

South Carolina Board of Economic Advisors

Statement of Estimated State Revenue Impact (Section 2-7-71)

Date: June 15, 2009 **Bill Number:** H.3722 as amended by the Senate on 5/21/09
Author: Kirsh and White **Committee Requesting Impact:** Senate Finance

Bill Summary

A bill to amend the Code of Laws of South Carolina, 1976, by adding Section 12-6-1145 so as to provide for determination of treatment of gains and losses apportioned to this State by the Internal Revenue Code standards; by adding Section 12-36-2575 so as to provide for filing of a return for each sales or use tax liability period even if no tax liability accrues for that period; to amend Section 12-4-320, as amended, relating to powers and duties of the Department of Revenue, so as to provide for adoption of federal relief for certain adversely affected taxpayers; to amend Section 12-6-590, as amended, relating to treatment of "S" corporations for tax purposes, so as to include additional references to the Internal Revenue Code for similar state treatment; to amend Section 12-6-2250, as amended, relating to the apportionment of income derived by a taxpayer to the taxpayer's conduct of business in this state, so as to change the word "allocated" to "apportioned"; to amend Section 12-6-2295, relating to inclusions and exclusions in connection with the terms "sales" and "gross receipts" as used in the apportionment of income to this state for state income tax purposes, so as to further specify rental and sales income from tangible and intangible, real and personal property in the ordinary course of the taxpayer's trade or business; to amend Section 12-6-3360, as amended, relating to the job tax credit against the state income tax, so as to delete a reference to general contractors in connection with the term "corporate office"; to amend Section 12-6-3376, relating to a credit against the state income tax for the purchase or lease of a plug-in hybrid vehicle, so as to require that the credit be the first claimed for that vehicle, to provide for regulations promulgated by the State Energy Office, to further provide for claiming the capped credit, and to provide for the effect of a repeal of the caps on the credit; to amend Section 12-6-3377, relating to the alternative motor vehicle fuel credit against the state income tax, so as to further provide for the calculation of the credit for business use and to delete a provision deeming the federal tax treatment of the alternative fuel credit to be permanent; to amend Section 12-6-3535, as amended, relating to a credit against the state income tax for rehabilitation of a historic structure, so as to include a credit against the corporate license fees; to amend Section 12-6-3550, as amended, relating to the voluntary cleanup income tax credit, so as to clarify that the credit is one against the state income tax; to amend Section 12-6-3585, as amended, relating to the industry partnership fund credit against state taxes, so as to allow the credit to be used against the taxpayer's applicable state income tax, bank tax, insurance premium tax, or license fee liability; to amend Section 12-6-3610, as amended, relating to income tax credit for property used for distribution or dispensing of renewable fuel, so as to delete certain transitional provisions; to amend Section 12-6-3630, relating to a credit against certain state taxes for a contribution to the South Carolina Hydrogen Infrastructure Development Fund, so as to further provide for claiming the credit; to amend Section 12-8-1530, relating to quarterly returns of withheld tax, so as to require returns even in periods when no tax has been withheld; to amend Section 12-8-1550, relating to statements required to be filed with the Department of Revenue, so as to provide for prescription by the department of either electronic or magnetic media method for submission of certain information; to amend Section 12-10-80, as amended, relating to the job development tax credit, so as to make technical corrections and add a cross reference; to amend Section 12-20-100, relating to license tax on utilities and electric cooperatives, so as to make technical changes; to amend Section 12-21-2575, relating to methods of accounting for admissions other than tickets, so as to provide that the tickets be collected and retained to account for admissions; to amend Section 12-36-910, as amended, relating to the five percent sales tax on the proceeds of the sale of tangible personal property, so as to delete a redundancy as to the tax on proceeds from the sale of a warranty, maintenance, or similar contract for tangible personal property; to amend Section 12-36-2120, as amended, relating to exemptions from the state's sales tax, so as to specify notification requirements for claiming the exemption on the construction materials used in certain single manufacturing and distribution facilities and to provide for assessment of any tax due, to specify that the exemption in connection with the sale of currency applies to currency that is legal tender, and to clarify the exemption as to durable medical equipment and related supplies; to amend Section 12-37-90, relating to duties of a full-time county assessor, so as to delete the authority of the Department of Revenue to alter a value of real property as set by the assessor; to amend Section 12-37-220, relating to property tax exemptions, so as to provide for exemption of the real property of defined tax exempt organizations and to correct a cross reference; to amend Section 12-44-30, as

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amended, relating to definitions for purposes of the Fee In Lieu Of Tax Simplification Act, so as to correct a cross reference in the definition of "sponsor"; to amend Section 12-54-70, as amended, relating to extension of time for filing returns or paying tax, so as to further define the length of the extension; to amend Section 12-54-85, as amended, relating to time limitation for assessment of taxes or fees by the Department of Revenue, so as to provide for the instance of a taxpayer lacking a valid business purpose; to amend Section 12-54-240, as amended, relating to disclosure of records and reports filed with the Department of Revenue, so as to require that the disclosure must be willful to give rise to the penalties; to amend Section 12-63-20, as amended, relating to the Energy Freedom And Rural Development Act, so as to define "biodiesel" for that purpose; to amend Section 30-2-320, relating to disclosure of identifying information in connection with public records, and Section 37-20-180, relating to disclosure of identifying information in connection with publication of a Social Security number, both so as to allow disclosure by and to the Department of Revenue for the purpose of carrying out its duties and responsibilities; to amend Section 44-43-1360, as amended, relating to administration of Donate Life South Carolina, so as to correct a cross reference; and to repeal Section 12-20-175, relating to reduction of license fees due to tax credits and Section 12-36-30, relating to the definition of "person" for purposes of the sales and use tax.

REVENUE IMPACT^{1/}

This bill, as amended by the Senate would reduce sales tax collections by \$480,000 in FY 2009-10. Of this amount, General Fund sales and use tax would be reduced by \$320,000, EIA funds by \$80,000 and Homestead Exemption funds by \$80,000. Sales and use tax would be reduced by an additional \$240,000 in FY2010-11 and FY2011-12, respectively. Of this amount, General Fund sales and use tax would be reduced by \$160,000, EIA funds by \$40,000 and Homestead Exemption funds by \$40,000 in FY2010-11 and FY2011-12, respectively. General Fund insurance premium tax would be reduced by \$57,692 in FY 2009-10. The remainder of this fiscal impact provides a detailed analysis of the bill Sections that are expected to impact revenues. Any Sections of the bill not specifically addressed below are not expected to have an impact on state or local revenues.

Explanation of Amendments (May 21, 2009) – By the Senate

Section 8. Section 8 adds to the definitions of things that do not trigger an assessable transfer of interest for purposes of determining when to appraise real property. Based on conversations with various assessors across the State, these changes clear up and put in law what most assessors are already doing in practice across the State.

Explanation of Amendments (May 14, 2009) – By the Senate Finance Committee

Section 3. Section 3 would add an appropriately numbered item to Section 12-36-2120 to exempt sales and use tax on the purchase of machinery and equipment, including lighting, filming and computer equipment, building and other raw materials used in test specimens, and electricity and electrical transformers and substations purchased for use in the operation of a facility placed in service after July 2, 2009. The non-profit facility would be used principally for the researching and testing of the impact of natural disasters such as wind, fire, water, earthquake, and hail on building materials and construction methods used in residential, commercial and agricultural buildings. To qualify for the sales and use tax exemption, the non-profit organization must invest at least \$20,000,000 in real or personal property in this state over a three year period. There is at least one entity that has announced it is proceeding on a project in South Carolina that will qualify for this sale tax exemption. The project will focus its research on mitigating insurance losses due to catastrophic events by testing the effects of the natural hazards of wind, fire, flood, earthquake, and hail on architectural models. According to the entity's website, the facility expects to invest \$25,000,000 for a research campus facility and an additional \$15,000,000 to cover maintenance,

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repairs, and to help defray annual infrastructure-related costs, such as access to power. When fully operational, the project expects to employ approximately twenty employees. We expect that one-half of the \$40,000,000 investment will occur in the first year of operation with the remaining investment equally divided between the subsequent two years. Based upon the Board of Economic Advisors' cost-benefit model methodology, capital investment project expenditures typically are divided as 60 percent for labor expenses and 40 percent for materials and equipment expenditures. Multiplying a capital investment of \$20,000,000 in the first year by 40 percent and applying a sales and use tax rate of six percent yields an estimated \$480,000 in FY2009-10 in sales and use taxes that would be collected from this project in the absence of this amendment. Of this amount, General Fund sales and use tax would be reduced by \$320,000, EIA funds by \$80,000 and Homestead Exemption funds by \$80,000 in FY2009-10. In the second and third years, sales and use tax would be reduced by an additional \$240,000 in FY2010-11 and FY2011-12, respectively. Of this amount, General Fund sales and use tax would be reduced by \$160,000, EIA funds by \$40,000 and Homestead Exemption funds by \$40,000 in FY2010-11 and FY2011-12, respectively.

Section 5. This Section would add an appropriately numbered item to Section 12-37-220 to exempt all property used in the operation of a facility with a capital investment of twenty million dollars or more at a single site that is owned by an organization that qualifies as a tax exempt organization pursuant to Internal Revenue Code Section 501(c)(3) when the facility is principally used for researching and testing the impact of natural hazards such as wind, fire, water, earthquake, and hail on building materials used in residential, commercial, and agricultural buildings. There is at least one entity that has announced it is proceeding on a project in Chester County South Carolina that will qualify for this property tax exemption. According to the entity's website, the facility expects to invest \$25,000,000 for a research campus facility and an additional \$15,000,000 to cover maintenance, repairs, and to help defray annual infrastructure-related costs, such as access to power. When fully operational, the project expects to employ approximately twenty employees. Chester County has already exempted this entity from 85% of its property taxes through a special source revenue credit for the first ten years. Since most of these entities property taxes are already exempt, this Section is not expected to negatively impact local property tax revenues.

Section 6. This amendment changes the qualification date of a new capital investment from "after July 1, 2009" to "after July 1, 2010". The amendment would reduce General Fund sales and use tax revenue by an estimated \$4,500,000 in FY2010-11 and each fiscal year thereafter subject to the limitations in Section 4-12-30. See explanation of Section 38 below for additional analysis of the proposed sales tax reallocation.

Section 7. This Section would add item (b) to Section 12-37-220 (B) (33) that would exempt aircraft, including associated personal property, owned by a company owning aircraft meeting the requirements of Section 55-11-500(a)(3)(i) without regard to the other requirements of Section 55-11-500. An aircraft qualifying for the exemption allowed by this subitem may not be used by the operator of the aircraft as the basis for an exemption pursuant to subitem (a) of this item. Section 55-11-500 relates to air carrier hub terminal facilities. Section 55-11-500 (a)(3)(i) states the specially equipped planes are used for the transportation of specialized cargo. There is at least one entity in the State that would qualify for this property tax exemption; however this entity is already under a fee in lieu agreement. To date, only one company has applied for the exemption under the special cargo provision. Due to the limited scope and the one known entity

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being under a fee in lieu agreement, local property tax revenues are not expected to be negatively impacted by this bill.

Section 8. Enacted in 2005, the textile rehabilitation credits allow a taxpayer an income/license tax credit or property tax credit for the renovation, improvement, and redevelopment of abandoned textile mills in South Carolina. This section amends Chapter 65 of Title 12 to allow a taxpayer that rehabilitates a textile mill site to apply a credit for qualified rehabilitation costs against insurance premium taxes imposed by Chapter 7, Title 38. The income or license tax credit is equal to twenty-five percent of the qualified rehabilitation expenses. The real property tax credit is equal to twenty-five percent of the qualified rehabilitation expenses made to the eligible site up to seventy-five percent of the real property taxes due on the site each year. According to the latest figures from the Department of Revenue, nearly \$1,500,000 of credits were claimed by 52 tax filers in FY2006-07. This was an average of \$28,846 per taxpayer during the latest year for which these data are available. Many of these rehabilitated textile mills have been converted into specialized textile operations, retail shopping areas, and even service-related businesses. The expansion of the application of the credit against insurance premium and license taxes increases the total pool of available taxes to which the credit can be applied. It is reasonable to expect that with the expansion of the available tax base, the credit will continue to be claimed at its historical level. Applying an average credit amount of \$28,846 per tax filer for two tax filers yields an estimated reduction of General Fund insurance premium taxes of \$57,692 in FY2009-10.

Explanation of Amendments (April 2, 2009) – By the House of Representatives

Section 34. Section 34 would add an appropriately numbered item to Section 12-37-220 to exempt all property used in the operation of a facility with a capital investment of twenty million dollars or more at a single site that is owned by an organization that qualifies as a tax exempt organization pursuant to Internal Revenue Code Section 501(c)(3) when the facility is principally used for researching and testing the impact of natural hazards such as wind, fire, water, earthquake, and hail on building materials used in residential, commercial, and agricultural buildings. There is at least one entity that has announced it is proceeding on a project in Chester County South Carolina that will qualify for this property tax exemption. According to the entity's website, the facility expects to invest \$25,000,000 for a research campus facility and an additional \$15,000,000 to cover maintenance, repairs, and to help defray annual infrastructure-related costs, such as access to power. When fully operational, the project expects to employ approximately twenty employees. Chester County has already exempted this entity from 85% of its property taxes through a special source revenue credit for the first ten years. Since most of these entities property taxes are already exempt, this Section is not expected to negatively impact local property tax revenues.

Section 37. This Section would add item (b) to Section 12-37-220 (B) (33) that would exempt aircrafts, including associated personal property, owned by a company owning aircraft meeting the requirements of Section 55-11-500(a)(3)(i) without regard to the other requirements of Section 55-11-500. An aircraft qualifying for the exemption allowed by this subitem may not be used by the operator of the aircraft as the basis for an exemption pursuant to subitem (a) of this item. Section 55-11-500 relates to air carrier hub terminal facilities. Section 55-11-500 (a)(3)(i) states the specially equipped planes are used for the transportation of specialized cargo. There is at least one entity in the State that would qualify for this property tax exemption; however this entity is already under a fee in lieu agreement. To date, only one company has applied for the

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exemption under the special cargo provision. Due to the limited scope and the one known entity being under a fee in lieu agreement, local property tax revenues are not expected to be negatively impacted by this bill.

Section 38. This amendment would add Section 4-1-180 to allow counties that create a multicounty business park to designate a portion or that entire park as a designated economic development site for “extraordinary commercial facilities” to be reimbursed sales tax revenue collected from retail sales within facilities located at a multicounty business park. The reimbursement rate would equal three-fourths of the total sales tax revenue collected in the designated economic development site. The sales tax revenue would be transferred from the General Fund of the State and allocated to the counties in a multicounty business park agreement pursuant to Section 4-1-170 and Section 13 of Article VIII of the Constitution of this State. Only sales tax revenue collected pursuant to Section 12-36-2620(1), the first four pennies of sales tax revenue, is transferred back to the counties. The collection of the EIA penny, pursuant to Section 12-36-2620(2), and the Homestead Exemption Fund penny, pursuant to Section 12-36-1110, is not affected by this amendment. To qualify as a designated economic development site, the commercial facility must meet the following conditions: the extraordinary commercial facility must have capital investment of at least \$100,000,000; there must be at least 1,000 new jobs at the time the facility is initially staffed; and the facility must generate at least \$6,000,000 in total sales tax receipts each year. The qualified capital investment must either be placed in service, or have a certificate of occupancy issued, after July 1, 2009. The qualified new jobs must be created at the time the facility is initially staffed. If at any time the number of jobs falls below an average of 500 jobs for the most recent four quarters, the receipt of payments shall be suspended until the next filing of an annual report that shows the average of 500 jobs during the next reporting period. This amendment does not help to create productive capacity in the state. Because the facility adds only to the retail sector, we expect that the facility will shift sales from existing retailers and not add to sales that would otherwise occur in the absence of the provision. Based upon the qualifications of a designated economic development site in a multicounty business park, multiplying \$6,000,000 by 0.75 yields a reduction in General Fund sales and use tax revenue of an estimated \$4,500,000 in FY2009-10, and each fiscal year through FY2013-14. The provisions of Section 4-1-180 expire five years from the effective date of this section.

Explanation of Amendments (March 26, 2009) – By the House Ways and Means Committee
Amendment #1 would add an appropriately numbered item to Section 12-36-2120 to exempt sales and use tax on the purchase of machinery and equipment, including lighting, filming and computer equipment, building and other raw materials used in test specimens, and electricity and electrical transformers and substations purchased for use in the operation of a facility placed in service after July 2, 2009. The non-profit facility would be used principally for the researching and testing of the impact of natural disasters such as wind, fire, water, earthquake, and hail on building materials and construction methods used in residential, commercial and agricultural buildings. To qualify for the sales and use tax exemption, the non-profit organization must invest at least \$20,000,000 in real or personal property in this state over a three year period. There is at least one entity that has announced it is proceeding on a project in South Carolina that will qualify for this sale tax exemption. The project will focus its research on mitigating insurance losses due to catastrophic events by testing the effects of the natural hazards of wind, fire, flood, earthquake, and hail on architectural models. According to the entity’s website, the facility expects to invest \$25,000,000

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for a research campus facility and an additional \$15,000,000 to cover maintenance, repairs, and to help defray annual infrastructure-related costs, such as access to power. When fully operational, the project expects to employ approximately twenty employees. We expect that one-half of the \$40,000,000 investment will occur in the first year of operation with the remaining investment equally divided between the subsequent two years. Based upon the Board of Economic Advisors' cost-benefit model methodology, capital investment project expenditures typically are divided as 60 percent for labor expenses and 40 percent for materials and equipment expenditures. Multiplying a capital investment of \$20,000,000 in the first year by 40 percent and applying a sales and use tax rate of six percent yields an estimated \$480,000 in FY2009-10 in sales and use taxes that would be collected from this project in the absence of this amendment. Of this amount, General Fund sales and use tax would be reduced by \$320,000, EIA funds by \$80,000 and Homestead Exemption funds by \$80,000 in FY2009-10. In the second and third years, sales and use tax would be reduced by an additional \$240,000 in FY2010-11 and FY2011-12, respectively. Of this amount, General Fund sales and use tax would be reduced by \$160,000, EIA funds by \$40,000 and Homestead Exemption funds by \$40,000 in FY2010-11 and FY2011-12, respectively.

Explanation of the Bill filed March 24, 2009

This bill is not expected to impact state or local revenues.

/s/ William C. Gillespie, Ph.D.
William C. Gillespie, Ph.D.
Chief Economist

Analyst: Ball, DiBiase, Jolliff, Gibson, Martin, and Shuford

^{1/} This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact, or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.