

South Carolina General Assembly
120th Session, 2013-2014

H. 3116

STATUS INFORMATION

General Bill

Sponsors: Reps. Taylor, Bedingfield, Edge, Daning, Wells, Long, Hardwick, Spires, Sottile, J.R. Smith, Hixon, Simrill, Atwater, Rivers, Wood, G.M. Smith, Lucas, Delleney, Kennedy, Huggins, Nanney, Chumley, Brannon, Erickson, Pitts, Willis, Toole, Pope, Quinn, Bingham, D.C. Moss, Clemmons, Putnam, G.R. Smith, Hamilton, V.S. Moss, Allison, Forrester, Patrick, Lowe, Whitmire, Southard, Limehouse, McCoy, Barfield, Gagnon, Henderson, Tallon, Cole, Crosby, Norman, Herbkersman, Newton and Goldfinch

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Companion/Similar bill(s): 185

Introduced in the House on January 8, 2013

Currently residing in the House Committee on **Ways and Means**

Summary: Fair Tax Act

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
12/11/2012	House	Prefiled
12/11/2012	House	Referred to Committee on Ways and Means
1/8/2013	House	Introduced and read first time (House Journal-page 90)
1/8/2013	House	Referred to Committee on Ways and Means (House Journal-page 90)
1/16/2013	House	Member(s) request name added as sponsor: Hardwick, Spires, Sottile, J.R.Smith, Hixon, Simrill
1/23/2013	House	Member(s) request name added as sponsor: Atwater
1/31/2013	House	Member(s) request name added as sponsor: Rivers, Wood
2/5/2013	House	Member(s) request name added as sponsor: G.M.Smith, Lucas, Delleney, Kennedy, Huggins, Nanney, Chumley, Brannon, Erickson, Pitts, Willis, Toole, Pope, Quinn, Bingham, D.C.Moss, Clemmons, Putnam, G.R.Smith, Hamilton, V.S.Moss, Allison, Forrester
2/6/2013	House	Member(s) request name added as sponsor: Patrick, Lowe, Whitmire, Southard, Limehouse, McCoy, Barfield, Gagnon, Henderson, Tallon, Cole
2/7/2013	House	Member(s) request name added as sponsor: Crosby, Norman
2/21/2013	House	Member(s) request name added as sponsor: Herbkersman, Newton
2/26/2013	House	Member(s) request name added as sponsor: Goldfinch

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VERSIONS OF THIS BILL

[12/11/2012](#)

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A BILL

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

1 HOMESTEAD EXEMPTION FUND, THE STATE PUBLIC
2 SCHOOL BUILDING FUND, THE SOUTH CAROLINA
3 EDUCATION IMPROVEMENT ACT OF 1984 FUND,
4 FUNDING FOR MUNICIPALITIES AND COUNTIES, AND
5 THE TOURISM EXPENDITURE REVIEW COMMITTEE; TO
6 PROVIDE FOR A SPECIAL VOTE TO AMEND OR REPEAL
7 THIS ACT WITHIN THREE YEARS OF ITS ENACTMENT
8 AND REFERENDUM FOR CHANGES AFTER THE FOURTH
9 YEAR; AND TO REPEAL CHAPTERS 6, 8, 11, 13, 16, 36, 58,
10 AND 62 OF TITLE 12 RELATING TO THE SOUTH
11 CAROLINA INCOME TAX, AND INCOME TAX
12 WITHHOLDING, THE BANK TAX, THE BUILDING AND
13 LOAN ASSOCIATION TAX, THE SOUTH CAROLINA
14 ESTATE TAX, THE SOUTH CAROLINA SALES TAX, THE
15 TAXPAYER BILL OF RIGHTS, AND THE SOUTH
16 CAROLINA MOTION PICTURE INCENTIVE ACT ALL
17 REPLACED BY THE PROVISIONS OF THE SOUTH
18 CAROLINA FAIR TAX ACT.

19

20 Be it enacted by the General Assembly of the State of South
21 Carolina:

22

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

24

25 “CHAPTER 34

26

27 South Carolina Fair Tax Act

28

29 Article 1

30

31 Citations, Purposes, and Definitions

32

33 Section 12-34-101. This chapter may be cited as the ‘South
34 Carolina Fair Tax Act’.

35

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

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

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

- 1 (2) tax all non federal government consumption of goods
- 2 and services in this State without exception, but only once;
- 3 (3) prevent double, multiple, or cascading taxation;
- 4 (4) simplify the tax law and reduce the administrative costs
- 5 of, and the costs of compliance with, the tax law; and
- 6 (5) provide for the administration of the tax law in a manner
- 7 that respects privacy, due process, individual rights when
- 8 interacting with the government, the presumption of innocence in
- 9 criminal proceedings, and the presumption of lawful behavior in
- 10 civil proceedings.

11 (C) As a secondary aid in statutory construction, any court, the

12 director, and the department shall consider:

- 13 (1) the common law canons of statutory construction;
- 14 (2) the meaning and construction of concepts and terms used
- 15 in the 1976 Code in effect before the effective date of this chapter;
- 16 and
- 17 (3) any ambiguities in this chapter in favor of reserving
- 18 powers to the people.

19

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

21 (1) A firm is affiliated with another if one of the firms owns

22 fifty percent or more of:

- 23 (a) the voting shares of the other firm, when the other firm
- 24 is a corporation; or
- 25 (b) the capital interests of the other firm, when the other
- 26 firm is not a corporation.

27 (2) 'Designated commercial private courier service' means a

28 firm designated as such by the director or the department, upon

29 application by the firm, if the firm:

- 30 (a) provides its services to the general public;
- 31 (b) records electronically to its data base kept in the
- 32 regular course of its business the date on which an item was given
- 33 to such firm for delivery; and
- 34 (c) has been operating as a courier service for at least one
- 35 year.

36 (3) 'Director' means the Director of the Department of

37 Revenue.

38 (4) 'Education and training' means primary, secondary, or

39 postsecondary level education and job-related training courses for

40 which one incurs costs for tuition, books, or laboratory or other

41 class related direct fees. Such term does not include room, board,

42 sports activities, recreational activities, hobbies, games, arts or

43 crafts, or cultural activities.

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

3 (6) 'Intangible property' includes copyrights, trademarks,
4 patents, goodwill, financial instruments, securities, commercial
5 paper, debts, notes and bonds, and other property deemed
6 intangible at common law. Intangible property does not include
7 tangible personal property, or rents or leaseholds of any term, real
8 property, or rents or leaseholds of any term, and computer
9 software.

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

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

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

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

35 (11) 'Taxable employer' includes:

36 (a) any household employing domestic servants; and

37 (b) any government, except for government enterprises.

38 The term 'taxable employer' does not include any employer
39 which is engaged in a trade or business, a qualified not-for-profit
40 organization, a government enterprise, or an educational or
41 training institution. The term also does not include federal
42 government and its agencies, until such time as federal law allows
43 state taxation of the federal government.

1 (12) 'Taxable property or service' means:
2 (a) any property, including leaseholds of any term or rents
3 with respect to the property, except for:
4 (i) intangible property; and
5 (ii) used property; and
6 (b) any service, including any financial intermediation
7 services.

8 (13) 'Service' shall include, but not be limited to, any service
9 performed by an employee for which the employee is paid wages
10 or a salary by a taxable employer, but shall not include any service
11 performed by an employee for which the employee is paid wages
12 or a salary:

13 (a) by an employer in the regular course of the employer's
14 trade or business;

15 (b) by an employer that is a qualified not-for-profit
16 organization;

17 (c) by an employer that is a government enterprise;

18 (d) by taxable employers to employees directly providing
19 education and training; or

20 (e) by the federal government and its agencies.

21 (14) 'Tax inclusive fair market value' means the fair market
22 value of taxable property or services plus the tax imposed by this
23 chapter.

24 (15) 'Used property' means:

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

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

31 (16) 'Wages' and 'salary' mean all compensation paid for
32 employment service including cash compensation, employee
33 benefits, disability insurance, wage replacement insurance
34 payments, unemployment compensation insurance, workers'
35 compensation insurance, and the fair market value of any other
36 consideration paid by an employer to an employee in consideration
37 for employment services rendered.

38

39

Article 2

40

41 Judicial Interpretation and Imposition of Tax

42

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

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

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

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

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

16

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

18 (1) 'Purchased for a business purpose in a trade or business'
19 means purchased by a person engaged in a trade or business and
20 used in that trade or business:

21 (a) for resale;

22 (b) to produce, provide, render, or sell taxable property or
23 services; or

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

25 (2) 'Purchased for an investment purpose' means property
26 purchased exclusively for purposes of appreciation or the
27 production of income but not entailing more than minor personal
28 efforts.

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

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

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

38

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

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

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

8 (C) Property or services purchased for a business purpose in a
9 trade or business or for export that were sold untaxed pursuant to
10 Section 12-34-202(B)(1) that were subsequently converted to
11 personal use shall be deemed purchased at the time of conversion
12 and shall be subject to the tax imposed by Section 12-34-201 at the
13 fair market value of the converted property as of the date of
14 conversion. The tax shall be due as if the property had been sold at
15 the fair market value during the month of conversion. The person
16 using or consuming the converted property is liable for and shall
17 remit the tax.

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

23

24

Article 3

25

26

Credits and Refunds

27

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

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

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

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

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

39 (5) the insurance proceeds credit pursuant to Section
40 12-34-306 for the month;

41 (6) the transitional inventory credit pursuant to Section
42 12-34-910; or

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

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

3
4 Section 12-34-302. (A) For purposes of Section
5 12-34-301(A)(1), a person's business use conversion credit for any
6 month is the amount determined under subsection (B) with respect
7 to taxable property and services:

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

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

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

14 (1) the product of:

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

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

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

22
23 Section 12-34-303. For purposes of Section 12-34-301(A)(2),
24 a person's intermediate and export sales credit is the amount of
25 sales tax paid on the purchase of any taxable property or service
26 purchased for:

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

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

30
31 Section 12-34-304. (A) Every person filing a timely monthly
32 report, with regard to extensions, in compliance with Section
33 12-34-501 shall be entitled to a taxpayer administrative credit
34 equal to the greater of:

35 (1) two hundred dollars; or

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

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

40
41 Section 12-34-305. (A) For the purposes of this section:

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

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

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

8 (B)(1) No business debt shall be considered wholly or partially
9 worthless unless it has been in arrears for one hundred eighty days
10 or more, except that if a debt is discharged wholly or partially in
11 bankruptcy before one hundred eighty days have elapsed, then it
12 shall be deemed wholly or partially worthless on the date of
13 discharge.

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

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

- 21 (1) the rate imposed by Section 12-34-201; and
- 22 (2) the amount of the bad debt.

23 (D) Any person electing the accrual method pursuant to Section
24 12-34-503(B) that has with respect to a transaction:

- 25 (1) invoiced the tax imposed by Section 12-34-201;
- 26 (2) remitted the invoiced tax;
- 27 (3) actually delivered the taxable property or performed the
28 taxable services invoiced; and
- 29 (4) not been paid one hundred eighty days after the date the
30 invoice was due to be paid;

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

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

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

- 40 (1) for fully taxable payments, between payment for the
41 taxable property and service and tax; and
- 42 (2) for partially taxable payments, among payment for the
43 taxable property and service, tax, and other payment.

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

3
4 Section 12-34-306. (A)(1) A person receiving a payment from
5 an insurer by virtue of an insurance contract shall be entitled to a
6 credit in an amount determined by subsection (B), less any amount
7 paid to the insured by the insurer pursuant to subsection (C), if the
8 entire premium, except that portion allocable to the investment
9 account of the underlying policy, for the insurance contract giving
10 rise to the insurer's obligation to make a payment to the insured
11 was subject to the tax imposed by Section 12-34-201 and the tax
12 was paid.

13 (2) For purposes of this subsection, the term 'insurance
14 contract' shall include a life insurance contract, a health insurance
15 contract, a property and casualty loss insurance contract, a general
16 liability insurance contract, a marine insurance contract, a fire
17 insurance contract, an accident insurance contract, a disability
18 insurance contract, a long-term care insurance contract, and an
19 insurance contract that provides a combination of these types of
20 insurance.

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

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

23 (2) the amount of the payment made by the insurer to the
24 insured.

25 (C) The credit determined pursuant to subsection (B) shall be
26 paid by the insurer to the insured and the insurer shall be entitled to
27 the credit in lieu of the insured, except that the insurer may elect,
28 in a form prescribed by the director, to not pay the credit and
29 require the insured to make application for the credit. In the event
30 of an election, the insurer shall provide to the director and the
31 insured the name and tax identification number of the insurer and
32 of the insured and indicate the proper amount of the credit.

33 (D) If taxable property or services purchased by an insurer on
34 behalf of an insured are purchased free of tax by virtue of Section
35 12-34-103(A)(9), then the credit provided by this section shall not
36 be available with respect to that purchase.

37
38 Section 12-34-320. (A) If a registered seller files a monthly
39 tax report with an overpayment, then, upon application by the
40 registered seller in a form prescribed by the department, the
41 overpayment shown on the report shall be refunded by the
42 department to the registered seller within sixty days of receipt of
43 the application. In the absence of the application, the overpayment

1 may be carried forward, without interest, by the person entitled to
2 the credit.

3 (B) If a person other than a registered seller has an
4 overpayment for any month, then, upon application by the person
5 in a form prescribed by the department, the overpayment shown on
6 the report shall be refunded by the department to the person within
7 sixty days of receipt of the application.

8 (C) No interest shall be paid on any overpayment due from the
9 department under this section for any month if the overpayment
10 due is paid within sixty days after the application for refund is
11 received by the department. Overpayments due, but not paid
12 within sixty days after the application for refund is received by the
13 department, shall bear interest from the date of application.
14 Interest shall be paid by the department at the federal short-term
15 rate as defined in Section 12-34-550.

16 (D) The sixty-day periods in subsections (A) and (B) shall be
17 suspended with respect to a purported overpayment, or portion of
18 an overpayment, only during any period that there is in effect a
19 temporary or preliminary injunction or other ruling from a federal
20 or state court that there is reasonable cause to believe that the
21 overpayment may not actually be due, or a permanent injunction or
22 other final ruling from a federal or state court that orders the
23 department not to refund the overpayment.

24

25 Article 4

26

27 Family Consumption Allowance

28

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

32 (1) the rate of tax imposed by Section 12-34-201; and

33 (2) the monthly poverty level.

34

35 Section 12-34-402. (A) For purposes of this article, the term
36 'qualified family' shall mean one or more family members sharing
37 a common residence. All family members sharing a common
38 residence shall be considered as part of one qualified family.

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

41 (a) an individual;

42 (b) the individual's spouse;

1 (c) all lineal ancestors and descendants of the individual
2 and the individual's spouse;

3 (d) all legally adopted children of the individual and the
4 individual's spouse; and

5 (e) all children under legal guardianship of the individual
6 and the individual's spouse.

7 (2) In order for a person to be counted as a family member
8 for purposes of determining the size of the qualified family, the
9 person must:

10 (a) have a bona fide Social Security number; and

11 (b) be a lawful resident of the United States.

12 (C)(1) Any person, who is a registered student during not fewer
13 than five months in a calendar year while living away from the
14 common residence of a qualified family but who receives over
15 fifty percent of his support during a calendar year from members
16 of the qualified family, shall be included as part of the qualified
17 family whose members provided that support.

18 (2) If a child's parents are divorced or legally separated, a
19 child for purposes of this article shall be included as part of the
20 qualified family of the custodial parent. In cases of joint custody,
21 the custodial parent for purposes of this article shall be the parent
22 that has custody of the child for more than one-half of the time
23 during a given calendar year. A parent entitled to be treated as the
24 custodial parent pursuant to this paragraph may release this claim
25 in writing to the other parent.

26 (D) In order to receive the sales tax rebate provided by Section
27 12-34-401, a qualified family must register annually with the
28 department in a form prescribed by the director. The annual
29 registration form shall provide:

30 (1) the name of each family member who shared the
31 qualified family's common residence on the family determination
32 date;

33 (2) the Social Security number of each family member who
34 shared the qualified family's common residence on the family
35 determination date;

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

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

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

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

1 (7) the address of the qualified family.

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

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

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

10 (G) Any qualified family that failed to timely make its annual
11 registration in accordance with this section, but subsequently
12 registers, shall be entitled to up to six months of lapsed sales tax
13 rebate payments. No interest on lapsed payment amount shall be
14 paid.

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

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

21 (J) An annual or revised registration shall be deemed filed
22 when:

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

25 (2) delivered and accepted at the offices of the department;
26 or

27 (3) provided to a designated commercial private courier
28 service for delivery within two days to the department at the
29 address of the department.

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

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

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

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

4 (M) The family determination date is a date assigned to each
5 family by the director for purposes of determining qualified family
6 size and other information necessary for the administration of this
7 article. The director shall promulgate regulations regarding the
8 issuance of family determination dates. In the absence of any
9 regulations, the family determination date for all families shall be
10 July first. The director may assign family determination dates for
11 administrative convenience. Permissible means of assigning
12 family determination dates include, but are not limited to, a
13 method based on the birthdates of family members.

14
15 Section 12-43-403. (A) For purposes of this section:

16 (1) 'Annual poverty level' shall be the sum of:

17 (a) the annual poverty guideline for a particular family
18 size as determined by the United States Department of Health and
19 Human Services under sections 652 and 673(2) of the Omnibus
20 Budget Reconciliation Act of 1981; and

21 (b) in the case of families that include a married couple,
22 the annual marriage penalty elimination amount.

23 (2) 'Annual marriage penalty elimination amount' shall be:

24 (a) the amount that is two times the annual poverty
25 guideline for a family of one as determined by the United States
26 Department of Health and Human Services under sections 652 and
27 673(2) of the Omnibus Budget Reconciliation Act of 1981; less

28 (b) the annual poverty guideline for a family of two as
29 determined by the United States Department of Health and Human
30 Services under sections 652 and 673(2) of the Omnibus Budget
31 Reconciliation Act of 1981.

32 (B) The monthly poverty level for any particular month shall be
33 one-twelfth of the annual poverty level.

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

38 (B) The payments shall be made to the persons designated by
39 the qualifying family in the annual or revised registration form for
40 each qualified family in effect with respect to the month for which
41 payment is being made. Payments may only be made to persons
42 eighteen years of age or older. If more than one person is
43 designated on a registration form to receive the rebate, then the

1 rebate payment shall be divided evenly between or among those
2 persons designated.

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

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

11

12 Section 12-34-420. (A) In the absence of the filing of a
13 revised registration in accordance with this article, the common
14 residence of the qualified family, marital status, and number of
15 persons in a qualified family on the family determination date shall
16 govern determinations required to be made under this article for
17 purposes of the following twelve calendar months.

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

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

23 (1) the name of each family member who shared the
24 qualified family's common residence on the filing date of the
25 revised registration;

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

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

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

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

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

37 (7) the address of the qualified family.

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

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

1 (E) Revised registrations reflecting changes in family status are
2 not mandatory.

3
4 Article 5

5
6 Other Administrative Provisions

7
8 Section 12-34-501. (A) For purposes of this section, the term
9 'week' shall mean the seven-day period ending on Friday.

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

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

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

18 (2) Regarding taxable property and services, the report
19 required pursuant to subsection (B)(1) shall set forth:

20 (a) the net payments referred to in Section 12-34-201;

21 (b) the tax collected under this chapter in connection with
22 the payments;

23 (c) the amount and type of any credit claimed; and

24 (d) other information reasonably required by the director
25 or the department for the administration, collection, and remittance
26 of the taxes imposed by this chapter.

27 (3) Regarding taxable gaming services, the report required
28 under subsection (B)(1) shall set forth:

29 (a) the gross receipts, total gaming payoffs, and gaming
30 specific taxes referred to in Section 12-34-702(E);

31 (b) other information reasonably required by the director
32 of the department for the administration, collection, and remittance
33 of the taxes imposed by this chapter.

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

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

40 (2) Upon application, extensions of thirty to sixty days to
41 file reports shall be liberally granted by the department for
42 reasonable cause. Extensions greater than sixty days may be
43 granted by the department to avoid hardship.

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

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

7 (F) A report filed pursuant to subsection (B) shall be deemed
8 filed when it is:

9 (1) deposited in the United States mail, postage prepaid,
10 addressed to the department;

11 (2) delivered and accepted at the offices of the department;

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

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

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

19

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

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

27 (C) Every person registered pursuant to subsection (A) or
28 Section 12-34-702(A) shall designate, in a manner prescribed by
29 the director, a tax matters person who shall be an individual whom
30 the department may contact regarding tax matters. Each person
31 registered must provide notice of a change, in a manner prescribed
32 by the director, in the identity of the tax matters person within
33 thirty days of the change.

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

40

41 Section 12-34-503. (A) Registered sellers, gaming sponsors,
42 and other persons shall file reports under this article using the cash

1 method of accounting, unless an election to use the accrual method
2 of accounting is made pursuant to subsection (B).

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

9

10 Section 12-34-510. (A) Each person who is required to
11 register pursuant to Section 12-34-502 or Section 12-34-702, but
12 fails to do so, prior to notification by the department, shall be
13 liable for a penalty not to exceed five hundred dollars.

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

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

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

27 (2) Each person who wilfully asserts an invalid intermediate or
28 export sales exemption from the taxes imposed by Section
29 12-34-201 is guilty of a misdemeanor and, upon conviction, may
30 be fined an amount not to exceed ten thousand dollars or
31 imprisoned for a period of not more than one year, or both.

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

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

40 (E) Each person who is required to and recklessly or wilfully
41 fails to pay taxes imposed by this chapter shall be liable for a
42 penalty equal to the greater of five hundred dollars or twenty
43 percent of the taxes not paid.

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

6 (a) fifty dollars; or

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

9 (2) The amount of the penalty imposed pursuant to item (1)
10 shall be doubled with respect to any report filed after a written
11 inquiry with respect to the report is received by the taxpayer from
12 the department.

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

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

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

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

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

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

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

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

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

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

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

10 (J) If any check, money order, or other form of payment of any
11 amount receivable under this chapter is not duly paid, in addition
12 to other penalties provided by law, the person who tendered the
13 payment shall pay a penalty equal to the greater of:

14 (1) twenty five dollars; or

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

16 (K) The tax matters person or the tax representative and
17 responsible officers, members and managers of a limited liability
18 company, or partners of a firm shall be jointly and severally liable
19 for the tax imposed by this chapter and penalties imposed by this
20 article.

21 (L) If more than one person is liable with respect to any tax or
22 penalty imposed by this chapter, each person who paid the tax or
23 penalty shall be entitled to recover from other persons who are
24 liable for the tax or penalty an amount equal to the excess of the
25 amount paid by such person over the person's proportionate share
26 of the tax or penalty.

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

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

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

35
36 Section 12-34-511. In all disputes concerning taxes imposed
37 by this chapter, the person engaged in a dispute with the
38 department or the director, as the case may be, shall have the
39 burden of production of documents and records, but the
40 department or the director shall have the burden of persuasion. In
41 all disputes concerning an exemption claimed by a purchaser, if the
42 seller has on file an intermediate sale or export sale certificate from
43 the purchaser and did not have reasonable cause to believe that the

1 certificate was improperly provided by the purchaser with respect
2 to the purchase, then the burden of production of documents and
3 records relating to that exemption shall rest with the purchaser and
4 not with the seller.

5

6 Section 12-34-512. In all disputes concerning taxes imposed
7 by this chapter, the person engaged in a dispute with the
8 department or the director, as the case may be, shall be entitled to
9 reasonable attorneys' fees, accountants' fees, and other reasonable
10 professional fees incurred in direct relation to the dispute, unless
11 the department or the director establishes that its position was
12 substantially justified.

13

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

20 (1) a record of all Section 12-34-531 receipts provided;

21 (2) complete records of intermediate and export sales,
22 including purchasers' intermediate and export sales certificates and
23 tax numbers; and

24 (3) documentation of net payments.

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

30

31 Section 12-34-531. (A) For each purchase of taxable property
32 or services for which a tax is imposed by Section 12-34-201, the
33 seller shall charge the tax imposed by Section 12-34-201
34 separately from the net payment. For each purchase of taxable
35 property or services for which a tax is imposed by Section
36 12-34-201, the seller shall provide to the purchaser a receipt for
37 each transaction that includes:

38 (1) the property or services price exclusive of tax;

39 (2) the amount of tax paid;

40 (3) the property or services price inclusive of tax;

41 (4) the tax rate divided by the property or services price
42 exclusive of tax;

43 (5) the date that the property or service was sold;

1 (6) the name of the seller; and
2 (7) the seller's registration number provided by the
3 department.

4 (B) The requirements of subsection (A) shall not apply to sales
5 through vending machines. Vending machines for purposes of this
6 subsection are machines:

7 (1) that dispense taxable property in exchange for coins or
8 currency; and

9 (2) that sell no single item exceeding ten dollars per unit in
10 price.

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

15
16 Section 12-34-540. No penalties shall be assessed pursuant to
17 Section 12-34-510 with respect to a period during which a case is
18 pending under Title 11, United States Code, against a person who
19 is otherwise subject to a penalty:

20 (1) if the tax was incurred by the estate and the failure
21 occurred pursuant to an order of the court finding probable
22 insufficiency of funds of the estate to pay administrative expenses;
23 or

24 (2) if:

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

28 (b) the petition was filed before the due date prescribed by
29 law, including extensions, for filing a return of the tax, or the date
30 for making the addition to tax occurs on or after the date the
31 petition was filed.

32
33 Section 12-34-550. (A) For underpayments, overpayments,
34 and refunds, interest shall be calculated at the rates stipulated in
35 Chapter 54, Title 12.

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

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

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

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

4 (C)(1) The federal short-term rate shall be the rate determined
5 by the director based on the average market yield on outstanding
6 marketable obligations of the United States with remaining periods
7 to maturity of three years or fewer. The outstanding marketable
8 obligations selected by the director to determine the federal
9 short-term rate must end during the calendar month in which the
10 determination is made during any one month.

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

18 (3) The federal long-term rate shall be the rate determined
19 by the director based on the average market yield on outstanding
20 marketable obligations of the United States with remaining periods
21 to maturity of more than nine years. The outstanding marketable
22 obligations selected by the director to determine the federal
23 long-term rate must end during the calendar month in which the
24 determination is made during any one month.

25 (D) During each calendar month, the director shall determine
26 the federal short-term rate, the federal mid-term rate, and the
27 federal long-term rate which shall apply during the following
28 calendar month. The director must publish the rates on the
29 department's Internet website.

30

31 Article 6

32

33 Collections, Appeals, Taxpayer Rights

34

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

37

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

1 (B) Problem resolution officers shall have the authority to
2 investigate complaints and issue Taxpayer Assistance Orders to
3 administratively enjoin any collection activity if, in the opinion of
4 the problem resolution officer, the collection activity is reasonably
5 likely to not be in compliance with law, or to impose an undue
6 hardship other than by reason of having to pay taxes lawfully due.
7 Problem resolution officers shall also have the authority to issue
8 Taxpayer Assistance Orders releasing or returning property that
9 has been levied upon or seized or ordering that a lien be released
10 and that garnished wages be returned. A Taxpayer Assistance
11 Order may only be rescinded or modified by the problem
12 resolution officer that issued it, by the director, or by the general
13 counsel of the department upon a finding that the collection
14 activity is justified by clear and convincing evidence. The
15 authority to rescind or modify a Taxpayer Assistance Order may
16 not be delegated.

17 (C) The director shall establish a form and procedure to aid
18 persons requesting the assistance of the Problem Resolution Office
19 and to aid the Problem Resolution Office in understanding the
20 needs of the person seeking assistance. The use of this form,
21 however, shall not be a prerequisite to a problem resolution officer
22 taking action, including issuing a Taxpayer Assistance Order.

23 (D) A Taxpayer Assistance Order shall contain the name of the
24 problem resolution officer, any provision relating to the running of
25 any applicable statute of limitations, the name of the person that
26 the Taxpayer Assistance Order assists, the government office to
27 whom it is directed, and the action or cessation of action that the
28 Taxpayer Assistance Order requires of said government office.
29 The Taxpayer Assistance Order need not contain findings of fact
30 or its legal basis; however, the problem resolution officer must
31 provide findings of fact and the legal basis for the issuance of the
32 Taxpayer Assistance Order to the department upon the request of
33 an officer of said government office within two weeks of the
34 receipt of such request.

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

40 (F) Nothing in this section shall limit the authority of the
41 department, the registered person, or other person from pursuing
42 any legal remedy in any court with jurisdiction over the dispute at
43 issue.

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

6
7 Section 12-34-630. (A) The department shall provide a
8 document setting forth in plain English the rights of the person to
9 any person against whom it has:

- 10 (1) commenced an audit or investigation;
- 11 (2) issued a final notice of amount due;
- 12 (3) filed an administrative lien, levy, or garnishment;
- 13 (4) commenced other collection action;
- 14 (5) commenced an action for civil penalties; or
- 15 (6) any other legal action.

16 (B) The document shall explain the administrative appeals
17 process, the authority of the Problem Resolution Office and how to
18 contact the office, the burden of production and persuasion that the
19 person and the department bear, the right of the person to
20 professional fees, the right to record interviews, and any additional
21 rights as the person may possess pursuant to this chapter. The
22 document will also set forth the procedures for entering into an
23 installment agreement.

24 (C) In all dealings with the department, a person shall have the
25 right to assistance, at their own expense, subject to Section
26 12-34-512, of one or more professional advisors.

27 (D) Any person who is interviewed by an agent of the
28 department shall have the right to video or audio tape the interview
29 at the person's own expense.

30 (E) No collection or enforcement action will be commenced
31 against a person until thirty days after that person has been
32 provided with a final notice of amount pursuant to this article. The
33 final notice of amount due shall set forth the amount of tax due,
34 along with any interest and penalties, and the factual and legal
35 basis for the amounts being due with sufficient specificity that the
36 basis can be understood by a reasonable person, who is not a tax
37 professional, reading the notice. The final notice of amount due
38 shall be sent by certified mail, return receipt requested, to:

- 39 (1) the address last provided by a registered seller; or
- 40 (2) the best available address to a person who is not a
41 registered seller.

42 (F)(1) All reports and report information submitted to the
43 department under this chapter shall be confidential and, except as

1 authorized by this title. No officer or employee, including former
2 officers and employees, of the United States; no officer or
3 employee, including former officers and employees, of any State
4 or local agency who has had access to reports or report
5 information; or no other person who has had access to reports or
6 report information shall disclose any report or report information
7 obtained by him in any manner in connection with his service as
8 such officer or employee or otherwise.

9 (2) The department may disclose the report and report
10 information of a person to that person or persons as that person
11 may designate to receive said information or report.

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

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

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

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

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

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

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

27 (8) Disclosure of the report or report information by officers
28 or employees of the department to other officers or employees of
29 the department in the ordinary course of tax administration
30 activities shall not constitute unlawful disclosure of the report or
31 report information.

32 (9) Upon request in writing by the Secretary of Commerce,
33 the director shall furnish summarized or aggregated tax
34 information to officers and employees of the Department of
35 Commerce as the director may prescribe by regulation. The
36 director shall not furnish individual taxpayer information pursuant
37 to this subsection.

38

39 Section 12-34-640. (A) The department is authorized to enter
40 into a written agreement with any person under which the person is
41 allowed to satisfy its liability for payment of any tax, including
42 penalties and interest, pursuant to this chapter in installment
43 payments. As a prerequisite for entering into an agreement, the

1 department must determine that the agreement will facilitate the
2 collection of the liability. The agreement shall remain in effect for
3 the term of the agreement, unless the information that the person
4 provided to the department was materially inaccurate or
5 incomplete.

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

10

11

Article 7

12

13

Special Rules

14

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

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

22 (1) taxable property and services purchased;

23 (2) wages and salary paid; and

24 (3) taxes of any type paid,

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

28 (C) This section does not apply to qualified not-for-profit
29 organizations.

30

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

33 (1) gross receipts of the gaming sponsor from the sale of
34 chances, minus;

35 (2) the sum of:

36 (a) total gaming payoffs by the gaming sponsor on
37 chances; and

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

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

1 (C) For purposes of this section, the term ‘chance’ means a
2 lottery ticket, a raffle ticket, chips, other tokens, a bet or bets
3 placed, a wager or wagers placed, or any similar device where the
4 purchase of the right gives rise to an obligation by the gaming
5 sponsor to pay upon the occurrence of:

6 (1) a random or unpredictable event; or

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

9 (D) Notwithstanding any other provision in this article, a
10 chance is not taxable property or services for purposes of Section
11 12-34-201.

12 (E) A six percent tax is imposed on the taxable gaming services
13 of a gaming sponsor. This tax shall be paid and remitted by the
14 gaming sponsor. The tax shall be remitted to the department by
15 the fifteenth day of each month with respect to the taxable gaming
16 services during the previous calendar month.

17

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

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

26

27 Section 12-34-704. (A) Any division, department, or
28 component unit of a state or local government or political
29 subdivision or any entity owned or operated by a state or local
30 government or political subdivision that receives gross payments
31 from private persons from the sale of taxable property and services
32 is a government enterprise, except that any division, department, or
33 component unit or government-owned or government-operated
34 entity shall not become a government enterprise for purposes of
35 this section unless in any quarter it has revenues from selling
36 taxable property or services that exceed two thousand five hundred
37 dollars.

38 (B) Nothing in this chapter shall be construed to exempt any
39 state or local government or political subdivision owning or
40 operating a government enterprise from collecting and remitting
41 taxes imposed by this chapter on any sale of taxable property or
42 services. Government enterprises shall comply with all duties
43 imposed by this chapter and shall be liable for penalties and

1 subject to enforcement actions in the same manner as private
2 persons that are not government enterprises.

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

7 (2) Government enterprises may not use the exemption
8 afforded by Section 12-34-202 to serve as a conduit for tax-free
9 purchases by governmental units that would otherwise be subject
10 to taxation on purchases pursuant to Section 12-34-703. Transfers
11 of taxable property or services, which were purchased pursuant to
12 an exemption from tax under this chapter, from a government
13 enterprise to a nonexempt governmental unit shall be taxable.

14 (D) Government enterprises must maintain books and records
15 that are adequate to fully document sales of taxable property and
16 services and to demonstrate that the government enterprise has
17 fully complied with the requirements of this chapter. The director
18 may prescribe by regulation the nature and extent of the required
19 books and records.

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

22 (F) A transfer of funds to a government enterprise by a
23 governmental unit, which is not a government enterprise, without
24 full consideration shall constitute a taxable government purchase
25 within the meaning of Section 12-34-703 to the extent that the
26 transfer of funds exceeds the fair market value of the
27 consideration.

28

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

30 (a) 'Mixed-use property or service' means a taxable
31 property or service used for both taxable use or consumption and
32 for a purpose that would not be subject to tax pursuant to Section
33 12-34-202.

34 (b) 'Business use ratio' means the ratio of business use to
35 total use for a particular calendar month, or portion of a month if
36 the property was owned for only part of said calendar month. For
37 vehicles, the 'business use ratio' means the ratio of business
38 purpose miles to total miles in a particular calendar month. For
39 real property, 'business use ratio' means the ratio of floor space
40 used primarily for business purposes to total floor space in a
41 particular calendar month. For tangible personal property other
42 than vehicles, 'business use ratio' means the ratio of total time
43 used for business purposes to total time used in a particular

1 calendar month. For other property or services, 'business use
2 ratio' shall be calculated using a reasonable method. Reasonable
3 records must be maintained to support a person's business use of
4 the mixed use property or service.

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

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

13 (a) the mixed-use property or service amount for the
14 applicable month;

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

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

17 (4) The mixed-use property or service amount for each
18 month, or fraction of a month, in which the property was owned
19 shall be:

20 (a) one-three-hundred-sixtieth of the net payments for real
21 property for three hundred sixty months or until the property is
22 sold;

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

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

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

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

36

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

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

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

1 (b) as civic leagues or social welfare organizations;
2 (c) as labor, agricultural, or horticultural organizations;
3 (d) as chambers of commerce, business leagues, or trade
4 associations; or

5 (e) as fraternal beneficiary societies, orders, or
6 associations.

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

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

13 (D) If a qualified not-for-profit organization provides taxable
14 property or services in connection with contributions, dues, or
15 similar payments to the organization, then it shall be required to
16 treat the provision of the taxable property or services as a purchase
17 taxable pursuant to this chapter at the fair market value of the
18 taxable property or services.

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

22

23 Article 8

24

25 Financial Intermediation Services

26

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

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

29 (a) explicitly charged fees for financial intermediation
30 services; and

31 (b) implicitly charged fees for financial intermediation
32 services.

33 (2) 'Explicitly charged fees for financial intermediation
34 services' means:

35 (a) brokerage fees;

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

38 (c) safe-deposit box fees;

39 (d) insurance premiums, to the extent such premiums are
40 not allocable to the investment account of the underlying insurance
41 policy;

42 (e) trustees' fees; and

43 (f) other financial services fees.

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

4 (4) 'Gross imputed amount' means:

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

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

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

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

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

14 (ii) the amount of the debt.

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

17 (a) in the case of explicitly charged fees for financial
18 intermediation services, the person who receives the gross
19 payments for the charged financial intermediation services;

20 (b) in the case of implicitly charged fees for financial
21 intermediation services with respect to any underlying
22 interest-bearing investment or account, the person making the
23 interest payments on the interest-bearing investment or account;
24 and

25 (c) in the case of implicitly charged fees for financial
26 intermediation services with respect to any interest-bearing debt,
27 the person receiving the interest payments on the interest-bearing
28 debt.

29
30 Section 12-34-810. The tax on financial intermediation
31 services provided by Section 12-34-201 with respect to an
32 underlying investment account or debt shall be imposed and
33 collected with the same frequency that statements are rendered by
34 the financial institution in connection with the investment account
35 or debt, but not less frequently than quarterly.

36
37 Section 12-34-820. (A) For purposes of this section, the term
38 'financing lease' means any lease under which the lessee has the
39 right to acquire the property for fifty percent or less of its fair
40 market value at the end of the lease term.

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

1 (C) The department shall promulgate regulations for
2 disaggregating the principal and interest components of a financing
3 lease. The principal amount shall be determined to the extent
4 possible by examination of the contemporaneous sales price or
5 prices of property the same or similar as the leased property.

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

10 (E) The principal component of the financing lease shall be
11 subject to tax as if a purchase in the amount of the principal
12 component had been made on the day on which the lease was
13 executed.

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

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

21
22 Section 12-34-830. For purposes of this chapter, the basic
23 interest rate with respect to a debt instrument, investment,
24 financing lease, or account shall be the applicable interest rate as
25 determined in Section 12-34-550. For debt instruments,
26 investments, or accounts of contractually fixed interest, the
27 applicable interest rate of the month of issuance shall apply. For
28 debt instruments, investments, or accounts of variable interest rates
29 and which have no referenced interest rate, the applicable interest
30 shall be the federal short-term interest rate for each month. For
31 debt instruments, investments, or accounts of variable interest rates
32 and which have a referenced interest rate, the applicable interest
33 shall be the applicable interest rate for the referenced interest rate
34 for each month.

35
36 Section 12-34-840. (A) Financial intermediation services
37 shall be deemed as used or consumed within the State if the
38 person, or any related party, purchasing the services is a resident of
39 this State.

40 (B) Any person that provides financial intermediation services
41 to state residents must, as a condition of lawfully providing such
42 services, register with the department, including appointing a tax
43 matters person, pursuant to Section 12-34-502. The director may

1 require that foreign persons which provide financial intermediation
2 services to state residents obtain a reasonable surety bond and
3 provide the bond to the department.

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

7

8

Article 9

9

10

Additional Matters

11

12 Section 12-34-901. (A) Notwithstanding the definition of
13 taxable property or service contained in Section
14 12-34-103(A)(12)(a)(i), the sale of a copyright or trademark shall
15 be treated as the use or consumption of taxable services if the
16 substance of the sale of a copyright or trademark constituted the
17 sale of the services that produced the copyrighted material or the
18 trademark.

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

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

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

28 (C) Up to one thousand two hundred dollars per calendar year
29 of net payments shall be exempt from the tax imposed by Section
30 12-34-201 if received:

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

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

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

40 (E) The director shall calculate during January of each year the
41 inflation adjusted amounts that will be the de minimis limits
42 established in subsections (B), (C), and (D) for the then current
43 calendar year. The director shall use the CPI-U Consumer Price

1 Index as established by the Bureau of Labor Statistics of the U.S.
2 Department of Labor for the latest twelve-month period available,
3 or its successor index, as the basis for calculating the inflation
4 adjusted amounts.

5 (F) If a registered person provides taxable property or services
6 to a person either as a gift, prize, reward, or as remuneration for
7 employment, and such taxable property or services were not
8 previously subject to tax pursuant to Section 12-34-201, then the
9 provision of such taxable property or services by the registered
10 person shall be deemed the conversion of such taxable property or
11 services to personal use and subject to tax pursuant to Section
12 12-34-203(C) at the tax exclusive fair market value of such taxable
13 property or services.

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

17 (H)(1) For purposes of this subsection, the term 'employee
18 discount' means an employer's offer of taxable property or
19 services for sale to its employees or their family members for less
20 than the offer of such taxable property or services to the general
21 public.

22 (2) For purposes of this subsection, the employee discount
23 amount is the amount by which taxable property or services are
24 sold pursuant to an employee discount below the amount for which
25 the taxable property or services would have been sold to the
26 general public.

27 (3) If the employee discount amount exceeds twenty percent
28 of the price that the taxable property or services would have been
29 sold to the general public, then the sale of the taxable property or
30 services by the employer shall be deemed the conversion of such
31 taxable property or services to personal use and tax shall be
32 imposed on the taxable employee discount amount. The taxable
33 employee discount amount shall be:

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

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

42

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

5 (a) before December thirty-first for the subsequent
6 calendar year;

7 (b) by a registered person; and

8 (c) subject to the tax imposed by Section 12-34-201.

9 (2) For purposes of this section, qualified inventory shall
10 have the cost that it had for federal income tax purposes for the
11 trade or business as of December thirty-first of the year that this
12 chapter is adopted.

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

18 (4) The credit provided under subsection (A)(3) shall be
19 taken in the month when the inventory is sold subject to the tax
20 imposed by this chapter. The credit shall be reported as an
21 intermediate and export sales credit and the person claiming said
22 credit shall attach supporting schedules in the form that the
23 director may prescribe.

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

26 (C)(1) Qualified inventory held by businesses that sell said
27 qualified inventory not subject to tax pursuant to Section
28 12-34-202(A) shall be eligible for the transitional inventory credit
29 only if that business, or a business that has successor rights
30 pursuant to subsection (C)(2), receives certification in a form
31 satisfactory to the director that the qualified inventory was
32 subsequently sold subject to the tax imposed by this chapter.

33 (2) The business entitled to the transitional inventory credit
34 may sell the right to receive the transitional inventory credit to the
35 purchaser of the qualified inventory that gave rise to the credit
36 entitlement. Any purchaser of the qualified inventory, or property
37 or services into which the qualified inventory has been
38 incorporated, may sell the right to the transitional inventory credit
39 to a subsequent purchaser of said qualified inventory, or property
40 or services into which the qualified inventory has been
41 incorporated.

42

1 Section 12-34-940. (A)(1) The General Assembly shall allocate
2 an amount deemed appropriate to the Homestead Exemption Fund,
3 established pursuant to Section 11-11-155, as part of the annual
4 general appropriations act.

5 (2) The General Assembly shall allocate the amount
6 described in Section 59-21-320 to the State Public School Building
7 Fund, as described in Section 59-21-1010(A), as part of the annual
8 general appropriations act.

9 (3) The General Assembly shall allocate an amount deemed
10 appropriate to the South Carolina Education Improvement Act of
11 1984 Fund, as described in Section 59-21-1010(B), as part of the
12 annual general appropriations act.

13 (4) For all constitutional and statutory appropriations and
14 transfer formulas and limitations that apply to the general fund of
15 the State, revenues appropriated pursuant to this subsection are
16 deemed to be 'other funds' and are not included in the general fund
17 of the State.

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

23 (C) The General Assembly shall allocate an amount deemed
24 appropriate to fund the expenses of the Tourism Expenditure
25 Review Committee, created pursuant to Section 6-4-35, as part of
26 the annual general appropriations act.

27
28 Section 12-34-960. (A) For the first three calendar years after
29 this chapter is enacted, its provisions may not be amended or
30 repealed, except by special vote as provided in subsection (B) or
31 except as permitted in Section 12-34-201(B)(2).

32 (B) A special vote means an affirmative two-thirds vote of the
33 total membership of the Senate and an affirmative two-thirds vote
34 of the total membership of the House of Representatives and
35 approval by the Governor.

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

42

1 SECTION 2. Chapters 6, 8, 11, 13, 16, 36, 58, and 62 of Title 12
2 of the 1976 Code are repealed on January first of the year
3 immediately following approval of this act by the Governor and
4 these repeals apply for all taxable periods and taxable events
5 beginning or occurring on and after that date.

6

7 SECTION 3. The repeal or amendment by this act of any law,
8 whether temporary or permanent or civil or criminal, does not
9 affect pending actions, rights, duties, or liabilities founded thereon,
10 or alter, discharge, release or extinguish any penalty, forfeiture, or
11 liability incurred under the repealed or amended law, unless the
12 repealed or amended provision shall so expressly provide. After
13 the effective date of this act, all laws repealed or amended by this
14 act must be taken and treated as remaining in full force and effect
15 for the purpose of sustaining any pending or vested right, civil
16 action, special proceeding, criminal prosecution, or appeal existing
17 as of the effective date of this act, and for the enforcement of
18 rights, duties, penalties, forfeitures, and liabilities as they stood
19 under the repealed or amended laws.

20

21 SECTION 4. This act takes effect on January first of the year
22 immediately following approval of this act by the Governor.

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