

# South Carolina State Tax Traps and Pitfalls

By Burnet Maybank III, Franklin Daniels and Cashida Okeke

While our state tax code is not nearly as byzantine and complex as the Internal Revenue Code, it does contain its share of pitfalls and traps for the unwary. The purpose of this article is to point out some of the more common problems, along with solutions (where such exist).

## A. Individual Liability for Unpaid Sales Taxes (Yikes)

### The Problem:

As a young lawyer, two things are going to happen to you: (1) one or more clients are not going to pay you for services rendered; and (2) you are going to be pitched to invest in a bar or grill that is certainly going to go out of business without remitting all of the sales taxes it has collected from customers.

Most of us are aware of the IRS and DOR trust fund liability for responsible corporate officers, directors and employees who fail to pay

employee withholdings over to the IRS and the state. Many of us are not aware that the S.C. General Assembly quietly imposed individual liability some 10 years ago for sales taxes that are collected but not remitted to the S.C. Department of Revenue.

Under S.C. Code Section 12-54-195, “responsible persons” can be held personally liable for failing to remit sales taxes to the Department of Revenue.<sup>1</sup> A “responsible person” is defined to include officers and partners, but also names employees, with “a duty to pay to the department any state or local sales tax [owed] ...”<sup>2</sup>

### The Solution:

**1. Don’t invest in any bar or restaurant.** Enough said.

**2. Know where you stand.**

Make sure that, as an officer or director of a corporation or a LLC

member, you know if you are, or could be, a “responsible party” when it comes to the collection and remittance of the company’s taxes to the Department. Even as a mere bookkeeper responsible for transmitting payments to the Department, you could be “under a duty to perform the act in respect of which the violation occurs”<sup>3</sup> and, if your company has an outstanding tax liability, this could mean writing a personal check.

**3. [Don’t] sign on the dotted line.** Know and understand the documents you sign as an employee, corporate officer or LLC member. If you sign tax returns and checks for tax payments, the Department could personally slam you with a bill for unpaid taxes because, by signing these documents, it can be shown that you knew, or should have known, that such returns

should have been filed.<sup>4</sup>

## B. Hidden Tax Liens?

### The Problem:

Buyers beware. Code Section 12-54-124 lays out the ground rules for transferring assets that may bring a tax liability with them. Under the old statute, Code Section 12-36-530, repealed in 2006, any outstanding tax liens or liabilities owed by the seller before he sold the business to the purchaser constituted a lien on the inventory, fixtures and equipment in the hands of the innocent purchaser and not just the seller. What's even more frustrating was that in many cases the unrecorded lien would remain in effect until all the taxes owed by the seller had been paid to the Department.<sup>5</sup> When the innocent purchaser applied to the Department of Revenue for a retail license to continue or conduct the business after the sale, his request would be denied simply because of the outstanding tax liability attached to his purchased assets. Unfortunately and frustratingly, this means that the

innocent purchaser is punished for the [tax] sins of the seller.


Fortunately, there is now hope (and new concerns). The new statute, Code Section 12-54-124, contains language that provides some help for purchasers that the old statute did not. This section provides that in the case of the transfer of a majority of the assets of a business, through sale, liquidation merger, corporate reorganization, lease or otherwise, any tax that was due on the date of transfer constitutes a liability of the transferee until the taxes are paid.<sup>6</sup> The section further states that the DOR may not issue a retail sales tax license to the purchaser and may revoke any license issued before the outstanding taxes were discovered.<sup>7</sup>

In summary, the prior statute was generally construed as applying only to a sale of an entire business which owed sales taxes. The new statute applies to a sale or other transfer of a majority of the assets and applies if *any* state tax is owing. The provisions of Code Section 12-54-124 do not apply to a purchaser

that has obtained a Certificate of Compliance from the Department "within 30 days before the transfer."<sup>8</sup> A DOR Policy Document notes that the Certificate of Compliance serves as "prima facie evidence that a tax has been paid, that a return has been filed, or that information has been supplied as required."<sup>9</sup> This Certificate remains valid for 30 days from its issue date; if the assets are transferred within those 30 days, no lien will be created. If there are tax liabilities, the Department will pursue the seller and *not* assets in the hands of the purchaser.<sup>10</sup>

### The Solution:

**1. Before you buy, certify.** The Department of Revenue strongly urges anyone interested in purchasing a business, or having a majority of a business's assets transferred over to their name, to request a Certificate of Compliance from the seller. Valid for 30 days, it certifies that no lien will be placed against the assets if the purchaser receives assets from the seller with an outstanding liability. It also assures the purchaser that the




A statewide practice devoted exclusively to  
**ALCOHOL LICENSING**

**Ken Allen** FORMER CHAIRMAN OF  
ATTORNEY THE SC ABC COMMISSION

Member of the National Association of  
Alcoholic Beverage Licensing Attorneys  
www.naabla.com

800-858-9237 • kallenlaw@sc.rr.com  
1201 Main St., Suite 1980 • Columbia, SC 29201

*Landex Research, Inc.*  
PROBATE RESEARCH



**Missing and Unknown Heirs  
Located  
No Expense to Estate**

Domestic and International Service for:  
Courts  
Lawyers  
Trust Officers  
Administrators/Executors

1345 Wiley Road, Suite 121, Schaumburg, IL 60173  
Phone: 847-519-3600 Fax: 800-946-6990  
Toll-free: 800-844-6778

[www.landexresearch.com](http://www.landexresearch.com)

Department will not come after the assets for any unpaid taxes associated with the seller.

Note that it may take several weeks to get a Certificate of Compliance—you can't apply several days before the closing. (You also can't apply too early, as the Certificate is only valid for 30 days.) Obviously, the purchaser may want to protect itself in the purchase transactional documents.

## 2. You can't game the system.

Two owners of four different restaurants converted their partnership to a corporation after each of their four restaurants became delinquent in paying their sales and withholding taxes.<sup>11</sup> Under Code Section 12-54-90, failure to pay such taxes would normally result in each operation's sales tax license being revoked.<sup>12</sup> However, in an effort to outsmart the Department of Revenue, the two owners used the existing corporate name to get a new sales tax license. The newly formed corporation also failed to pay its withholding taxes and the two owners formed two *new*

corporations. After forming the corporations and falling behind in tax payments at least three different times—each time, trying to acquire a new sales tax license for the corporation—their final attempt at obtaining a license was thwarted. The Department saw that the two owners had other outstanding liabilities on their properties and, although the most recently formed corporation did not, *that* corporation was not issued a license. It was ultimately determined that, since the two owners were creating new corporations for the sole purpose of "avoiding outstanding tax liabilities," the owners had to pay off their existing debt, generated by the previously formed businesses, before they could be issued a new retail license.

### C. You Have to Withhold on Payments to Non-Resident Contractors?

#### The Problem:

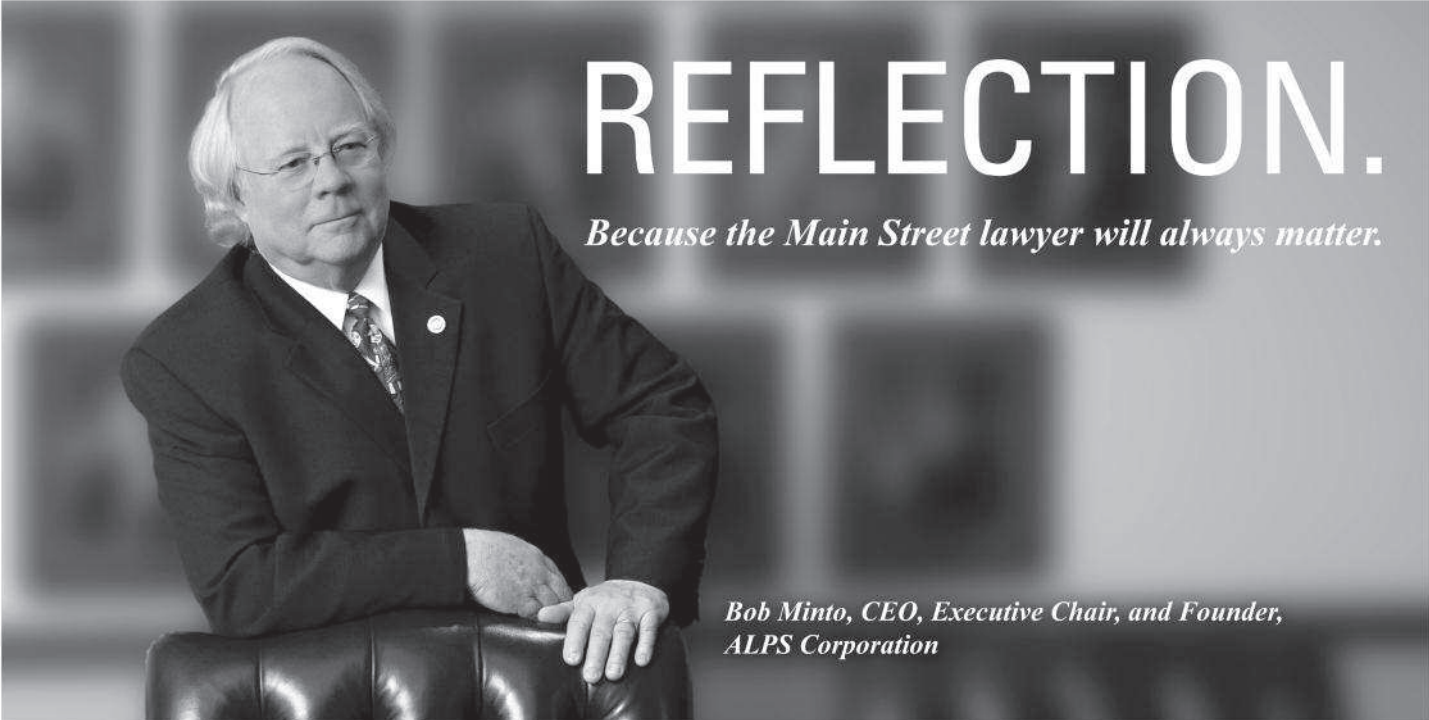
Every so often South Carolina is struck by a major hurricane or ice storm causing extensive damage, which will frequently be followed

with a flood of out-of-state contractors. Some of us will impulse purchase a seemingly great deal from a contractor to repair our roof, driveway, etc. (and we don't have a clue where the contractor is from). And some of us have good clients who engage in large construction projects.

We all have a general notion that withholdings may be required in the above circumstances, but assume it applies only in very narrow circumstances involving large dollars. Alas, such is not the case.

S.C. Code Section 12-8-550(A) mandates that "a person hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within this State shall withhold two percent of each payment in which the South Carolina portion of the contract exceeds or could reasonably be expected to exceed \$10,000."<sup>13</sup> When the non-resident skips town without paying the DOR—or even where it pays the DOR—the DOR can exact payment of the two percent withholding tax from you.

Note that a very similar provi-



# REFLECTION.

*Because the Main Street lawyer will always matter.*

*Bob Minto, CEO, Executive Chair, and Founder, ALPS Corporation*

Founded by lawyers for lawyers when you needed us most, ALPS is celebrating 25 years of bringing stability to the Lawyers' Professional Liability Insurance market.

ALPS. We're still proudly with you. Celebrate with us at [25.alpsnet.com](http://25.alpsnet.com)

 **ALPS**  
A Family of Professional Service Companies

sion, Section 12-8-540, requires a tenant to withhold seven percent of lease payments over \$1,200 per year to non-resident landlords.<sup>14</sup> (Let's see how your landlord reacts to that.)

#### **The Solution:**

#### **1. Get an Affidavit or Check with the Secretary of State and the S.C. Department of Revenue.**

With the power of the Secretary of State, the person contracting with a foreign contractor can forego the responsibility of the withholding. Code Section 12-8-550(A) includes a stipulation stating that the two percent withholding tax doesn't apply to non-residents who register as non-resident entities with the Secretary of State or the Department of Revenue.<sup>15</sup> By registering with these entities, a non-resident contractor, in effect, surrenders itself to the jurisdiction of the Department. Exempt as stated below, only then is the owner not responsible under the state's withholding tax law.

Code Section 12-8-550(A) also encourages owners to get an affi-

davit from the non-resident stating that he or she has registered with either the Department of Revenue or the Secretary.<sup>16</sup>

#### **D. A Single Member LLC is not Regarded as an Entity Separate from its Owner?**

#### **The Problem:**

The state tax statute dealing with single member LLCs previously stated with admirable clarity "Single-member limited liability companies which are not taxed for South Carolina income tax purposes as a corporation ... *will be ignored for all South Carolina tax purposes.*" (Emphasis added.) We all know what this means. In 2001, the statute was quietly amended. Code Section 12-2-25(B)(1) now states that "[f]or South Carolina tax purposes: (1) a single-member limited liability company, which is not taxed for South Carolina income tax purposes as a corporation, *is not regarded as an entity separate from its owner.*"<sup>17</sup> What the heck does this mean? And what taxes does the new statute "disregard"?

In *CFRE, LLC v. Greenville County Assessor*, the question was whether a single member LLC, here CFRE, should be afforded the same four percent tax ratio that is used for primary residences in Code Section 12-43-220(c)(1).<sup>18</sup> The owner formed her single-member LLC for estate planning and asset protection purposes. Two years later, the plaintiff deeded title to her legal residence to CFRE and sought to have her residence taxed under the lower four percent assessment ratio used for primary residences. The county argued, and the ALC agreed, that the new single member LLC statute, Section 12-2-25(B)(1), only applies to income taxes (and that only natural persons can qualify for the lower legal residence ratio).

On appeal, the S.C. Supreme Court reversed the ALC decision. The Court determined that no additional language in Code Section 12-2-25(B)(1) limits its use to certain taxes; rather "the plain language of [the section] renders it applicable to all forms of taxation in Title 12 ..."<sup>19</sup> The Court also

## George DuRant has served the courts and trustees in bankruptcy cases for over 30 years.

George DuRant, CPA/ABV, ASA, CFF, recently served as Examiner in the Harold H. Pavilack and Congaree Triton Acquisitions, LLC bankruptcies. Over the past 30 years, he has served as accountant for the trustee in hundreds of Chapter 7 bankruptcies requiring investigation of debtors' pre-petition transactions.

### He can serve your law firm in similar matters.

Previously qualified as an expert in forensic accounting, business valuation, lost profits, and accounting standards. George DuRant is available for consultation. Please call or email.



#### **DURANT, SCHRAIBMAN & LINDSAY, LLC**

4408 Forest Drive • Third Floor • Columbia, SC 29206  
803.790.0020 • george@gdurant.com

*References from leading members of the bar available upon request.*

noted in footnote 5:

“Prior to the 2001 amendments to Section 12-2-35(B), that section explicitly stated that single-member limited liability companies received this treatment for “all South Carolina tax purposes.” S.C. Code Ann. §12-2-25(B) (2000)(emphasis added). The 2001 amendments removed the word “all” from the language ... We do not believe this deletion was substantive, and as discussed *infra*, the Department of Revenue (DOR) has not treated it as such.”<sup>20</sup>

### The Solution:

The statute is still awkwardly worded. Hopefully the *CFRE, LLC* decision will make clear that single member LLCs will be disregarded for all tax purposes.

### E. YOU NEED TO KEEP ATI RECORDS—FOR 25 YEARS?

#### The Problem:

Act 388 of 2006 significantly altered property taxation in South

Carolina. As part of its sweeping reforms, Act 388 imposes a 15 percent cap on increases in property tax values. The tax cap is removed, however, when an “assessable transfer of interest” (ATI) occurs. Section 12-37-3150 contains a list of ATI events, including the conveyance of a parcel of real property by deed or land contract. It also includes a conveyance by lease if the lease is either for more than 20 years or contains a bargain purchase option.

Act 388 was written at a time of rapidly increasing property values. Based upon the experience of California and other states with caps, the General Assembly was fully aware that efforts would be made to game the system by imaginative lawyers.

Section 12-37-3150(A)(8) accordingly provides that an ATI also includes:

A transfer of an ownership interest in a single transaction *or as a part of a series of related transactions within a twenty-five year period* in a corporation, partner-

ship, sole proprietorship, limited liability company, limited liability partnership, or other legal entity if the ownership interest conveyed is more than fifty percent of the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity.<sup>21</sup>

The Section goes on to state the following:

[T]he corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity *shall notify the applicable property tax assessor on a form provided by the Department of Revenue not more than forty-five days after a conveyance of an ownership interest that constitutes an assessable transfer of interest or transfer of ownership under this item. Failure to provide this notice or failure to provide accurate information of a transaction required to be reported by this*

# MCWHIRTER, BELLINGER & ASSOCIATES, P.A.

*Helping Workers' Compensation Claimants for over 35 years.*



Put our experience to work for your Workers' Compensation clients.

We'll honor your relationship with the client while serving their needs through the workers' compensation process.

Fee Sharing Arrangements Available



Call Pat McWhirter

**803.252.5523**

1807 Hampton Street • Columbia, SC 29201 • [www.mcwhirterlaw.com](http://www.mcwhirterlaw.com)

Litigators Available for Personal Injury Cases • Criminal Law by John Meadors • Offices in Aiken, Camden, Columbia, Lexington, Newberry, Orangeburg & Sumter  
Aiken and Newberry cases handled in our Lexington and Columbia offices

sub-item subjects the property to a civil penalty of not less than one hundred nor more than one thousand dollars as determined by the assessor. This penalty is enforceable and collectible as property tax and is in addition to any other penalties that may apply. Failure to provide this notice is a separate offense for each year after the notice was required.<sup>22</sup>

In other words, if a corporation owns a parcel of real property, and within a 25 year period, over half of the corporation's stock is sold in one transaction or a series of related transactions, then the corporation has a duty to report the transfer to the Assessor.<sup>23</sup>

#### The Solution:

Keep track of the transfer ownership interests of an entity that owns real property in South Carolina—for the next 25 years. Report all leases of real property that are for more than 20 years or contain a bargain purchase option. Note also, where the

property has declined in value since the last reassessment, this statute may be helpful. (See Topic 1.)

#### F. You Can Owe Sales Taxes on the Sale of a Business?

##### The Problem:

Sales taxes are imposed on the sale of tangible personal property in South Carolina. Virtually every business owns tangible personal property. Retailers and others who sell tangible personal property routinely collect and remit sales taxes. Often overlooked are the sales tax consequences of the sale of all or a portion of the business itself. While the sales tax base may be low, such sales are typically subject to sales taxes unless an exemption applies.

The sales tax base may be small because all the various sales tax exemptions (wholesale sale; intangibles etc.) apply to the sales of a business. In addition, two other sales tax exemptions may exempt all of the remaining tangible personal property: (1) the occasional (casual) sale; and (2) the sale of an entire business. Note that South Carolina

does not, however, (unlike many states) contain a sales tax exemption for corporate formations that meet the non-recognition requirements of IRC §351. As stated in Tax Management Multistate Tax Portfolio, *Mergers and Acquisitions: Sales and Use Tax Consequences* Section 1530.04:

Section 351 of the Internal Revenue Code (IRC) provides for the nonrecognition of gain (or loss) if property is transferred to a corporation solely in exchange for stock in the corporation by the persons who thereafter control the corporation ... *Most states [but not including South Carolina] have sales and use tax exemptions which, in some respects, parallel IRC §351.*"<sup>24</sup>

Two exemptions may apply. SC DOR Regulation 117-322 exempts casual sales:

Casual or isolated sales by persons not engaged in the business of selling tangible personal property at retail are not subject to the sales or use tax.

For purposes of administering this regulation, the term "casual" means occurring, encountered, acting or performed without regularity or at random. The term "occasional" and the term "isolated" mean occurring alone or once, an incident not likely to recur, sporadic.<sup>25</sup>

The casual sale exemption does not apply to retailers. For example: if a grocery store purchases new freezer units and sells the old ones to a small country store for its use, the sale is a retail sale by a person engaged in the sale of tangible personal property at retail and subject to the tax. A sale of old furniture by a law firm to another, smaller law firm for its use would be a casual sale since the law firm is not engaged in selling tangible personal property at retail. Unfortunately, there are no South Carolina court cases, ALJ decisions, DOR policy documents or attorney general opinions construing



**Quality law firms demand dependable Professional Liability coverage.**

We're the nation's largest provider of legal liability protection.

CNA understands the potential risks lawyers face every day. Since 1961, our **Lawyers Professional Liability Program** has helped firms manage risk with a full range of insurance products, programs and services, and vigorous legal defense when it's needed. As part of an insurance organization with \$55 billion in assets and an "A" rating from A.M. Best, we have the financial strength you can count on.

**See how we can help protect your firm by contacting The General Agency at 1-800-922-5036.**

The General Agency, the exclusive broker for CNA for firms up to 34 attorneys, has been handling the insurance needs of professionals in South Carolina for over 50 years. We know the intricacies of a claims-made policy and can help design coverage to best meet your firm's needs.

[www.generalagencyinc.com](http://www.generalagencyinc.com)  
[www.lawyersinsurance.com](http://www.lawyersinsurance.com)

The program referenced herein is underwritten by one or more of the CNA companies. CNA is a registered trademark of CNA Financial Corporation. Copyright © 2010 CNA. All rights reserved.



the casual sales exemption. This exemption has proven effective in many states to exempt a sale of an entire business or division.<sup>26</sup> Of course, the larger and older the business, the more difficult it can be to meet the casual test.<sup>27</sup>

The sale of the entire business exempts sales of depreciable assets used in the operation of a business, pursuant to the sale of the business when (1) the entire business is sold by the owner of it, (2) pursuant to a written contract and (3) the purchaser continues operation of the business.<sup>28</sup> In DOR Revenue Advisory Bulletin #01-1 (RAB), the DOR interpreted this exemption and stated it applied under two circumstances: (1) when the taxpayer sells *all* the assets of the legal entity; or (2) when the taxpayer sells all of the assets of a “discrete business enterprise” (as determined by case law regarding the unitary business test).<sup>29</sup> If the business being sold is unitary with the taxpayer’s other South Carolina businesses (which were not sold), then the taxpayer will not be considered to have sold a discrete business enterprise and thus will not qualify for the exemption.

The RAB gives several examples. In example A, Seller F operates 10 retail outlets in South Carolina on a unitary basis and sells, pursuant to a written contract, two of the outlets to Purchaser Q who will continue to operate them. In example B, corporation X owns in South Carolina and operates on a unitary basis a distribution center, a manufacturing plant and three retail stores. X sells three stores to D. In both examples, obviously, the seller did not dispose of the “entire business.” In addition, neither transaction qualified for the relief contained in the RAB as neither transaction constituted a sale of a discrete business enterprise.

As previously stated, the sales tax base in both examples may be quite low. The sale of the real estate, inventory and intangibles will likely be exempt under various sales tax provisions. What may be subject to tax are the furniture, fixtures and equipment (cash register, computers, etc.).

### **The Solution:**

The sales tax typically only applies if: (1) the business is engaged in the business of selling; (2) the business is selling tangible personal property in South Carolina; and (3) the sales of tangible personal property are at retail. Many businesses are accordingly not subject to sales taxes, and the casual sale regulation provides somewhat of a safe harbor.

In any event, the purchaser may want to protect itself in the transactional documents. The seller may want to file a sales tax return after the sale to trigger the statute of limitations.

### **G. (Non-Exempt) Tenants Who Lease from Exempt Landlords May Be Subject to Property Taxes?**

#### **The Problem:**

The S.C. Constitution and Title 12 of the S.C. Code provide numerous property tax exemptions, chiefly to government and certain non-profit organizations. These entities own billions of dollars in real estate in this state, some of which is leased to non-exempt (chiefly for-profit) entities. Historically, the for-profit entities escaped property taxation notwithstanding S.C. Code Section 12-37-950, which has been on the books since 1957. This statute states: “When any leasehold estate is conveyed for a definite term by any grantor whose property is exempt from taxation to a grantee whose property is not exempt, the leasehold estates shall be valued for property tax purposes as real estate.”<sup>30</sup>

In 2011 the DOR discussed this statute as follows:

Practitioners in the area of ad valorem taxes are split on whether SC Code §12-37-950 should be construed as a tax imposition statute as well as a tax valuation statute. Some practitioners believe that SC Code 12-37-950 is merely a valuation statute that is obsolete because it values the leasehold interest, which they view as intangible personal property.<sup>31</sup>

Incredibly (given that the

statute has been on the books since 1957), the issue was not litigated in the courts until the Clarendon County Assessor sought to tax a leasehold interest entered into between a for-profit campground and the South Carolina Public Service Authority (Santee Cooper), a political subdivision of the state. In upholding the assessment, the S.C. Supreme Court in *Clarendon County Assessor v. Tykat, Inc.*, found that

[t]he precedents relied upon by Tykat address whether a tax-exempt owner in fee simple retains its tax exemption when it leases real property to a private entity. These cases make no mention of a tax exemption for a lessee. . . . By contrast, Section 12-37-950 is directly on point. Section 12-37-950 unambiguously requires that Tykat’s leasehold estate ‘be valued for property tax purposes as real estate’, and it makes no mention of an exemption if the leasehold estate is used for a public purpose.<sup>32</sup>

#### **The Solution:**

The 2012 version of the DOR’s property tax manual plainly states that the statute refers to a “leasehold interest” for a “definite term.”<sup>33</sup> It’s possible (we suppose) to escape taxation if the instrument is written for other than a leasehold interest, or for an indefinite term.

### **H. Litigation Proceeds are Subject to Sales Taxes?**

#### **The Problem:**

Common sense will tell you that if a transaction is subject to taxes (e.g. sales taxes), then recoveries of the transaction proceeds through litigation are subject to the same taxes. Indeed, federal law makes explicit that litigation proceeds (including punitive damages, but excluding recoveries for bodily injury, including lost wages) are subject to taxes.

Leases of tangible personal property are subject to sales taxes in South Carolina.<sup>34</sup> In recent Private Letter Ruling #12-3 from the S.C. Department of Revenue, the DOR opined that the settle-

ment proceeds from a lawsuit over the breach of a lease of tangible personal property were subject to sales taxes for both the amounts paid by the lessee as well as the amounts recovered from a third-party guarantor of the lease.<sup>35</sup>

### The Solution:

The tax department or tax advisor for a corporation is generally well aware of the duty to collect and remit sales taxes. Problems occur when the matter is turned over to the litigation department, which generally is less aware of sales tax obligations. Report the results of the litigation to the tax department or the tax advisor. And if the litigation involves multiple issues (including those not subject to sales taxes), it may be prudent to itemize the portion of the settlement recovery that is subject to sales taxes in the settlement agreement.

### I. Your House Has Drastically Declined in Value—and You Can't Appeal the Assessment?

#### The Problem:

As a result of the Great Recession, your home (which you may have owned for many years) has drastically declined in value. You get a tax bill in a non-reassessment year with a valuation set as of the last reassessment (perhaps five or six years old), which you feel is far in excess of your home's current fair market value. Surely you can appeal it?

Unfortunately, two ALC decisions as well as an attorney general's opinion hold that the only time (absent an assessable transfer of interest, e.g., a sale) either the property owner or (in a rising market) the assessor can contest valuation in a non-reassessment year is where (1) the property was omitted from the tax rolls; (2) the property has undergone a change in physical condition that would alter its value; or (3) there is a specific directive from the Department of Revenue to conduct a reassessment.<sup>36</sup>

#### The Solution:

A substantial argument exists that the ALC decisions and attorney

general's opinions are wrong. Section 12-37-3140(A)(1) provides: "For property tax years beginning after 2006, the fair market value of real property is its fair market value applicable for the later of: (a) the base year, as defined in subsection (C) of this section; (b) December thirty-first of the year in which an assessable transfer of interest has occurred; [or] (c) *as determined on appeal.*"<sup>37</sup> The authors are not aware whether any of the ALC cases referenced above are on appeal.

### Conclusion

While the South Carolina tax code is considerably more straightforward than the Internal Revenue Code, it does have its share of complexities. Many of the pitfalls rear their head in the sale or merger of a business. Often, the federal tax aspects of sales/mergers/acquisitions are examined closely with little thought given to the state tax side. Simply put, in any transaction in which lawyers research or consider the federal tax consequences, the state tax implications should be examined as well.

*Burnet R. Maybank III and Franklin G. Daniels are members and Cashida Okeke is a former law clerk of Nexsen Pruet. The authors thank John McCormack, Ricky Taylor, Jerilynn VanStory, Deana West, Cherie Blackburn and Rick Handel, who proofed (in whole or part) this article.*

### Endnotes

<sup>1</sup> S.C. Code Ann. § 12-54-195 (Supp. 2012).

<sup>2</sup> *Id.*

<sup>3</sup> S.C. Code Ann. § 12-8-10(D) (2000) (defining term and subsequent duties of a "withholding agent").

<sup>4</sup> Ned Lenhart, *Personal Liability for Sales Tax—Not Just for Corporate Officers Anymore!*, ACCOUNTINGWEB, Oct. 9, 2007, [www.accountingweb.com/topic/tax/personal-liability-sales-tax-not-just-corporate-officers-anymore](http://www.accountingweb.com/topic/tax/personal-liability-sales-tax-not-just-corporate-officers-anymore).

<sup>5</sup> S.C. Rev. Procedure No. 2003-5 (Nov. 19, 2003).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* (emphasis added).

<sup>8</sup> S.C. Rev. Procedure No. 2003-5 (Nov. 19, 2003).

<sup>9</sup> *Id.* (Also warns as a caution that, regardless of either Code Section 12-54-124 or the Certificate of Compliance, purchaser will not be protected against statutory or judi-

cial liens existing before the transfer).

<sup>10</sup> In Re: A Finding Concerning the Retail Sales Tax Licenses of XYZ Enterprises, Inc., S.C. Tax Comm'n Decision 92-31 (April 1, 1992).

<sup>11</sup> S.C. Code Ann. § 12-54-90 (2000).

<sup>12</sup> S.C. Code Ann. § 12-8-550 (2000 & Supp. 2012).

<sup>13</sup> S.C. Code Ann. § 12-8-540 (2000) (Tenants must withhold seven percent of rentals paid to non-corporate landlords and five percent to corporate landlords.)

<sup>14</sup> S.C. Code Ann. § 12-8-550(A) (2000 & Supp. 2012).

<sup>15</sup> *Id.* (Many businesses register with the Department of Revenue but not the Secretary of State.)

<sup>16</sup> S.C. Code Ann. § 12-2-25(B)(1) (Supp. 2012) (emphasis added).

<sup>17</sup> *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011)

<sup>18</sup> *CFRE, LLC*, 395 S.C. at 76, 716 S.E.2d at 882.

<sup>19</sup> *CFRE, LLC* n.5 (2011).

<sup>20</sup> S.C. Code Ann. § 12-37-3150(A)(8) (Supp. 2012) (emphasis added).

<sup>21</sup> *Id.*

<sup>22</sup> See generally Alyson C. Campbell, *Implications of the South Carolina Real Property Valuation Reform Act on Business and Trust Transactions*, South Carolina Lawyer, (Jan. 2009).

<sup>23</sup> BNA Tax Management Portfolios, State Series, Mergers and Acquisitions: Sales and Use Tax Consequences Sect. 1530.04 (emphasis added).

<sup>24</sup> 10 S.C. Code Ann. Regs. 117-322 (2012).

<sup>25</sup> See generally Robert L. Simpson, *Sales and Use Taxes: Exemption of Casual, Isolated, or Occasional Sales*, 42 A.L.R.3d 292 (1972).

<sup>26</sup> See *ACF Industries, Inv. v. Comptroller of Treasury*, 263 A.2d 574 (1970) (Sale not casual where in 13 years the company had sold five separate business activities, and in addition to regularly selling tangible personal property, from time to time it sold used machinery and equipment).

<sup>27</sup> S.C. Code Ann. § 12-36-2120(42) (2000 & Supp. 2011).

<sup>28</sup> SC DOR Rev. Adv. Bulletin #01-1 (February 27, 2001), [www.sctax.org/NR/rdonlyres/E366C96E-1456-48AD-8943-C287883663F8/0/Rab011.pdf](http://www.sctax.org/NR/rdonlyres/E366C96E-1456-48AD-8943-C287883663F8/0/Rab011.pdf).

<sup>29</sup> S.C. Code Ann. § 12-37-950 (2000).

<sup>30</sup> Department of Revenue, South Carolina Property Tax, 79 (2011).

<sup>31</sup> *Clarendon County Assessor v. Tykat, Inc.*, 394 S.C. 21, 714 S.E.2d 305 (2011).

<sup>32</sup> Department of Revenue, South Carolina Property Tax, 80 (2012).

<sup>33</sup> See S.C. Code Ann. § 12-36-100 (2000).

<sup>34</sup> SC DOR Priv. Ltr. Rul. #12-3 (June, 22, 2012), [www.sctax.org/NR/rdonlyres/9DF19712-BD1E-4BDE-9222-5471D094BF04/0/PLR123San.pdf](http://www.sctax.org/NR/rdonlyres/9DF19712-BD1E-4BDE-9222-5471D094BF04/0/PLR123San.pdf).

<sup>35</sup> See *Long Cove Home Owners' Ass'n v. Beaufort County Tax Equalization Bd.*, 327 S.C. 135, 488 S.E.2d 857 (1997); *Bertrand v. Beaufort County Assessor*, Docket No. 10-ALJ-17-0560-CC (S.C. Admin. L. Ct., filed Jan 4, 2011). See also 2010 Op. Atty. Gen. No. \_\_\_ (June 9, 2010) (2010 WL 2678685).

<sup>36</sup> S.C. Code Ann. § 12-37-3140(A)(1) (Supp. 2012) (emphasis added).