CHAPTER 54

Uniform Method of Collection and Enforcement of Taxes Levied and Assessed by South Carolina Department of Revenue

**SECTION 12‑54‑10.** Definitions.

 The word “person” or “taxpayer”, for the purpose of this chapter, unless otherwise required by the text, includes any individual, firm, partnership, limited liability company, association, corporation, receiver, trustee, fiduciary, or any other group or combination acting as a unit and the State or any agency or instrumentality, authority, or political subdivision thereof, including municipalities. “Department” means the South Carolina Department of Revenue.

HISTORY: 1985 Act No. 201, Part II, Section 32A; 1993 Act No. 181, Section 235; 1995 Act No. 60, Section 2C.

CROSS REFERENCES

Application of this chapter to the collection of the excise, license, or privilege tax on licensed hospitals, see Section 12‑23‑820.

Local sales and use tax, see Section 4‑10‑10 et seq.

Provisions of Chapter 54 of Title 12, applicable to property taxes, also apply to provisions governing fee in lieu of taxes, see Section 4‑29‑67.

Provisions of this chapter apply to administration, collection, and enforcement of fees imposed by the Solid Waste Policy and Management Act, see Section 44‑96‑220.

**SECTION 12‑54‑15.** Tax and all increases, interest, and penalties on tax are personal debt from person liable to pay.

 Every tax imposed by this title and all increases, interest, and penalties on the tax is from the time it is due and payable, a personal debt from the person liable to pay it to the State.

HISTORY: 1995 Act No. 76, Section 4.

Library References

Taxation 2168, 3480, 3660.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 80 to 81, 1818, 1836 to 1837, 1839, 1841, 1843, 2180.

**SECTION 12‑54‑17.** Action by Attorney General to recover taxes, penalties, and interest.

 Action may be brought at any time by the Attorney General, in the name of the State, to recover taxes, penalties, and interest due under this title.

HISTORY: 1995 Act No. 76, Section 4.

Library References

Taxation 2848, 3561, 3709.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 998, 1024, 1174 to 1203, 1927, 2217.

**SECTION 12‑54‑25.** Interest due on late taxes; applicable interest rate.

 (A) If any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety. For administrative convenience, the department may waive up to thirty days’ interest.

 (B) For purposes of this section, a tax is due on the last day provided for its payment, without regard for any extension of time for payment and without regard for or to any assessment under Section 12‑60‑910. Stamp taxes and any other tax for which no payment date is provided are due on the day the liability arises.

 (C)(1) Any tax refunded or credited must include interest on the amount of the credit or refund from the latest of the date the tax was paid, the original due date of the return, or the last day prescribed for paying the tax if no return is required, to either the date the refund was sent or delivered to the taxpayer or the date the credit was made.

 (2) This interest must be paid by drawing upon funds from the type of tax being refunded or credited. The funds withdrawn may be expended by the department in the payment of interest on refunds.

 (3) Interest on an overpayment is not allowed pursuant to this subsection if it is refunded:

 (a) within seventy‑five days after the last day prescribed for filing the tax return, without regard to an extension of time for filing, or within seventy‑five days after the last day prescribed for paying the tax if no return is required;

 (b) within seventy‑five days after the return is filed, in the case of a return filed after the last date;

 (c) within seventy‑five days after the taxpayer files a claim for a credit or refund for the overpayment of tax for the period between the filing of the claim to the payment of the refund; or

 (d) within seventy‑five days after the county has received notice from the Department of Revenue that the taxpayer is due a credit or refund for the overpayment of property taxes.

 (D) Except as preempted or superseded by federal law or inter‑governmental compact such as the International Fuel Tax Agreement, the rate of interest on underpayments and overpayments is established by the department in the same manner and at the same time as the underpayment rate provided in Internal Revenue Code Sections 6621(a)(2) and 6622.

HISTORY: 1995 Act No. 60, Section 4C; 1996 Act No. 456, Section 4; 1998 Act No. 432, Section 13; 2000 Act No. 399, Section 3(J)(1), eff August 17, 2000; 2003 Act No. 69, Section 3.Z, eff June 18, 2003; 2005 Act No. 145, Section 53, eff June 7, 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 J.1. applies to taxable periods ending after December 31, 1999; subsection J.2. applies to tax returns due after October 31, 2000, and does not affect an action or proceeding commenced or a right accrued before October 1, 2000 ....”

CROSS REFERENCES

Guidelines of refund due to taxpayer when appeal of proposed assessment prevails, see Section 12‑60‑490.

Interest to be calculated in a refund or collection of adjusted personal property tax assessment or homestead exemption after final determination is made by the Administrative Law Court, see Section 12‑60‑2930.

Interest to be calculated in a refund or collection of adjusted property tax assessment after final determination is made by the Administrative Law Court, see Section 12‑60‑2550.

Refund due for excess payment and any penalties imposed shall be paid with interest within thirty days of the final determination, see Section 12‑60‑1740.

Library References

Taxation 2763, 3554, 3697.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1925, 2206.

**SECTION 12‑54‑42.** Penalties for an employer for failure to furnish or file withholding statement; separate violation.

 (a) A person who fails to comply with the provisions of Section 12‑8‑1540, requiring the furnishing of a withholding statement to employees is subject to a penalty of not less than one hundred dollars nor more than one thousand dollars for each violation.

 (b) A person who fails to comply with the provisions of Section 12‑8‑1550, requiring the filing of withholding statements with the department is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each violation.

 (c) Failure to comply with Sections 12‑8‑1540 and 12‑8‑540(A)(1) with respect to each withholding statement required to be provided to the department or each employee is considered a separate violation.

HISTORY: 1995 Act No. 76, Section 4; 2005 Act No. 145, Section 32.A, eff July 1, 2005.

Library References

Taxation 3560, 3563.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1926, 1929.

**SECTION 12‑54‑43.** Civil penalties and damages applicable to every tax or revenue law requiring return or statement filing with department.

 (A) Except as otherwise provided, the civil penalties imposed by this penalty section apply to every revenue or tax law of the State that provides for the filing with the department of a return or statement of the tax or the amount taxable.

 (B) The penalties described in this section must be added to and become a part of and collected as the tax imposed by the revenue or tax laws of this State.

 (C)(1) In the case of failure to file a return on or before the date prescribed by law, determined with regard to any extension of time for filing, there must be added to the amount required to be shown as tax on the return, a penalty of five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of the month during which the failure continues, not exceeding twenty‑five percent in the aggregate.

 (2) For the purpose of this subsection, the amount of tax required to be shown on the return must be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

 (D) In case of failure to pay the amount shown as tax on any return on or before the date prescribed by law, determined with regard to any extension of time for paying, there must be added to the tax due a penalty of one‑half of one percent of the amount of the tax if the failure is for not more than one month, with an additional one‑half of one percent for each additional month or fraction of the month, during which the failure continues, not exceeding twenty‑five percent in the aggregate.

 (E) In case of failure to pay any amount of any tax required to be shown on a return which is not shown, including an assessment within ten days of the date of the notice and demand for payment, there must be added to the amount of tax stated in the notice and demand one‑half of one percent of the amount of the tax if the failure is for not more than one month, with an additional one‑half of one percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty‑five percent in the aggregate.

 (F)(1) If part of an underpayment of tax or part of a claim for refund of tax paid is due to negligence or disregard of regulations, there must be added to the tax an amount equal to the sum of five percent of the underpayment or claimed refund and an amount equal to fifty percent of the interest payable under Section 12‑54‑25.

 (2) A portion of an underpayment attributable to fraud with respect to which a penalty is imposed under subsection (G) must not be considered under this subsection.

 (3) For purposes of this subsection, “negligence” includes a failure to make a reasonable attempt to comply with the provisions of this title, and “disregard” includes careless, reckless, or intentional disregard.

 (G)(1) If a part of an underpayment of tax required to be shown on a return is due to fraud, there must be added to the tax an amount equal to the sum of seventy‑five percent of the portion of the underpayment which is attributable to fraud and an amount equal to fifty percent of the interest payable under Section 12‑54‑25 with respect to that portion for the period beginning on the last day prescribed by law for payment of the underpayment, determined without regard to any extension, and ending on the date of the assessment of the tax or, if earlier, the date of the payment of the tax.

 (2) If the department establishes that a portion of an underpayment is attributable to fraud, the entire underpayment must be treated as attributable to fraud, except that portion of the underpayment which the taxpayer establishes is not attributable to fraud.

 (3) In case of a joint return, this subsection applies to a spouse only if some part of the underpayment is due to the fraud of the spouse.

 (4) If a penalty is assessed under this subsection for an underpayment of tax which is required to be shown on a return, a penalty relating to failure to file the return or pay tax may not be assessed with respect to the portion of the underpayment which is attributable to fraud.

 (H) A person who must obtain a license or purchase stamps for identification purposes, and who fails to obtain or display the license properly, or to affix the stamps properly, or to comply with statutory provisions, is subject to a penalty of not less than fifty dollars nor more than five hundred dollars for each failure. For failure to obtain or display a license as prescribed in Sections 12‑21‑2720 and 12‑21‑2730, the penalty is fifty dollars for each failure to comply.

 (I) A person:

 (1)(a) who files what purports to be a return of the tax imposed by a provision of law administered by the department but which:

 (i) does not contain information on which the substantial correctness of the tax liability may be judged; or

 (ii) contains information that on its face indicates the liability is substantially incorrect; or

 (b) who files a claim, a protest, or document, other than a return, that contains information that on its face indicates its position is substantially incorrect; and

 (2) whose conduct is due to:

 (a) a position which is frivolous or groundless; or

 (b) a desire, which appears on the purported return, claim, protest, or document, to delay or impede the administration of state tax laws;

 (3) is liable to a penalty of five hundred dollars for the first filing, twenty‑five hundred dollars for the second filing, and five thousand dollars for each subsequent filing. These penalties are in addition to all other penalties provided by law.

 (J) Whenever it appears to an administrative law judge that proceedings before him have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer’s position in the proceedings is frivolous or groundless, damages in an amount not to exceed five thousand dollars must be awarded to the State in the administrative law judge’s decision. These damages must be assessed at the same time as the deficiency, paid upon notice and demand from the department, and collected as a part of the tax.

 (K) A failure to deposit or pay taxes deducted and withheld pursuant to Article 5, Chapter 8 subjects the withholding agent to a penalty of not less than ten dollars nor more than one thousand dollars. The penalty imposed by this item applies to failure to comply with the provisions of Section 12‑54‑250.

 (L) If a taxpayer asserts a value for property used in, or owned by, a business for property tax purposes that is fifty percent or more below the property’s property tax value, there must be added to the tax an amount equal to the fifty percent of the underpayment which would have resulted if the value asserted had been accepted.

 (M) If a purchaser uses a resale, wholesale, or an exemption certificate issued or authorized by the department to purchase tangible personal property tax free which the purchaser knows is not excluded or exempt from the tax under the provisions of Chapter 36 of this title, then the purchaser, in addition to any other penalties due under this title, is liable for a penalty of five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of the month during which the failure continues, not exceeding fifty percent in the aggregate. The provisions of this section do not apply to direct pay certificates.

HISTORY: 1999 Act No. 114, Section 4; 2000 Act No. 399, Section 3(J)(2), eff August 17, 2000; 2001 Act No. 89, Section 30, eff July 20, 2001; 2005 Act No. 145, Section 33.A, eff October 1, 2005; 2005 Act No. 145, Section 33.B, eff July 1, 2005; 2005 Act No. 161, Section 16.A, 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 J.1. applies to taxable periods ending after December 31, 1999; subsection J.2. applies to tax returns due after October 31, 2000, and does not affect an action or proceeding commenced or a right accrued before October 1, 2000 ....”

2005 Act No. 161, Section 16.B, provides as follows:

“This SECTION [adding subsection (L)] takes effect upon approval by the Governor and is applicable for tax years beginning after December 31, 2005.”

Library References

Taxation 3214, 3563, 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 1721 to 1723, 1725 to 1727, 1929, 2219 to 2220.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

State General Assembly was constitutionally authorized to levy a state income tax, absent any state or federal constitutional provision prohibiting it from levying an income tax. State v. Charron (S.C.App. 2002) 351 S.C. 319, 569 S.E.2d 388, rehearing denied, certiorari denied. Taxation 3405

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

2. Constitutional issues

Enforcement of the filing of state income tax returns was reasonably and inherently related to the expenditure of tax money, and thus, inclusion of income tax levy in a general appropriations act satisfied the single‑subject requirement of the State Constitution. State v. Charron (S.C.App. 2002) 351 S.C. 319, 569 S.E.2d 388, rehearing denied, certiorari denied. Statutes 1617(12); Statutes 1617(14); Taxation 3427

**SECTION 12‑54‑44.** Criminal penalties applicable to every tax or revenue law requiring return or statement filing with department.

 (A) Except as otherwise provided, the criminal penalties imposed by this section apply to every revenue or tax law of the State that provides for the filing with the department of a return or statement of the tax or the amount taxable.

 (B)(1) A person who wilfully attempts in any manner to evade or defeat a tax or property assessment imposed by a title administered by the department or the payment of that tax or property assessment, in addition to other penalties provided by law, is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than five years, or both, together with the cost of prosecution.

 (2) A person required by a provision of law administered by the department and who wilfully fails to collect, truthfully account for, and pay over any tax imposed by a provision of law, in addition to other penalties provided by law, is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than five years, or both, together with the cost of prosecution.

 (3) A person required under any provision of law administered by the department and who wilfully fails to pay any estimated tax or tax, or who is required by any provision of law or by any regulation and who wilfully fails to make a return, keep records, or supply information, at the time or times required by law or regulation, in addition to other penalties provided by law, is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars, or imprisoned not more than one year, or both, together with the cost of prosecution.

 (4) A person required by law or regulation to furnish a statement who wilfully furnishes a false or fraudulent statement in the manner, at the time, and showing the information required by law or regulation, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

 (5) A person required to supply information to his employer under Chapter 8, Title 12 who wilfully supplies false or fraudulent information or who wilfully fails to supply information which would require an increase in the tax to be withheld under Chapter 8, Title 12 is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars, or imprisoned not more than one year, or both. Offenses in this item are triable in magistrate’s court.

 (6)(a) A person is guilty of a felony and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than five years, or both, together with the cost of prosecution, if he:

 (i) wilfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or

 (ii) wilfully assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with a matter arising under those provisions of law administered by the department of a return, affidavit, claim, or other document which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document.

 (b) A person convicted of a crime described in subitem (a)(ii) is prohibited from preparing or assisting in the preparation of a tax return required to be filed under any title administered by the department. A person violating this prohibition is guilty of a felony, and, upon conviction, must be fined ten thousand dollars and imprisoned for at least five years without probation, parole, or suspension of sentence.

 (c) A person who:

 (i) wilfully removes, deposits, or conceals, or is concerned in removing, depositing, or concealing goods or commodities for which a tax is or must be imposed, or property upon which levying is authorized pursuant to law, with intent to evade or defeat the assessment or collection of any tax imposed by this provision of law administered by the department 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, together with the cost of prosecution;

 (ii) in connection with the preparation of a tax return for another, the filing of a tax return, or the payment of a tax, receives money from the payment of any tax, receives money from the other person with the understanding that it is to be paid over to the department to discharge, in whole or in part, the other person’s tax liability and wilfully fails to pay over the same to the department is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years, or both, for each offense together with the cost of prosecution; or

 (iii) wilfully delivers or discloses to the department any list, return, account, statement, or other document known by him to be fraudulent or to be false as to a material matter, is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than one year, or both.

 (C) Reserved

 (D) A machine owner or distributor, as defined in Article 20, Chapter 21 of this title, who allows or causes a machine to be operated without a metering device, or who wilfully places a machine on location or who wilfully allows or causes a machine to be operated with a metering device that does not accurately record the information required under Article 20, Chapter 21 of this title is guilty of a felony and, upon conviction, must be imprisoned for not less than one year nor more than ten years, without benefit of probation, parole, or suspension of sentence, and in addition may be fined not more than twenty‑five thousand dollars.

HISTORY: 1999 Act No. 114, Section 4; 2001 Act No. 89, Section 31, eff July 20, 2001.

Editor’s Note

1999 Act No. 125, Part I, Section 6, effective July 1, 2000, purported to repeal Section 12‑54‑40(M); however, Section 12‑54‑40 had already been repealed by Act 114, Section 4. Act 114 also added Section 12‑54‑44. Subsection (D) of the new Section 12‑54‑44 is the same as subsection (M) of the former Section 12‑54‑40 prior to its repeal by Act 114. The subsection refers to Title 12, Chapter 21, Article 20, which was repealed by Act 125, Part I, Section 8, effective July 1, 2000.

Library References

Taxation 2471, 3563, 3712.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 541 to 542, 544, 1929, 2221.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

Three‑year suspension, retroactive to the date of attorney’s interim suspension, was warranted as discipline for attorney who admitted misconduct in failing to file notice of appeal on behalf of criminal client, failing to pay mediator for services, pleading guilty to three counts of failure to pay withholding taxes, file a return or maintain records, and violating interim suspension order; attorney’s disciplinary history included prior admonition and public reprimand. In re Gay (S.C. 2015) 412 S.C. 335, 772 S.E.2d 276. Attorney and Client 59.13(3); Attorney and Client 59.13(5)

Supreme Court accepted agreement for discipline by consent between attorney and Office of Disciplinary Counsel (ODC) and suspended attorney from the practice of law for 90 days based on attorney’s admission that he violated rules of professional conduct regarding convictions for crimes of moral turpitude, engaging in conduct that was prejudicial to the administration of justice, and violating rules regarding professional conduct of lawyers when he violated several conditions of his probation for conviction for failing to pay taxes. In re Reaves (S.C. 2009) 383 S.C. 132, 678 S.E.2d 439. Attorney And Client 59.13(5)

State General Assembly was constitutionally authorized to levy a state income tax, absent any state or federal constitutional provision prohibiting it from levying an income tax. State v. Charron (S.C.App. 2002) 351 S.C. 319, 569 S.E.2d 388, rehearing denied, certiorari denied. Taxation 3405

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

2. Constitutional issues

Enforcement of the filing of state income tax returns was reasonably and inherently related to the expenditure of tax money, and thus, inclusion of income tax levy in a general appropriations act satisfied the single‑subject requirement of the State Constitution. State v. Charron (S.C.App. 2002) 351 S.C. 319, 569 S.E.2d 388, rehearing denied, certiorari denied. Statutes 1617(12); Statutes 1617(14); Taxation 3427

**SECTION 12‑54‑46.** Exemption certificate violations; penalties; exception.

 (A) An individual subject to withholding and required to supply information to his employer pursuant to Chapter 8, Title 12 is liable for a penalty of five hundred dollars for each of the following violations:

 (1) refusing or failing to provide a withholding exemption certificate;

 (2) providing a withholding exemption certificate that claims he is exempt from withholding;

 (3) providing exemptions on a withholding exemption certificate exceeding the number of exemptions to which he is entitled; or

 (4) requesting a waiver from withholding to which he is not entitled.

 (B) An additional five‑hundred‑dollar penalty is imposed each January first that a violation is not corrected.

 (C) The penalty does not apply to an individual described in subsection (A) who has a change in family circumstances that makes his withholding exemption certificate inaccurate unless his employer or the department has informed him to revise his withholding exemption certificate.

HISTORY: 1995 Act No. 76, Section 4; 1998 Act No. 387, Section 5; 2005 Act No. 161, Section 27, eff June 9, 2005.

Library References

Taxation 3563.

Westlaw Topic No. 371.

C.J.S. Taxation Section 1929.

**SECTION 12‑54‑47.** Failure of tax preparer to include own taxpayer identification number; penalty; waiver of penalty if information submitted.

 The department may impose a penalty in an amount not to exceed two hundred dollars for each failure to comply with the provisions of Section 12‑6‑5050. The department may waive the penalty if the tax preparer submits the required information.

HISTORY: 1995 Act No. 76, Section 4.

Library References

Taxation 3213, 3563, 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 1929, 2219 to 2220.

**SECTION 12‑54‑50.** Penalty for checks returned to department on account of insufficient funds.

 When the bank on which an uncertified check or electronic payment tendered to the department in payment of an obligation due to the department refuses payment of the check or electronic payment on account of insufficient funds of the drawer in the bank and the check or electronic payment is returned to the department, a penalty of fifteen dollars must be imposed. This penalty is in addition to and separate from any other penalty that may be imposed by the department. This section applies to all taxes or license fees levied or assessed by the department.

HISTORY: 1985 Act No. 201, Part II, Section 32A; 1991 Act No. 168, Section 5; 1996 Act No. 431, Section 13.

Library References

Taxation 3213, 3216, 3563, 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 1728 to 1737, 1929, 2219 to 2220.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 2, Jurisdictional Background.

**SECTION 12‑54‑55.** Interest on underpayment of declaration of estimated tax.

 In the case of an underpayment of declaration of estimated tax by an individual, estate, trust, or corporate taxpayer, instead of all other penalties provided by law, there must be added to the tax for the taxable year a penalty to be determined as follows:

 (1) in the case of an individual taxpayer, estate, or trust in the same manner as prescribed by the provisions of Internal Revenue Code Section 6654 and applicable regulations except that the small amount provisions are one hundred dollars. No interest or penalty is due under this item for underpayments attributable to personal service income earned in another state on which income tax due the other state was withheld;

 (2) in the case of a corporate taxpayer, in the same manner as prescribed by the provisions of Internal Revenue Code Section 6655 and applicable regulations, except that the small amount provisions are one hundred dollars.

HISTORY: 1987 Act No. 170, Part II, Section 25 O(2); 1990 Act No. 612, Part II Section 38; 1995 Act No. 76, Section 13; 1998 Act No. 432, Section 14; 2002 Act No. 334, Section 8D, eff June 24, 2002; 2002 Act No. 363, Section 1E, eff August 2, 2002; 2005 Act No. 161, Section 10, eff June 9, 2005.

Editor’s Note

2002 Act No. 334, Section 8.E and 2002 Act No. 363, Section 1.F provide as follows:

“This section takes effect upon approval by the Governor and applies for estimated taxes due after 2002.”

CROSS REFERENCES

Amount of tax withheld on distribution to nonresident shareholders of “S” corporations and nonresident partners deemed payment of estimated tax for purposes of computing penalty under this section, see Section 12‑8‑590.

Library References

Taxation 3554, 3697.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1925, 2206.

**SECTION 12‑54‑70.** Extension of time for filing returns or paying tax; tentative return and payment of tentative liability.

 (a) The department may allow further time for the filing of returns or remitting of tax due required by the provisions of law administered by the department. The request for an extension must be filed with the department on or before the day the return of the tax is due. Except as otherwise provided in this section, the department may allow an extension of time not to exceed six months. A tentative return is required reflecting one hundred percent of the anticipated tax to be paid for the taxable period, to be accompanied by a remittance for the tentative tax liability. Interest at the rate provided in Section 12‑54‑25, calculated from the date the tax was originally due, must be added to the balance due whenever an extension to file or to remit tax due is granted.

 (b) If the amount remitted with the tentative return fails to reflect at least ninety percent of the tax to be paid for the period granted by the extension, a penalty as provided in Section 12‑54‑43(D) must be imposed from the date the tax was originally due on the difference between the amount remitted and the tax to be paid for the period.

 (c) Provisions regarding prepayment of ninety percent of the estimated liability do not apply to persons filing monthly reports. For monthly filers, no extension may be granted for more than one additional month beyond the due date. The time and payment requirements of this section do not apply for estate tax purposes if a hardship extension is granted under Section 12‑16‑1140; but interest must be calculated on any outstanding amount until completely paid.

 (d) An extension may not be granted to a taxpayer who has been granted an extension for a previous period and has not fulfilled the requirements of the previous period.

HISTORY: 1985 Act No. 201, Part II, Section 32A; 1987 Act No. 70 Section 6; 1987 Act No. 170, Part II, Section 25 O(4); 2005 Act No. 161, Section 11, eff June 9, 2005; 2007 Act No. 110, Section 27, eff June 21, 2007; 2007 Act No. 116, Section 33, eff June 28, 2007, applicable for tax years after 2007.

CROSS REFERENCES

Additional provisions regarding extension of time for filing estate tax return, see Section 12‑16‑1110.

Discount allowed on amount of sales or use tax owed to state upon timely filing and payment of tax, see Section 12‑36‑2610.

Library References

Taxation 2463, 2760, 3554, 3697.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 541 to 542, 544, 1023, 1925, 2206.

Attorney General’s Opinions

The Tax Commission is authorized by Sections 12‑54‑20 and 12‑54‑70 to charge interest on sales tax payments and estimated sales tax payments where such payments are paid after the due date even if such are paid within an extension period granted by Section 12‑54‑70. 1986 Op Atty Gen, No 86‑110, p 330 (October 27, 1986) 1986 WL 192068.

**SECTION 12‑54‑75.** Electronic collection of revenues.

 (A) The State Treasurer may authorize a state agency which collects revenues, either as taxes or license fees or as payment for goods or services, to accept electronic forms of payment including, but not limited to, credit cards, debit cards, bank debits or credits, or electronic purse options. These electronic payments may be accepted in the course of an electronic commerce transaction, in which the business transaction is conducted by means of the internet, interactive voice response, or other fully electronic means.

 (B) The State Treasurer may contract on behalf of the agencies with payment service providers for the processing of electronic payments, and may negotiate associated processing fees. The agency collecting revenues electronically may withhold the negotiated processing fees for payment to service providers from the revenues collected.

HISTORY: 1999 Act No. 121, Section 1.

Library References

Taxation 2761, 3554, 3697.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 995, 1019, 1022, 1027 to 1034, 1925, 2206.

**SECTION 12‑54‑85.** Time limitation for assessment of taxes or fees; exceptions.

 (A) Except as otherwise provided in this section, taxes must be determined and assessed within thirty‑six months from the date the return or document was filed or due to be filed, whichever is later.

 (B) Except as otherwise provided in this section:

 (1) if a tax, except for a penalty described in item (2), is not required to be remitted with a return or document, the amount of taxes must be determined and assessed within thirty‑six months after the later of the date the tax was due or the first date on which any part of the tax was paid; and

 (2) a penalty that is not associated with the assessment of a tax must be determined and assessed within thirty‑six months after the date of the violation giving rise to the penalty.

 (C) Taxes may be determined and assessed after the thirty‑six month limitation if:

 (1) there is fraudulent intent to evade the taxes;

 (2) the taxpayer failed to file a return or document as required by law;

 (3) there is a twenty percent understatement of the total of all taxes required to be shown on the return or document. The taxes in this case may be assessed at any time within seventy‑two months from the date the return or document was filed or due to be filed, whichever is later. For the purpose of this item, the total of all taxes required to be shown on the return is the total of all taxes required to be shown on the return before any reduction for estimated payments, withholding payments, other prepayments, or discount allowed for timely filing of the return and payment of the tax due, but that amount must be reduced by another credit that may be claimed on the return;

 (4) the person liable for any taxes consents in writing, before the expiration of the time prescribed in this section for assessing taxes due, to the assessment of the taxes after the time prescribed by this section; or

 (5) the tax is a use tax imposed under Chapter 36 of this title, or a local use tax administered and collected by the department on behalf of a local jurisdiction, and the assessment of the use tax is the result of information received from, or as a result of exchange agreements with, other state or local taxing authorities, regional or national tax administration organizations, or the federal government. The use taxes in this case may be assessed at any time within twelve months after the department receives the information, but no later than seventy‑two months after the last day the use tax may be paid without penalty.

 (D)(1) Taxes due to an understatement of taxes resulting from adjustments of the Internal Revenue Service also may be determined and assessed after the thirty‑six month limitation if:

 (a) except as provided in subitem (b), in the case of income, estate, and generation skipping transfer taxes, the taxes are assessed before one hundred eighty days after the department receives notice from the taxpayer of a final determination of a tax adjustment made by the Internal Revenue Service; or

 (b) in the case of individual income tax returns described in subitem (4)(c) below, the taxes are assessed before one hundred eighty days after the department receives notice of the tax adjustment from the Internal Revenue Service or the taxpayer, whichever occurs first.

 (2) A person, including a pass‑through entity, who conducts a trade or business, other than a trade or business of being an employee, shall notify the department in writing of all changes in taxable income reported to the Internal Revenue Service when the taxable income is changed by the Internal Revenue Service. Notification to the department must be made before one hundred eighty days after a final determination of a tax adjustment is made by the Internal Revenue Service.

 (3) Notwithstanding a restriction on filing a claim for refund provided in subsection (F), a person may file a claim for refund resulting from an overpayment due to changes in taxable income made by the Internal Revenue Service, if the claim for refund is filed no later than one hundred eighty days after the date a final determination of a tax adjustment is made by the Internal Revenue Service. The refund described in this subsection applies only to the overpayment of taxes resulting from adjustments of the Internal Revenue Service.

 (4) For the purposes of this subsection (D):

 (a) the date the Internal Revenue Service makes a final determination of a tax adjustment is the federal assessment date;

 (b) underpayments and overpayments resulting from adjustments of the Internal Revenue Service include both the year for which the adjustments were made and other tax years affected by the adjustments; and

 (c) the individual income tax returns referred to in subsection (D)(1)(b) are those individual income tax returns that do not include income, deductions, or credits from a trade or business, other than the trade or business of being an employee.

 (E) A tax may not be collected by levy, warrant for distraint, or proceedings in court, unless the:

 (1) levy, warrant for distraint, or proceedings in court were begun within ten years after the assessment of the tax;

 (2) taxpayer has agreed to extend this period; or

 (3) running of this period is suspended in accordance with this section.

 For property tax purposes, the “assessment of the tax” occurs on the later of the last day the tax may be paid without penalty or the date of the tax notice.

 (F)(1) Except as provided in subsection (D), claims for credit or refund must be filed within three years from the time the return was filed, or two years from the date the tax was paid, whichever is later. If no return was filed, a claim for credit or refund must be filed within two years from the date the tax was paid. A credit or refund may not be made after the expiration of the period of limitation prescribed in this item for the filing of a claim for credit or refund, unless the claim for credit or refund is filed by the taxpayer or determined to be due by the department within that period.

 (2) If the claim was filed by the taxpayer during the three‑year period prescribed in item (1), the amount of the credit or refund may not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to three years plus the period of any extension of time for filing the return.

 (3) If the claim was not filed within the three‑year period, the amount of the credit or refund may not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim.

 (4) If no claim was filed, the credit or refund may not exceed the amount which would be allowable under item (2) or (3), as the case may be, as if a claim were filed on the date the credit or refund is allowed.

 (5) For the purposes of this subsection:

 (a) A return filed before the last day prescribed for the filing is considered as filed on the last day. Payment of any portion of the tax made before the last day prescribed for the payment of the tax is considered made on the last day. The last day prescribed for filing the return or paying the tax must be determined without regard to any extension of time.

 (b) Any tax actually withheld at the source in respect of the recipient of income, is considered to have been paid by the recipient on the last day prescribed for filing his return for the taxable year, determined without regard to any extension of time for filing the return, with respect to which the taxpayer would be allowed a credit for the amount withheld.

 (c) Any amount paid as estimated income tax for any taxable year is considered to have been paid on the last day prescribed for filing the return for the taxable year, determined without regard to any extension of time for filing the return.

 (6) In the case of an individual, the running of the period specified in this subsection is suspended for a period of the individual’s life during which he is financially disabled. For purposes of this item, an individual is financially disabled if he is unable to manage his financial affairs by reason of a medically determinable physical or mental impairment that is expected to result in death or which has lasted or is expected to last for a continuous period of not less than twelve months. An individual must not be treated as financially disabled for a period during which his spouse or another person is authorized to act on his behalf in financial matters. An individual must not be considered financially disabled unless the following statements are submitted as part of the claim for credit or refund:

 (a) a written statement signed by a physician qualified to make the determination that provides the:

 (i) name and a brief description of the physical or mental impairment;

 (ii) physician’s medical opinion that the physical or mental impairment prevented the taxpayer from managing his financial affairs;

 (iii) physician’s medical opinion that the taxpayer’s physical or mental impairment resulted in, or is expected to result in, death, or that it has lasted, or is expected to last, for a continuous period of not less than twelve months; and ( iv) specific time period during which the taxpayer was prevented by the physical or mental impairment from managing his financial affairs, to the best of the physician’s knowledge; and

 (b) a written statement by the taxpayer or the person signing the claim for credit or refund that the person, including the taxpayer’s spouse, was not authorized to act on his behalf in financial matters for the period during which he was unable to manage his own financial affairs. Alternatively, if a person was authorized to act on the taxpayer’s behalf in financial matters during part of that period of disability, the statement must contain the beginning and ending dates of the period of time the person was authorized; and

 (c) other information the department may require.

 The department, in its discretion, may adopt a determination made by the Internal Revenue Service with respect to an individual, and may follow rules issued by the Internal Revenue Service or Department of Treasury with regard to interpreting Internal Revenue Code Section 6511(h).

 (G) The running of the period of limitations provided in subsections (A), (B), (C), (D), and (E) of this section is suspended:

 (1) for ninety days after the date the taxpayer gives notice of termination of a waiver or extension of the assessment period;

 (2) for ninety days after the date of a proposed assessment, property tax assessment notice, or tax notice;

 (3) from the date of a proposed assessment, property tax assessment notice, or tax notice, until ninety days after a decision becomes final, if a taxpayer protests the proposed assessment, property tax assessment notice, or tax notice;

 (4) from the date when an action is stayed by injunction, order of a court, or statutory prohibition, until ninety days after the injunction or prohibition is lifted; and

 (5) during the pendency of a stay ordered by the Taxpayers’ Rights Advocate.

HISTORY: 1995 Act No. 60, Section 4D(1); 1996 Act No. 456, Section 5; 1997 Act No. 86, Section 1; 1998 Act No. 386, Section 3; 1998 Act No. 442, Section 4D; 1999 Act No. 114, Section 3; 2000 Act No. 399, Sections 3(U)(1) and (2), eff August 17, 2000; 2001 Act No. 89, Sections 33, 34, eff July 20, 2001, applicable to tax periods beginning after December 31, 1997; 2007 Act No. 110, Section 28.A, eff June 21, 2007; 2007 Act No. 116, Section 34.A, eff June 28, 2007.

Editor’s Note

2005 Act No. 17, Section 2, provides as follows:

“This act takes effect upon approval by the Governor and applies for property tax years beginning after 2001. The time limitations provided in Section 12‑54‑85(F) of the 1976 Code do not apply for purposes of computing refunds pursuant to Section 12‑37‑220(B)(7) of the 1976 Code as amended in this act.”

2007 Act No. 116, Section 34.B, provides as follows:

“This section takes effect upon approval by the Governor and applies to all assessments issued after that date.”

CROSS REFERENCES

Extending time of assessment due to filing of appeal, see Section 12‑60‑450.

Investment tax credit for manufacturing and productive equipment, see Section 12‑14‑80.

Refund of money erroneously or illegally collected from taxpayer under a mistake of fact or law is subject to limitations set forth in this section, see Section 12‑60‑2150.

Refund of money to taxpayer as a result of adjustment in personal property tax assessment or homestead exemption status is subject to limitations set forth in this section, see Section 12‑60‑2940.

Refund of money to taxpayer as a result of property tax assessment appeal is subject to limitations set forth in this section, see Section 12‑60‑2560.

Refund of property taxes paid subject to time limitations set forth in this section, see Section 12‑60‑2150.

Suspension of statute of limitations during the appeal of a personal property tax assessment or a homestead exemption denial brought before the Administrative Law Court, see Section 12‑60‑2920.

Suspension of statute of limitations during the process of a contested case hearing before the Administrative Law Court, see Section 12‑60‑2130.

Suspension of statute of limitations during the process of a property tax assessment appeal before the Administrative Law Court, see Section 12‑60‑2540.

Suspension of statute of limitations when taxpayer requests a contested case hearing for appeal of proposed assessment in a timely manner, see Section 12‑60‑510.

Suspension of statute of limitations when taxpayer requests a contested case hearing for license suspension, cancellation, or revocation in a timely manner, see Section 12‑60‑1330.

Taxpayer cannot be considered to have prevailed on the merits in a lawsuit if the taxpayer did not file a claim for refund within the period covered in this section, see Section 12‑60‑480.

Library References

Taxation 2443, 3542, 3689.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 539, 1907, 2190.

LAW REVIEW AND JOURNAL COMMENTARIES

[Federal] Income tax statute of limitations: Sixty years of mitigation—Enough already!! 51 S.C. L. Rev. 62, Fall 1999.

Attorney General’s Opinions

Discussion of how many previous years of property taxes can be recovered by a county for a parcel of land that has not been taxed for thirteen years due to an error by the County. S.C. Op.Atty.Gen. (October 23, 2012) 2012 WL 5376056.

NOTES OF DECISIONS

Equitable tolling 1

Estoppel 2

1. Equitable tolling

No extraordinary circumstances or active misleading by county existed to allow undated letter requesting refund to equitably toll the three‑year statute of limitations for nonprofit corporations to seek refund of payments of county’s hospitality admissions fees for corporations’ bingo games; nothing prevented corporations from learning of the governing limitations statute, as was required for due diligence. American Legion Post 15 v. Horry County (S.C.App. 2009) 381 S.C. 576, 674 S.E.2d 181. Limitation Of Actions 104.5

2. Estoppel

County was not estopped from relying on three‑year statute of limitations as a defense to nonprofit corporations’ action seeking refund of county’s hospitality admissions fees paid in connection with the operation of bingo games; corporations were presumed to know the law and could not rely on contrary conduct by county in contradiction of statute. American Legion Post 15 v. Horry County (S.C.App. 2009) 381 S.C. 576, 674 S.E.2d 181. Limitation Of Actions 13

**SECTION 12‑54‑87.** Timely filing discount.

 Notwithstanding any other provision of law, for purposes of discounts allowed for timely filing of returns, if the department waives all penalties for late filing due to reasonable cause, the discount must be allowed despite the late filing.

HISTORY: 2012 Act No. 233, Section 2, eff June 18, 2012.

Library References

Taxation 2463, 2762, 3214, 3540, 3554, 3563, 3688, 3697, 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 541 to 542, 544, 1025, 1027, 1035 to 1039, 1721 to 1723, 1725 to 1727, 1834, 1903, 1925, 1929, 2189, 2206, 2219 to 2220.

**SECTION 12‑54‑90.** Revocation of license to do business for failure to comply with law.

 (A) When a person fails, neglects, violates, or refuses to comply with a provision of law or regulation administered by the department, the department, in its discretion, may refuse to issue a license to a taxpayer and may revoke one or more licenses held by the taxpayer.

 (B) A person whose license has been revoked must not be issued a new license until all outstanding liabilities are satisfied.

 (C) The department may review and determine whether a new license may be issued according to guidelines established by it.

HISTORY: 1985 Act No. 201, Part II, Section 32A; 1989 Act No. 188, Section 2; 1996 Act No. 431, Section 14; 2005 Act No. 145, Section 34, eff June 7, 2005.

CROSS REFERENCES

Drycleaning Facility Restoration Trust Fund, duties of Department of Revenue, see Section 44‑56‑435.

Library References

Licenses 38.

Westlaw Topic No. 238.

C.J.S. Architects Sections 13 to 14.

C.J.S. Licenses Sections 80, 82 to 100.

Attorney General’s Opinions

The authority granted to the Department of Revenue under S.C. Code Ann. Section 12‑54‑90 to revoke one or more licenses held by a taxpayer is applicable to a taxpayer who fails to report its business personal property for tax purposes. S.C. Code Ann. Section 12‑37‑970 requires the filing of a return reporting the taxpayer’s business personal property, requires the Department to utilize the information in making its assessment and requires the Department to supply the assessment to the various political subdivisions. Such statute is within the scope of Section 12‑54‑90 since the statutory duty to file a return is established under a “law administered by the department.” 1994 Op Atty Gen, No 94‑43, p 99 (July 6, 1994) July 6, 1994.

The Tax Commission may revoke a license issued by it for nonpayment of any outstanding tax liability administered by the Commission, and may refuse to issue a license to any person who is delinquent in the payment of a tax liability. 1986 Op Atty Gen, No 86‑77, p 243 (July 10, 1986) July 10, 1986.

**SECTION 12‑54‑100.** Authority of department to conduct examination or investigation.

 (A) In the administration of a state tax law, the director or his duly authorized agent, for the purpose of ascertaining the correctness of a return or making a determination of or fixing tax liability, may examine or investigate the place of business, tangible personal property, facilities, computers, computer programs, electronic data, books, invoices, papers, records, memoranda, vouchers, other documents, equipment, or licenses of the taxpayer or other person bearing upon the matters required to be included on a return.

 (B) The taxpayer or other person and his agents and employees shall exhibit to the director these places and items and facilitate the examination or investigation.

 (C) A taxpayer, upon request, may delay the examination up to thirty days, except that the provisions of this subsection do not apply if there is reasonable evidence that the taxpayer is about to destroy or remove the items from the State or otherwise make them unavailable for examination or investigation.

 (D) The director may employ proper and reasonable audit methods necessary to the examination or investigation, including the use of sampling.

HISTORY: 1985 Act No. 201, Part II, Section 32A; 2000 Act No. 399, Section 3(J)(3), eff August 17, 2000.

CROSS REFERENCES

Recordkeeping, Department of Revenue, see S.C. Code of Regulations R. 117‑200.

Local sales and use tax, see Section 4‑10‑10 et seq.

Library References

Licenses 25, 30.

Taxation 2472, 3530, 3686.

Westlaw Topic Nos. 238, 371.

C.J.S. Licenses Sections 64, 77, 109 to 111.

C.J.S. Taxation Sections 551, 1901 to 1904, 2189, 2191 to 2193.

**SECTION 12‑54‑110.** Power of department to summon taxpayer or other person; remedy for failure to comply with summons.

 (A) The department may summon:

 (1) a person who:

 (a) is required to make a return or obtain a license pursuant to the provisions of law administered by the department and who fails to do so at the time required;

 (b) delivers a return that the department considers erroneous; or

 (c) refuses to allow an authorized agent of the department to examine his books and records;

 (2) another person having possession, care, or custody of books of account containing entries relating to the business of such person; or

 (3) another person it considers proper.

 (B) The summons may demand that the person appear before the department and produce the books at a time and place named in the summons and to give testimony and answer questions under oath relating to a tax or other matter administered by the department.

 (C) The summons must be served by an authorized agent of the department by delivering an attested copy to the person in hand or leaving the copy at the person’s last or usual place of abode. When the summons requires the production of books and returns, it is sufficient if the books are described with reasonable certainty.

 (D) If a person summoned pursuant to this section neglects or refuses to obey the summons, the department may apply to the Administrative Law Court for an attachment against him for contempt. Any administrative law judge may hear the application and, if satisfactory proof is made, shall issue an attachment directed to the sheriff of the county in which the person resides for his arrest. When the person is brought before him, the judge shall proceed to a hearing of the case and may enforce obedience to the requirements of the summons by making an order consistent with existing laws for the punishment of contempt.

HISTORY: 1985 Act No. 201, Part II, Section 32A; 2003 Act No. 69, Section 3.L, eff June 18, 2003; 2005 Act No. 161, Section 12, eff June 9, 2005.

CROSS REFERENCES

Local sales and use tax, see Section 4‑10‑10 et seq.

Library References

Taxation 2472, 3530, 3686.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 551, 1901 to 1904, 2189, 2191 to 2193.

**SECTION 12‑54‑120.** Tax lien; property subject to seizure, levy, and sale; effective period; effect on other liens and remedies.

 (A)(1) If a person liable to pay a tax neglects or refuses to pay it after demand, the amount of the tax, including interest, additional tax, addition to tax, or assessable penalty, plus accrued costs, is a lien in favor of the Department of Revenue on all property and rights to property, real or personal, tangible or intangible, belonging to the person.

 (2) This lien:

 (a) is referred to as a “tax lien”;

 (b) is effective on the date of the assessment of the tax;

 (c) allows an authorized agent of the department to seize, levy on, and sell the property of the person for the payment of the amount due, with added penalties, interest, and costs of executing on the lien, and to pay the money collected to the department;

 (d) extends to bank deposits, choses in action, and all other property incapable of manual levy or delivery; and

 (e) continues for ten years from the date of filing.

 (3) “Demand”, as used in this section, means an assessment by the department.

 (B) This tax lien and the limitations in Section 12‑54‑122 are in addition to all other liens or remedies in favor of the department and does not affect any other lien or remedy.

 (C) The department, in addition to other remedies for enforcement of its tax lien, retains all remedies available to a judgment creditor.

HISTORY: 1985 Act No. 201, Part II, Section 32A; 1988 Act No. 456; 1991 Act No. 168, Section 6; 1995 Act No. 76, Section 14; 1998 Act No. 345, Section 1.

Code Commissioner’s Note

1997 Act No. 34, Section 1, directed the Code Commissioner to change all references to “Register of Mesne Conveyances” to “Register of Deeds” wherever appearing in the 1976 Code of Laws.

CROSS REFERENCES

Expungement of a recorded lien, see Section 12‑58‑165.

Local sales and use tax, see Section 4‑10‑10 et seq.

Library References

Taxation 2730 to 2744, 3553, 3696.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 960 to 990, 1926, 2216.

**SECTION 12‑54‑122.** Notice of lien required; exemptions from validity of lien; priority of other liens or security interests; filing of notice; due diligence as factor determining notice or knowledge; subrogation of rights.

 (A) For purposes of this section, the term:

 (1) “Security interest” means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists if the property is in existence, the interest is protected under the laws of this State against a subsequent judgment lien arising out of an unsecured obligation, and the holder of the interest has parted with money or money’s worth.

 (2) “Mechanic’s lienor” means a person who under the laws of this State has a lien on real property, or on the proceeds of a contract relating to real property, for services, labor, or materials furnished in connection with the construction or improvement of the property. For purposes of this item, a person has a mechanic’s lien on the earliest date the lien becomes valid under the laws of this State as against subsequent purchasers without actual notice, but not before he begins to furnish the services, labor, or materials.

 (3) “Motor vehicle” means a self‑propelled vehicle which is registered for highway use under the laws of any state or foreign country.

 (4) “Security” means:

 (a) bond, debenture, note, certificate, or other evidence of indebtedness issued by a corporation or a government or its political subdivision with interest coupons or in registered form;

 (b) share of stock;

 (c) voting trust certificate;

 (d) a certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase any of the instruments set forth in subitems (a) through (c);

 (e) negotiable instrument; or

 (f) money.

 (5) “Tax lien filing” means the filing of notice of the tax lien imposed by Section 12‑54‑120.

 (6) “Purchaser” means a person who, for adequate and full consideration in money or money’s worth, acquires an interest other than a lien or security interest in property and the interest is valid under the laws of this State as against subsequent purchasers without actual notice. An interest in property includes a lease of property, a written executory contract to purchase or lease property, an option to purchase or lease property or an interest in it, or an option to renew or extend a lease of property which is not a lien or security interest.

 (7) “Notice of lien” and “warrant for distraint”, as used throughout Title 12, have the same legal effect and both mean the notice of tax lien filing.

 (B) The tax lien is not valid against a purchaser, holder of a security interest, mechanic’s lienor, or judgment lien creditor until notice, as prescribed by subsection (G), is filed by the Department of Revenue.

 (C) The tax lien is not valid even though notice, as prescribed by subsection (G), is filed by the department with respect to:

 (1) a security as defined in subsection (A)(4):

 (a) as against a purchaser of the security who, at the time of purchase, did not have actual notice or knowledge of the existence of the lien; and

 (b) as against a holder of a security interest in the security who, at the time the interest came into existence, did not have actual notice or knowledge of the existence of the lien;

 (2) a motor vehicle as defined in subsection (A)(3), as against a purchaser of the motor vehicle if:

 (a) at the time of the purchase, the purchaser did not have actual notice or knowledge of the existence of the lien; and

 (b) before the purchaser obtains actual notice or knowledge of the existence of the lien, he has acquired possession of the motor vehicle and has not relinquished possession of the motor vehicle to the seller or his agent;

 (3) tangible personal property purchased at retail, as against a purchaser in the ordinary course of the seller’s trade or business, unless at the time of the purchase the purchaser intends the purchase to, or knows the purchase will, hinder, evade, or defeat the collection of any tax under this title;

 (4) household goods, personal effects, or other tangible personal property purchased, not for resale, in a casual sale for less than two hundred fifty dollars, as against the purchaser, but only if the purchaser does not have actual notice or knowledge of the existence of the lien or that the sale is one of a series of sales;

 (5) tangible personal property subject to a lien under the laws of this State securing the reasonable price of the repair or improvement of the property, as against a holder of that lien, if the holder has been continuously in possession of the property from the time that lien arose;

 (6) real property, as against a holder of a lien upon real property, if the real property lien has priority over security interests in the property which are prior in time, and that lien secures payment of:

 (a) a tax of general application levied by a taxing authority based upon the value of the property;

 (b) a special assessment imposed directly upon the property by a taxing authority, if the assessment is imposed for the purpose of defraying the cost of a public improvement; or

 (c) charges for utilities or public services furnished to the property by this State or its political subdivision or an instrumentality of either of them;

 (7) a judgment or other amount in settlement of a claim or of a cause of action, as against an attorney who, under the laws of this State, holds a lien upon or a contract enforceable against the judgment or settlement amount, to the extent of his reasonable compensation for obtaining the judgment or procuring the settlement. This item does not apply to a judgment or an amount in settlement of a claim or of a cause of action against this State to the extent that this State offsets the judgment or settlement amount against any liability of the taxpayer to this State;

 (8) a life insurance, endowment, or annuity contract, as against the organization which is the insurer under the contract, at any time:

 (a) before the organization had actual notice or knowledge of the existence of the lien; or

 (b) after the organization had notice or knowledge of the existence of the lien, with respect to advances required to maintain the contract in force under an agreement entered into before the organization had notice or knowledge of the existence of the lien;

 (9) a savings deposit, share, or other account, evidenced by a passbook, with an institution described in 26 U.S.C. Section 581 or 591, to the extent of a loan made by the institution without actual notice or knowledge of the existence of the lien, as against the institution, if the loan is secured by the account and if the institution has been continuously in possession of the passbook from the time the loan was made.

 (D)(1) To the extent provided in this subsection, even though notice of a tax lien has been filed, the tax lien is not valid with respect to a security interest which came into existence after the tax lien filing but which is:

 (a) in qualified property covered by the terms of a written agreement entered into before the tax lien filing and constituting:

 (i) a commercial transaction financing agreement;

 (ii) a real property construction or improvement financing agreement; or

 (iii) an obligatory disbursement agreement; and

 (b) is protected as of the time of the tax lien filing, under the laws of this State, against a judgment lien arising out of an unsecured obligation.

 (2) For purposes of this subsection, the term:

 (a) “Commercial transaction financing agreement” means an agreement entered into by a person in the course of his trade of business:

 (i) to make loans to the taxpayer secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business; or

 (ii) to purchase commercial financing security other than inventory acquired by the taxpayer in the ordinary course of his trade or business, but only to the extent that the loan or purchase is made before the forty‑sixth day after the date of the tax lien filing or, if earlier, before the lender or purchaser had actual notice or knowledge of the tax lien filing.

 (b) “Commercial financing security” means:

 (i) paper of a kind ordinarily arising in commercial transactions;

 (ii) accounts receivable;

 (iii) mortgages on real property; and

 (iv) inventory.

 (c) “Real property construction or improvement financing agreement” means an agreement to make cash disbursements to finance:

 (i) the construction or improvement of real property;

 (ii) a contract to construct or improve real property; or

 (iii) the raising or harvesting of a farm crop or the raising of livestock or other animals. For purposes of this subsubitem, the furnishing of goods and services is treated as the disbursement of cash.

 (d) “Obligatory disbursement agreement” means an agreement entered into by a person in the course of his trade or business to make disbursements, but only to the extent of disbursements required to be made by reason of the intervention of the rights of a person other than the taxpayer.

 (e) “Qualified property”, when used with respect to a commercial transaction financing agreement, means only commercial financing security acquired by the taxpayer before day forty‑six after the date of the tax lien filing.

 (f) “Qualified property”, when used with respect to a real property construction or improvement financing agreement, means only:

 (i) the real property with respect to which construction or improvement has been or will be made;

 (ii) the proceeds of a contract to construct or improve real property; and

 (iii) property subject to the tax lien at the time of the tax lien filing and the crop or the livestock or other animals referred to in item (2)(c)(iii).

 (g)(i) “Qualified property”, when used with respect to an obligatory disbursement agreement, means property subject to the tax lien imposed by Section 12‑54‑120 at the time of the tax lien filing and, to the extent the acquisition is directly traceable to the disbursements referred to in subitem (d), property acquired by the taxpayer after the tax lien filing.

 (ii) When the obligatory disbursement agreement is an agreement ensuring the performance of a contract between the taxpayer and another person, the term “qualified property” also includes the proceeds of the surety contract.

 (iii) If the surety contract ensured performance of a contract to construct or improve real property, to produce goods, or to furnish services, the term “qualified property” also includes any tangible personal property used by the taxpayer in the performance of the ensured contract.

 (E) Even though notice of a tax lien is filed, the lien is not valid with respect to a security interest arising out of disbursements made before the forty‑sixth day after the date the tax lien was filed or before the person making the disbursement had actual notice or knowledge of the tax lien filing, whichever is earlier, but only if the security interest is:

 (1) in property subject to the tax lien at the time it is filed and covered by the terms of a written agreement entered into before the filing; and

 (2) protected under the laws of this State against a judgment lien arising out of an unsecured obligation.

 (F) If the tax lien is not valid as against another lien or security interest, the priority of the other lien or security interest extends to:

 (1) any interest or carrying charges upon the secured obligation;

 (2) the reasonable charges and expenses of a trustee or agent holding the security interest for the benefit of the holder of the security interest;

 (3) the reasonable expenses, including reasonable attorney’s fee, actually incurred in collecting or enforcing the secured obligation;

 (4) the reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates;

 (5) the reasonable costs of insuring payment of the secured obligation; and

 (6) amounts paid to satisfy a lien on the property to which the other lien or security interest relates, but only if the satisfied lien has priority over the tax lien to the extent that, under the laws of this State, any such item has the same priority as the lien or security interest to which it relates.

 (G)(1) The tax lien notice must be filed with the clerk of court or, where appropriate, the register of mesne conveyances. The appropriate official shall enter the name of the taxpayer in the judgment docket in the column for judgment debtors and, in appropriate columns, the amount of tax, penalties, and the date of filing, and shall index the tax lien on the index of judgment.

 (2) The form and content of the notice of tax lien must be prescribed by the department, and the notice, as prescribed, is valid notwithstanding another provision of law regarding the form or content of a notice of lien.

 (3) The notice of tax lien may be filed by the department or its authorized agent at any time and in any county the department finds appropriate.

 (H)(1) For purposes of this section, an organization has actual notice or knowledge of a fact about a particular transaction from the time the fact is brought to the attention of the individual conducting the transaction or from the time the fact would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routine. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

 (2) When a person is subrogated to the rights of another with respect to a lien or interest under the laws of this State, that person is subrogated to those rights for purposes of the tax lien imposed by Section 12‑54‑120.

HISTORY: 1998 Act No. 345, Section 2.

Library References

Taxation 2730 to 2744, 3553, 3696.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 960 to 990, 1926, 2216.

**SECTION 12‑54‑123.** Surrender of property upon which levy has been made; liability to taxpayer.

 A person in possession of property upon which a levy has been made who, upon demand by the department, surrenders the property to the department must not be held personally liable for any obligation or liability to the taxpayer and any other person with respect to the property that arises from the surrender or payment. If a person brings an action not allowed pursuant to this section in any court of this State, the court shall dismiss the case.

HISTORY: 2005 Act No. 145, Section 3.A, eff July 1, 2005.

Library References

Taxation 2846, 3560, 3705.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1167 to 1169, 1926, 2212.

**SECTION 12‑54‑124.** Transfer of business assets; tax liens; suspension of business license; certificate of compliance.

 In the case of the transfer of a majority of the assets of a business, other than cash, whether through sale, gift, devise, inheritance, liquidation, distribution, merger, consolidation, corporate reorganization, lease or otherwise, any tax generated by the business which was due on or before the date of any part of the transfer constitutes a lien against the assets in the hands of a purchaser, or any other transferee, until the taxes are paid. Whether a majority of the assets have been transferred is determined by the fair market value of the assets transferred, and not by the number of assets transferred. The department may not issue a license to continue the business to the transferee until all taxes due the State have been settled and paid and may revoke a license issued to the business in violation of this section.

 This section does not apply if the purchaser receives a certificate of compliance from the department stating that all tax returns have been filed and all taxes generated by the business have been paid. The certificate of compliance is valid if it is obtained no more than thirty days before the sale or transfer.

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

Library References

Taxation 2740, 3553, 3696.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 980 to 982, 1926, 2216.

**SECTION 12‑54‑125.** Withdrawal of warrants of distraint.

 If, upon investigation, the department determines that any corporation which has been dissolved by the Secretary of State has not conducted any business since the last return was filed with the department, or if there are no available assets of the corporation, the department may deem that warrants of distraint issued against the corporation were issued in error and may withdraw them.

HISTORY: 1988 Act No. 444, Section 8.

Library References

Taxation 2812, 2939, 3560, 3705.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1133, 1284 to 1287, 1926, 2212.

**SECTION 12‑54‑126.** Return of licenses.

 A person operating a business within this State who has been issued a license or licenses by the department, after closing, selling, or otherwise transferring the business to another person, shall return all licenses issued by the department to the department for cancellation and remit unpaid or accrued taxes. The department may refuse to issue a license to a person and may revoke one or more licenses held by a person who has failed to comply with the provisions of this section.

HISTORY: 2006 Act No. 386, Section 1.A, eff October 1, 2006.

**SECTION 12‑54‑127.** Transfer of personal or real property; liability for tax; lien; inapplicability of provisions to certain transfers.

 When title to property, both real and personal, is transferred and the payment or collection of any tax is defeated because of the transfer, then the transferor, the spouse of the transferor, a fiduciary holding title to the property and a person for whose benefit the property is held, the officers and stockholders of a corporation transferring the property, and the transferee of the property, are personally liable for tax in an amount equal to the interest in the property transferred, and the liens provided by law for the tax attach to the property as if no transfer was made. The above provisions do not apply to a transfer to a bona fide purchaser or mortgagee for an adequate and full consideration in money or moneys’ worth. The provisions of this section are in addition to and do not supersede any other provision of law.

HISTORY: 1995 Act No. 76, Section 4.

Library References

Taxation 2740, 3553, 3696.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 980 to 982, 1926, 2216.

**SECTION 12‑54‑130.** Service upon taxpayer’s employer of notice to withhold compensation; withholding by employer.

 If any person liable to pay any tax neglects or refuses to pay the same within ten days after notice and demand, the department, or its authorized representatives, may serve the person’s employer with a notice to withhold, setting forth thereon the amount to be withheld and the applicable tax period. The employer shall upon service of the notice withhold twenty‑five percent of the compensation due or payable to the person for each pay period until the full amount is withheld, after which the same must be remitted to the department. Should the employment of the person terminate, the employer shall withhold the full amount of compensation due the employee, not exceeding, the amount in the notice. The employer shall at that time remit the amount so withheld and give further notice to the department of the termination of the person’s employment.

HISTORY: 1985 Act No. 201, Part II, Section 32A.

CROSS REFERENCES

Local sales and use tax, see Section 4‑10‑10 et seq.

Library References

Taxation 3560, 3705.

Westlaw Topic No. 371.

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

RESEARCH REFERENCES

Treatises and Practice Aids

Guide to Employment Law and Regulation 2d Section 16:23, State Garnishment Laws.

**SECTION 12‑54‑135.** Notice of failure to withhold or remit sum due; liability of person failing to withhold or remit; issuance of warrant for collection of sum due; no right of action by person against employer for compliance with section.

 (A) If a person after notice fails to withhold a sum due by a taxpayer in accordance with the notice, or fails to remit the sum in accordance with the provisions of Section 12‑54‑130, then the person failing to withhold or remit is liable for the total of the notice in the same manner and with similar effect as though the amount as shown by the notice was due by the person as a direct obligation to the State. Where a person fails to withhold or to remit after withholding in accordance with the provisions of Section 12‑54‑130, the amount of the notice is due and payable by the person in the same manner as now is provided for the collection of similar taxes and by Section 12‑54‑130. The department shall, upon failure of the person to pay the amount of the notice which was not withheld in accordance with Section 12‑54‑130, issue its warrant for distraint to a duly authorized representative of the department, who shall proceed to the collection of the warrant.

 (B) No person has a right of action against his employer in respect of any monies withheld and paid to the department or its duly authorized representative in compliance or intended compliance with the provisions of this section.

HISTORY: 1995 Act No. 76, Section 4.

Library References

Taxation 3560, 3705.

Westlaw Topic No. 371.

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

**SECTION 12‑54‑138.** Recovery of duplicate refund.

 If it is determined that a taxpayer has received a duplicate refund, the department may assess and collect the amount of one of the refund checks in the same manner as a tax. If the taxpayer returns one of the refund checks uncashed, no interest must be charged.

HISTORY: 1994 Act No. 516, Section 7.

Library References

Taxation 2773, 3555, 3700.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1049 to 1054, 1059, 1822, 1910, 2208.

**SECTION 12‑54‑155.** Substantial underpayment of tax or substantial valuation misstatement.

 (A)(1) If there is an underpayment attributable to either a substantial understatement of tax for a taxable period or a substantial valuation misstatement, there must be added to the tax an amount equal to twenty‑five percent of the amount of the underpayment.

 (2) This section does not apply to a portion of an underpayment attributable to fraud on which a penalty is imposed pursuant to Section 12‑54‑43(G).

 (3) This section does not apply to a portion of an underpayment on which a penalty for underpayment of property tax on business‑related property is imposed pursuant to Section 12‑54‑43(L).

 (B)(1)(a) For purposes of this section, there is a substantial understatement of tax for a taxable period if the amount of the understatement for the taxable period exceeds the greater of ten percent of the tax required to be shown on the return for the taxable period or five thousand dollars.

 (b) In the case of a corporation other than an “S” Corporation or a personal holding company, as defined in Internal Revenue Code Section 542, item (1) must be applied by substituting “ten thousand dollars” for “five thousand dollars”.

 (2)(a) For purposes of item (1), “understatement” means the excess of the amount of the tax required to be shown on the return for the taxable period over the amount of the tax imposed which is shown on the return.

 (b) The amount of the understatement under subitem (a) must be reduced by that portion of the understatement which is attributable to the tax treatment of an item: (i) by the taxpayer if there is or was substantial authority for that treatment, or (ii) with respect to which the relevant facts affecting the item’s tax treatment are adequately disclosed in the return or in a statement attached to the return and there is a reasonable basis for the tax treatment of the item by the taxpayer. For purposes of subsection (B)(2)(b)(ii) a corporation must not be treated as having a reasonable basis for its tax treatment of an item attributable to a multiple‑party financing transaction if the treatment does not clearly reflect the income of the corporation. For purposes of this paragraph, the words “substantial authority” and “adequately disclosed” must be interpreted in accordance with Treasury Regulation Section 1.6662‑4 as of the date on which the Internal Revenue Code is applied to state tax laws pursuant to Section 12‑6‑40.

 (c)(i) Subitem (b) does not apply to an item attributable to a tax shelter.

 (ii) For purposes of subsubitem (i), “tax shelter” means:

 (A) a partnership or other entity;

 (B) an investment plan or arrangement; or

 (C) another plan or arrangement if the principal purpose of the partnership, entity, plan, or arrangement is the avoidance or evasion of income tax.

 (C) For purposes of this section, there is a substantial valuation misstatement if the:

 (1) value of property or the adjusted basis of property claimed on a return of tax imposed in Title 12 is two hundred percent or more of the amount determined to be the correct amount of the valuation or adjusted basis; or

 (2)(a) price for property or services for use of property claimed on the return in connection with a transaction between persons described in Internal Revenue Code Section 482 is two hundred percent or more, or fifty percent or less, of the amount determined pursuant to Section 482 to be the correct amount of the price; or

 (b) net Internal Revenue Code Section 482 transfer price adjustment for the taxable year exceeds the lesser of five million dollars or ten percent of the taxpayer’s South Carolina gross receipts.

 (D)(1) A penalty must not be imposed pursuant to this section with respect to a portion of an underpayment if it is shown that there was a reasonable cause for the portion and that the taxpayer acted in good faith with respect to the portion. For purposes of this item, the words “ reasonable cause” and “good faith” must be interpreted in accordance with Treasury Regulation Section 1.6664‑4 as of the date on which the Internal Revenue Code is applied to state tax laws pursuant to Section 12‑6‑40.

 (2) In the case of underpayment attributable to a substantial valuation misstatement with respect to charitable deduction property, item (1) does not apply unless:

 (a) the claimed value of the property was based on a qualified appraisal made by a qualified appraiser; and

 (b) in addition to obtaining the appraisal, the taxpayer made a good‑faith investigation of the value of the contributed property.

 (3) For purposes of this subsection, the term “charitable deduction property” means property contributed by the taxpayer in a contribution for which a deduction was claimed under Internal Revenue Code Section 170. For purposes of item (2) the term does not include securities for which as of the date of the contribution, market quotations are readily available on an established securities market.

 (E) As used in this section, “Internal Revenue Code” refers to the Internal Revenue Code as applied to state tax laws pursuant to Section 12‑6‑40.

HISTORY: 1988 Act No. 660, Section 4; 2006 Act No. 386, Section 27.A, eff June 14, 2006 applicable for tax periods beginning after December 31, 2006; 2007 Act No. 110, Section 29.A, eff June 21, 2007, applicable for tax periods beginning after December 31, 2006; 2007 Act No. 116, Section 35.A, eff June 28, 2007, applicable for tax periods beginning after December 31, 2006.

CROSS REFERENCES

This section inapplicable to certain provisions governing fee in lieu of taxes, see Section 4‑29‑67.

This section inapplicable to provisions relating to fee payments and filing of returns, see Section 12‑44‑90.

Federal Aspects

Provisions of the Internal Revenue Code Section 542, see 26 U.S.C.A. Section 542.

Library References

Taxation 3563, 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 1929, 2219 to 2220.

**SECTION 12‑54‑160.** Waiver, dismissal or reduction of penalties.

 Unless otherwise specifically prohibited, the department may waive, dismiss, or reduce penalties provided for in this chapter.

HISTORY: 1985 Act No. 201, Part II, Section 32A; 1998 Act No. 432, Section 15.

Library References

Taxation 3220, 3563, 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 1743 to 1746, 1756 to 1757, 1929, 2219 to 2220.

**SECTION 12‑54‑170.** Deposit and distribution of funds collected as penalties and interest.

 Penalties and interest collected under the provisions of this chapter are considered funds collected under the chapter imposing the tax and must be deposited to the appropriate fund and distributed in accordance with appropriate distribution provisions.

HISTORY: 1985 Act No. 201, Part II, Section 32A.

Library References

Taxation 3243, 3564, 3713.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1791, 1927, 2222.

**SECTION 12‑54‑180.** Manner of collection of penalties and interest.

 Penalties and interest imposed by this chapter must be collected by the department in the manner as all other taxes are collected.

HISTORY: 1985 Act No. 201, Part II, Section 32A.

Library References

Taxation 3221, 3563, 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 1747 to 1749, 1929, 2219 to 2220.

**SECTION 12‑54‑190.** Precedence of this chapter over other statutes.

 Unless otherwise specified, the provisions of this chapter take precedence over all other related statutory provisions.

 The provisions of this chapter apply to returns filed with or assessments issued by the department as they relate to property tax and forest renewal.

HISTORY: 1985 Act No. 201, Part II, Section 32A; 1989 Act No. 78, Section 6.

CROSS REFERENCES

Local sales and use tax, see Section 4‑10‑10 et seq.

RESEARCH REFERENCES

ALR Library

8 ALR 6th 117 , What Constitutes Commercial or Financial Information, Exclusive of Trade Secrets, Exempt from Disclosure Under State Freedom of Information Acts‑Specific Applications.

NOTES OF DECISIONS

Construction and application 1

1. Construction and application

Section 12‑54‑190 does not alter the non‑disclosure provisions of Section 12‑54‑240 since the legislature could not reasonably have intended to prevent disclosure of tax commission assessments to local taxing authorities. South Carolina Tax Com’n v. Gaston Copper Recycling Corp. (S.C. 1994) 316 S.C. 163, 447 S.E.2d 843.

**SECTION 12‑54‑195.** Penalty if responsible person fails to remit sales tax to Department of Revenue.

 (A) As used in this section, “responsible person” includes any officer, partner, or employee of the taxpayer who has a duty to pay to the department any state or local sales tax due by the taxpayer or use tax required or authorized to be collected by the retailer pursuant to Chapter 36 of this title or with respect to any local sales and use tax collected by the department on behalf of a political subdivision of the State.

 (B) If a retailer adds and collects a state or local sales tax as permitted by Section 12‑36‑940, or collects a state or local use tax from the purchaser as required by Section 12‑36‑1350, but the retailer fails to remit the tax collected to the department, then a responsible person may be held liable, individually and personally, for the tax collected but not remitted to the department, along with penalties and interest from the date the tax was due. The tax, penalties, and interest are not collectible from the retailer to the extent the tax, penalties, and interest imposed by this subsection are collected from a responsible person.

HISTORY: 2001 Act No. 89, Section 32, eff July 20, 2001; 2002 Act No. 334, Section 13, eff June 24, 2002.

CROSS REFERENCES

Sales and use tax regulations, retail license, see S.C. Code of Regulations R. 117‑300.

**SECTION 12‑54‑196.** Collection of excessive tax by retailer; refunds; penalty; defenses.

 (A) If a retailer collects from the purchaser a state or local sales tax in an amount that exceeds the amount authorized pursuant to Section 12‑36‑940, or the amount required to be collected pursuant to Section 12‑36‑1350, the retailer may be held liable for a penalty equal to one hundred fifty percent of the amount of tax collected that exceeds the amount authorized to be collected from the purchaser pursuant to Section 12‑36‑940 or required to be collected from the purchaser pursuant to Section 12‑36‑1350. The assessment or remittance of this penalty does not relieve the retailer of an obligation the retailer has to repay the purchaser tax collected that exceeds the amount authorized or required to be collected from the purchaser pursuant to Chapter 36 of this title.

 (B) Notwithstanding the provisions of subsection (A), a retailer is not subject to this penalty if the retailer:

 (1) made a good faith effort to determine the proper tax rate;

 (2) made a good faith effort to determine whether or not an exemption or exclusion was applicable; or

 (3) refunds to the purchaser the amount that exceeded the amount authorized or required to be collected on a particular sale within ninety days of being notified and receiving documentation of the proper tax rate or the applicability of the exemption or exclusion.

 (C) The department, at its discretion, may extend the time for issuing a refund pursuant to subsection (B)(3) to avoid the penalty if the retailer makes a request in writing to the department.

 (D) The imposition of the penalty must be based on the facts and circumstances and is at the sole discretion of the department.

HISTORY: 2006 Act No. 386, Section 2.A, eff June 14, 2006 applicable to taxes collected beginning in tax year 2006.

**SECTION 12‑54‑200.** Requirement of bond securing payment of taxes, penalties, and interest.

 (A) The department, at its discretion, after notification as provided in this section, may require a person subject to provisions of law administered by the department, to post a cash or surety bond, deposit and maintain taxes due including associated penalties and interest in a separate account in a bank or other financial institution in this State, or both, if the person fails to file a timely return or pay a tax for as many as two tax filing periods in a twelve‑month period.

 (B) The amount of the bond must be determined by the department and may not be greater than three times the estimated average liability each filing period of the person required to file the return. A cash bond must be held by the State Treasurer, without interest, as surety conditioned upon prompt payment of all taxes, penalties, and interest imposed by law upon the person.

 (C) A person required to maintain a separate account must give the name of the financial institution, the account number, and other information the department requires. Taxes, penalties, and interest due must be withdrawn from the account by preprinted, consecutively numbered checks signed by a properly authorized officer, partner, manager, employee, or member of the taxpayer and made payable to the department. Monies deposited in the account must not be commingled with other funds. The department, at its discretion, may apply Section 12‑54‑250, if the amount due from the taxpayer is fifteen thousand dollars or more.

 (D) When a person required to post a bond or maintain a separate account, or both, complies with all requirements of law and regulations for a period of twenty‑four consecutive months, the department shall return the bond and cancel the bonding and separate account requirements.

 (E) The department may serve the notice required by this section by mail or by delivery by an authorized agent of the department to the person in hand or at the person’s last or usual place of abode or at his place of business or employment. For corporations, partnerships, or trusts, the notice may be delivered by mail or by delivery by an authorized agent of the department to an officer, partner, or trustee in hand or at the officer’s, partner’s, or trustee’s last or usual place of abode or at his place of business or employment.

 (F) A person who fails to comply with this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both. Offenses under this section are triable in magistrates court. These penalties are in addition to other penalties provided by law.

HISTORY: 1985 Act No. 201, Part II, Section 32A; 2001 Act No. 89, Section 35, eff July 20, 2001; 2007 Act No. 110, Section 43, eff June 21, 2007; 2007 Act No. 116, Section 48, eff June 28, 2007, applicable for tax years beginning after 2007.

Library References

Taxation 3698.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2207.

**SECTION 12‑54‑210.** Requirements as to keeping of books and records, making of statements and returns, and compliance with department regulations; penalties.

 (A) A person liable for a tax, license, fee, or surcharge administered by the department or for the filing of a return with the department, including information returns shall keep books, papers, memoranda, records, render statements, make returns, and comply with regulations as the department prescribes. Persons failing to comply with the provisions of this section must be penalized in an amount to be assessed by the department not to exceed five hundred dollars for the period covered by the return in addition to other penalties provided by law.

 (B) Microfilm reproductions of supporting record of details including, but not limited to, documents of original entry, purchase orders, invoices, checks, vouchers, and payroll records may be retained in lieu of actual documents only when the following conditions are met:

 (1) the taxpayer retains the microfilm copies as long as the contents may become material in the administration of any law administered by the department;

 (2) the taxpayer provides appropriate facilities for preservation of the films and for the ready inspection and location of the particular records, including a projector for viewing the records if inspection is necessary; and

 (3) the taxpayer is ready to make transcripts of the information contained on the microfilm.

HISTORY: 1985 Act No. 201, Part II, Section 32A; 1995 Act No. 76, Section 15; 1996 Act No. 431, Section 15; 2005 Act No. 145, Section 35.A, eff July 1, 2005.

CROSS REFERENCES

Recordkeeping, Department of Revenue, see S.C. Code of Regulations R. 117‑200.

Library References

Licenses 25.

Taxation 2462, 2493, 3539, 3688.

Westlaw Topic Nos. 238, 371.

C.J.S. Licenses Sections 64, 77.

C.J.S. Taxation Sections 541 to 549, 618 to 625, 1834, 1903, 2189.

**SECTION 12‑54‑220.** Furnishing of tax returns or information to other states or to Internal Revenue Service.

 The department may permit the Commissioner of Internal Revenue of the United States, the proper officer of any state, or the authorized representative of either of these officers to inspect any return of any taxpayer or may furnish to the officer or his authorized representative an abstract of any return of any taxpayer, or supply him with information concerning any item contained in any return or disclosed by the report of any investigation of the return of any taxpayer. The permission is granted or the information furnished to the officer or his representative only if the statutes of the United States or of the other state, as the case may be, grant substantially similar privileges to the appropriate officer of this State. Information received as a result of an exchange of information between South Carolina and the Internal Revenue Service or any other state is not subject to the provisions of Chapter 4, Title 30, the Freedom of Information Act.

HISTORY: 1985 Act No. 201, Part II, Section 32A; 1988 Act No. 504, Section 1.

Library References

Taxation 2462, 2493, 3539, 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 541 to 549, 618 to 625, 1834, 1903, 2189.

Attorney General’s Opinions

Information made privileged by state law under former Sections 12‑7‑1680 and 12‑35‑1530 is nonetheless subject to disclosure under subpoena of Federal Grand Jury or by order of Federal Court. 1985 Op Atty Gen, No. 85‑125, p 339 (October 28, 1985) 1985 WL 166093.

**SECTION 12‑54‑225.** Authority of department to enter into agreements with other states for mutual exchange of tax information.

 The department may enter into agreements with other states of the United States or their authorized representatives for the mutual exchange of tax returns, information thereon, and related information. The department may, if it chooses, designate a third person to act as its agent for the receipt and exchange of the returns and information, including the assimilation of the material for proper use. The exchange may be in any form suitable to the parties, including, but not limited to, cards, tapes, and other electronic means. The returns and information exchanged may be used for the exclusive purpose of administering the tax laws of the exchanging jurisdictions, including any administrative or judicial proceeding that involves the administration, collection, or recovery of any tax. The agreements may be on such terms and conditions as the department and the other states may agree and designate. However, any such agreement entered into by the department must include a provision that the agreement may be canceled upon notice.

HISTORY: 1988 Act No. 660, Section 6; 1992 Act No. 361, Section 27.

CROSS REFERENCES

Local sales and use tax, see Section 4‑10‑10 et seq.

Library References

States 6.

Westlaw Topic No. 360.

C.J.S. States Sections 13, 67 to 71, 257.

**SECTION 12‑54‑227.** Out‑of‑state collections.

 (A)(1) As provided by Section 12‑4‑340, the department may contract with a collection agency, within or without this State, for the collection of delinquent taxes, including penalties and interest. Delinquent tax claims may be assigned to the collection agency, for the purpose of litigation in the agency’s name and at the agency’s expense, to facilitate and expedite the collection process.

 (2) For purposes of this section, “delinquent tax claim” means a tax liability that is due and owing for a period longer than six months and for which the taxpayer has been given at least three notices requesting payment and for any subsequent tax debts issued, one notice of which includes a statement that the taxpayer’s delinquency may be referred to a collection agency.

 (B)(1) Fees for services, reimbursements, or other remuneration to the collection agency must be based on the amount of tax, penalty, and interest actually collected. Each contract entered into between the department and the collection agency must provide for the payment of fees for these services, reimbursements, or other remuneration not in excess of fifty percent of the total amount of delinquent taxes, penalties, and interest actually collected.

 (2) All funds collected, less the fees for collection services as provided in the contract, must be remitted to the department within forty‑five days from the date of collection from a taxpayer. The department may refund the fees for collection services to the collection agency, if all funds collected are remitted gross of fees. Forms to be used for these remittances must be prescribed by the department.

 (C) The contract with a collection agency must provide that the collection agency acknowledges that it is receiving income from sources within this State or doing business in this State for purposes of income taxation.

 (D) Before entering into a contract, the department shall require the collection agency to post a bond guaranteeing compliance with the terms of the contract, not in excess of one hundred thousand dollars.

HISTORY: 1991 Act No. 50, Section 3; 1995 Act No. 60, Section 2D; 1998 Act No. 386, Section 4; 2000 Act No. 399, Section 3(K), eff August 17, 2000; 2001 Act No. 89, Section 36, eff July 20, 2001.

CROSS REFERENCES

Authority of Department of Revenue to contract with collection agency to collect delinquent taxes from out‑of‑state taxpayer, see Section 12‑4‑340.

Library References

Taxation 3560, 3705.

Westlaw Topic No. 371.

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

United States Supreme Court Annotations

Prohibition under Tax Injunction Act (28 USCA Section 1341) of Federal District Courts from interfering with assessment, levy, or collection of state taxes. 67 L Ed 2d 906.

**SECTION 12‑54‑230.** Access to Employer’s Quarterly Report.

 The Employment Security department shall allow the South Carolina Department of Revenue access to the information contained in the Employer’s Quarterly Report and any by‑product of the report. The report or information extracted from the report is not subject to provisions of Chapter 4, Title 30, the Freedom of Information Act.

HISTORY: 1985 Act No. 201, Part II, Section 32A; 1988 Act No. 504, Section 2; 1993 Act No. 181, Section 236.

CROSS REFERENCES

Requirement that withholding agents submit quarterly returns, see Sections 12‑8‑1520, 12‑8‑1530.

Department of Employment and Workforce, generally, see Section 41‑29‑10 et seq.

**SECTION 12‑54‑240.** Disclosure of records of and reports and returns filed with Department of Revenue by employees and agents of department and state auditor’s office prohibited; penalties.

 (A) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for a person to divulge or make known in any manner any particulars set forth or disclosed in any report or return required under Chapters 6, 8, 11, 13, 16, 20, or 36 or Article 17, Chapter 21 of this title. A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both. If the offender is an officer or an employee of the State, he must be dismissed from office and is disqualified from holding any public office in this State for a period of five years thereafter. If the offender is an officer or employee of a company retained by the State on an independent contract basis under subsection (B)(3) of this section or Section 12‑4‑350, the contract is immediately terminated and the company is not eligible to contract with the State for this purpose for a period of five years thereafter.

 (B) Nothing in this section prohibits the:

 (1) publication of statistics classified to prevent the identification of particular reports or returns and the items included on them, or the inspection by the Attorney General or other legal representative of the State of the report or return of a taxpayer (a) who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted to recover a tax or a penalty imposed by this chapter, or (b) who has applied for review of an adjustment proposed by the department, or (c) filing a petition for redetermination of a deficiency assessed by the department. Reports and returns must be preserved for six years and after until the department orders them to be destroyed;

 (2) examination of records, returns, and reports held by the department by persons employed by the State Auditor’s Office annually to examine the books, accounts, receipts, disbursements, vouchers, and records of the department as required by Section 11‑7‑20;

 (3) examination of records, returns, and reports held by the department by persons retained on an independent contract basis by the State Auditor’s Office exclusively for the purpose of auditing statewide financial statements, or by persons retained on an independent contract basis by the department to collect delinquent taxes;

 (4) transfer of funds and the submission of taxpayer home addresses and corrected social security numbers to the Department of Social Services Child Support Enforcement Division in accordance with Section 12‑56‑30;

 (5) inspection of returns by officials of other jurisdictions in accordance with Section 12‑54‑220;

 (6) disclosure of a deficiency assessment to a probate court or to an attorney conducting a closing, the filing of a tax lien for uncollected taxes, and the issuance of a notice of levy;

 (7) submission of taxpayer names, home addresses, and social security numbers to the State Election department and Department of Motor Vehicles to effect the purposes of Section 14‑7‑130;

 (8) exchange of information pursuant to Section 12‑54‑260 between the department and the collecting agency necessary to implement that section;

 (9) disclosure of information pursuant to Section 12‑4‑310(5) to county and municipal officials;

 (10) verification of information to the Retirement Systems Division of the Public Employee Benefit Authority pursuant to Section 12‑4‑360;

 (11) disclosure of information contained on a return to the South Carolina Department of Employment and Workforce, Department of Revenue, or to the Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau;

 (12)(a) disclosure to a state agency, county auditor, or county assessor of whether a resident or nonresident tax return was filed by a particular taxpayer, whether the return is joint or individual, the name of a taxpayer filing jointly with the taxpayer, the taxpayer’s address as shown on the return, and what county code of residence is contained on the return;

 (b) disclosure to a county auditor or county assessor of whether the four percent assessment pursuant to Section 12‑43‑220(c)(1) has been claimed by a taxpayer in a county;

 (13) disclosure and data sharing as provided pursuant to Article 8, Chapter 1, Title 6, the Fairness in Lodging Act;

 (14) disclosure and presentation of documents and other information in a bankruptcy proceeding relating to a claim or potential claim, including submission of the claim; disclosure of documents and information to the Trustee and U. S. Trustee; and disclosure of documents and information to the debtor in bankruptcy and the debtor’s attorney;

 (15) disclosure of information in accordance with the provisions of Article 5, Chapter 55, Title 38, the ‘Omnibus Insurance Fraud and Reporting Immunity Act’;

 (16) disclosure of information pursuant to Section 31‑3‑50. The public housing authority making this request is responsible for reimbursing the department for actual costs incurred in supplying the information. This information must be provided in the most useful and economical format possible;

 (17) disclosure of information to the Secretary of State about a taxpayer who filed an initial or final corporate return or failed to pay a tax or fee or file a return, where the Secretary of State has the power to dissolve administratively the taxpayer or to revoke the taxpayer’s authority to transact business in this State for failure to pay taxes or fees or file returns.

 (18) disclosure of specific information to a United States Senator from South Carolina, a United States Representative from South Carolina, a South Carolina Constitutional Officer, or a member of the South Carolina General Assembly in connection with a taxpayer’s written inquiry for assistance to the elected official, who has then referred the taxpayer to the South Carolina Department of Revenue for assistance;

 (19) disclosure of information to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee pursuant to Section 12‑4‑380;

 (20) submission of taxpayer names and home addresses to the director of the South Carolina Retirement System to effectuate the provisions of Section 9‑1‑1650 relating to the disposition of inactive accounts;

 (21) disclosure of information, including statistics classified to prevent their identification to certain items on reports or returns, filed in a return pursuant to Chapter 36, Title 12, for accommodations taxes imposed pursuant to Section 12‑36‑920 and sales and use taxes collected by and reported to the Department of Parks, Recreation and Tourism including, but not limited to, statistics reflecting tourism activity;

 (22) disclosure of information contained in a return filed pursuant to Article 17, Chapter 21, Title 12, for the purpose of complying with the Tourism Infrastructure Admissions Tax Act;

 (23) disclosure of any information on any return that has been filed with the Department of Revenue to the Department of Health and Human Services for the purpose of verifying Medicaid eligibility;

 (24) disclosure of information pursuant to a subpoena issued by the State Grand Jury of South Carolina;

 (25) exchange of information between the department and the Department of Commerce pursuant to Section 12‑6‑3375;

 (26) disclosure of information referred to in Section 12‑60‑3312;

 (27) disclosure of information to the State Treasurer necessary for the administration and enforcement of the Uniform Unclaimed Property Act;

 (28) exchange of information between the department, the Department of Commerce and its agency, the Venture Capital Authority, and the Department of Insurance for the purpose of registering and verifying the existence, possession, transfer, and use of tax credits pursuant to Chapter 45, Title 11;

 (29) exchange between the Department of Revenue and the Secretary of State of any information that assists the Department of Revenue or the Secretary of State in determining or verifying information concerning whether a business is a qualified business pursuant to Section 11‑44‑60;

 (30) verification that the federal Schedule E filed with the department is the same as the Schedule E required by the assessor pursuant to Section 12‑43‑220(c).

 (C) The department shall provide guidelines to persons receiving information pursuant to subsection (B) of this section and shall monitor compliance with this section.

HISTORY: 1988 Act No. 658, Part II, Section 32; 1989 Act No. 106, Section 2; 1991 Act No. 50, Section 4; 1991 Act No. 171, Part II, Section 43B; 1992 Act No. 361, Sections 8(C), 28; 1993 Act No. 181, Section 237; 1994 Act No. 516, Section 19; 1995 Act No. 60, Section 2E; 1995 Act No. 76, Section 16; 1995 Act No. 98, Section 2; 1996 Act No. 343, Section 4; 1996 Act No. 459, Section 24; 1997 Act No. 84, Section 1; 1997 Act No. 89, Sections 1, 2; 1997 Act No. 155, Part II, Section 43B; 1999 Act No. 93, Section 10; 1999 Act No. 111, Section 2; 1999 Act No. 114, Section 4; 2000 Act No. 399, Section 3(L), eff August 17, 2000; 2001 Act No. 89, Section 37, eff July 20, 2001; 2002 Act No. 356, Section 1, Pt X.B, eff July 1, 2002; 2003 Act No. 69, Sections 3.AA, 3.BB, eff June 18, 2003; 2005 Act No. 145, Sections 36.A, 36.B, 54 eff June 7, 2005; 2006 Act No. 386, Section 10.B, eff June 14, 2006, applicable to tax years beginning after December 31, 2004; 2007 Act No. 110, Sections 30, 31.A, 44, eff June 21, 2007; 2007 Act No. 116, Sections 36, 37.A, 49, eff June 28, 2007; 2013 Act No. 80, Section 2, eff June 14, 2013; 2013 Act No. 90, Section 1, eff June 13, 2013; 2014 Act No. 259 (S.437), Section 2, eff June 9, 2014; 2014 Act No. 261 (S.985), Section 3, eff June 9, 2014.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

Editor’s Note

2007 Act No. 110, Section 31.B and 2007 Act No. 116, Section 37.B provide as follows:

“This section takes effect upon approval by the Governor and applies to all tax decisions and associated information filed whether the decision was issued before or after that date.”

Effect of Amendment

The 2013 amendment, by 2013 Act No. 90, Section 1, in subsection (B)(17), inserted “filed an initial or final corporate return or”.

The 2013 amendment, by 2013 Act No. 80, Section 2, added subsection (B)(29) relating to Section 11‑44‑60.

2014 Act No. 259, Section 2, added subsection (B)(30), relating to verification of federal Schedule E.

2014 Act No. 261, Section 3, added subsection (B)(13), which had been reserved, relating to the Fairness in Lodging Act.

CROSS REFERENCES

Information used to calculate distributions and estimating revenues, confidentiality of information about specific taxpayers, see Section 4‑10‑370.

Investment tax credit for manufacturing and productive equipment, see Section 12‑14‑80.

Local sales and use tax information, confidentially, see Section 4‑10‑90.

Publication by Department of Revenue of rulings on tax liability, in conformance with confidentiality requirement of this section, see Section 12‑4‑320.

Library References

Taxation 2452, 3530, 3686.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 529, 1901 to 1904, 2189, 2191 to 2193.

RESEARCH REFERENCES

ALR Library

8 ALR 6th 117 , What Constitutes Commercial or Financial Information, Exclusive of Trade Secrets, Exempt from Disclosure Under State Freedom of Information Acts‑Specific Applications.

Attorney General’s Opinions

Section 12‑54‑240(A)’s “as otherwise provided by law” exception applies to the disclosure of tax returns and other tax related information in criminal cases. S.C. Op.Atty.Gen. (August 26, 2014) 2014 WL 4382448.

Discussion of whether a person who makes an unlawful disclosure under Section 12‑54‑240 may be subjected to a loss of employment or the loss of contract without first having been criminally convicted of having made the unlawful disclosure. S.C. Op.Atty.Gen. (Oct. 20, 2008) 2008 WL 4870544.

Discussion of the Family Privacy Protection Act of 2002, and whether the Department of Revenue can release an address reported to it as a taxpayer’s business address when there is the possibility such might also be the taxpayer’s home address. S.C. Op.Atty.Gen. (Sept. 26, 2002) 2002 WL 31341824.

The disclosure of social security numbers as required by Section 12‑54‑430(D) does not violate state or federal law. 1994 Op Atty Gen, No. 94‑11, p 29 (January 21, 1994) 1994 WL 50387.

Freedom of Information Act does not prohibit Department of Revenue and Taxation from disclosing gross proceeds listed on reports required by Chapter 21 of Title 12. Further, Section 12‑54‑240 does not prohibit disclosure of such information since it does not apply to reports and information presented to Department of Revenue and Taxation under reporting requirement of Chapter 21 of Title 12. 1993 Op Atty Gen No. 93‑62 (September 29, 1993) 1993 WL 439025.

NOTES OF DECISIONS

Construction and application 1

1. Construction and application

Section 12‑54‑190 does not alter the non‑disclosure provisions of Section 12‑54‑240 since the legislature could not reasonably have intended to prevent disclosure of tax commission assessments to local taxing authorities. South Carolina Tax Com’n v. Gaston Copper Recycling Corp. (S.C. 1994) 316 S.C. 163, 447 S.E.2d 843.

**SECTION 12‑54‑250.** Authority of Department of Revenue to require payment with immediately available funds debts of $15,000 or more; interest and penalties.

 (A)(1) The South Carolina Department of Revenue may require, consistent with the cash management policies of the State Treasurer, that a person owing fifteen thousand dollars or more in connection with any return, report, or other document to be filed with the department or a withholding agent making at least twenty‑four payments in a year pursuant to Section 12‑8‑1520(D) pay the tax liability to the State no later than the date the payment is required by law to be made, in funds that are available immediately to the State. “Payment in immediately available funds” means payment by cash to the main office of the department before five o’clock p.m. or by electronic means established by the department, with the approval of the State Treasurer, which ensures the settlement of those funds in the state’s account on or before the banking day following the due date of the tax as provided by law.

 (2) Initiation of the transfer of funds must occur on or before the due date of the tax. If payment is made by means other than cash and settlement to the state’s account does not occur on or before the banking day following the due date of the tax, payment is deemed to occur on the date settlement occurs.

 (3) Failure to make timely payment in immediately available funds or failure to provide evidence of payment in a timely manner subjects the taxpayer to penalties and interest as provided by law for delinquent or deficient tax payments.

 (B) The department may provide alternative periodic filing and payment dates later than the dates otherwise provided by law for taxes collected by the department in those instances considered to be in the best interests of the State. An alternative date must not be later than the last day of the month in which the tax was otherwise due.

 (C) The department may prescribe rules and the State Treasurer banking procedures necessary for the administration of the provisions of this section.

 (D) The department may prescribe alternative means other than paper to file returns and reporting documents necessary for the administration of this section.

 (E) Reserved

 (F)(1) A tax return preparer who prepares one hundred or more returns for a tax period for the same tax year shall submit all returns by electronic means where electronic means are available. Where electronic means are not available to file the return, but 2D barcode is available, the preparer must use 2D barcode. If a taxpayer checks a box on his return indicating a preference that his return is to be filed by another means, the preparer may submit that return by another means.

 (2) The department shall include a notice of this requirement in its form instructions and in the forms area of its website.

 (3) For the purposes of this subsection, tax return preparer means the business entity and not the individual location or individual completing the return.

 (4) If compliance with this section is a substantial financial hardship, a tax return preparer may apply in writing to the department to be exempted from these requirements. The department may grant an exemption for no more than one year at a time.

 (5) A person who fails to comply with the provisions of this section may be penalized in an amount to be assessed by the department equal to fifty dollars for each return.

HISTORY: 1990 Act No. 612, Part II, Section 24; 1993 Act No. 181, Section 238; 1996 Act No. 431, Section 33; 2002 Act No. 363, Section 4B, eff July 1, 2002; 2005 Act No. 161, Section 20.A, eff June 9, 2005; 2007 Act No. 110, Section 45, eff June 21, 2007; 2007 Act No. 116, Sections 50.A, 50.B, eff June 28, 2007, applicable for tax years beginning after 2007; 2010 Act No. 274, Section 2, eff June 16, 2010.

Editor’s Note

2005 Act No. 161, Section 20.B, provides as follows:

“This SECTION takes effect upon approval by the Governor [became law without the governor’s signature June 9, 2005] for tax years beginning on or after January 1, 2007.”

Library References

Taxation 2760, 3217, 3554, 3563, 3697, 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1023, 1025, 1758, 1925, 1929, 2206, 2219 to 2220.

**SECTION 12‑54‑260.** Setoff for delinquent taxes.

 (A) As used in this section:

 (1) “Delinquent taxes” mean state taxes including penalty, interest, and costs for which a warrant for distraint has been issued and filed by the department.

 (2) “Department” means the South Carolina Department of Revenue.

 (3) “Payment owed by the State” means amounts for which the Comptroller General is responsible for payment and which result from goods or services rendered or to be rendered to the State or its agencies or political subdivisions.

 (4) “Collecting agency” means the Comptroller General.

 (B) The department may collect delinquent taxes by means of a setoff procedure as provided in this section.

 (C) The department shall provide to the Comptroller General the names, social security numbers, or federal employer identification numbers, or other identifying information considered necessary by the Comptroller General to determine whether a payment owed by the State to a taxpayer is a payment due a taxpayer owing delinquent taxes.

 (D) Based solely on the information furnished by the department, the Comptroller General shall determine if a payment owed by the State is payable to a taxpayer owing delinquent taxes and on this determination he shall remit the payment to the department. The department shall promptly notify the delinquent taxpayer of the payment. Remitting of the payment to the department terminates the Comptroller General’s responsibilities under this section, except as otherwise provided by law. The department’s notice to the taxpayer must:

 (1) be in writing;

 (2) specify the amount paid to the department;

 (3) state the total amount the department determines to be due from the taxpayer;

 (4) specify the name, address, and telephone number of an employee of the department whom the taxpayer can contact to discuss the delinquent tax liability.

 (E) Reviews of setoffs are with the department and information furnished by the department to the Comptroller General is considered correct and reliable for use by the Comptroller General in applying the setoff procedure.

HISTORY: 1991 Act No. 69, Section 1; 1993 Act No. 181, Section 239.

Library References

Taxation 3560, 3705.

Westlaw Topic No. 371.

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

**SECTION 12‑54‑270.** Returned refund check as unclaimed property.

 A tax refund check that is returned to the Department of Revenue for an unknown, undeliverable, or insufficient address is unclaimed property pursuant to the provisions of Chapter 18, Title 27, the Uniform Unclaimed Property Act.

HISTORY: 2005 Act No. 161, Section 26.A, eff June 9, 2005.