



STATE OF SOUTH CAROLINA  
**DEPARTMENT OF REVENUE**

300A Outlet Pointe Blvd., Columbia, South Carolina 29210  
P.O. Box 12265, Columbia, South Carolina 29211

SC REVENUE PROCEDURE #15-3

**SUBJECT:** Requesting an Alternative Allocation or Apportionment Method – Economic Development Incentive (Income Tax)

**EFFECTIVE DATE:** Applies to all periods open under the statute.

**SUPERSEDES:** SC Revenue Procedural Bulletin #02-4 and all previous advisory opinions and any oral directives in conflict herewith.

**REFERENCES:** S.C. Code Ann. Section 12-6-2320 (2014)  
S.C. Code Ann. Section 12-15-40 (2014)

**AUTHORITY:** S.C. Code Ann. Section 12-4-320 (2014)  
S.C. Code Ann. Section 1-23-10(4) (2005)  
SC Revenue Procedure #09-3

**SCOPE:** The purpose of a Revenue Procedure is to provide procedural guidance to the public. It is an advisory opinion issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. It is effective until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

**INTRODUCTION**

Code Sections 12-6-2320(B), 12-6-2320(C), and 12-15-40 allow a taxpayer and the Department to enter into an agreement to use an allocation and apportionment method other than the standard single sales method, gross receipts method, or industry specific methods (including special formulas for railroad, telephone, airline companies, etc.).<sup>1</sup> The economic development based alternative allocation and apportionment methods for companies who are planning new facilities or expansions in South Carolina are: (1) a maximum 5 year method for a new facility or expansion, (2) a maximum 10 year method for a large new facility or expansion, (3) a method for a taxpayer constructing or operating a qualified recycling facility, (4) a method for the establishment of a life sciences facility, (5) and a method for the establishment of a renewable energy manufacturing facility.

<sup>1</sup> See Code Section 12-6-2240.



This advisory opinion provides an overview of each of the conditions that must be met to qualify for an economic development based method and the application process.<sup>2</sup>

## **ALTERNATIVE METHODS OF ALLOCATION AND APPORTIONMENT**

### **1. New Facility or Expansion – Maximum 5 Year Method**

Code Section 12-6-2320(B)(1) provides that the Department may enter into an agreement with a taxpayer<sup>3</sup> establishing the allocation and apportionment of the taxpayer's income for a period not to exceed 5 years if the following conditions are met:

1. The taxpayer is planning a new facility or an expansion of an existing facility in South Carolina.
2. The taxpayer asks the Department to enter into a contract reciting an allocation and apportionment method.
3. The Coordinating Council for Economic Development at the Department of Commerce ("Council") certifies that the new facility or expansion will have a significant beneficial economic effect on the region for which it is planned and that its benefits to the public exceed its costs.

### **2. New Facility or Expansion – Maximum 10 Year Method**

Code Section 12-6-2320(B)(3)(a)(i) provides that the Department may enter into an agreement with a taxpayer establishing the allocation and apportionment of the taxpayer's income for a period not to exceed 10 years if the following conditions are met:

1. The taxpayer is planning a new facility or an expansion of an existing facility in South Carolina that results in (1) a total investment of \$10 million or more and (2) the creation of 200 or more new full time jobs with an average cash compensation level of more than three times the per capita income of the State at the time the jobs are filled. The job requirement must be met within 5 years of the Council's certification.
2. The taxpayer asks the Department to enter into a contract reciting an allocation and apportionment method.

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<sup>2</sup> Another provision, Code Section 12-6-2320(A), allows a taxpayer to request an alternative method if the taxpayer believes that the statutory formula does not fairly represent the extent of the taxpayer's operations within South Carolina. This provision is discussed in SC Revenue Procedure #15-2 ("Requesting an Alternative Allocation or Apportionment Method Under Code Section 12-6-2320(A)") and SC Revenue Ruling #15-5 ("Use of Alternative Allocation or Apportionment Methods – Including Combined Unitary Reporting").

<sup>3</sup> Code Section 12-6-2320(B)(2) defines the word "taxpayer" as any member of a controlled group of corporations authorized to file a consolidated return pursuant to Code Section 12-6-5020 or any person with a relationship to the taxpayer as provided in Section 267(b) of the Internal Revenue Code.



3. The Council certifies that the new facility or expansion will have a significant beneficial economic effect on the region for which it is planned and that its benefits to the public exceed its costs.<sup>4</sup>

### 3. Special Industry Methods

Code Sections 12-6-2320(C) and 12-15-40 provide that the Department may enter into an agreement with taxpayers in special industries described below to use a method other than the standard apportionment method. The Department may approve the request after the Council certifies that the benefits to the public exceed the costs to the public.

#### A. Qualified Recycling Facility

Code Section 12-6-2320(C) allows a taxpayer constructing or operating a qualified recycling facility, as defined by Code Section 12-6-3460, to request separate accounting or any other method to determine the taxpayer or subsidiary's taxable income. A qualified recycling facility under Code Section 12-6-3460 must invest at least \$300 million by the end of the fifth calendar year after the year the taxpayer began construction or operation of the facility and must manufacture products composed of at least 50% postconsumer waste material by weight or volume.

#### B. Life Sciences Facility

Under Code Section 12-15-40, a taxpayer establishing a life sciences facility may request that the Department enter into an agreement for up to 15 years establishing the allocation and apportionment of the taxpayer's income pursuant to Code Section 12-6-2320(B) if the facility otherwise meets the requirements of subsection (B).

Code Section 12-15-20(A) defines a "life sciences facility" as a business engaged in pharmaceutical, medicine, and related laboratory instrument manufacturing, processing, or research and development, including a business under North American Industry Classification System Manual Code 3254 (Pharmaceutical and Medical Manufacturing) or 334516 (Analytical Laboratory Instrument Manufacturing).

#### C. Renewable Energy Manufacturing Facility

Under Code Section 12-15-40, a taxpayer establishing a renewable energy manufacturing facility may request that the Department enter into an agreement for up to 15 years establishing the allocation and apportionment of the taxpayer's income pursuant to Code Section 12-6-2320.

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<sup>4</sup> Pursuant to Code Section 12-6-2320(B)(3)(a)(ii) a new facility making a \$750 million investment and creating 3,800 new full-time jobs may apply for an alternative allocation and apportionment method. However, the provision only applies to agreements entered into before October 31, 2015; therefore, it will not be discussed in this advisory opinion.



Code Section 12-15-20(B) defines a “renewable energy manufacturing facility” as a business which manufactures qualifying machinery and equipment for use by solar and wind turbine energy producers. It also includes a facility manufacturing qualifying advanced lithium ion, or other batteries for alternative energy motor vehicles as described in Code Section 12-6-3377 or for other vehicles certified by the South Carolina Energy Office.

## **THE APPLICATION PROCESS**

### *New Large Facility or Expansion – Maximum 5 and 10 Year Methods*

A taxpayer seeking approval for an alternative method of allocating or apportioning income pursuant to Code Section 12-6-2320(B) must submit an “Application for Qualification of Income Apportionment Incentive” (“Application”) directly to the Council. The application may be obtained from the Council’s staff by calling (803) 737-0095.

After certification by the Council, the Council will forward the Department a copy of the taxpayer’s Application. The Department will review the Application and will determine whether the taxpayer may adopt the alternative method. In making its determination, the Department may request any additional information it deems necessary from the taxpayer.

If the taxpayer is permitted to use an alternative method, the Department will enter into a special allocation and apportionment agreement (“Agreement”) with the taxpayer setting forth the terms of the method. The taxpayer may begin using the alternative method beginning with the tax year the Agreement is executed.

### *Special Industry Formulas*

A taxpayer seeking approval for an alternative method of allocating or apportioning income pursuant to Code Sections 12-6-2320(C) or 12-15-40 should contact the Department’s Policy Section at 803-898-5171 to discuss the application and agreement process.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Rick Reames III  
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Rick Reames III, Director

September 3, 2015  
Columbia, South Carolina