

South Carolina General Assembly
119th Session, 2011-2012

S. 274

STATUS INFORMATION

General Bill

Sponsors: Senators Grooms, Campsen, Davis, Rose and McConnell

Document Path: I:\s-res\lkg\011fair.kmm.lkg.docx

Introduced in the Senate on January 11, 2011

Currently residing in the Senate Committee on **Finance**

Summary: Fair Tax Act

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
12/15/2010	Senate	Prefiled
12/15/2010	Senate	Referred to Committee on Finance
1/11/2011	Senate	Introduced and read first time (Senate Journal-page 124)
1/11/2011	Senate	Referred to Committee on Finance (Senate Journal-page 124)

View the latest [legislative information](#) at the LPITS web site

VERSIONS OF THIS BILL

[12/15/2010](#)

1
2
3
4
5
6
7
8
9
10

A BILL

11 TO AMEND TITLE 12 OF THE 1976 CODE, RELATING TO
12 TAXATION, TO ENACT THE "SOUTH CAROLINA FAIR
13 TAX ACT", BY ADDING CHAPTER 34, TO PROVIDE FOR
14 THE PURPOSES OF THE ACT AND DEFINITIONS, TO
15 PROVIDE FOR JUDICIAL GUIDANCE FOR
16 INTERPRETATION OF THE ACT AND THE IMPOSITION OF
17 THE TAX, TO PROVIDE FOR CREDITS AND REFUNDS, TO
18 PROVIDE FOR A FAMILY CONSUMPTION ALLOWANCE,
19 TO PROVIDE FOR THE ADMINISTRATION OF THE TAX BY
20 THE DEPARTMENT OF REVENUE, TO PROVIDE FOR
21 PENALTIES FOR VIOLATIONS OF THE ACT, AND TO
22 PROVIDE FOR COLLECTIONS, APPEALS, AND TAXPAYER
23 RIGHTS; TO PROVIDE FOR SPECIAL RULES RELATED TO
24 INTERMEDIATE SALES, TAXABLE GAMING SERVICES,
25 PURCHASES BY THE FEDERAL GOVERNMENT,
26 GOVERNMENT ENTERPRISES, MIXED USE PROPERTY OR
27 SERVICES, AND NOT-FOR-PROFIT ORGANIZATIONS; TO
28 PROVIDE FOR TAXATION OF FINANCIAL
29 INTERMEDIATION SERVICES, TO PROVIDE FOR
30 ADDITIONAL MATTERS RELATED TO THE SALE OF A
31 COPYRIGHT OR TRADEMARK, CERTAIN EXCLUSIONS
32 FROM TAXATION, TAXATION RELATED TO THE
33 PURCHASE OF TAXABLE PROPERTY OR SERVICES
34 SUBJECT TO AN EMPLOYEE DISCOUNT, TAXABLE
35 PROPERTY OR SERVICES GIVEN AS A GIFT, PRIZE,
36 REWARD, OR AS RENUMERATION FOR EMPLOYMENT
37 BY A REGISTERED PERSON, AND TO PROVIDE FOR TAX
38 TREATMENT FOR INVENTORY HELD BY A TRADE OR
39 BUSINESS ON THE CLOSE OF BUSINESS ON DECEMBER
40 THIRTY-FIRST OF THE YEAR THAT THIS ACT IS
41 ENACTED; TO PROVIDE FOR FUNDING TO THE
42 HOMESTEAD EXEMPTION FUND, THE STATE PUBLIC

1 SCHOOL BUILDING FUND, THE SOUTH CAROLINA
2 EDUCATION IMPROVEMENT ACT OF 1984 FUND,
3 FUNDING FOR MUNICIPALITIES AND COUNTIES, AND
4 THE TOURISM EXPENDITURE REVIEW COMMITTEE; TO
5 PROVIDE FOR A SPECIAL VOTE TO AMEND OR REPEAL
6 THIS ACT WITHIN THREE YEARS OF ITS ENACTMENT
7 AND REFERENDUM FOR CHANGES AFTER THE FOURTH
8 YEAR; AND TO REPEAL CHAPTERS 6, 8, 11, 13, 16, 36, 58,
9 AND 62 OF TITLE 12.

10

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

13

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

15

16 "CHAPTER 34

17

18 The South Carolina Fair Tax Act

19

20 ARTICLE 1

21

22 Citations, Purposes, and Definitions

23

24 Section 12-34-101. This chapter may be cited as the 'South
25 Carolina Fair Tax Act'.

26

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

31 (B) The purposes of this chapter are to:

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

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

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

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

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

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

- 3 (1) the common law canons of statutory construction;
- 4 (2) the meaning and construction of concepts and terms used
5 in the 1976 Code in effect before the effective date of this chapter;
- 6 and
- 7 (3) any ambiguities in this chapter in favor of reserving
8 powers to the people.

9

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

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

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

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

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

20 (a) provides its services to the general public;

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

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

26 (3) 'Director' means the Director of the Department of
27 Revenue.

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

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

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

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

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

7 (9) 'Produce, provide, render, or sell a taxable property or
8 service' means a taxable property or service purchased by a person
9 engaged in a trade or business for the purpose of employing or
10 using such taxable property or service in the production, provision,
11 rendering, or sale of other taxable property or services in the
12 ordinary course of that trade or business. Taxable property or
13 services used in a trade or business for the purpose of research,
14 experimentation, testing, and development shall be treated as used
15 to produce, provide, render, or sell taxable property or services.
16 Taxable property or services purchased by an insurer on behalf of
17 an insured shall be treated as used to produce, provide, render, or
18 sell taxable property or services if the premium for the insurance
19 contract giving rise to the insurer's obligation was subject to tax
20 pursuant to Section 12-34-801. Education and training shall be
21 treated as services used to produce, provide, render, or sell taxable
22 property or services.

23 (10) 'Registered seller' means a person registered pursuant to
24 Section 12-34-502.

25 (11) 'Taxable employer' includes:

- 26 (a) any household employing domestic servants; and
- 27 (b) any government, except for government enterprises.

28 The term 'taxable employer' does not include any employer
29 which is engaged in a trade or business, a qualified not-for-profit
30 organization, a government enterprise, or an educational or
31 training institution. The term also does not include federal
32 government and its agencies, until such time as federal law allows
33 state taxation of the federal government.

34 (12) 'Taxable property or service' means:

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

- 37 (i) intangible property; and
- 38 (ii) used property; and

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

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

- 1 performed by an employee for which the employee is paid wages
2 or a salary:
3 (a) by an employer in the regular course of the employer's
4 trade or business;
5 (b) by an employer that is a qualified not-for-profit
6 organization;
7 (c) by an employer that is a government enterprise;
8 (d) by taxable employers to employees directly providing
9 education and training; or
10 (e) by the federal government and its agencies.

11 (14) 'Tax inclusive fair market value' means the fair market
12 value of taxable property or services plus the tax imposed by this
13 chapter.

14 (15) 'Used property' means:

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

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

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

28

29

ARTICLE 2

30

31

Judicial Interpretation and Imposition of Tax

32

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

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

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

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

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

6

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

8 (1) 'Purchased for a business purpose in a trade or business'
9 means purchased by a person engaged in a trade or business and
10 used in that trade or business:

11 (a) for resale;

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

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

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

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

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

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

28

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

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

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

40 (C) Property or services purchased for a business purpose in a
41 trade or business or for export that were sold untaxed pursuant to
42 Section 12-34-202(B)(1) that were subsequently converted to
43 personal use shall be deemed purchased at the time of conversion

1 and shall be subject to the tax imposed by Section 12-34-201 at the
2 fair market value of the converted property as of the date of
3 conversion. The tax shall be due as if the property had been sold at
4 the fair market value during the month of conversion. The person
5 using or consuming the converted property is liable for and shall
6 remit the tax.

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

12
13 ARTICLE 3

14
15 Credits and Refunds

16
17 Section 12-34-301. (A) Each person shall be allowed a credit
18 with respect to the taxes imposed by Section 12-34-201 for each
19 month in an amount equal to the sum of:

20 (1) the person's business use conversion credit pursuant to
21 Section 12-34-302 for the month;

22 (2) the person's intermediate and export sales credit pursuant
23 to Section 12-34-303 for the month;

24 (3) the administration credit pursuant to Section 12-34-304
25 for the month;

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

28 (5) the insurance proceeds credit pursuant to Section
29 12-34-306 for the month;

30 (6) the transitional inventory credit pursuant to Section
31 12-34-910; or

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

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

35
36 Section 12-34-302. (A) For purposes of Section
37 12-34-301(A)(1), a person's business use conversion credit for any
38 month is the amount determined under subsection (B) with respect
39 to taxable property and services:

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

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

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

3 (1) the product of:

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

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

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

11

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

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

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

19

20 Section 12-34-304. (A) Every person filing a timely monthly
21 report, with regard to extensions, in compliance with Section
22 12-34-501 shall be entitled to a taxpayer administrative credit
23 equal to the greater of:

24 (1) two hundred dollars; or

25 (2) one-quarter of one percent of the tax remitted.

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

29

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

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

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

36 (3) 'Related parties' means affiliated firms and family
37 members as defined in Section 12-34-402(B).

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

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

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

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

9 (2) the amount of the bad debt.

10 (D) Any person electing the accrual method pursuant to Section
11 12-34-503(B) that has with respect to a transaction:

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

13 (2) remitted the invoiced tax;

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

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

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

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

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

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

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

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

33

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

1 (2) For purposes of this subsection, the term 'insurance
2 contract' shall include a life insurance contract, a health insurance
3 contract, a property and casualty loss insurance contract, a general
4 liability insurance contract, a marine insurance contract, a fire
5 insurance contract, an accident insurance contract, a disability
6 insurance contract, a long-term care insurance contract, and an
7 insurance contract that provides a combination of these types of
8 insurance.

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

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

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

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

21 (D) If taxable property or services purchased by an insurer on
22 behalf of an insured are purchased free of tax by virtue of Section
23 12-34-103(A)(9), then the credit provided by this section shall not
24 be available with respect to that purchase.

25
26 Section 12-34-320. (A) If a registered seller files a monthly
27 tax report with an overpayment, then, upon application by the
28 registered seller in a form prescribed by the department, the
29 overpayment shown on the report shall be refunded by the
30 department to the registered seller within sixty days of receipt of
31 the application. In the absence of the application, the overpayment
32 may be carried forward, without interest, by the person entitled to
33 the credit.

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

39 (C) No interest shall be paid on any overpayment due from the
40 department under this section for any month if the overpayment
41 due is paid within sixty days after the application for refund is
42 received by the department. Overpayments due, but not paid
43 within sixty days after the application for refund is received by the

1 department, shall bear interest from the date of application.
2 Interest shall be paid by the department at the federal short-term
3 rate as defined in Section 12-34-550.

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

12
13 ARTICLE 4

14
15 Family Consumption Allowance

16
17 Section 12-34-401. Each qualified family shall be eligible to
18 receive a sales tax rebate each month. The sales tax rebate shall be
19 in an amount equal to the product of:

- 20 (1) the rate of tax imposed by Section 12-34-201; and
21 (2) the monthly poverty level.

22
23 Section 12-34-402. (A) For purposes of this article, the term
24 'qualified family' shall mean one or more family members sharing
25 a common residence. All family members sharing a common
26 residence shall be considered as part of one qualified family.

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

- 29 (a) an individual;
30 (b) the individual's spouse;
31 (c) all lineal ancestors and descendants of the individual
32 and the individual's spouse;
33 (d) all legally adopted children of the individual and the
34 individual's spouse; and
35 (e) all children under legal guardianship of the individual
36 and the individual's spouse.

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

- 40 (a) have a bona fide Social Security number; and
41 (b) be a lawful resident of the United States.

42 (C)(1) Any person, who is a registered student during not fewer
43 than five months in a calendar year while living away from the

1 common residence of a qualified family but who receives over
2 fifty percent of his support during a calendar year from members
3 of the qualified family, shall be included as part of the qualified
4 family whose members provided that support.

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

13 (D) In order to receive the sales tax rebate provided by Section
14 12-34-401, a qualified family must register annually with the
15 department in a form prescribed by the director. The annual
16 registration form shall provide:

17 (1) the name of each family member who shared the
18 qualified family's common residence on the family determination
19 date;

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

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

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

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

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

31 (7) the address of the qualified family.

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

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

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

40 (G) Any qualified family that failed to timely make its annual
41 registration in accordance with this section, but subsequently
42 registers, shall be entitled to up to six months of lapsed sales tax

1 rebate payments. No interest on lapsed payment amount shall be
2 paid.

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

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

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

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

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

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

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

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

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

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

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

43

1 Section 12-43-403. (A) For purposes of this section:
2 (1) 'Annual poverty level' shall be the sum of:
3 (a) the annual poverty guideline for a particular family
4 size as determined by the United States Department of Health and
5 Human Services under sections 652 and 673(2) of the Omnibus
6 Budget Reconciliation Act of 1981; and
7 (b) in the case of families that include a married couple,
8 the annual marriage penalty elimination amount.
9 (2) 'Annual marriage penalty elimination amount' shall be:
10 (a) the amount that is two times the annual poverty
11 guideline for a family of one as determined by the United States
12 Department of Health and Human Services under sections 652 and
13 673(2) of the Omnibus Budget Reconciliation Act of 1981; less
14 (b) the annual poverty guideline for a family of two as
15 determined by the United States Department of Health and Human
16 Services under sections 652 and 673(2) of the Omnibus Budget
17 Reconciliation Act of 1981.
18 (B) The monthly poverty level for any particular month shall be
19 one-twelfth of the annual poverty level.

20
21 Section 12-34-410. (A) The department shall provide a
22 monthly sales tax rebate to duly registered qualified families in an
23 amount determined pursuant to Section 12-34-401.

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

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

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

40
41 Section 12-34-420. (A) In the absence of the filing of a
42 revised registration in accordance with this article, the common
43 residence of the qualified family, marital status, and number of

1 persons in a qualified family on the family determination date shall
2 govern determinations required to be made under this article for
3 purposes of the following twelve calendar months.

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

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

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

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

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

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

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

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

23 (7) the address of the qualified family.

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

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

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

32

33

ARTICLE 5

34

35

Other Administrative Provisions

36

37 Section 12-34-501. (A) For purposes of this section, the term
38 'week' shall mean the seven-day period ending on Friday.

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

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

1 (b) liable to remit the tax imposed by this chapter which is
2 not collected pursuant to Section 12-34-203(B) or (C);
3 shall submit to the department in a form prescribed by the director
4 a report relating to the previous calendar month.

5 (2) Regarding taxable property and services, the report
6 required pursuant to subsection (B)(1) shall set forth:
7 (a) the net payments referred to in Section 12-34-201;
8 (b) the tax collected under this chapter in connection with
9 the payments;
10 (c) the amount and type of any credit claimed; and
11 (d) other information reasonably required by the director
12 or the department for the administration, collection, and remittance
13 of the taxes imposed by this chapter.

14 (3) Regarding taxable gaming services, the report required
15 under subsection (B)(1) shall set forth:
16 (a) the gross receipts, total gaming payoffs, and gaming
17 specific taxes referred to in Section 12-34-702(E);
18 (b) other information reasonably required by the director
19 of the department for the administration, collection, and remittance
20 of the taxes imposed by this chapter.

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

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

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

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

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

37 (F) A report filed pursuant to subsection (B) shall be deemed
38 filed when it is:
39 (1) deposited in the United States mail, postage prepaid,
40 addressed to the department;
41 (2) delivered and accepted at the offices of the department;

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

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

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

8

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

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

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

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

29

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

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

40

41 Section 12-34-510. (A) Each person who is required to
42 register pursuant to Section 12-34-502 or Section 12-34-702, but

1 fails to do so, prior to notification by the department, shall be
2 liable for a penalty not to exceed five hundred dollars.

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

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

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

16 (2) Each person who willfully asserts an invalid intermediate
17 or export sales exemption from the taxes imposed by Section
18 12-34-201 is guilty of a misdemeanor and, upon conviction, may
19 be fined an amount not to exceed ten thousand dollars or
20 imprisoned for a period of not more than one year, or both.

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

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

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

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

38 (a) fifty dollars; or

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

41 (2) The amount of the penalty imposed pursuant to item (1)
42 shall be doubled with respect to any report filed after a written

1 inquiry with respect to the report is received by the taxpayer from
2 the department.

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

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

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

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

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

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

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

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

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

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

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

42 (J) If any check, money order, or other form of payment of any
43 amount receivable under this chapter is not duly paid, in addition

1 to other penalties provided by law, the person who tendered the
2 payment shall pay a penalty equal to the greater of:

3 (1) twenty five dollars; or

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

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

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

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

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

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

24

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

37

38 Section 12-34-512. In all disputes concerning taxes imposed
39 by this chapter, the person engaged in a dispute with the
40 department or the director, as the case may be, shall be entitled to
41 reasonable attorneys' fees, accountants' fees, and other reasonable
42 professional fees incurred in direct relation to the dispute, unless

1 the department or the director establishes that its position was
2 substantially justified.

3
4 Section 12-34-530. (A) Any person liable to collect or remit
5 taxes pursuant to this chapter shall keep records sufficient to
6 determine the amounts reported, collected, and remitted for a
7 period of six years after the latter of the filing of the report for
8 which the records formed the basis or when the report was due to
9 be filed. These records shall include, but are not limited to:

- 10 (1) a record of all Section 12-34-531 receipts provided;
11 (2) complete records of intermediate and export sales,
12 including purchasers' intermediate and export sales certificates and
13 tax numbers; and
14 (3) documentation of net payments.

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

20
21 Section 12-34-531. (A) For each purchase of taxable property
22 or services for which a tax is imposed by Section 12-34-201, the
23 seller shall charge the tax imposed by Section 12-34-201
24 separately from the net payment. For each purchase of taxable
25 property or services for which a tax is imposed by Section
26 12-34-201, the seller shall provide to the purchaser a receipt for
27 each transaction that includes:

- 28 (1) the property or services price exclusive of tax;
29 (2) the amount of tax paid;
30 (3) the property or services price inclusive of tax;
31 (4) the tax rate divided by the property or services price
32 exclusive of tax;
33 (5) the date that the property or service was sold;
34 (6) the name of the seller; and
35 (7) the seller's registration number provided by the
36 department.

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

- 40 (1) that dispense taxable property in exchange for coins or
41 currency; and
42 (2) that sell no single item exceeding ten dollars per unit in
43 price.

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

5

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

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

14 (2) if:

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

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

22

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

26 (B) For all other purposes in this chapter:

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

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

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

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

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

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

15 (F) During each calendar month, the director shall determine
16 the federal short-term rate, the federal mid-term rate, and the
17 federal long-term rate which shall apply during the following
18 calendar month. The director must publish the rates on the
19 department's internet website.

20

21 ARTICLE 6

22

23 Collections, Appeals, Taxpayer Rights

24

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

27

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

33 (B) Problem resolution officers shall have the authority to
34 investigate complaints and issue Taxpayer Assistance Orders to
35 administratively enjoin any collection activity if, in the opinion of
36 the problem resolution officer, the collection activity is reasonably
37 likely to not be in compliance with law, or to impose an undue
38 hardship other than by reason of having to pay taxes lawfully due.
39 Problem resolution officers shall also have the authority to issue
40 Taxpayer Assistance Orders releasing or returning property that
41 has been levied upon or seized or ordering that a lien be released
42 and that garnished wages be returned. A Taxpayer Assistance
43 Order may only be rescinded or modified by the problem

1 resolution officer that issued it, by the director, or by the general
2 counsel of the department upon a finding that the collection
3 activity is justified by clear and convincing evidence. The
4 authority to rescind or modify a Taxpayer Assistance Order may
5 not be delegated.

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

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

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

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

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

38

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

42 (1) commenced an audit or investigation;

43 (2) issued a final notice of amount due;

- 1 (3) filed an administrative lien, levy, or garnishment;
- 2 (4) commenced other collection action;
- 3 (5) commenced an action for civil penalties; or
- 4 (6) any other legal action.

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

13 (C) In all dealings with the department, a person shall have the
14 right to assistance, at their own expense, subject to Section
15 12-34-512, of one or more professional advisors.

16 (C) Any person who is interviewed by an agent of the
17 department shall have the right to video or audio tape the interview
18 at the person's own expense.

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

- 28 (1) the address last provided by a registered seller; or
- 29 (2) the best available address to a person who is not a
30 registered seller.

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

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

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

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

7 (5) The department may disclose the report and report
8 information to the decedent's:

9 (a) administrator, executor, estate trustee; or

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

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

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

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

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

27

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

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

42

43

ARTICLE 7

1
2 Special Rules
3

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

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

- 11 (1) taxable property and services purchased;
- 12 (2) wages and salary paid; and
- 13 (3) taxes of any type paid,

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

17 (C) This section does not apply to qualified not-for-profit
18 organizations.

19
20 Section 12-34-702. (A) For purposes of this section, the term
21 'taxable gaming services' means:

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

24 (2) the sum of:

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

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

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

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

38 (1) a random or unpredictable event; or

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

41 (D) Notwithstanding any other provision in this article, a
42 chance is not taxable property or services for purposes of Section
43 12-34-201.

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

6

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

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

15

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

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

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

39 (2) Government enterprises may not use the exemption
40 afforded by Section 12-34-202 to serve as a conduit for tax-free
41 purchases by governmental units that would otherwise be subject
42 to taxation on purchases pursuant to Section 12-34-703. Transfers
43 of taxable property or services, which were purchased pursuant to

1 an exemption from tax under this chapter, from a government
2 enterprise to a non-exempt governmental unit shall be taxable.

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

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

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

17

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

19 (a) and Section 12-34-302, the term 'mixed use property
20 or service' is a taxable property or service used for both taxable
21 use or consumption and for a purpose that would not be subject to
22 tax pursuant to Section 12-34-202.

23 (b) 'Business use ratio' means the ratio of business use to
24 total use for a particular calendar month, or portion of a month if
25 the property was owned for only part of said calendar month. For
26 vehicles, the 'business use ratio' means the ratio of business
27 purpose miles to total miles in a particular calendar month. For
28 real property, 'business use ratio' means the ratio of floor space
29 used primarily for business purposes to total floor space in a
30 particular calendar month. For tangible personal property other
31 than vehicles, 'business use ratio' means the ratio of total time
32 used for business purposes to total time used in a particular
33 calendar month. For other property or services, 'business use
34 ratio' shall be calculated using a reasonable method. Reasonable
35 records must be maintained to support a person's business use of
36 the mixed use property or service.

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

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

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

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

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

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

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

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

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

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

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

27

28 Section 12-34-706. (A) For purposes of this section, the term
29 'qualified not-for-profit organization' means a not-for-profit
30 organization organized and operated exclusively:

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

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

35 (b) as civic leagues or social welfare organizations;

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

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

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

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

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

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

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

13

14

ARTICLE 8

15

16

Financial Intermediation Services

17

18 Section 12-34-801. For purposes of this chapter:

19 (1) 'Financial intermediation services' means the sum of:

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

22 (b) implicitly charged fees for financial intermediation
23 services.

24 (2) 'Explicitly charged fees for financial intermediation
25 services' means:

26 (a) brokerage fees;

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

29 (c) safe-deposit box fees;

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

33 (e) trustees' fees; and

34 (f) other financial services fees.

35 (3) 'Implicitly charged fees for financial intermediation
36 services' means the gross imputed amount in relation to any
37 underlying interest-bearing investment, account, or debt.

38 (4) 'Gross imputed amount' means:

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

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

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

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

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

5 (ii) the amount of the debt.

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

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

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

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

20
21 Section 12-34-810. The tax on financial intermediation
22 services provided by Section 12-34-201 with respect to an
23 underlying investment account or debt shall be imposed and
24 collected with the same frequency that statements are rendered by
25 the financial institution in connection with the investment account
26 or debt, but not less frequently than quarterly.

27
28 Section 12-34-820. (A) For purposes of this section, the term
29 'financing lease' means any lease under which the lessee has the
30 right to acquire the property for fifty percent or less of its fair
31 market value at the end of the lease term.

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

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

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

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

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

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

12
13 Section 12-34-830. For purposes of this chapter, the basic
14 interest rate with respect to a debt instrument, investment,
15 financing lease, or account shall be the applicable interest rate as
16 determined in Section 12-34-550. For debt instruments,
17 investments, or accounts of contractually fixed interest, the
18 applicable interest rate of the month of issuance shall apply. For
19 debt instruments, investments, or accounts of variable interest rates
20 and which have no referenced interest rate, the applicable interest
21 shall be the federal short-term interest rate for each month. For
22 debt instruments, investments, or accounts of variable interest rates
23 and which have a referenced interest rate, the applicable interest
24 shall be the applicable interest rate for the referenced interest rate
25 for each month.

26
27 Section 12-34-840. (A) Financial intermediation services
28 shall be deemed as used or consumed within the State if the
29 person, or any related party, purchasing the services is a resident of
30 this State.

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

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

41

42 ARTICLE 9

43

Additional Matters

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

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

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

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

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

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

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

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

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

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

(F) If a registered person provides taxable property or services to a person either as a gift, prize, reward, or as remuneration for employment, and such taxable property or services were not previously subject to tax pursuant to Section 12-34-201, then the provision of such taxable property or services by the registered

1 person shall be deemed the conversion of such taxable property or
2 services to personal use and subject to tax pursuant to Section
3 12-34-203(C) at the tax exclusive fair market value of such taxable
4 property or services.

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

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

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

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

- 25 (a) the employee discount amount, minus;
- 26 (b) twenty percent of the amount for which said taxable
27 property or services would have been sold to the general public.

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

33
34 Section 12-34-910. (A)(1) Inventory held by a trade or
35 business on the close of business on December thirty-first of the
36 year that this chapter is enacted shall be qualified inventory if it is
37 sold:

- 38 (a) before December thirty-first for the subsequent
39 calendar year;
- 40 (b) by a registered person; and
- 41 (c) subject to the tax imposed by Section 12-34-201.

42 (2) For purposes of this section, qualified inventory shall
43 have the cost that it had for federal income tax purposes for the

1 trade or business as of December thirty-first of the year that this
2 chapter is adopted.

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

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

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

16 (C)(1) Qualified inventory held by businesses that sell said
17 qualified inventory not subject to tax pursuant to Section
18 12-34-202(A) shall be eligible for the transitional inventory credit
19 only if that business, or a business that has successor rights
20 pursuant to subsection (C)(2), receives certification in a form
21 satisfactory to the director that the qualified inventory was
22 subsequently sold subject to the tax imposed by this chapter.

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

32

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

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

41 (C) The General Assembly shall allocate an amount deemed
42 appropriate to the South Carolina Education Improvement Act of

1 1984 Fund, as described in Section 59-21-1010(B), as part of the
2 annual general appropriations act.

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

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

12

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

17 (B) A special vote means an affirmative two-thirds vote of the
18 total membership of the Senate and an affirmative two-thirds vote
19 of the total membership of the House of Representatives and
20 approval by the Governor.

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

27

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

31

32 SECTION 3. The provisions in the bill become effective on
33 January first of the year immediately following approval by the
34 Governor’s signature.

35

----XX----

36