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STATE TAX AND ECONOMIC DEVELOPMENT INCENTIVES LEGISLATIVE UPDATE 2022

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INCOME TAXES

Conformity (H. 5057)

General Assembly adopted last year's Conformity bill through December 31, 2021 and also specifically adopts the federal provision that targeted Economic Injury Disaster Loan advances and Restaurant Revitalization Grants maybe excluded from gross income. In addition the bill proactively adopts any expired provisions extended but not amended in 2022.

INCOME TAXES

Reduction of IIT Rates (S. 1087)

While South Carolina has a very pro-taxpayer Individual Income tax base (federal taxable income), it has a very high IIT tax rate – 7%. This causes optic problems and efforts have been for years to reduce the rate. S. 1087 reduces the IIT rate to 6.5% for taxable years after 2021, and beginning with tax year 2023, the top rate decreases by one-tenth of one percent if General Fund revenues increase by at least 5% till it hits 6% in 2027.

INCOME TAXES

Reduction of IIT Rates (S. 1087)

The remaining current tax brackets — 4 percent, 5 percent and 6 percent — will all be cut to 3 percent right away. The bracket changes combined will reduce collections next year by $596 million, the state estimated.

INCOME TAXES

Individual Income Tax Rate

Here's a sample of what the tax rate cuts will be worth, on average, based on taxable income ranges, and how many tax filers are in each group:

- 206,449 tax filers between $5,000 and $10,000 — $17.
- 249,770 between $20,000 and $30,000 — $245.
- 136,503 between $40,000 and $50,000 — $351.
- 63,891 between $70,000 and $80,000 — $511.
- 40,917 between $125,000 and $150,000 — $839.
- 7,060 between $500,000 and $1 million — $3,660.
- 2,337 above $1 million — $13,453.

If the top rate is eventually reduced to 6 percent, as planned for 2027 tax returns, a family with between $70,000 and $80,000 in taxable income would save $929 compared to current tax rates. Those in the $1 million-plus group would average $29,926 in savings that year.

INCOME TAXES

Income Taxes Military Retirement Income

The legislation also provides that military retirement income will be fully deductible — income tax-free — which will collectively save those retirees about $8 million at tax time next year.

PROPERTY TAXES

Manufacturer's Property Taxes

The General Assembly passed legislation which effectively lowers the assessment ratio for manufacturers to 6%. As you know, the equation for calculating property taxes is:

FMV * Assessment Ratio* combined millage

PROPERTY TAXES

Manufacturer's Property Taxes

For decades the assessment ratio for manufacturers was 10.5%, which is actually in the SC Constitution. (This is why the bill increases the exemption %, rather than amends the assessment ratio.) The Gas tax bill effectively lowered it to 9% over a six year period. The new legislation immediately lowers it effectively to 6%.

PROPERTY TAXES

Manufacturer's Property Taxes

This is fabulous news to (1) manufacturers with assets (chiefly real property) which predate fee in lieu; (2) manufacturers who acquired assets after their fee investment period had run; (3) manufacturers whose fee in lieu is expiring; and (4) small and medium size manufacturers who never got a fee in lieu.

PROPERTY TAXES

Manufacturer's Property Taxes

It's fabulous news to local governments as they will now be reimbursed (up to a statewide cap of $170 million) for the tax revenue losses resulting from the reduction in the assessment ratio. Local governments have never been reimbursed by state government for revenue losses from fee in lieu, which in most cases lowered the assessment ratio from 10.5 to 6%, a 43% tax savings.

PROPERTY TAXES

Manufacturer’s Property Taxes

Fee in lieu had several advantages and disadvantages to manufacturers. The major advantages were (1) lowering the assessment ratio to 6%; (2) freezing the millage; (3) freezing the value of the building (advantage to commercial but a disadvantage to manufacturers); (4) eliminating roll back taxes; and (5) Special Source Revenue Credits for the largest projects. The disadvantages are (1) elimination of manufacturers abatement (county portion of the millage, typically 20-30%); (2) freezing the value of the manufacturer’s building, which can decline precipitously in value; and (3) elimination of the Local Option Sales Tax credit.

PROPERTY TAXES

Manufacturer's Property Taxes

As a practical matter, you may now see few fees for small and medium size manufacturing projects. You will continue to see them for warehouse, distribution and commercial. Why would a manufacturer not want to do a fee? It now has a 6% assessment ratio (same as under a fee) plus the manufacturers abatement for new investments and LOST credits. But it doesn't have the millage freeze.

PROPERTY TAXES

Manufacturer's Property Taxes

From the county's perspective, it wants to do fees on small and medium size projects as it gets no tax revenue for five years under the manufacturer's abatement.

Cities and school districts will be reimbursed for the revenue loss in year 1. Will counties have to wait 6 years to be reimbursed by the state.

Taxes on Manufacturers
Millage Freeze

Fee-in-Lieu can freeze the millage for either the life of the fee or it can be reset every 5 years. Act 388 imposed a hand freeze on local government's ability to raise millage. Under prior law, a positive majority of the local governing board could raise taxes. Under Act 388, millage can only be raised in limited circumstances. One of these permitted circumstances is to the extent of the increase in the average of the 12 monthly consumer price indices for the most recent 12 month period consisting of January through December of the proceeding calendar year plus the percentage increase in the previous year in the population of the local government.

PROPERTY TAXES

Taxes on Manufacturers
Millage Freeze

Millage increases have been nominal for most local governments over the past 8-10 years as CPI growth has been nominal. The CPI in calendar year 2021 was 7.5%, the largest increase since 1982. Many areas of South Carolina have received large population growth as well. SC was the third most moved-to-state in 2021 according to a study by United Van Lines. These factors may set the stage for millage rate hikes by local governments.

PROPERTY TAXES

Manufacturer's Property Taxes

Large manufacturing projects may still want to do a fee particularly if they qualify for a super fee. Rollback taxes can be significant for large sites, particularly in the low country. Because fee in lieu is a contract many manufacturers may still want to do a fee in lieu as the above statute can be repealed or amended in future years. There is also a statewide reimbursement cap (see below), which might result in the assessment ratio effectively rising. Freezing of the millage may be a very significant incentive in the years ahead.

PROPERTY TAXES

Manufacturer's Property Taxes

Some manufacturers will look at terminating their fee if their millage has not gone up and they anticipate future investments subject to the manufacturers abatement. The county is likely to agree as presumably they will be reimbursed for the tax savings for the preexisting investment, but likely not on new investment covered by the manufacturer's abatement. Where millage has gone up the county can presumably cure by granting a naked MCBP with a SSRC equivalent to the millage increases and freeze it in the future.

PROPERTY TAXES

Manufacturer's Property Taxes

Some counties dedicate a percentage of fee revenue to their economic development fund. They need to convert to MCBP revenue.

Manufacturer's Property Taxes

You have all seen the recent publicity for the Good Jobs First report. Local governments will now not report GASB 77 tax incentives for manufacturers who do not do a fee (i.e. lowering of the assessment ratio). GASB 77 doesn't require reporting of non-discretionary incentives.

PROPERTY TAXES

Manufacturer's Property Taxes

What happens if local governments hit the reimbursement cap? It was previously $85 million and will increase to $170 million. The Act provides that the assessment ratio reduction will be proportionally reduced so as not to exceed the cap. Last year the General Assembly reimbursed counties $21 million for the reduction of the assessment ratio (10.5 to 9%) which was contained in the Gas Tax bill.

PROPERTY TAXES

Manufacturer's Property Taxes

When does the assessment ratio reduction go into effect? The Act says it applies to "property tax years after 2021." Property tax year is a term of art and we are currently in property tax year 2023, so the reduction goes into effect this year.

PROPERTY TAXES

Manufacturer's Property Taxes

How will manufacturers get the savings? Manufacturers not in a fee in lieu file a PT-300 by April 30, 2022 (deadline for calendar year taxpayers). They will receive a Proposed Assessment from the DOR this summer/fall. Make sure your proposed assessment contains the reduction.

PROPERTY TAXES

Manufacturer's Property Taxes

In summary this is a huge win for manufacturers not in a fee. Warehouse, distribution and commercial will continue to seek fee in lieu. Large manufacturers will also do the same.

PROPERTY TAXES

Disasters (S. 233)

Under prior law, property owners could only get a mid-year adjustment of property taxes where real property or improvements sustained damage as a result of fire. S. 233 adds flooding, hurricane or wind event.

The taxpayer must apply for the correction of the assessment prior to paying the taxes.

PROPERTY TAXES

Farm Buildings (S. 233)

For years the value of farm buildings were incorporated into the value of farmland and were not separately assessed. A Court of Appeals decision some five years ago held that this was in error and that farm buildings should be separately assessed. S. 233 exempts from property taxes all farm buildings and agricultural structures owned by a producer in this state used to house livestock, poultry, crops, farm equipment or farm supplies.

PROPERTY TAXES

Rural Telephone Cooperatives (H. 5144)

Former law exempted property "used in providing rural telephone service." H. 5144 expands the exemption to include other property, including broadband.

SALES TAXES

LOST (H. 3948)

A county which has imposed one LOST not to exceed one percent may impose an addition LOST, not to exceed one percent.

SALES TAXES

Agribusiness Processor

The SC Department of Agriculture was successful in getting a budget proviso exempting sales taxes for material handling and construction materials on agribusiness facilities that invest at least $100 million.

WITHHOLDINGS TAXES (JDC)

Job Development Credits (S. 901)

As a condition of grating Job Development credits the CCED requires the applicant to make both a Cap X and a new job commitment.

Since the Enterprise Zone Act originally passed, the Act has required the same legal entity which makes the Cap X to be the W-2 employer of the new jobs.

WITHHOLDINGS TAXES (JDC)

Job Development Credits (S. 901)

S. 901 allows a qualifying business to designate up to two related persons to meet the employment and Cap X commitment. “Related person” is defined in IRC §267 or 707 (b). IRC §267 disallows deductions of losses from the sale of property between related parties. Related parties include (among many others) two corporations which are part of the same control group as well as a corporation and partnership if the same person owns more than 50% of the shares of stock and more than 50% of the capital or profits interest of the partnership.

WITHHOLDINGS TAXES (JDC)

Job Development Credits (S. 901)

IRC §707(b) disallows deductions from losses with respect to sales or exchanges of property between related partnerships and partners.

Single member LLCs and qualified subchapter S subsidiaries are also treated as related parties.

LOCAL GOVERNMENT USER FEES

Local Government Road Fees

One of the more contentious debates among lawmakers last week regarded whether or not local governments should be allowed to implement local user and service fees. This issue came about due to a lawsuit in Greenville County where the SC Supreme Court invalidated Greenville's annual increase in vehicle registration fees and the annual telecommunications fee.

S. 984, by Senator Greg Hembree (R-Horry), was introduced to clarify that counties could implement these fees. Senator Tom Davis (R-Beaufort) who served on the conference committee said he supported the legislation because "taxpayers will be taxed to pay taxpayers back and half will go to the plaintiff's lawyers," without the bill.

The House rejected the conference report before reconsidering the vote and eventually narrowly passing the legislation. The Senate approved it 24-12.

It now heads to Governor McMaster's desk.

LOCAL GOVERNMENT USER FEES

User Fees (S. 233)

The South Carolina Supreme Court held that a road maintenance fee imposed by Greenville County was an invalid tax – not a user fee – and class actions were filed against a number of local governments. S. 233 authorizes service or user fees where the revenue generated by the fee (1) benefits the payers (even if the general public also benefits); (2) is used only for the specific improvement contemplated; (3) does not exceed the cost of the improvement; (4) is uniformly imposed on all payers; and (5) the amount of dollars annually collected is published on the County's website.

UTILITIES

Utility Tax Credit (H. 3340)

H. 3340 increases the maximum $400,000 UTC to $600,000 and authorizes additional UTCs for projects located in Tiers II-IV as follows:

Tier II - $50,000

Tier III - $100,000

Tier IV - $150,000

The legislation clarified existing law by providing: (1) companies may enter into multi-year commitments to provide cash for eligible projects; (2) where a project does not move forward, the company may shift commitment to another project and retain the credit; and (3) cash payments to local government to defray the cost of bonds to provide eligible infrastructure qualify for the credit.

UTILITIES

Economic Development Utility Rates (H. 4062)

H. 4062 allows an electric utility subject to PSC Regulation to provide the SC Department of Commerce or a prospective manufacturing entity with a specified economic development rate that is lower than the utility's PSC approved rate, so long as the rate is not lower than the utility's marginal cost. A qualifying customer means a commercial or industrial customer that agrees to locate or expand in South Carolina with a minimum of (a) 500 kilowatts; (b) one hundred new employees; and (c) Cap X of $400,000. The new economic development rates must be approved by the PSC.

UTILITIES

Offshore Wind Energy (H. 4831)

The Department of Commerce must conduct an economic development study to create a road map for South Carolina to compete in attracting offshore wind energy supply chain industries to South Carolina.

UNEMPLOYMENT INSURANCE

Department of Employment and Workforce Interpretation Controls (S. 1090)

After class action lawsuits were filed regarding the weekly maximum amount of unemployment benefits, the General Assembly passed S. 1090 to explicitly provide that DEW's interpretation of maximum benefits controls, and to override the bringing of class actions by unemployed persons.

BUDGET

House and Senate Agree to Budget

The House and Senate voted to approve the Budget Conference Report. Highlights include:

- SC Commerce Closing Fund $200M
- Strategic Economic Development Infrastructure $100M
- LocateSC $5M
- SC Technology & Aviation Center $9M
- County Transportation Acceleration Funds $250M
- ReadySC $2M
- Federal Infrastructure Investment Act (State Match) $120M
- Rural Interstate Funding $133,636,230
- Naval Base Intermodal Facility and Container Barge Infrastructure $350M
- Destination Specific Grants $15M
- Regional Tourism Advertising $4M
- $4,000 teacher pay raise
- Tuition freeze

ACCOUNTANTS

S. 812 makes extensive changes to Chapter 2, Title 40, relating to the regulation of Certified Public Accountants and Public Accountants.

Coordinating Council for Workforce Development (H. 4766)

H. 4766 changes to the make up of the Coordinating Council for Workforce Development and requires the development of a unified, statewide workforce plan to identify workforce priorities and measurable, time-sensitive metrics.

RECENT DOR POLICY DOCUMENTS

- Rev. Rul. #22-4 (Income Tax) Federal Employee Retention Credit – modification for qualified wages in 2020 and 2021. Taxpayers may deduct qualified wages disallowed for federal tax purposes as a result of claiming the federal employee retention credit from their federal taxable income on their SC tax return
- Rev. Rul. #22-5 (Income Tax) SALT Workaround. Deals with income taxes paid by a Pass-Through entity to other states on personal services income and other business income and the credit for taxes paid to other states.
- Rev. Rul #22-2 (Sales Tax) Local Transportation Tax – Expenditure Guidelines
- Rev. Rul. #22-3 (Income Tax) Employer Wage Withholding Requirements
- PLR # 22-1 (Sales Tax) Sales of Allergen Extracts – injectable Biologics Exemption