location is changed from North Carolina to South Carolina as a result of the boundary clarification, as contained in the amendments in Section 1‑1‑10, effective January 1, 2017, nor is there any new investment in South Carolina as a result of property that changes location from North Carolina to South Carolina as a result of the boundary clarification.

HISTORY: 2016 Act No. 270 (S.667), Section 4, eff January 1, 2017.

**SECTION 12‑2‑120.** Tax liability or refunds; boundary clarification.

 (A) Individuals whose residency or taxpayers whose property or business location is considered to have changed from North Carolina to South Carolina solely as a result of the boundary clarification, as contained in the amendments to Section 1‑1‑10, effective January 1, 2017, is not liable for any taxes for periods prior to the boundary clarification date based solely on a claim that the individual was a resident or the taxpayer’s property or business location was located in South Carolina in the prior year.

 (B) Individuals whose residency or taxpayers whose property or business location is considered to have changed from South Carolina to North Carolina solely as a result of the boundary clarification are not entitled to a refund of any state, county, or local taxes or license fees for periods prior to the boundary clarification date based solely on a claim that the individual was not a resident of South Carolina or the taxpayer’s property or business location was not in South Carolina in prior years.

 (C) Taxpayers who have sold products or services subject to South Carolina taxes to persons whose residence or location is considered to have changed from South Carolina to North Carolina solely as a result of the boundary clarification are not allowed a refund for any taxes paid prior to the boundary clarification as a result of these sales.

HISTORY: 2016 Act No. 270 (S.667), Section 5, eff January 1, 2017.

**SECTION 12‑2‑130.** Authority to compromise taxes; boundary clarification.

 In the year containing the date of the boundary clarification, as contained in the amendments to Section 1‑1‑10, effective January 1, 2017, the Department of Revenue has the authority to compromise taxes that result in taxation in both South Carolina and North Carolina solely because of the boundary clarification.

HISTORY: 2016 Act No. 270 (S.667), Section 6, eff January 1, 2017.