CHAPTER 12

Fee in Lieu of Property Taxes

Editor's Note

2000 Act No. 283, Section 3.A, provides as follows:

"The General Assembly finds that notwithstanding previous attempts by the General Assembly to simplify fee‑in‑lieu, one of South Carolina's most important tax incentives, the current system is cumbersome, complex, and continues to inhibit use of popular financing techniques by South Carolina taxpayers which are widely used in other states. The General Assembly further finds that the purpose of this legislation is to simplify the fee program by making it more like traditional ad valorem taxation, which imposes no limitation on financing techniques, and to make explicit the General Assembly's intent that businesses be afforded broad flexibility in their choice of financing techniques. This legislation also allows two businesses which are not part of a controlled group, which are involved in a simple project, for example, one owns the real estate and the other the machinery and equipment, to execute a single fee‑in‑lieu where the aggregate investment equals or exceeds the statutory minimum. This legislation is not intended to, and does not, expand the incentive itself, for example by decreasing the assessment ratio."

**SECTION 4‑12‑10.** Definitions.

As used in this chapter:

(1) "Department" means the South Carolina Department of Revenue.

(2) "Project" means land, buildings, and other improvements on the land including water, sewage treatment and disposal facilities, air pollution control facilities, and all other machinery, apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, or useful by a sponsor. "Project" also may consist of or include aircraft hangered or utilizing an airport in a county so long as the county expressly consents to its inclusion. Aircraft previously subject to taxation in South Carolina qualify pursuant to this provision.

(3) "Sponsor" means one or more entities which sign the inducement agreement with the county and also includes a sponsor affiliate unless the context clearly indicates otherwise.

(4) "Sponsor affiliate" means an entity that joins with or is an affiliate of a sponsor and that participates in the investment in, or financing of, a project.

(5) "Lease agreement" means an agreement between the county and the sponsor leasing the property at the project from the county to the sponsor.

HISTORY: 1995 Act No. 125, Section 4A, approved June 7, 1995 and effective for taxable years beginning after 1995; 2000 Act No. 283, Section 3(B), eff May 19, 2000; 2003 Act No. 69, Section 3.YY.1, eff Jan. 1, 2003; 2008 Act No. 313, Section 2.I.5, eff upon approval (became law without the Governor's signature on June 12, 2008).

Effect of Amendment

The 2000 amendment added items (3), (4) and (5).

The 2003 amendment, in item (2), deleted ", without limiting the generality of the forgoing" after "the land including" and made nonsubstantive changes, in item (3) added "fee inducement" preceding "agreement", and in item (5) substituted the definition of "lease agreement" for the definition of "Title to the property".

The 2008 amendment added the second and third sentences in item (2) relating to aircraft.

**SECTION 4‑12‑20.** Lease agreements between county, municipality, school district, water and sewer authority, or other political subdivisions and another party to contain provision for fees in lieu of taxes.

Every agreement between a county, municipality, school district, water and sewer authority, or other political subdivision and another party in the form of a lease must contain a provision requiring the other party to make payments to the county, municipality, school district, water and sewer authority, and other political subdivisions in which the project is located in lieu of taxes, in the amounts that would result from taxes levied on the project by a county, municipality, school district, water and sewer authority, and other political subdivisions, if the project were owned by the other party, but with appropriate reductions similar to the tax exemptions, if any, which would be afforded to the other party if it were owner of the project.

HISTORY: 1995 Act No. 125, Section 4A, approved June 7, 1995 and effective for taxable years beginning after 1995; 1998 Act No. 432, Section 19A, eff for leases entered into after June 23, 1998; 2003 Act No. 69, Section 3.YY.1, eff Jan. 1, 2003.

Editor's Note

2003 Act No. 69, Section 3.YY.2, in part provides as follows:

"(i) for those projects which have been granted a two‑year extension of time to complete the project and that two‑year period has not expired, the sponsor may at any time during the two‑year extension request an additional three years to complete the project, and (ii) the county and the sponsor may agree to waive the provisions of Section 4‑12‑45 under any agreement whenever executed."

Effect of Amendment

The 1998 amendment substituted ", municipality, school district, water and sewer authority, or other political subdivision" for "council or county councils", "other party" for "industry" in three places, "water and sewer authority" for "or school districts" in two places, and "subdivisions" for "units" in two places; and made other nonsubstantive changes.

The 2003 amendment reprinted this section with no apparent changes.

**SECTION 4‑12‑30.** Fees in lieu of taxes; exception for qualifying inducement lease agreements.

(A) Notwithstanding the provisions of Section 4‑12‑20 for a project qualifying under subsection (B), the county and a sponsor may enter into an inducement agreement which provides for a fee in lieu of taxes, as provided in this section, for certain property, title to which is held by the county, and leased to the sponsor.

(B) In order for property to qualify for the fee, as provided in subsection (D)(2):

(1) Title to the property must be held by the county. In the case of a project located in an industrial development park, as defined in Section 4‑1‑170, title may be held by more than one county, if each county is a member of the industrial development park. Any real property transferred to the county through a lease agreement must include a legal description and plat of the real property. Property titled in the name of a county pursuant to this section is considered privately owned for purposes of Section 58‑3‑240.

(2) The project must be located in a single county or an industrial development park, as defined in Section 4‑1‑170. A project located on a contiguous tract of land in more than one county, but not in an industrial development park, may qualify for the fee if:

(a) the counties agree on the terms of the fee and the distribution of the fee payment;

(b) the minimum millage rate is provided for in the agreement; and

(c) all the counties are parties to all agreements establishing the terms of the fee.

(3) The minimum level of investment in the project must be at least two and one‑half million dollars and must be invested within the time period provided in subsection (C)(2). If a county has an average annual unemployment rate of at least twice the state average during the last twenty‑four months based on data available on the most recent November first, the minimum level of investment is one million dollars. The department shall designate these reduced investment counties by December thirty‑first of each year using data from the South Carolina Department of Employment and Workforce and the United States Department of Commerce. The designations are effective for a sponsor whose inducement agreement is signed in the calendar year following the county designation. Investments may include amounts expended by a sponsor as a nonresponsible party in a voluntary cleanup contract on the property at a project pursuant to Article 7, Chapter 56 of Title 44, the Brownfields Voluntary Cleanup Program, if the Department of Health and Environmental Control has issued a certificate of completion for the cleanup. If the amounts, under the Brownfields Voluntary Cleanup Program, equal at least one million dollars, the investment threshold requirement of this chapter is deemed to have been met.

(4)(a) A sponsor and a sponsor affiliate may qualify for the fee if each sponsor and sponsor affiliate invests the minimum level of investment as specified in subsection (B)(3).

(b) If the project consists of a manufacturing, research and development, corporate office, or distribution facility, as those terms are defined in Section 12‑6‑3360(M), each sponsor or sponsor affiliate is not required to invest the minimum investment required by subsection (B)(3), if the total investment in the project exceeds five million dollars.

(c) Investments by sponsor affiliates within the time periods provided in subsections (C)(1) and (C)(2) qualify for the fee whether or not the affiliate was part of the inducement agreement. To qualify for the fee, the sponsor affiliates are approved specifically by the county and agree to be bound by agreements with the county relating to the fee, except that the sponsor affiliates are not bound by agreements, or portions of agreements, to the extent the agreements do not affect the county. The inducement agreement or the lease agreement may provide for a process for approval of sponsor affiliates.

(d) The investments pursuant to this item must be at the same project.

(e) The department must be notified in writing of all sponsor affiliates which have investments subject to the fee before or within ninety days after the end of the calendar year during which the project or pertinent phase of the project was first placed in service. The department may extend this period upon written request. Failure to meet this notice requirement does not affect the fee adversely, but a penalty may be assessed by the department for late notification in the amount of ten thousand dollars a month or portion of a month, not to exceed fifty thousand dollars.

(f)(i) if at any time a sponsor or sponsor affiliate no longer has the minimum level of investment as provided in subsection (B)(3), without regard to depreciation, that sponsor or sponsor affiliate no longer qualifies for the fee.

(ii) Except as provided in subsection (H)(3), if the sponsor qualifies for the fee under subsection (D)(4), the sponsor must maintain the applicable level of investment, without regard to the depreciation. If the sponsor fails to maintain the applicable investment, it no longer qualifies for the fee.

(5) Before undertaking a project, the county council or county councils shall:

(a) find that the project is anticipated to benefit the general public welfare of the locality by providing services, employment, recreation, or other public benefits not otherwise provided locally;

(b) find that the project gives rise to no pecuniary liability of the county or incorporated municipality or a charge against its general credit or taxing power;

(c) find that the purposes to be accomplished by the project are proper governmental and public purposes;

(d) find that the benefits of the project are greater than the costs;

(e) seek the advice and assistance of the department or the Revenue and Fiscal Affairs Office in making the findings in items (a) through (d) above if necessary or helpful; and

(f) set forth in an ordinance its determination and findings.

(6) Every lease agreement with respect to a project must contain a provision obligating the sponsor to complete and maintain the project, and to carry all proper insurance with respect to the project.

(C)(1) From the end of the property tax year in which the sponsor and the county execute an inducement agreement, the sponsor has five years in which to enter into an initial lease agreement with the county.

(2) From the end of the property tax year in which the sponsor and the county execute the initial lease agreement, the sponsor has five years in which to complete its investment for purposes of qualifying for this section. If the sponsor does not anticipate completing the project within five years, the sponsor may apply to the county before the end of the five‑year period for making the minimum investment for an extension of time to complete the project. The extension may not exceed five years. If a project receives an extension of less than five years, the sponsor may apply to the county before the end of the extension period for an additional extension of time to complete the project for an aggregate extension of not more than five years. Unless approved as part of the original lease documentation, the county council of the county may approve any extension by resolution, a copy of which must be delivered to the department within thirty days of the date the resolution was adopted. There is no extension allowed for the five‑year period in which to meet the minimum level of investment. If the minimum level of investment is not met within five years, all property under the lease agreement or agreements, reverts retroactively to the payments required by Section 4‑12‑20. The difference between the fee actually paid by the sponsor and the payment which is due under Section 4‑12‑20 is subject to interest, as provided in Section 12‑54‑25(D). To the extent necessary to determine if a sponsor or sponsor affiliate has met its investment requirements, any statute of limitations that might apply pursuant to Section 12‑54‑85 is suspended for all sponsors and sponsor affiliates during the time period allowed to make the required investment and the department or county may seek collection of any amount that may be due pursuant to this subsection. Any property placed in service after the five‑year period, or ten‑year period in the case of a project which has received an extension, is not part of the fee agreement under subsection (D)(2) and is subject to the payments required by Section 4‑12‑20 if the county has title to the property, or to ad valorem property taxes, if the sponsor has title to the property. For purposes of those sponsors qualifying under subsection (D)(4), the five‑year period referred to in this subsection is eight years.

(3) For those sponsors that, after qualifying pursuant to subsection (D)(4), have more than five hundred million dollars in capital invested in this State and employ more than one thousand people in this State, the five‑year period referred to in this subsection is ten years, and the ten‑year period for completing the project is fifteen years.

(4) The annual fee provided by subsection (D)(2) is available for no more than thirty years for an applicable piece of property. The sponsor may apply to the county prior to the end of the thirty‑year period for an extension of the fee period for up to ten years. The county council of the county shall approve an extension by resolution upon a finding of substantial public benefit. A copy of the resolution shall be delivered to the department within thirty days of the date the resolution was adopted. For projects completed and placed in service during more than one year, each year's investment may be subject to the fee in subsection (D)(2) for thirty years or, if extended as provided in this subsection up to forty years, for an aggregate fee period of up to fifty years. For those sponsors qualifying under subsection (D)(4), the annual fee is available for no more than forty years for an applicable piece of property and for those projects placed in service in more than one year the annual fee is available for an aggregate fee period of up to fifty‑three years, or for those sponsors qualifying pursuant to subsection (C)(3), fifty‑five years.

(5) Annually, during the time period allowed to meet the minimum investment level, the sponsor shall provide the total amount invested to the appropriate county official.

(D) The inducement agreement must provide for fee payments, to the extent applicable, as follows:

(1)(a) Any property is subject to an annual fee payment, as provided in Section 4‑12‑20.

(b) Any undeveloped land before being developed and placed in service, is subject to an annual fee payment as provided in Section 4‑12‑20. The time during which fee payments are made under Section 4‑12‑20 is not considered part of the maximum periods provided in subsections (C)(2) through (C)(4), and a lease is not considered an "initial lease agreement" for purposes of this subsection until the first day of the calendar year for which a fee payment is due under item (2) in connection with the lease.

(2) After property qualifying under subsection (B) is placed in service, an annual fee payment determined in accordance with one of the following is due:

(a) an annual payment in an amount not less than the property taxes that would be due on the project if it were taxable, but using an assessment ratio of not less than six percent, or four percent of those projects qualifying pursuant to subsection (D)(4), a fixed millage rate as provided in subsection (G), and a fair market value estimate determined by the department as follows:

(i) for real property, using the original income tax basis for South Carolina income tax purposes without regard to depreciation, if real property is constructed for the fee or is purchased in an arm's length transaction; otherwise, the property must be reported at its fair market value for ad valorem property tax purposes as determined by appraisal. The fair market value estimate established for the first year of the fee remains the fair market value of the real property for the life of the fee. The county and the sponsor or sponsor affiliate may instead provide in the fee agreement or any amendment thereto that any real property subject to the fee shall be reported at its fair market value for ad valorem property taxes as determined by the department's appraisal as if such property were not subject to the fee; provided, the department may not undertake such an appraisal more than once every five years; and

(ii) for personal property, using the original tax basis for South Carolina income tax purposes less depreciation allowable for property tax purposes, except that the sponsor is not entitled to any extraordinary obsolescence.

(b) an annual payment as provided in subsection (D)(2)(a), except that every fifth year the applicable millage rate is allowed to increase or decrease in step with the average actual millage rate applicable in the district where the project is located based on the preceding five‑year period.

(3) At the conclusion of the payments determined pursuant to items (1) and (2) of this subsection, an annual payment equal to the taxes is due on the project as if it were taxable. When the property is no longer subject to the fee under subsection (D)(2), the fee or property taxes must be assessed:

(a) with respect to real property, based on the fair market value as of the latest reassessment date for similar taxable property; and

(b) with respect to personal property, based on the then depreciated value applicable to such property under the fee, and thereafter continuing with the South Carolina property tax depreciation schedule.

(4)(a) The assessment ratio may not be lower than four percent:

(i) in the case of a single sponsor investing at least one hundred fifty million dollars and creating at least one hundred twenty‑five new full‑time jobs in this State;

(ii) in the case of a single sponsor investing at least four hundred million dollars at a project; or

(iii) in the case of a project that satisfies the requirements of Section 11‑41‑30(2)(a), and for which the Secretary of Commerce has delivered certification pursuant to Section 11‑41‑70(2)(a).

For purposes of this item, if a single sponsor enters into a financing arrangement of the type described in Section 4‑12‑30(M)(2), the investment in or financing of the property by a developer, lessor, financing entity, or other third party in accordance with this arrangement is considered investment by the sponsor. Investment by a related person to the sponsor, as described in Section 12‑10‑80(D)(2), is considered investment by the sponsor.

(b) The new full‑time jobs requirement of this item does not apply in the case of a sponsor which for more than the twenty‑five years ending on the date of the agreement paid more than fifty percent of all property taxes actually collected in the county.

(c) In an instance in which the governing body of a county has by contractual agreement provided for a change in fee in lieu of taxes arrangement conditioned on a future legislative enactment, any new enactment shall not bind the original parties to the agreement unless the change is ratified by the governing body of the county.

(5) Notwithstanding the use of the term "assessment ratio", a sponsor qualifying for the fee may negotiate an inducement agreement with a county using differing assessment ratios for different assessment years or levels of investment covered by the inducement agreement. However, the lowest assessment ratio allowed is the lowest ratio for which the sponsor may qualify under this section.

(E) Calculations pursuant to subsection (D)(2) must be made on the basis that the property, if taxable, is allowed all applicable property tax exemptions except the exemption allowed under Section 3(g) of Article X of the Constitution of this State and the exemption allowed pursuant to Section 12‑37‑220(B)(32) and (34).

(F) With regard to calculation of the fee provided in subsection (D)(2), the inducement agreement may provide for the disposal of property and the replacement of property subject to the fee as follows:

(1)(a) If a sponsor disposes of property subject to the fee, the fee must be reduced by the amount of the fee applicable to that property.

(b) Property is disposed of only when it is scrapped or sold or it is removed from the project. If it is removed from the project, it becomes subject to ad valorem property taxes to the extent the property remains in this State.

(c) If there is no provision in the agreement dealing with the disposal of property in accordance with this subsection, the fee remains fixed and no adjustment to the fee is allowed for disposed property.

(2) Any property which is placed in service as a replacement for property which is subject to the fee payment may become part of the fee payment, as provided in this item:

(a) Replacement property does not have to serve the same function as the property it is replacing. Replacement property is deemed to replace the oldest property subject to the fee, whether real or personal, which is disposed of in the same property tax year as the replacement property is placed in service. Replacement property qualifies for fee treatment provided in subsection (D)(2) only up to the original income tax basis of fee property it is replacing. More than one piece of replacement property can replace a single piece of fee property. To the extent that the income tax basis of the replacement property exceeds the original income tax basis of the property which it is replacing, the excess amount is subject to payments, as provided in Section 4‑12‑20. Replacement property is entitled to the fee payment for the period of time remaining on the fee period for the property which it is replacing.

(b) The new replacement property which qualifies for the fee provided in subsection (D)(2) is recorded using its income tax basis and the fee is calculated using the millage rate and assessment ratio provided for the original fee property. The fee payment for replacement property must be based on subsection (D)(2)(a) or (D)(2)(b), if the sponsor originally used this method.

(c) In order to qualify as replacement property, title to the replacement property must be held by the county.

(d) If there is no provision in the inducement agreement dealing with replacement property, any property placed in service after the time period allowed for investments, as provided by subsection (C)(2), is subject to the payments required by Section 4‑12‑20 if the county has title to the property, or to ad valorem property taxes if the sponsor has title to the property.

(G)(1) The county and the sponsor may enter into a millage rate agreement to establish the millage rate for purposes of calculating payments under subsection (D)(2)(a), and the first five years under subsection (D)(2)(b). This millage rate agreement may be executed at any time up to and including, but not later than, the date of the initial lease agreement. This millage rate agreement may be a separate agreement or may be made a part of either the inducement agreement or the initial lease agreement.

(2) The millage rate established pursuant to subsection (G)(1) must be no lower than the cumulative property tax millage rate levied by or on behalf of all taxing entities within which the project is to be located on either:

(a) June thirtieth of the year preceding the calendar year in which the millage rate agreement is executed or the initial lease agreement is executed if there is no millage rate agreement; or

(b) June thirtieth of the calendar year in which the millage rate agreement is executed. If a millage rate agreement is not executed, the initial lease agreement is considered to be the millage rate agreement for purposes of this item.

(H)(1) Upon agreement of the parties, and except as provided in item (2) of this subsection, an inducement agreement, a millage rate agreement, or both, may be amended or terminated and replaced with regard to all matters including, but not limited to, the addition or removal of sponsors or sponsor affiliates.

(2) No amendment or replacement of an inducement agreement or millage rate agreement may be used to lower the millage rate, assessment ratio, or, except as provided in Sections 4‑12‑30(C)(2) and (C)(4), increase the term of the agreement under any such agreement. However, existing inducement agreements which have not yet been implemented by the execution and delivery of a millage rate agreement or a lease agreement may be amended up to the date of execution and delivery of a millage rate agreement or a lease agreement in the discretion of the governing body.

(3) An inducement agreement or a lease agreement may provide that a sponsor who has committed to an investment under subsection (D)(4) may continue to receive the benefits of this chapter even if the sponsor fails to make or maintain the required investment or fails to create the jobs required by subsection (D)(4), if the sponsor meets the two and one‑half million dollar minimum investment. If the sponsor fails to make or maintain the required investment or create the required number of jobs, the inducement agreement or the lease agreement may not provide for an assessment ratio and an exemption period more favorable than those allowed for the minimum investment. To the extent that the sponsor obtained a four percent assessment ratio under subsection (D)(4), the sponsor must recalculate the fee using a six percent ratio or such other ratio as the inducement agreement or lease agreement may provide for all years in which the four percent assessment ratio was used and pay the county any difference. This difference is subject to interest as provided in Section 12‑54‑25.

(I) Investment expenditures incurred by any sponsor in connection with a project, or relevant phase of a project for a project completed and placed in service in more than one year, qualify as expenditures subject to the fee in subsection (D)(2), so long as those expenditures are incurred before the end of the applicable five‑year, eight‑year, ten‑year, or fifteen‑year period referenced in subsection (C)(2) or (C)(3). An inducement agreement must be executed within two years after the date on which the county adopts an inducement or resolution identifying the project; otherwise, only investment expenditures made or incurred by any sponsor after the date of the inducement agreement in connection with a project qualifies as expenditures subject to the fee in subsection (D)(2).

(J)(1) Property which has been previously subject to property taxes in South Carolina does not qualify for the fee except as provided in this subsection:

(a) land, excluding improvements on the land, on which a new project is to be located may qualify for the fee even if it has previously been subject to South Carolina property taxes;

(b) property which has been subject to South Carolina property taxes, but which has never been placed in service in South Carolina, or which was placed in service in South Carolina pursuant to an inducement agreement or other preliminary approval by the county prior to execution of the lease agreement pursuant to subsection (C)(1), may qualify for the fee.

(2) Repairs, alterations, or modifications to real or personal property which are not subject to a fee are not eligible for a fee, even if they are capitalized expenditures, except for modifications to existing real property improvements which constitute an expansion of the improvements.

(3) Project expenditures which are incurred within the applicable time period provided in subsection (I) by an entity whose investments are not being computed in the level of investment for purposes of subsection (B)(3) or (D)(4) qualify as investment expenditures subject to the fee in subsection (D)(2) if:

(a) the expenditures are part of the original cost of the property which is transferred, within the applicable time period provided in subsection (I), to one or more sponsors and whose investments are being computed in the level of investment for purposes of subsection (B) or (C);

(b) the property would have qualified for the fee in subsection (D)(2) if it had been initially acquired by the sponsor rather than the transferor entity;

(c) the income tax basis of the property immediately before the transfer must equal the income tax basis of the property immediately after the transfer. However, to the extent income tax basis of the property immediately after the transfer unintentionally exceeds the income tax basis of the property immediately before the transfer, the excess shall be subject to payments under Section 4‑12‑20; and

(d) the county agrees to any inclusion in the fee of the property described in subsection (J)(3).

(K)(1) For a project not located in an industrial development park, as defined in Section 4‑1‑170, distribution of the fee in lieu of taxes on the project must be made in the same manner and proportion that the millage levied for school and other purposes would be distributed if the property were taxable, but without regard to an exemption otherwise available to the project pursuant to Section 12‑37‑220 for that year.

(2) For a project located in an industrial development park, as defined in Section 4‑1‑170, distribution of the fee in lieu of taxes on the project must be made in the manner provided for by the agreement establishing the industrial development park.

(3) A county or municipality or special purpose district that receives and retains revenues from a payment in lieu of taxes may use a portion of this revenue for the purposes outlined in Section 4‑29‑68 without the requirement of issuing special source revenue bonds or the requirements of Section 4‑29‑68(A)(4) by providing a credit against or payment derived from the fee due from a sponsor.

(4) Misallocations of the distribution of the fee in lieu of taxes on the project pursuant to this chapter may be corrected by adjusting later distributions, but these adjustments must be made in the same fiscal year as the misallocations. To the extent distributions are made improperly in previous years, a claim for adjustment must be made within one year of the distribution.

(L) Projects on which a fee in lieu of taxes is paid pursuant to this section are considered taxable property at the level of the negotiated payments for purposes of bonded indebtedness pursuant to Sections 14 and 15 of Article X of the Constitution of this State and for purposes of computing the index of taxpaying ability pursuant to Section 59‑20‑20(3). However, for a project located in an industrial development park, as defined in Section 4‑1‑170, projects are considered taxable property in the manner provided in Section 4‑1‑170 for purposes of bonded indebtedness pursuant to Sections 14 and 15 of Article X of the Constitution of this State and for purposes of computing the index of taxpaying ability pursuant to Section 59‑20‑20(3). However, the computation of bonded indebtedness limitation is subject to the requirements of Section 4‑29‑68(E).

(M)(1) Any interest in an inducement agreement, millage rate agreement, lease agreement, and property to which these agreements relate may be transferred to another entity at any time. Notwithstanding any other provision of this chapter, any equity interest in a sponsor may be transferred to another entity or person at any time. To the extent an agreement is transferred, the transferee assumes the current basis the sponsor has in real or personal property subject to the fee for purposes of calculating the fee.

(2) A sponsor or a county may enter into any lending, financing, security, lease, or similar arrangement, or succession of such arrangements, with any financing entity, concerning all or part of a project including, without limitation, any sale‑leaseback arrangement, equipment lease, build‑to‑suit lease, synthetic lease, nordic lease, defeased tax benefit, or transfer lease, an assignment, a sublease, or similar arrangement, or succession of such arrangements, with one or more financing entities, concerning all or part of a project, regardless of the identity of the income tax owner of the property which is subject to the fee payment under subsection (D)(2). Even though income tax basis is changed for income tax purposes, neither the original transfer to the financing entity nor the later transfer from the financing entity back to the original transferor, pursuant to terms in the sale‑leaseback agreement, shall affect the amount of the fee due.

(3) All transfers undertaken with respect to other projects to effect a financing authorized under subsection (M) must meet the following requirements:

(a) The department and the county must receive notification in writing within sixty days after the transfer of the identity of each transferee and other information required by the department with the appropriate returns. Failure to meet this notice requirement shall not adversely affect the fee, but a penalty may be assessed by the department for late notification for up to ten thousand dollars a year or portion of a year up to a maximum penalty of fifty thousand dollars.

(b) If a financing entity is the income tax owner of property, either the financing entity is primarily liable for the fee as to that portion of the project to which the transfer relates with the sponsor remaining secondarily liable for the payment of the fee or the sponsor must agree to continue to be primarily liable for the payment of the fee as to that portion of the project to which the transfer relates.

(4) A sponsor may transfer an inducement agreement, millage rate agreement, lease agreement, or the assets subject to the lease agreement, if it obtains the prior approval, or subsequent ratification, of the county with whom it entered into the original inducement agreement, millage rate agreement, or lease agreement. The county's prior approval or subsequent ratification may be evidenced by any one of the following, in the absolute and sole discretion of the county providing the approval or ratification: (i) a letter or other writing executed by an authorized county representative as designated in the respective inducement, millage rate, or lease agreement; (ii) a resolution passed by the county council; or (iii) an ordinance passed by the county council following three readings and a public hearing. That approval is not required in connection with transfers to sponsor affiliates or other financing‑related transfers.

(N) The minimum amount of investment provided in subsection (B)(3) of this section may not be reduced except by a special vote which, for purposes of this section, means an affirmative vote in each branch of the General Assembly by two‑thirds of the members present and voting, but not less than three‑fifths of the total membership in each branch.

(O)(1) The sponsor shall file the returns, contracts, and other information which may be required by the department.

(2) Fee payments and returns showing investments and calculating fee payments are due at the same time as property tax payments and property tax returns would be due if the property were owned by the sponsor obligated to make the fee payments and file the returns.

(3) Failure to make a timely fee payment and file required returns shall result in penalties being assessed as if the payment or return were a property tax payment or return.

(4) The department may issue the rulings and promulgate regulations it determines necessary or appropriate to carry out the purpose of this section.

(5) The provisions of Chapters 4 and 54 of Title 12 applicable to property taxes shall apply to this section; and, for purposes of such application, the fee is considered a property tax. Sections 12‑54‑80 and 12‑54‑155 do not apply to this section.

(6) If a sponsor fails to make the fee or lease payments as provided by the agreements between the sponsor and the county, upon ninety days' notice, the county may terminate the fee and lease agreement and sell the property to which the county has title free from any claim by the sponsor.

(7) Within thirty days of the date of execution of an inducement or lease agreement, a copy of the agreement must be filed with the department and the county auditors and the county assessors for the county or counties in which the project is located. If the project is located in an industrial development park, the agreements must be filed with the auditors and assessors for all counties participating in the industrial development park.

(8) The department, for good cause, may allow additional time for filing of returns required under this chapter. The request for an extension may be granted only if the request is filed with the department on or before the date the return is due. However, the extension must not exceed sixty days from the date the return is due. The department shall develop applicable forms and procedures for handling and processing extension requests. An extension may not be granted to a sponsor who has been granted an extension for a previous period and has not fulfilled the requirements of the previous period.

(9) To the extent a form or a return is filed with the department, the sponsor must file a copy of the form or return with the county auditor, assessor, and the treasurer of the county or counties in which the project is located. To the extent requested, the county auditor of the county in which the project is physically located shall make these forms and returns available to any county auditor of a county participating in an industrial development park in which the project is located.

(10) Upon the direction of the governing body of the county, a county official may request and obtain such financial books and records from a sponsor that support the sponsor's fee in lieu of taxes return as may be reasonably necessary to verify the calculations of the sponsor's fee in lieu of taxes payment or the calculations of the sponsor's special source revenue credit.

(P) All references in this section to taxes mean South Carolina taxes unless otherwise expressly stated.

HISTORY: 1995 Act No. 125, Section 4A, approved June 7, 1995 and effective for taxable years beginning after 1995; 1996 Act No. 462, Section 6A‑J, L, M, eff July 2, 1996; 1997 Act No. 149, Section 5, eff June 24, 1997; 1997 Act No. 151, Section 2A, eff for millage rate agreements executed after July 1, 1996; 1999 Act No. 100, Part II, Section 20, eff June 30, 1999; 1999 Act No. 114, Section 4, eff for property tax years beginning after 1998; 2000 Act No. 283, Section 3(C), eff May 19, 2000; 2000 Act No. 399, Sections 3(R)(1) and (2), eff August 17, 2000; 2001 Act No. 89, Sections 51A, 61B, 65A eff July 20, 2001; 2001 Act No. 89, Section 51B, eff July 20, 2001, applicable to a fee in lieu of property taxes agreement in which an initial lease agreement is executed on or after that date; 2002 Act No. 280, Section 1, eff May 28, 2002; 2002 Act No. 334, Sections 7.A and 7.B, eff June 24, 2002; 2003 Act No. 69, Sections 3.Q, 3.YY.1, eff Jan. 1, 2003; 2005 Act No. 71, Section 3, eff May 23, 2005; 2005 Act No. 145, Section 44.B, eff June 7, 2005; 2005 Act No. 161, Section 40.B, eff upon approval (became law without the Governor's signature on June 9, 2005); 2006 Act No. 384, Sections 14, 15, 16, 17, eff June 14, 2006; 2006 Act No. 386, Section 57, eff June 14, 2006; 2007 Act No. 116, Section 7.B, eff June 28, 2007; 2008 Act No. 313, Sections 2.H, 2.I.6, eff upon approval (became law without the Governor's signature on June 12, 2008); 2008 Act No. 352, Section 2.H, eff upon approval (became law without the Governor's signature on June 12, 2008); 2010 Act No. 290, Sections 2.A, 3.A, 4.A, 5, eff January 1, 2011; 2012 Act No. 187, Section 4, eff June 7, 2012.

Validity

For the validity of (N) of this section, see Pinckney v. Peeler, 862 S.E.2d 906 (S.C. 2021).

Editor's Note

1997 Act No. 151, Section 2B, provides as follows:

"SECTION 2B. The amendment to Section 4‑12‑30(G) of the 1976 Code as contained in subsection A. is effective for millage rate agreements executed after July 1, 1996."

2000 Act No. 399, Section 3.Z, provides, in pertinent part, as follows:

"This section takes effect upon approval by the Governor, or as otherwise stated, except that ... subsection R. applies to inducement agreements entered into after December 31, 2000."

2003 Act No. 69, Section 3.YY.2, in part provides as follows:

"(i) for those projects which have been granted a two‑year extension of time to complete the project and that two‑year period has not expired, the sponsor may at any time during the two‑year extension request an additional three years to complete the project, and (ii) the county and the sponsor may agree to waive the provisions of Section 4‑12‑45 under any agreement whenever executed."

2003 Act No. 69, Section 3.AAA.2, provides in part as follows:

"For those projects that have been granted a two‑year extension of time to complete the project and the two‑year period has expired, the sponsor may request an additional three years to complete the project notwithstanding the provisions of Section 4‑12‑30(C)(2)".

2010 Act No. 290, Sections 2.B, and 3.B, provide:

"2.B. This provision takes effect for fee‑in‑lieu agreements executed after January 1, 2011, provided that a county may amend existing fee‑in‑lieu agreements at any time prior to the expiration of the fee to incorporate the amendment to Section 4‑12‑30(B)(4)(b) as contained in subsection A."

"3.B. This provision takes effect for fee‑in‑lieu agreements executed after January 1, 2011, provided that a county may amend existing fee‑in‑lieu agreements at any time prior to the expiration of the fee to incorporate the amendment to Section 4‑12‑30(C)(4) as contained in subsection A."

2010 Act No. 290, Section 4.B, provides as follows:

"This SECTION shall take effect in each county in the first property tax year in which a countywide reassessment program is implemented after December 31, 2010."

Effect of Amendment

The 1996 amendment revised (B)(4)(a), (B)(4)(b)(iv), (B)(5)(b), (C), (D), (F), (H)‑(K), (M), and reserved (N).

The first 1997 amendment (by Act No. 149), in subsection (Q), added paragraph (7).

The second 1997 amendment (by Act No. 151), in subsection (G), added paragraph (3).

The first 1999 amendment (by Act No. 100), in subsection (B)(3), added the second sentence relating to counties with double the state average unemployment rate.

The second 1999 amendment (by Act No. 114) revised the replacement property provisions in subparagraph (F)(2)(a).

The first 2000 amendment (by Act No. 283) substituted "sponsor" for "investor", and substantially rewrote subsections (B)(4) and (M)(2) and rewrote subsection (O).

The second 2000 amendment (by Act No. 399) rewrote subsection (B)(4) and, in subsection (O), changed the $5,000,000.00 minimum to a reference to the minimum provided in subsection (B)(3), moved the provision relating to subsection (C)(2), and made nonsubstantive language changes.

The 2001 amendment added subitems (iv) and (v) to item (D)(4)(a); in subsection (G), rewrote the second sentence of paragraph (G)(1) and paragraphs (G)(2) and (G)(3); and added paragraph (K)(4), relating to adjustments to misallocations.

The first 2002 amendment, in paragraph (B)(3), added the third and fourth sentences.

The second 2002 amendment, in paragraph (C)(2), in the fourth sentence, substituted "five" for "two"; in the eighth sentence, substituted "up to ten" for "seven"; in the second undesignated paragraph, deleted "and the seven year period is ten years" following "eight years"; and added paragraph (Q)(8).

The 2003 amendments rewrote this section.

The three 2005 amendments added a substantially identical subparagraph (D)(4)(a)(v).

The first 2006 amendment, in subparagraph (B)(1), added the fourth sentence relating to property titled in the name of a county; in subparagraphs (B)(3) and (H)(3), in the first sentence substituted "two and one‑half" for "five" million; in subparagraph (D)(4)(a), in (i) substituted "one hundred fifty" for "two hundred" and "three hundred" for "four hundred" million dollars and "one hundred twenty‑five" for "two hundred" new full‑time jobs, deleted (iii), redesignated (iv) as (iii), merged the paragraph designated as "A" into it and deleted the paragraph designated as "B"; redesignated (v) as (iv); and made conforming amendments.

The second 2006 amendment, added an identical fourth sentence in subparagraph (B)(1) as that added by the first 2006 amendment.

The 2007 amendment, in paragraph (C)(2), deleted the third sentence requiring extensions to be in writing and delivered to the department with in 30 days of being granted and added the fourth and fifth sentences; rewrote paragraph (C)(4) and subparagraph (D)(4)(a); in paragraph (H)(2), in the first sentence added ", except as provided in Sections 4‑12‑30(C)(2) and (C)(4),"; and, in paragraph (K)(3), added "or payment derived from" and deleted the second sentence which stated "A direct payment of cash may not be made to the sponsor."

The first 2008 amendment, in subparagraph (D)(4)(a), added the undesignated paragraph at the end applicable to tax years beginning on or after January 1, 2008; and, in paragraph (M)(4) added the second sentence applicable for property tax years beginning after 2007.

The second 2008 amendment added an identical undesignated paragraph at the end of subparagraph (D)(4)(a).

The 2010 amendment, in in subparagraph (B)(4)(b), substituted "five" for "ten"; in paragraph (C)(4), three time substituted "thirty" for "twenty", twice substituted "forty" for "thirty", and three times substituted "fifty" for "forty"; in sub‑subparagraph (D)(2)(a)(i), inserted ". The county and the sponsor or sponsor affiliate may instead provide in the fee agreement or any amendment thereto that any real property subject to the fee shall be reported at its fair market value for ad valorem property taxes as determined by the department's appraisal as if such property were not subject to the fee; provided, the department may not undertake such an appraisal more than once every five years;"; and in subparagraph (J)(1)(b), inserted "or which was placed in service in South Carolina pursuant to an inducement agreement or other preliminary approval by the county prior to execution of the lease agreement pursuant to subsection (C)(1),".

The 2012 amendment added subsection (O)(10).

**SECTION 4‑12‑40.** [Reserved]

Editor's Note

2003 Act No. 69, Section 3.YY.1, eff January 1, 2003, omitted and reserved Section 4‑12‑40 which was entitled "Applicability of chapter; option for projects which exceed forty‑five million" and was derived from 1995 Act Nol 125, Section 4A, amended 1996 Act No. 462, Section 6K.

**SECTION 4‑12‑45.** Agreements; content requirements; waiver.

(A) All agreements entered into pursuant to this chapter must include as the first portion of the document a recapitulation of the remaining contents of the document which includes, but is not limited to, the following:

(1) the legal name of each party to the agreement;

(2) the county and street address of the project and property to be subject to the agreement;

(3) the minimum investment agreed upon;

(4) the length and term of the agreement;

(5) the assessment ratio applicable for each year of the agreement;

(6) the millage rate applicable for each year of the agreement;

(7) a schedule showing the amount of the fee and its calculation for each year of the agreement;

(8) a schedule showing the amount to be distributed annually to each of the affected taxing entities;

(9) a statement answering the following questions:

(a) Is the project to be located in a multi‑county park formed pursuant to Chapter 29 of Title 4?;

(b) Is disposal of property subject to the fee allowed?;

(c) Will special source revenue bonds be issued or credits for infrastructure investment be allowed in connection with this project?;

(d) Will payment amounts be modified using a net present value calculation?; and

(e) Do replacement property provisions apply?;

(10) any other feature or aspect of the agreement which may affect the calculation of items (7) and (8) of this subsection;

(11) a description of the effect upon the schedules required by items (7) and (8) of this subsection of any feature covered by items (9) and (10) not reflected in the schedules for items (7) and (8) of this subsection;

(12) which party or parties to the agreement are responsible for updating any information contained in the summary document.

(B) The auditor shall prepare a bill for each installment of the fee according to the schedule set forth in subsection (A)(7) or as modified pursuant to subsection (A)(10), (11), or (12) and that payment must be distributed to the affected taxing entities according to the schedule in subsection (A)(8) or as modified pursuant to subsection (A)(10), (11), or (12).

(C) The county and the sponsor and sponsor affiliates may agree to waive any or all of the items described in this section.

HISTORY: 2002 Act No. 334, Section 4, eff June 24, 2002; 2003 Act No. 69, Section 3.YY.1, eff Jan. 1, 2003.

Editor's Note

2003 Act No. 69, Section 3.YY.2, in part provides as follows:

"(i) for those projects which have been granted a two‑year extension of time to complete the project and that two‑year period has not expired, the sponsor may at any time during the two‑year extension request an additional three years to complete the project, and (ii) the county and the sponsor may agree to waive the provisions of Section 4‑12‑45 under any agreement whenever executed."

Effect of Amendment

The 2003 amendment added subsection (C), relating to waiver of items described in this section, and made nonsubstantive changes in subsection (A)(9)(d).

**SECTION 4‑12‑50.** Severability.

If any provision of this chapter or its application to any circumstance is held by a court of competent jurisdiction to be invalid for any reason, this holding does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable.

HISTORY: 1995 Act No. 125, Section 4A, approved June 7, 1995 and effective for taxable years beginning after 1995; 2003 Act No. 69, Section 3.YY.1, eff Jan. 1, 2003.

Effect of Amendment

The 2003 amendment made no apparent changes.