CHAPTER 44

Fee in Lieu of Tax Simplification Act

**SECTION 12‑44‑10.** Short title.

This act may be cited as the "Fee in Lieu of Tax Simplification Act".

HISTORY: 1997 Act No. 149, Section 1; 2003 Act No. 69, Section 3.AAA.1, eff January 1, 2003; 2007 Act No. 116, Section 7.D, eff June 28, 2007.

Editor's Note

2003 Act No. 69, Section 3.AAA.2, provides in part as follows:

"For those projects that have been granted a two‑year extension of time to complete the project and the two‑year period has expired, the sponsor may request an additional three years to complete the project notwithstanding the provisions of Section 4‑12‑30(C)(2)".

**SECTION 12‑44‑20.** Legislative findings.

The General Assembly finds that:

(1) With the state's economy being centrally connected, as the wealth‑generating capacity of South Carolina's businesses has increased, the state's per capita income also has increased.

(2) Since South Carolina's property tax rates as applied to manufacturing and certain commercial properties are disproportionately higher than those applied to other property in South Carolina, this disparity and the resulting property tax burdens historically have impeded new and expanded business in South Carolina.

(3) Previous General Assemblies have enacted legislation which reduces this disparity and the resulting property tax burden through a complex fee in lieu of tax arrangement that requires a company to transfer title to its property to the county and then lease the property back by paying rent and fees instead of property taxes on the property. The arrangement often includes the issuance of industrial revenue bonds by the county.

(4) The transfer of title and issuance of bonds are expensive, complex, time‑consuming, and difficult undertakings for the county, public, and companies to understand and implement. The current rules also make financings more difficult and more expensive. All of these factors act to discourage new investments in South Carolina.

(5) The "Fee in Lieu of Tax Simplification Act" simplifies the method for obtaining the fee in lieu of tax benefits while maintaining the essential county council approval process.

(6) The "Fee in Lieu of Tax Simplification Act" makes the fee in lieu of tax incentive more attractive by eliminating the requirement for the issuance of industrial revenue bonds or the transfer of title of property to a county. This simplification facilitates the benefit for the county and the company making the investments.

HISTORY: 1997 Act No. 149, Section 1; 2003 Act No. 69, Section 3.AAA.1, eff January 1, 2003.

**SECTION 12‑44‑30.** Definitions.

As used in this chapter:

(1) "Alternative payment method" means fee payments as provided in Section 12‑44‑50(A)(3).

(2) "Commencement date" means the last day of the property tax year during which economic development property is placed in service, except that this date must not be later than the last day of the property tax year which is three years from the year in which the county and the sponsor enter into a fee agreement. The commencement date for an economic development project as defined in item (17) is the last day of the first property tax year in which economic development property is placed in service.

(3) "County" means the county or counties in which the project is proposed to be located. A project may be located in more than one county, subject to the provisions of Section 12‑44‑40(H).

(4) "County council" means the governing body of the county in which the economic development property is located, except as specifically provided by Section 12‑44‑40(H).

(5) "Department" means the South Carolina Department of Revenue.

(6) "Economic development property" means each item of real and tangible personal property comprising a project which satisfies the provisions of Section 12‑44‑40(C) and other requirements of this chapter and is subject to a fee agreement. That property, other than replacement property qualifying under Section 12‑44‑60, must be placed in service by the end of the investment period.

(7) "Enhanced investment" means a project that results in a total investment:

(a) by a single sponsor investing at least one hundred fifty million dollars and creating at least one hundred twenty‑five new full‑time jobs at the project; provided that the new full‑time jobs requirement of this subsection does not apply to a taxpayer who paid more than fifty percent of all property taxes actually collected in the county for more than twenty‑five years, ending on the date of the fee agreement;

(b) by a single sponsor investing at least four hundred million dollars; or

(c) that satisfies the requirements of Section 11‑41‑30(2)(a), and for which the Secretary of Commerce has delivered certification pursuant to Section 11‑41‑70(2)(a).

For purposes of this item, if a single sponsor enters into a financing arrangement of the type described in Section 12‑44‑120(B), the investment in or financing of the property by a developer, lessor, financing entity, or other third party in accordance with this arrangement is considered investment by the sponsor. Investment by a related person to the sponsor, as described in Section 12‑10‑80(D)(2), is considered investment by the sponsor.

(8) "Exemption period" means the period beginning on the first day of the property tax year after the property tax year in which an applicable piece of economic development property is placed in service and ending on the termination date. For projects which are completed and placed in service during more than one year, the exemption period applies to each year's investment made by a sponsor during the investment period.

(9) "Fee" means the amount paid in lieu of ad valorem property tax as provided in the fee agreement.

(10) "Fee agreement" means an agreement between the sponsor and the county obligating the sponsor to pay fees instead of property taxes during the exemption period for each item of economic development property as more particularly described in Section 12‑44‑40.

(11) "Inducement resolution" means a resolution of the county setting forth the commitment of the county to enter into a fee agreement.

(12) "Infrastructure improvement credit" means a credit against the fee as provided by Section 12‑44‑70.

(13) "Investment period" means the period beginning with the first day that economic development property is purchased or acquired and ending five years after the commencement date; except that for a project with an enhanced investment as described above, the period ends eight years after the commencement date. The minimum investment must be completed within five years of the commencement date. For an enhanced investment, the applicable minimum investment and job requirements under item (7) must be completed within eight years of the commencement date. Investment period means for a qualified nuclear plant facility the period beginning with the first day that economic development property is purchased or acquired and ending ten years after the commencement date. For those sponsors that, after qualifying for the enhanced investment, have more than five hundred million dollars in capital invested in this State and employ more than one thousand people in this State, the investment period ends ten years after the commencement date. If the sponsor does not anticipate completing the project within these periods, the sponsor may apply to the county before the end of the investment period for an extension of time to complete the project. The extension may not exceed five years. If a project receives an extension of less than five years, the sponsor may apply to the county before the end of the extension period for an additional extension of time to complete the project for an aggregate extension of not more than five years. Unless approved as part of the original fee documentation, the county council of the county may approve an extension by resolution, a copy of which must be delivered to the department within thirty days of the date the resolution was adopted. An extension is not allowed for the time period in which the sponsor must meet the minimum investment requirement.

(14) "Minimum investment" means an investment in the project of at least two and one‑half million dollars within the investment period. If a county has an average annual unemployment rate of at least twice the state average during the last twenty‑four month period based on data available on the most recent November first, the minimum investment is one million dollars. The department shall designate these reduced investment counties by December thirty‑first of each year using data from the South Carolina Department of Employment and Workforce and the United States Department of Commerce. The designations are effective for a sponsor whose fee agreement is signed in the calendar year following the county designation. For all purposes of this chapter, the minimum investment may include amounts expended by a sponsor or sponsor affiliate as a nonresponsible party in a voluntary cleanup contract on the property pursuant to Article 7, Chapter 56, Title 44, the Brownfields Voluntary Cleanup Program, if the Department of Health and Environmental Control certifies completion of the cleanup. If the amounts under the Brownfields Voluntary Cleanup Program equal at least one million dollars, the investment threshold requirement of this chapter is deemed to have been met.

(15) "Industrial development park" means an industrial or business park developed by two or more counties as defined in Section 4‑1‑170.

(16) "Project" means land, buildings, and other improvements on the land, including water, sewage treatment and disposal facilities, air pollution control facilities, and all other machinery, apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, or useful by a sponsor. "Project" also may consist of or include aircraft hangered or utilizing an airport in a county so long as the county expressly consents to its inclusion. Aircraft previously subject to taxation in South Carolina qualify pursuant to this provision.

(17) "Qualified nuclear plant facility" means a nuclear electric power generating plant regulated by the Nuclear Regulatory Commission and includes all real and personal property incorporated into or associated with the facility located or to be located within this State with a total minimum level of investment of one billion dollars.

(18) "Replacement property" means property placed under the fee agreement to replace economic development property previously subject to the fee agreement, as provided in Section 12‑44‑60.

(19) "Sponsor" means one or more entities which sign the fee agreement with the county and makes the minimum investment, subject to the provisions of Section 12‑44‑40, each of which makes the minimum investment as provided in item (13) and also includes a sponsor affiliate unless the context clearly indicates otherwise. If a project consists of a manufacturing, research and development, corporate office, or distribution facility, as those terms are defined in Section 12‑6‑3360(M) and including a qualified nuclear plant facility as defined in item (17) of this section, each sponsor or sponsor affiliate is not required to invest the minimum investment if the total investment at the project exceeds five million dollars.

(20) "Sponsor affiliate" means an entity that joins with or is an affiliate of a sponsor and that participates in the investment in, or financing of, a project.

(21) "Termination date" means the date that is the last day of a property tax year that is no later than the twenty‑ninth year following the first property tax year in which an applicable piece of economic development property is placed in service. A sponsor may apply to the county prior to the termination date for an extension of the termination date beyond the twenty‑ninth year up to ten years. The county council of the county shall approve an extension by resolution upon a finding of substantial public benefit. A copy of the resolution must be delivered to the department within thirty days of the date the resolution was adopted. With respect to a fee agreement involving an enhanced investment, the termination date is the last day of a property tax year that is no later than the thirty‑ninth year following the first property tax year in which an applicable piece of economic development property is placed in service. A sponsor may apply to the county before the termination date for an extension of the termination date beyond the thirty‑ninth year up to ten years. If the fee agreement is terminated in accordance with Section 12‑44‑140, the termination date is the date the agreement is terminated.

HISTORY: 1997 Act No. 149, Section 1; 1999 Act no. 100, Part II, Section 20; 2000 Act No. 283, Section 3(D), eff May 19, 2000; 2001 Act No. 89, Section 65C, eff July 20, 2001; 2002 Act No. 280, Section 3, eff May 2, 2002; 2002 Act No. 334, Section 1, eff June 24, 2002; 2003 Act No. 69, Section 3.P, eff June 18, 2003; 2003 Act No. 69, Section 3.AAA.1, eff January 1, 2003; 2005 Act No. 71, Section 2, eff May 23, 2005; 2005 Act No. 145, Section 44.A, eff June 7, 2005; 2005 Act No. 161, Section 40.A, eff June 9, 2005; 2007 Act No. 116, Section 7.E, eff June 28, 2007; 2008 Act No. 313, Sections 2.F, 2.I.3, eff June 12, 2008; 2008 Act No. 352, Section 2.F, eff June 12, 2008; 2010 Act No. 150, Section 1, eff April 27, 2010; 2010 Act No. 161, Sections 2.A to 2.D, eff May 12, 2010; 2010 Act No. 290, Sections 8.A, 37, eff June 23, 2010; 2010 Act No. 290, Section 8.A, eff January 1, 2011; 2012 Act No. 187, Section 3, eff June 7, 2012.

Code Commissioner's Note

2010 Act No. 150 amended the definition of "termination date" to read: "(20) 'Termination date' means the date that is the last day of a property tax year that is the twenty‑ninth year following the first property tax year in which an applicable piece of economic development property is placed in service. A sponsor may apply to the county prior to the termination date for an extension of the termination date beyond the twenty‑ninth year up to ten years. The county council of the county shall approve an extension by resolution upon a finding of substantial public benefit. A copy of the resolution must be delivered to the department within thirty days of the date the resolution was adopted. If the fee agreement is terminated in accordance with Section 12‑44‑140, the termination date is the date the agreement is terminated." This definition was effective from April 27, 2010, to June 22, 2010. 2010 Act No. 290, Section 37 repealed 2010 Act No. 150, which amended the definition of "termination date". The pre‑Act 150 version of the definition of "termination date" is effective from June 23, 2010 until January 1, 2011, when the amendment to "termination date" made by 2010 Act No. 290, Section 8 becomes effective.

Editor's Note

2002 Act No. 280, Section 7, provides as follows:

"The incentives offered in this act apply only to projects receiving a certification of completion from the Department of Health and Environmental Control after the effective date of this act."

2010 Act No. 290, Section 8.B, provides as follows:

"The provisions of this section take effect upon approval by the Governor except that the provisions of Section 12‑44‑30(21) take effect January 1, 2011, provided that a county may amend an existing fee‑in‑lieu agreement at any time prior to the expiration of the fee to incorporate the amendments to Section 12‑44‑30(21) as contained in subsection A."

**SECTION 12‑44‑40.** Fee agreement; economic development property to be exempt from ad valorem taxation; exemption period; inducement resolution; location of exempt property; criteria to qualify as economic development property.

(A) To obtain the benefits provided by this chapter, the sponsor and the county must enter into a fee agreement requiring the payment of the fee described in Section 12‑44‑50. The county must adopt an ordinance approving the fee agreement with the sponsor.

(B) If the county and the sponsor enter into a fee agreement, all economic development property is exempt from all ad valorem property taxation for the entire exemption period. Upon termination of the exemption period, the property is subject to property taxation in the manner provided by law, unless the property is otherwise exempt.

(C) Subject to the provisions of subsection (D) and the provisions of Section 12‑44‑110, real or tangible personal property of a sponsor or sponsor affiliate which has been acquired for which expenditures have been incurred by the sponsor or sponsor affiliate and which are used in connection with a project or a portion of a project, qualifies as economic development property, if the expenditures are incurred or the property is acquired before the end of the investment period.

(D) A county has two years from the date it takes action reflecting or identifying the project, or proposed project, to adopt an inducement resolution if the inducement resolution was not the original county action reflecting or identifying the project or proposed project. Otherwise, expenditures incurred before adoption of the inducement resolution do not qualify as economic development property.

(E) If a fee agreement is not executed within five years after action by the county identifying or reflecting the project, the real property or tangible personal property of a sponsor for which expenditures have been incurred by the sponsor with respect to the project does not qualify as economic development property. An action includes an inducement resolution adopted by the county council of the county.

(F) Notwithstanding another provision of this chapter, in the case of a qualified nuclear plant facility, the sponsor has five years from the end of the calendar year in which the Nuclear Regulatory Commission grants the sponsor a combined license to construct and operate a nuclear power plant to enter into a fee agreement with the county but in no event more than fifteen years from the latter of the adoption of an inducement resolution or execution of an inducement agreement by the county.

(G) To be eligible to enter into a fee agreement, the sponsor shall commit to a project which meets the minimum investment level and, with respect to applicable enhanced investments, the total applicable investment and the minimum job creation levels required for an enhanced investment.

(H) The project must be located in a single county or in an industrial development park. A project located on contiguous tracts of land in more than one county, but not in an industrial development park, may qualify for the fee if:

(1) the counties agree on the terms of the fee and the distribution of the fee payment;

(2) a minimum millage rate is provided for in the agreement; and

(3) all counties are parties to all agreements establishing the terms of the fee.

(I)(1) Before undertaking a project, the county council shall find that:

(a) the project is anticipated to benefit the general public welfare of the locality by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally;

(b) the project gives rise to no pecuniary liability of the county or incorporated municipality or a charge against its general credit or taxing power; and

(c) the purposes to be accomplished by the project are proper governmental and public purposes and the benefits of the project are greater than the costs.

(2) In making the findings of this subsection, the county council may seek the advice and assistance of the department or the Revenue and Fiscal Affairs Office. The determination and findings must be set forth in an ordinance.

(J) If the county council has by contractual agreement provided for a change in fee in lieu of taxes arrangements conditioned on a future legislative enactment, a new enactment does not bind the original parties to the agreement unless the change is ratified by the county council.

(K)(1) Upon agreement of the parties, and except as provided in item (2), a fee agreement may be amended or terminated and replaced with regard to all matters, including the addition or removal of sponsors or sponsor affiliates.

(2) An amendment or replacement of a fee agreement must not be used to lower the millage rate, discount rate, assessment ratio, or, except as provided in Sections 12‑44‑30(13) and (21), increase the term of the agreement.

HISTORY: 1997 Act No. 149, Section 1; 2000 Act No. 283, Section 3(E), eff May 19, 2000; 2003 Act No. 69, Section 3.AAA.1, eff January 1, 2003; 2007 Act No. 116, Section 7.F, eff June 28, 2007; 2010 Act No. 161, Section 3, eff May 12, 2010; 2010 Act No. 290, Section 9, eff June 23, 2010.

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).

**SECTION 12‑44‑50.** Contents of fee agreement; disposal of economic development property; reduction of fee.

(A) A fee agreement must contain the requirement that a fee in lieu of property tax be paid as follows:

(1) During the exemption period, the sponsor shall pay, or be responsible for payment, to the county the annual fee payment in connection with the economic development property which has been placed in service, in an amount not less than the property taxes that would be due on the economic development property if it were taxable but using:

(a) an assessment ratio of not less than six percent, or four percent for those projects qualifying under the enhanced investment definition;

(b) a millage rate that is, either:

(i) fixed for the life of the fee; or

(ii) is allowed to increase or decrease every fifth year in step with the average cumulative actual millage rate applicable to the project based upon the preceding five‑year period; and

(c) a fair market value for the economic development property:

(i) if real property is constructed for the fee or is purchased in an arm's length transaction, the fair market value of real property is determined by using the original income tax basis for South Carolina income tax purposes without regard to depreciation, otherwise the property must be reported at its fair market value for ad valorem property taxes as determined by appraisal. The fair market value estimate established for the first year of the fee remains the fair market value of the real property for the life of the fee. The county and the sponsor or sponsor affiliate may instead provide in the fee agreement or any amendment thereto that any real property subject to the fee shall be reported at its fair market value for ad valorem property taxes as determined by appraisal as if such property were not subject to the fee; provided, the department may not undertake such an appraisal more than once every five years;

(ii) fair market value for personal property is determined by using the original tax basis for South Carolina income tax purposes less depreciation allowable for property tax purposes, except that the sponsor is not entitled to extraordinary obsolescence; and

(d) to establish the millage rate for purposes of subsection (A)(1)(b)(i) or the first five years millage under subsection (A)(1)(b)(ii), the millage rate must be no lower than the cumulative property tax millage rate levied by, or on behalf of, all taxing entities within which the project is located on either:

(i) June thirtieth of the year preceding the calendar year in which the fee agreement is executed; or

(ii) the millage rate in effect on June thirtieth of the calendar year in which the fee agreement is executed.

(2) The fee calculation must be made so that the property, if taxable, is allowed all applicable property tax exemptions except the exemption allowed under Section 3(g), Article X of the Constitution of this State and the exemption allowed pursuant to Section 12‑37‑220(B)(32) and (34).

(3) If the project subject to the fee agreement involves an investment of at least forty‑five million dollars, the county and the sponsor may agree to pay the fees established in subsection (A)(1) based on an alternative payment method yielding a net present value of the fee schedule as calculated in subsection (A)(1) provided the sponsor agrees to a millage rate as established in subsection (A)(1)(b)(i). Net present value calculations must use a discount rate equivalent to the yield in effect for new or existing United States Treasury bonds of similar maturity as published during the month in which the fee agreement is executed. If no yield is available for the month in which the fee agreement is executed, the last published yield for the appropriate maturity available must be used. If there are no bonds of appropriate maturity available, bonds of different maturities may be averaged to obtain the appropriate maturity.

(B)(1) If a sponsor disposes of an item of economic development property, the fee must be reduced by the amount of the fee applicable to that item of economic development property. Economic development property is disposed of only when it is scrapped or sold or it is removed from the project. If it is removed from the project, it is subject to ad valorem property taxes to the extent the property remains in the State.

(2) If the sponsor used an alternative payment method as provided in subsection (A)(3), the fee applicable to the item of property which was disposed of must be recomputed in accordance with subsection (A)(1) and, to the extent that the amount which would have been paid with respect to this item under subsection (A)(1) exceeds the fee actually paid by the sponsor, the sponsor shall pay the difference with the next annual fee payment due after the item of property is disposed of. This amount is subject to interest as provided in Section 12‑54‑25.

HISTORY: 1997 Act No. 149, Section 1; 2001 Act No. 89, Section 51F, eff July 20, 2001, applicable to a fee in lieu of property taxes agreement in which an initial lease agreement is executed on or after that date; 2003 Act No. 69, Section 3.AAA.1, eff January 1, 2003; 2010 Act No. 290, Section 10.A, eff January 1, 2011.

Editor's Note

2010 Act No. 290, Section 10.B, provides as follows:

"This SECTION shall take effect in each county in the first property tax year in which a countywide reassessment program is implemented after December 31, 2010."

**SECTION 12‑44‑55.** Agreements; content requirements.

(A) All agreements entered into pursuant to this chapter must include as the first portion of the document a recapitulation of the remaining contents of the document which includes, but is not limited to, the following:

(1) the legal name of each party to the agreement;

(2) the county and street address of the project and property to be subject to the agreement;

(3) the minimum investment agreed upon;

(4) the length and term of the agreement;

(5) the assessment ratio applicable for each year of the agreement;

(6) the millage rate applicable for each year of the agreement;

(7) a schedule showing the amount of the fee and its calculation for each year of the agreement;

(8) a schedule showing the amount to be distributed annually to each of the affected taxing entities;

(9) a statement answering the following questions:

(a) Is the project to be located in a multi‑county park formed pursuant to Chapter 29, Title 4?;

(b) Is disposal of property subject to the fee allowed?;

(c) Will special source revenue bonds be issued or credits for infrastructure investment be allowed in connection with this project?;

(d) Will payment amounts be modified using a net present value calculation?; and

(e) Do replacement property provisions apply?

(10) any other feature or aspect of the agreement which may affect the calculation of items (7) and (8) of this subsection;

(11) a description of the effect upon the schedules required by items (7) and (8) of this subsection of any feature covered by items (9) and (10) not reflected in the schedules for items (7) and (8) of this subsection;

(12) which party or parties to the agreement are responsible for updating any information contained in the summary document.

(B) The auditor shall prepare a bill for each installment of the fee according to the schedule set forth in subsection (A)(7) or as modified pursuant to subsection (A)(10), (11), or (12) and that payment must be distributed to the affected taxing entities according to the schedule in subsection (A)(8) or as modified pursuant to subsection (A)(10), (11), or (12). The county and the sponsor and sponsor affiliates may agree to waive any or all of the items described in this section.

HISTORY: 2002 Act No. 334, Section 5, eff June 24, 2002; 2003 Act No. 69, Section 3.AAA.1, eff January 1, 2003.

**SECTION 12‑44‑60.** Replacement property; qualifications and conditions.

(A) The fee agreement may provide that property which is placed in service as a replacement for economic development property may become economic development property. This replacement property is not required to serve the same function as the economic development property it is replacing. Replacement property is deemed to replace the oldest property subject to the fee, whether real or personal, which is disposed of in the same property tax year as the replacement property is placed in service. Replacement property qualifies as economic development property only to the extent of the original income tax basis of the economic development property which is being disposed of in the same property tax year. More than one piece of replacement property can replace a single piece of economic development property.

(B) To the extent that the income tax basis of the replacement property exceeds the original income tax basis of the economic development property which it is replacing, the excess amount is subject to annual payments calculated as if the exemption for economic development property were not allowed. Replacement property is entitled to the fee payment for the period of time remaining during the exemption period for the economic development property which it is replacing.

(C) The new replacement property which qualifies for the fee provided in Section 12‑44‑50 is recorded using its income tax basis, and the fee is calculated using the millage rate and assessment ratio provided on the original economic development property. The fee payment for replacement property must be based on Section 12‑44‑50(A)(3) if the sponsor originally used an alternative payment method.

HISTORY: 1997 Act No. 149, Section 1; 1999 Act No. 114, Section 4; 2003 Act No. 69, Section 3.AAA.1, eff January 1, 2003.

**SECTION 12‑44‑70.** Use of revenues.

A county, municipality, or special purpose district that receives and retains revenues from a payment in lieu of taxes may use a portion of the revenues for the purposes outlined in Section 4‑29‑68 without the requirements of issuing special source revenue bonds or complying with Section 4‑29‑68(A)(4) by providing a credit against or payment derived from the fee due from a sponsor.

HISTORY: 1997 Act No. 149, Section 1; 2003 Act No. 69, Section 3.AAA.1, eff January 1, 2003; 2007 Act No. 116, Section 7.G, eff June 28, 2007.

**SECTION 12‑44‑80.** Distribution of fee payments.

(A) For a project not located in an industrial development park, distribution of the fee payments on the project must be made in the same manner and proportion that the millage levied for school and other purposes would be distributed if the property were taxable but without regard to exemptions otherwise available to the project pursuant to Section 12‑37‑220.

(B) For a project located in an industrial development park, distribution of the fee payments on the project must be made in the same manner provided for by the agreement between or among counties establishing the industrial development park.

(C) Misallocations of the distribution of the fee payments on the project pursuant to this chapter may be corrected by adjusting later distributions, but these adjustments must be made in the same fiscal year as the misallocations. To the extent that distributions have been made improperly in previous years, claims for adjustment must be made within one year of the distribution.

HISTORY: 1997 Act No. 149, Section 1; 2001 Act No. 89, Section 61A, eff July 20, 2001; 2003 Act No. 69, Section 3.AAA.1, eff January 1, 2003.

**SECTION 12‑44‑90.** Filing of returns, contracts, and other information; due date of payments and returns.

(A) The sponsor shall file returns, contracts, and other information which may be required by the department.

(B) Fee payments, and returns showing investments and calculating fee payments, are due at the same time as property tax payments and property tax returns are due.

(C) Failure to make a timely fee payment and file required returns results in penalties being assessed as if the payment or return were a property tax payment or return.

(D) The department may issue rulings and promulgate regulations as necessary to carry out the purpose of this section.

(E) The provisions of Chapters 4 and 54, Title 12, applicable to property taxes, apply to this section, and for purposes of the application, the fee is considered a property tax. Section 12‑54‑155 does not apply to this section.

(F) The provisions of Chapters 49, 51, and 53, Title 12 apply to a fee agreement and a fee due under the agreement. For purposes of those chapters, the fee is considered a property tax.

(G) Within thirty days of the date of execution of a fee agreement, a copy of the fee agreement must be filed with the department, the county assessor, and the county auditor for the county in which the project is located. If the project is located in an industrial development park, the fee agreement must be filed with the auditors and assessors for all counties participating in the industrial development park.

(H) The department, for good cause, may allow additional time for filing of returns required under this chapter. The request for an extension may be granted only if the request is filed with the department on or before the date the return is due. However, the extension must not exceed sixty days from the date the return is due. The department shall develop applicable forms and procedures for handling and processing extension requests. An extension may not be granted to a sponsor who has been granted an extension for a previous period and has not fulfilled the requirements of the previous period.

(I) To the extent a form or a return is filed with the department, the sponsor must file a copy of the form or return with the county auditor, assessor, and treasurer of the county or counties in which the project is located. To the extent requested, the county auditor of the county in which the project is physically located shall make these forms and returns available to any county auditor of a county participating in an industrial development park in which the project is located.

(J) Upon the direction of the governing body of the county, a county official may request and obtain such financial books and records from a sponsor that support the sponsor's fee in lieu of taxes return as may be reasonably necessary to verify the calculations of the sponsor's fee in lieu of taxes payment or the calculations of the sponsor's special source revenue credit.

HISTORY: 1997 Act No. 149, Section 1; 2002 Act No. 334, Section 2, eff June 24, 2002; 2003 Act No. 69, Section 3.AAA.1, eff January 1, 2003; 2012 Act No. 187, Section 6, eff June 7, 2012.

**SECTION 12‑44‑100.** Sponsor committed to enhanced investment to continue to benefit from this chapter despite failure to make required investment where minimum investment met; assessment ratio.

(A) A fee agreement may provide that a sponsor who has committed to an enhanced investment or an investment above that required for a minimum investment may continue to receive the benefits of this chapter, even if the sponsor fails to make or maintain the required investment or fails to create the jobs required by the fee agreement, if the sponsor meets the minimum investment. If the sponsor fails to make or maintain the required investment or create the required number of jobs, the fee agreement may not provide for an assessment ratio and an exemption period more favorable than those allowed for the minimum investment.

(B) Notwithstanding the use of the term "assessment ratio", a sponsor and a county may negotiate a fee agreement using differing assessment ratios for different assessment years or different levels of investment covered by the fee agreement, but the assessment ratio for an assessment year may not be lower than six percent or, if the project involves an enhanced investment, four percent.

HISTORY: 1997 Act No. 149, Section 1; 2003 Act No. 69, Section 3.AAA.1, eff January 1, 2003.

**SECTION 12‑44‑110.** Property previously subject to state property taxes not qualified to be economic development property; exceptions.

Property which previously has been subject to property taxes in South Carolina does not qualify as economic development property, except that:

(1) land, excluding existing improvements on the land, on which a new project is to be located may qualify as economic development property even if it previously has been subject to property taxes in this State;

(2) property which has been subject to property taxes in this State, but which has never been placed in service in this State, or which was placed in service in this State pursuant to an inducement agreement or other preliminary approval by the county prior to execution of the fee agreement pursuant to Section 12‑44‑40(E), may qualify as economic development property;

(3) property which previously has been placed in service in this State and previously has been subject to property taxes in this State which is purchased in a transaction other than between any of the entities specified in Section 267(b) of the Internal Revenue Code, as defined under Chapter 6, Title 12 as of the time of the transfer, may qualify as economic development property if the sponsor invests at least an additional forty‑five million dollars at the project;

(4) repairs, alterations, or modifications to real or personal property, which is not economic development property, are not eligible to be economic development property, even if they are capitalized expenditures, except for modifications which constitute an expansion to existing real property improvements.

HISTORY: 1997 Act No. 149, Section 1; 2003 Act No. 69, Section 3.AAA.1, eff January 10, 2003; 2010 Act No. 290, Section 11, eff January 1, 2011.

**SECTION 12‑44‑120.** Transfers of interest in fee agreement and economic development property; sale‑leaseback arrangement; requirements.

(A) An interest in a fee agreement and the economic development property to which the fee agreement relates may be transferred to another entity at any time. Notwithstanding another provision of this chapter, an equity interest in a sponsor may be transferred to another entity or person at any time. To the extent that the fee agreement is transferred, for the purposes of calculating the fee, the transferee assumes the current basis the sponsor has in real or personal property subject to the fee.

(B) A sponsor may enter into lending, financing, security, leasing, or similar arrangements, or succession of such arrangements, with a financing entity concerning all or part of a project including, without limitation, a sale‑leaseback arrangement, equipment lease, build‑to‑suit lease, synthetic lease, nordic lease, defeased tax benefit, or transfer lease, an assignment, sublease, or similar arrangement, or succession of such arrangements, with one or more financing entities concerning all or part of a project, regardless of the identity of the income tax owner of economic development property. Even though income tax basis is changed for income tax purposes, neither the original transfer to the financing entity nor the later transfer from the financing entity back to the sponsor, pursuant to terms in the sale‑leaseback agreement, affects the amount of the fee due.

(C) All transfers undertaken with respect to other projects to effect a financing authorized under this subsection must meet the following requirements:

(1) The department and the county must receive notification, in writing within sixty days after the transfer, of the identity of each transferee and other information required by the department with the appropriate returns. Failure to meet this notice requirement does not adversely affect the fee, but a penalty may be assessed by the department for late notification for up to ten thousand dollars a year or portion of a year, up to a maximum penalty of fifty thousand dollars.

(2) If a financing entity is the income tax owner of property, either the financing entity is primarily liable for the fee as to that portion of the project to which the transfer relates, with the sponsor remaining secondarily liable for the payment, or the sponsor must agree to continue to be primarily liable for the annual payments as to that portion of the project to which the transfer relates.

(D) A sponsor may transfer a fee agreement, or substantially all the economic development property to which the fee agreement relates, if it obtains the prior approval, or subsequent ratification, of the county with which it entered into the fee agreement. The county's prior approval or subsequent ratification may be evidenced by any one of the following, in the absolute and sole discretion of the county providing the approval or ratification: (i) a letter or other writing executed by an authorized county representative as designated in the respective fee agreement; (ii) a resolution passed by the county council; or (iii) an ordinance passed by the county council following three readings and a public hearing. That approval is not required in connection with transfers to sponsor affiliates or other financing‑related transfers.

HISTORY: 1997 Act No. 149, Section 1; 2000 Act No. 283, Section 3(F), eff May 19, 2000; 2003 Act No. 69, Section 3.AAA.1, eff January 1, 2003; 2008 Act No. 313, Section 2.I.4, eff June 12, 2008.

**SECTION 12‑44‑130.** Minimum investment to qualify for fee; notice to department of all sponsors or sponsor affiliates with investments subject to fee.

(A) Except as otherwise provided in Section 12‑44‑30(19), to be eligible for the fee, a sponsor and each sponsor affiliate must invest the minimum investment as defined in Section 12‑44‑30(14). For an enhanced investment pursuant to Section 12‑44‑30(7), a single sponsor must make the investment, unless otherwise provided in that section. The county and the sponsors who are part of the fee agreement may agree that investments by other sponsor affiliates within the investment period qualify for the fee regardless of whether the sponsor affiliate was part of the fee agreement, except that each new sponsor affiliate must invest at least the minimum investment or the enhanced investment if applicable in the project, unless the project is a manufacturing, research and development corporate office, or distribution facility as provided in Section 12‑44‑30(19). To qualify for the fee, the sponsor affiliates must be approved specifically by the county and must agree to be bound by agreements with the county relating to the fee. These sponsor affiliates are not bound by agreements, or portions of agreements, to the extent the agreements do not affect the county. The investments pursuant to this subsection must be at the sponsor's project. The fee agreement may provide for a process for approval of sponsor affiliates.

(B) The department must be notified in writing of all sponsors or sponsor affiliates which have investments subject to the fee before or within ninety days after the end of the calendar year during which the project, or a phase of it, was placed in service. The department may extend the ninety‑day period upon written request. Failure to meet this notice requirement does not affect adversely the fee, but a penalty may be assessed by the department for late notification in an amount of ten thousand dollars a month or portion of a month, not to exceed fifty thousand dollars.

HISTORY: 1997 Act No. 149, Section 1; 2000 Act No. 283, Section 3(G), eff May 19, 2000; 2000 Act No. 399, Section 3(R)(3), eff August 17, 2000; 2003 Act No. 69, Section 3.AAA.1, eff January 1, 2003; 2006 Act No. 384, Section 12, eff June 14, 2006; 2010 Act No. 290, Section 12, eff January 1, 2011.

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 R. applies to inducement agreements entered into after December 31, 2000."

**SECTION 12‑44‑140.** Termination of fee agreement; automatic termination; minimum level of investment required to remain qualified for fee.

(A) The county and the sponsor may agree to terminate the fee agreement at any time. From the date of termination, all economic development property is subject to ad valorem taxation as imposed by law. If the sponsor used an alternative payment method, the sponsor shall pay to the county at the time of termination an additional fee payment equal to the difference between the total amount of the fee payments that would have been made with respect to the economic development property by the sponsor if the standard fee calculation under Section 12‑44‑50(A)(1) had been used and the total amount of fee payments actually made by the sponsor. This amount is subject to interest as provided in Section 12‑54‑25.

(B) Except as provided in Section 12‑44‑100(A), a fee agreement is automatically terminated if the sponsor fails to satisfy the minimum investment level provided in Section 12‑44‑30(14) within the investment period or the applicable minimum investment or job creation requirements provided in Section 12‑44‑30(7). If the fee agreement is terminated under this subsection, all economic development property is subject, as of the commencement date, to ad valorem property taxation as imposed by law. At the time of termination, the sponsor shall pay to the county an additional fee equal to the difference between the total amount of property taxes that would have been paid by the sponsor had the project been taxable, taking into account exemptions from property taxes that would have been available to the sponsor, and the total amount of fee payments actually made by the sponsor. This additional amount is subject to interest as provided in Section 12‑54‑25.

(C) If at any time a sponsor or sponsor affiliate no longer has the minimum level of investment as provided in Section 12‑44‑30(14), without regard to depreciation, that sponsor or sponsor affiliate no longer qualifies for the fee. If the sponsor qualifies for the enhanced investment, the sponsor must maintain the applicable level of investment, without regard to depreciation. If the sponsor fails to maintain the applicable level of investment in Section 12‑44‑30(7), it no longer qualifies for the fee unless the provisions of Section 12‑44‑100 apply.

(D) To the extent necessary to determine if a sponsor or sponsor affiliate has met its minimum investment requirements, any statute of limitations that might apply pursuant to Section 12‑54‑85 is suspended for all sponsors and sponsor affiliates and the department or the county may seek to collect any amounts that may be due pursuant to this section.

HISTORY: 1997 Act No. 149, Section 1; 2003 Act No. 69, Section 3.AAA.1, eff January 1, 2003; 2006 Act No. 384, Section 13, eff June 14, 2006.

**SECTION 12‑44‑150.** Projects to be taxable property at level of negotiated payments for purposes of bonded indebtedness and for computing index of taxpaying ability.

Projects to which a fee agreement applies pursuant to this section are considered taxable property at the level of the negotiated payments for purposes of bonded indebtedness pursuant to Sections 14 and 15, Article X of the Constitution of this State, and for purposes of computing the index of taxpaying ability pursuant to Section 59‑20‑20(3). However, for a project located in an industrial development park as defined in Section 4‑1‑170, projects are considered taxable property in the manner provided in Section 4‑1‑170 for purposes of bonded indebtedness pursuant to Sections 14 and 15, Article X of the Constitution of this State, and for purposes of computing the index of taxpaying ability pursuant to Section 59‑20‑20(3). However, the computation of bonded indebtedness limitation is subject to the requirements of Section 4‑29‑68(E).

HISTORY: 1997 Act No. 149, Section 1; 2003 Act No. 69, Section 3.AAA.1, eff January 1, 2003.

**SECTION 12‑44‑160.** Transfer of title; qualification for a fee in lieu of taxes.

If all or part of this chapter is determined to be unconstitutional or otherwise illegal by a court of competent jurisdiction, a sponsor has one hundred eighty days from the date of the determination to transfer title to economic development property to the county and have it qualify for a fee in lieu of taxes pursuant to Chapter 12, Title 4 or Section 4‑29‑67.

HISTORY: 1997 Act No. 149, Section 1; 2000 Act No. 399, Section 3(I), eff August 17, 2000; 2003 Act No. 69, Section 3.AAA.1, eff January 1, 2003.

**SECTION 12‑44‑170.** Economic development property; transfer of property to fee arrangement provided for by this chapter.

(A) Economic development property as defined in Section 12‑44‑30(7) may include property placed in service for property tax purposes after the effective date of this act.

(B) An entity with property subject to an existing fee in lieu of property taxes arrangement under Article 1, Chapter 12, Title 4 of the 1976 Code or Section 4‑29‑67 of the 1976 Code, or which has acquired or will acquire property pursuant to an inducement resolution, may elect, with the consent of the applicable county, to transfer property from the prior arrangement to the fee arrangements provided by this chapter and that property must be considered automatically economic development property as defined in Section 12‑44‑30(7) subject to:

(1) a continuation of the same fee payments required under the existing lease agreement;

(2) a continuation of the same fee in lieu of tax payments only for the time required for payments under the existing lease agreement;

(3) a carryover of minimum investment or employment requirements of the existing arrangements to the new fee arrangement; and

(4) appropriate agreements and amendments between the sponsor and the county entered into continuing the provisions and limitations of the prior agreement.

The entity and the governing body of the county may enter into a new fee agreement reflecting the appropriate handling of the transition with due regard to appropriate cancellation or amendment of existing financing arrangements.

HISTORY: 1997 Act No. 149, Section 3; 2003 Act No. 69, Section 3.AAA.1.