

NEXT CHALLENGE. NEXT LEVEL.

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# Legislative Update 2013

Burnet R. Maybank, III  
Nexsen Pruet, LLC  
1230 Main Street, Suite 700  
Columbia, SC 29201  
803-771-8900  
bmaybank@nexsenpruet.com

W. Thomas Lavender, Jr.  
Nexsen Pruet, LLC  
1230 Main Street, Suite 700  
Columbia, SC 29201  
803-771-8900  
tlavender@nexsenpruet.com

Robert D. Coble  
Nexsen Pruet, LLC  
1230 Main Street, Suite 700  
Columbia, SC 29201  
803-771-8900  
bcoble@nexsenpruet.com

Ric Tapp  
Nexsen Pruet, LLC  
205 King Street, Suite 400  
Charleston, SC 29401  
rtapp@nexsenpruet.com

# SC Tax Incentives Legislative Update

## 2013

Burnet R. Maybank, III  
Nexsen Pruet, LLC  
1230 Main Street, Suite 700  
Columbia, SC 29201  
803-771-8900  
[bmaybank@nexsenpruet.com](mailto:bmaybank@nexsenpruet.com)

# SC Tax Incentives Legislative Update 2013

## A. Economic Development

1. Film
2. Port
3. Abandoned Buildings
4. Angel Investors
5. Nascar/Darlington Speedway
6. Unemployment Insurance

## B. Practice and Procedure

1. Tax Conformity
2. Expunging Tax Liens

# SC Tax Incentives Legislative Update 2013

## C. Economic Development Bonds & Alliance Funding

1. Economic Development Bonds (S. 578)
2. Economic Development Bonds (S. 610)
3. Alliance Funding
4. DOC Funding

# SC Tax Incentives Legislative Update 2013

## FILM

Section 12-62-50 has for some 8 years included a 15% wage rebate and a 15% supplier rebate.

These percentages were annually increased by Budget Provisos. The proviso was not renewed for the state budget effective July 1, 2012.

# SC Tax Incentives Legislative Update 2013

## FILM

### S.163:

- ✓ Increases the wage rebate from 15% to 20% for non-resident employees and 25% for SC residents.
- ✓ Increases the supplier rebate from 15% to 30%
- ✓ No rebates for films with patently offensive sexual conduct or which lack serious literary, artistic, political or scientific value.

# SC Tax Incentives Legislative Update 2013

## PORT TAX CREDITS

H. 3557 amends Section 12-6-3375 to:

- ✓ Include as qualifying taxpayers, in addition to manufacturers and warehousing, freight forwarding, freight handling, goods processing, cross-docking, transloading and wholesaling of goods.
- ✓ Delete the \$4 million withholdings cap out of the \$8 million cap.
- ✓ Creates a withholding credit carry forward of 20 succeeding taxable quarters.
- ✓ Eliminates the requirement that the taxpayer must own the cargo.
- ✓ Defines a “weighted TEU” as equal to 7.5 tons and a “measured TEU” as equal to 38.5 cubic meters.



# SC Tax Incentives Legislative Update 2013

## PORT TAX CREDITS

### H. 3557 Cont'd:

- ✓ Amends the base year cargo volume (previously 75 net tons of non containerized cargo or Ten TEUs) to include 385 cubic meters.

# SC Tax Incentives Legislative Update 2013

## PORT TAX CREDITS

Regarding the provision allowing the CCED to award up to \$1M of the \$8M total credit for a new warehouse or distribution facility, the Act amends it as follows:

- ✓ Explicitly allows the CCED to award withholding tax credits;
- ✓ Imposes a requirement (in addition to the current \$40M Cap X/100 jobs) of a minimum of 500,000 TEUs or non-containerized equivalent.
- ✓ Allows the withholdings tax credit to be carried forward the next 20 succeeding taxable quarters
- ✓ Pro-rata clawback

# SC Tax Incentives Legislative Update 2013

## PORT TAX CREDITS

The Act also allows the CCED to award a Port Volume tax credit to a taxpayer which does not currently have a distribution center so long as the taxpayer:

1. Employs at least 250 jobs statewide;
2. Completes construction of the facility within 5 years of the tax credit award; and
3. Has a base year TEU of 500,000 or non-containerized equivalent.
4. Pro-rata clawback.

# SC Tax Incentives Legislative Update 2013

## ABANDONED BUILDINGS

H.3093, the South Carolina Abandoned Buildings Revitalization Act, is similar to the Retail Facilities Revitalization Act.

An “abandoned building” is one in which at least 65% of the space has been closed continuously or otherwise nonoperational for income producing purposes for at least five years.

The credit is only available for buildings renovated for income producing purposes. Residences do not qualify.

# SC Tax Incentives Legislative Update 2013

## ABANDONED BUILDINGS

The taxpayer must expend:

1. More than \$250,000 in the county with more than 25,000 persons;
2. \$150,000 in a county with less than 25,000; or
3. \$75,000 in a municipality with less than 1,000 persons.

The credit is either:

1. Income taxes; or
2. Real property taxes.

# SC Tax Incentives Legislative Update 2013

## ABANDONED BUILDINGS

Eligible rehabilitation expenses' means the expenses or capital expenditures incurred in the rehabilitation, demolition, renovation, or redevelopment of the building site, including without limitations, the renovation or redevelopment of existing buildings, environmental remediation, site improvements, and the construction of new buildings and other improvements on the building site, but excluding the cost of acquiring the building site or the cost of personal property located at the building site.

# SC Tax Incentives Legislative Update 2013

## ABANDONED BUILDINGS

Rehabilitation expenses associated with a building site that increases the amount of square footage on the building site in excess of two hundred percent of the amount of square footage of the buildings that existed on the building site as of the filing of the notice of intent to rehabilitate shall not be considered a rehabilitation expense for purposes of calculating the amount of the credit.

# SC Tax Incentives Legislative Update 2013

## ABANDONED BUILDINGS

### Income Tax Credit

The taxpayer files a Notice of Intent to Rehabilitate with the DOR.

The credit is 25% of the actual eligible rehabilitation expenses if such expenses are between 80-125% of the estimated expenses contained in the Notice; no credit if actual expenses fall below 80%

Credit may not exceed \$500,000 per year.

Credit is limited to 50% of tax liability.



# SC Tax Incentives Legislative Update 2013

## ABANDONED BUILDINGS

### Real Property Tax Credit

City or county must approve by Ordinance; taxing entities may opt out.

Credit is 25% of actual expenses if such expenses are between 80-125% of the Notice; no credit if actual expenses are below 80%.

Credit is up to 75% of the real property taxes of consenting tax entities up to 8 years.

# SC Tax Incentives Legislative Update 2013

## ABANDONED BUILDINGS

The income tax credit - - but not the real property tax credit - - may be assigned to a tenant or purchaser of the building.

# SC Tax Incentives Legislative Update 2013

## ANGEL INVESTORS

H. 3505, the High Growth Small Business Job Creation Act of 2013, provides tax credits for qualified investors in businesses meeting certain criteria.

# SC Tax Incentives Legislative Update 2013

## ANGEL INVESTORS

A qualifying angel investor is:

1. An accredited investor under SEC rules; and is either
2. (i) an individual who is either a resident or a non-resident subject to South Carolina Income taxes;  
or  
(ii) a pass-through entity (e.g., LLC) formed for investment purposes with no business operations, with less than \$5M under management and is not capitalized through private placement memorandum directed to institutional investors.

# SC Tax Incentives Legislative Update 2013

## ANGEL INVESTORS

A qualifying business is one:

- A. That has its headquarters located in South Carolina;
- B. Was organized not more than 5 years before the investment;
- C. Has 25 or fewer employees;
- D. Had gross income less than \$2 million; and
- E. Is primarily engaged in manufacturing, processing, warehousing, wholesaling, software development, IT services, R& D or meets the requirements of Section 12-6-3360(M)(3)

# SC Tax Incentives Legislative Update 2013

## ANGEL INVESTORS

A qualified investment is an Investment in cash by a qualified investor in a qualified business for an equity interest or subordinated debt.

An investment does not qualify if a broker fee or commission is paid directly or indirectly.

# SC Tax Incentives Legislative Update 2013

## ANGEL INVESTORS

A qualified investor is entitled to an income tax credit equal to 35% of his qualified investment.

50% of the tax credit may be utilized in the year of the investment with a 10 year carry-forward.

# SC Tax Incentives Legislative Update 2013

## ANGEL INVESTORS

Total credits for all taxpayers may not exceed \$5M in any one calendar year.

Total credit per taxpayer may not exceed \$100,000 per year.

Credits can be sold - - but only once.



# SC Tax Incentives Legislative Update 2013

## ANGEL INVESTORS

Special rules for net capital gains and losses.

# SC Tax Incentives Legislative Update 2013

## ANGEL INVESTORS

The Act limits total tax credits to \$5M per year.

Pursuant to the cap, taxpayers submit an application for tentative approval of the credit to the DOR.

If credit applications exceed \$5M, the DOR allocates on a pro-rata basis.

# SC Tax Incentives Legislative Update 2013

## NASCAR/DARLINGTON SPEEDWAY

Section 12-21-2425(B)(1) provided an admissions tax exemption for a speedway with at least 60,000 fixed seats for race patrons.

Darlington is renovating its facility which would result in fewer than 60,000 seats.

S.481 provides an admissions tax exemption to a facility which is a NASCAR sanctioned motor speedway that hosted at least one NASCAR Spring Cup Series in 2012 and continues to host at least one.

# SC Tax Incentives Legislative Update 2013

## UNEMPLOYMENT INSURANCE

H.3751, commonly referred to as the DEW Integrity bill, brings South Carolina into compliance with the Federal Trade Adjustment Assistance Extension Act of 2011. Had the legislation not passed before Oct 2013, SC employers would have been subject to higher taxes due to the elimination of the entire federal FUTA credit.

# SC Tax Incentives Legislative Update 2013

## UNEMPLOYMENT INSURANCE

The Federal Act requires states to impose a monetary penalty on claimants whose fraudulent acts resulted in overpayments; prohibit states from providing relief from charges to an employer's unemployment insurance account when the actions of an employer or an agent of an employer have led to an improper payment, and requires employers to report to a State Director of New Hires information on employees the employer has rehired after at least a sixty-day separation.

# SC Tax Incentives Legislative Update 2013

## UNEMPLOYMENT INSURANCE

Section 41-41-45 requires DEW to assess a 25% penalty against a UI claimant if an improper payment from the unemployment compensation fund was made to an individual due to a false statement or failure to disclose a material fact.

# SC Tax Incentives Legislative Update 2013

## UNEMPLOYMENT INSURANCE

DEW will not correct the employer's account where overpayments are made if *both* of the following conditions apply:

1. The overpayment occurred because the employer failed to respond timely or accurately to DEW; and
2. The employer failed to timely or adequately respond on 3 or more occasions, or 3% of the requests made, whichever is greater in a single calendar year.

# SC Tax Incentives Legislative Update 2013

## UNEMPLOYMENT INSURANCE

The definition of “new hire” in Section 43-5-598(A)(6) was amended to include the rehiring of an individual who was separated at least 60 days from employment.



# SC Tax Incentives Legislative Update 2013

## UNEMPLOYMENT INSURANCE

Section 5 of the Act requires DEW, as soon as practicable to fully implement an on-line employer pre-filing program that allows employers to address potential claims for benefits by a former employee.

# SC Tax Incentives Legislative Update 2013

## TAX CONFORMITY

S.261 updates federal income tax conformity to January 2, 2013.

The Act decouples from IRC §68, relating to the reduction of itemized deductions and IRC §151(d)(3) relating to a reduction in personal exemptions for certain high-income taxpayers (e.g. joint return, \$300,000)

# SC Tax Incentives Legislative Update 2013

## EXPUNGEMENT OF TAX LIENS

H.3974, Expungement

The bill allows the DOR

- ✓ To share information with the Secretary of State where the Secretary of State has the power to administratively dissolve the corporation.
- ✓ To expunge liens which have been satisfied.

# SC Tax Incentives Legislative Update 2013

## ECONOMIC DEVELOPMENT BONDS

S. 578 allows the state to issue General Obligation Bonds not to exceed \$120m to support a new investment of not less than \$400m with no fewer than 400 jobs for a project sponsor with a total investment of not less than \$1.1 billion and 2,000 new jobs.

# Economic Development Incentives

## Legislative Update 2013

### ECONOMIC DEVELOPMENT BONDS

S.610 amends the Economic Development Bond Act, Section 11-41-30, to:

- ✓ Amend one of the qualifying uses, a convention and trade show center of not less than 200,000 square feet, to include in the space requirement adjacent facilities.
- ✓ Extend from ten to fifteen years the time period to complete the trade show facility.

# Economic Development Incentives

## Legislative Update 2013

### ALLIANCE FUNDING

The Budget Conference Committee went with the House version of the Alliance funding proviso:

**50.17.** (CMRC: Regional Economic Development Organizations) The Department of Commerce shall utilize the \$5,000,000 appropriated in Fiscal Year ~~2012-13~~ 2013-14 for Regional Economic Development Organizations to provide funds to the following six economic development organizations:

- ~~(1) Central SC Economic Development Alliance;~~
- ~~(2) Charleston Regional Development Alliance;~~
- ~~(3) Economic Development Partnership;~~
- ~~(4) North Eastern Strategic Alliance (NESAs);~~
- ~~(5) Southern Carolina Alliance; and~~
- ~~(6) Upstate Alliance.~~

# Economic Development Incentives

## Legislative Update 2013

### ALLIANCE FUNDING

#### 50.17. Cont'd

Of the \$5,000,000 appropriated for this purpose, ~~\$4,475,000~~ \$4,350,000 must be disbursed ~~equally to each organization~~ as follows:

(1) Upstate Alliance, \$750,000;

(2) Central SC Economic Development Alliance, \$750,000;

(3) North Eastern Strategic Alliance (NESAs), \$650,000;

(4) Charleston Regional Development Alliance, \$650,000;

(5) I-77 Alliance, \$575,000;

(6) Economic Development Partnership, \$500,000; and

(7) Southern Carolina Alliance, \$475,000.

# Economic Development Incentives

## Legislative Update 2013

### ALLIANCE FUNDING

#### 50.17 Cont'd

Each dollar of state funds must be matched with one dollar of private funds. The organization receiving state funds must certify that the private funds are new dollars specifically designated for the purpose of matching state funds and have not been previously allocated or designated for economic development.

The remaining ~~\$525,000~~ \$650,000 shall be provided to ~~Chester County, Lancaster County, Saluda County, Lee County, Sumter County, Beaufort County, and York County~~ counties as follows, provided they meet the requirements established above:

(1) Beaufort County, \$250,000;

(2) Sumter County, \$250,000;

(3) Lancaster County, \$75,000; and

(4) Saluda County, \$75,000.



# Economic Development Incentives

## Legislative Update 2013

### ALLIANCE FUNDING

#### 50.17 Cont'd

Upon receipt of the request for the funds and certification of the matching funds, the Department of Commerce shall disburse the funds to the requesting organization.

Funds recipients shall provide an annual report by November first, to the Chairmen of the Senate Finance Committee and the House Ways and Means Committee and the Secretary of Commerce on the expenditure of the funds and on the outcome measures.

Any unexpended or undistributed funds appropriated in prior fiscal years for Regional Economic Development Organizations shall be transferred to the Rural Infrastructure Fund at the Department of Commerce.

# Economic Development Incentives

## Legislative Update 2013

### DOC FUNDING

ITEM	GENERAL FUNDS (non-recurring)	CAPITAL RESERVE	TOTAL
Deal Closing Fund	\$12,677,776	\$3,322,234	\$16M
Base Closure Fund	\$500,000	0	\$500,000
Business Incubator	\$5,000,000	\$1,000,000	\$6M
Council on Competitiveness	\$650,000	0	\$650,000

# Local Government Legislative Update

## 2013

Robert D. Coble  
Nexsen Pruet, LLC  
1230 Main Street, Suite 700  
Columbia, SC 29201  
803-771-8900  
[rcoble@nexsenpruet.com](mailto:rcoble@nexsenpruet.com)

# Local Government Legislative Update 2013

H.3774 – “Permit Extension Joint Resolution of 2013”

Senate and House adopted the conference report on Wednesday, June 19, 2013. The bill has been ratified and submitted to the Governor.

This is the second Joint Resolution extension because of the Great Recession.

# Local Government Legislative Update 2013

The purpose of this joint resolution to prevent the wholesale abandonment of already approved projects and activities due to the present unfavorable economic conditions by tolling the term of these approvals for a finite period of time as the economy improves, thereby preventing a waste of public and private resources.

# Local Government Legislative Update 2013

Types of permits extended:

“Development approval” means an approval issued by the State, an agency or subdivision of the State, or a unit of local government, regardless of the form of the approval, that is for the development of land or for the provision of water or wastewater services by a governmental entity, including:

(a) an approval of an erosion and sedimentation control plan, land disturbance permit application, or stormwater management plan granted by a local government or by the department;

(b) a water or wastewater permit issued by the department, including authorization for construction and installation of lines and infrastructure extending water and sewer service and authorization to connect to available or proposed lines and infrastructure;

(c) an NPDES permit issued by the department for the construction, operation, and expansion of a publicly owned treatment works;

# Local Government Legislative Update 2013

Types of permits extended cont'd:

(d) a 401 water quality certification issued by the department;

(e) an air quality permit issued by the department;

(f) an approval by a county or its authorized boards and commissions of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, or a building permit;

(g) an approval by a city or its authorized boards and commissions of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, or a building permit;

(h) a permit issued by the Office of Coastal Resource Management.

# Local Government Legislative Update 2013

- Timeframe of extension 12-31-2016
- Retroactive from 12-31-12



# Local Government Legislative Update 2013

## Permits not covered:

- (1) extend a permit or approval issued by the United States or its agencies or instrumentalities;
- (2) extend a permit or approval for which the term or duration of the permit or approval is specified or determined pursuant to federal law;
- (3) shorten the duration that a development approval would have had in the absence of this joint resolution;
- (4) prohibit the granting of additional extensions provided by law;

# Local Government Legislative Update 2013

## Permits not covered, cont'd:

(5) affect an administrative consent order issued by the department in effect or issued at any time from the effective date of this joint resolution to December 31, 2016;

(6) affect the ability of a governmental entity to revoke or modify a development approval pursuant to law;

(7) modify a requirement of law that is necessary to retain federal delegation by the State of the authority to implement a federal law or program; or

(8) affect a Certificate of Need issued pursuant to Article 3, Chapter 7, Title 44 or a Demonstration of Need issued pursuant to Article 2, Chapter 96, Title 44.

# Local Government Legislative Update 2013

State agencies must publish in the State Register within 30 days a list of permits extended.

Within thirty days after the effective date of this joint resolution, each agency or subdivision of the State to which this joint resolution applies shall submit a notice for publication to the State Register listing the types of development approvals that the agency or subdivision issues and noting the suspension provided in this joint resolution. This section does not apply to units of local government.

# Environmental Legislative Update

## 2013

W. Thomas Lavender, Jr.  
Nexsen Pruet, LLC  
1230 Main Street, Suite 700  
Columbia, SC 29201  
803-771-8900  
[tlavender@nexsenpruet.com](mailto:tlavender@nexsenpruet.com)

# Environmental Legislative Update 2013

- H.3827 - APA amendments - Passed House, Referred to Senate Medical Affairs
- H.3925 - PCA bill regarding private causes of action - House adjourned debate
- H.3097 - Rewrote the Drycleaning Facility Act - Signed by Governor
- H.3920 - Business Freedom to Choose (flow control) - Passed House, on Senate calendar

# Environmental Legislative Update 2013

- S.717 - Landfill moratorium - Referred to Senate Medical Affairs
- S.359 - Well & septic tank - Referred to Senate Medical Affairs
- H.3847 – Electronics recycling – On House calendar for concurrence or non concurrence in Senate amendments

# Highway/DOT/SIB Legislative Update

## 2013

Ric Tapp  
Nexsen Pruet, LLC  
205 King Street, Suite 400  
Charleston, SC 29401  
843-577-9440  
[rtapp@nexsenpruet.com](mailto:rtapp@nexsenpruet.com)

# H. 3360 – Road Ownership Legislative Update 2013

- Road Ownership:
  - Permits the transfer of road ownership between consenting governmental parties (e.g., City or County to SCDOT; SCDOT to City or County or school, etc.).
  - Permits the transfer of road ownership to the private sector with the consent of the parties and the businesses and persons located on that road.
    - As to the private sector, this would have Constitutional and operational ramifications: no discussion of price; no discussion of future access (e.g. tolls, etc.); no discussion of condemnation issues.



# H. 3360 – Road Funding Legislative Update 2013

- Road Funding:
  - Transfers \$50M annually from non-tax sources from SCDOT to the SIB (*i.e.*, equal to gasoline user fees of about 2¢/gallon).
    - Results in approximately \$600M in bonding capacity to the SIB (aggregate varies depending upon interest rates).
  - Funds must be used solely, “to finance bridge replacement, rehabilitation projects, and expansion and improvements to existing mainline interstates.” But, SIB retains some discretion over which projects.
  - Funds cannot be used for SIB projects “approved” before July 1, 2013.

# H. 3360 – Road Funding Cont'd

## Legislative Update 2013

- Operationally, the incongruency with existing law is anticipated to create confusion for the SIB:
  - Presumably timing component drafted to preclude further funding for the Mark Clark completion in Charleston - but has impact of potentially precluding funding for other unrelated, existing road projects like those in Dorchester, Beaufort, and Jasper counties.
  - SIB enabling legislation precludes financial assistance when the term of the financing exceeds the useful life of the project – so repaving is arguably precluded. See *S.C. Code Ann.* 11-43-180(A).
  - SIB enabling legislation provides, “[p]reference must be given to eligible projects which have local financial support.” See *S.C. Code Ann.* 11-43-180(B).

## H. 3360 – Road Funding Cont'd Legislative Update 2013

- Diverts 50% of the motor vehicle sales/use and casual excise taxes – roughly \$42M annually - to the SCDOT's *State Non-Federal Aid Highway Fund* (i.e., secondary roads) exclusively for “highway, road, and bridge maintenance, construction, and repair.”
- Provides up to \$50M in non-recurring funding from otherwise unobligated general funding to the SCDOT to be used for “Bridge Replacement and Rehabilitation.” See Proviso 118.17

# Summary – Road Funding Legislative Update 2013

- Provides a mechanism to reduce road maintenance exposure by transferring road ownership to others.
- Provides about \$600M in bonding capacity to the SIB for “bridge replacement, rehabilitation projects, and expansion and improvements to existing mainline interstates” - with some restrictions.
- Diverts 50% of the motor vehicle sales/use and casual excise taxes (roughly \$42M annually) to the SCDOT for secondary road “highway, road, and bridge maintenance, construction, and repair.”
- Provides up to \$50M in non-recurring funding to SCDOT for “Bridge Replacement and Rehabilitation.”

NEXT CHALLENGE. NEXT LEVEL.

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