



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 RULING #18-8

- SUBJECT:** Utility License Fee Credit Under Code Section 12-20-105
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- SUPERSEDES:** SC Revenue Ruling #96-11, SC Revenue Ruling #99-6, and all previous advisory opinions and any oral directives in conflict herewith.
- REFERENCES:** S.C. Code Ann. Section 12-6-3420 (2014)
S.C. Code Ann. Section 12-20-100 (2014)
S.C. Code Ann. Section 12-20-105 (2014; Supp. 2017)
- 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 Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Background on Infrastructure Credits

Code Section 12-20-105 allows a taxpayer subject to the license fee under Code Section 12-20-100 a credit against its license fee liability for 100% of the amount paid in cash for qualifying infrastructure for an eligible project. This credit is claimed on the applicable South Carolina tax return – generally on a SC1120U, “Public Utility Tax Return,” or a CL-4, “Annual Report of Electric Cooperative Corporation Property and Gross Receipts.” The credit allowed by Code Section 12-20-105 is commonly referred to as the “Utility License Fee Credit” and for purposes of this document, that term will be used when referring to this credit. Code Section 12-20-105 is attached as Exhibit A to this advisory opinion.

Code Section 12-6-3420 allows a taxpayer a credit against South Carolina corporate income taxes imposed by Code Section 12-6-530 or bank taxes imposed by Code Section 12-11-20 for construction or improvement of an infrastructure project consisting of water or sewer lines, their related facilities or roads. This credit is calculated on SC Sch. TC-6, “Infrastructure Credit,” and is also reported on Form SC1120-TC, “Corporate Tax Credits.”

This document updates Department guidance published in SC Revenue Rulings #96-11 and #99-6 concerning the Utility License Fee Credit and also addresses additional questions concerning the Utility License Fee Credit that have arisen subsequent to those documents.

This revenue ruling is divided into six parts consisting of:

1. Background on infrastructure credits;
2. Law relating to the Utility License Fee Credit, including a discussion of general information relating to the credit, eligible project requirements and qualifying infrastructure requirements;
3. General questions about the Utility License Fee Credit;
4. Questions concerning eligible projects;
5. Questions concerning qualifying infrastructure; and
6. Exhibit A - Code Section 12-20-105

Law

General Requirements

Code Section 12-20-105 allows a taxpayer subject to the license fee under Code Section 12-20-100 (“Utility License Fee”) a credit against its liability for 100% of the amount paid in cash for qualifying infrastructure that benefits an eligible project.¹ (“Utility License Fee Credit”). A taxpayer is not allowed a Utility License Fee Credit for actual expenses it incurs in the construction and operation of any building or infrastructure it owns, leases, manages, or operates.²

¹ Code Section 12-20-105(A).

² Code Section 12-20-105(D).

The maximum Utility License Fee Credit that may be claimed in any tax year by a taxpayer is \$400,000.³ The credit cannot reduce the Utility License Fee liability of the taxpayer below zero. If the applicable credit originally earned during a taxable year exceeds the taxpayer's liability, the amount of the excess may be carried forward to the next year.⁴ A taxpayer that claims the Utility License Fee Credit may not also claim the credit for infrastructure construction contained in Code Section 12-6-3420.⁵

Eligible Project Requirements

To qualify for the Utility License Fee Credit, the taxpayer must give cash to an "eligible project." A project can qualify as an "eligible project" in one of three ways.

(I) The project qualifies for one of the following tax incentives:

- Income tax credits under Chapter 6, Title 12 (e.g., jobs tax credits);
- Withholding tax credits under Chapter 10, Title 12 (e.g., job development credits);
- Income tax credits under Chapter 14, Title 12 (e.g., investment tax credits); or
- Fee in lieu of property taxes under Chapter 12, Title 4; Chapter 29, Title 4; or Chapter 44, Title 12.⁶

(II) The project is located in an office, business, commercial, or industrial park, or a combination of these, and meets both of the following requirements:

- It is used exclusively for economic development; and
- It is owned or constructed by a county, political subdivision or agency of this State when the qualifying improvements are paid for.⁷

(III) The project is a county-owned or municipality-owned multiuse sports and recreation complex located in a county in which at least \$5 million in state accommodations tax pursuant to Code Section 12-36-920 has been collected in at least one fiscal year.⁸

³ Code Section 12-20-105(E).

⁴ Code Section 12-20-105(F).

⁵ Code Section 12-20-105(G).

⁶ Code Section 12-20-105(B)(1).

⁷ Code Section 12-20-105(B)(2).

⁸ Code Section 12-20-105(B)(3).

Qualifying Infrastructure Requirements

The cash that the taxpayer provides for the eligible project must be used for qualifying infrastructure. Code Section 12-20-105(C)(1) defines the term “infrastructure” as improvements for water, wastewater, hydrogen fuel, sewer, gas, steam, electric energy and communications services made to a building or land that are considered necessary, suitable or useful to an eligible project. The type of infrastructure improvements that qualify include, but are not limited to:

1. Improvements to public or private water and sewer systems.⁹
2. Improvements to public or private electric, natural gas and telecommunications systems including, but not limited to, ones owned or leased by an electric cooperative, electrical utility or electric supplier as defined by Chapter 27, Title 58.¹⁰
3. Fixed transportation facilities including highway, road, rail, water and air.¹¹
4. Shell buildings, and the purchase of land for a qualifying park, if the project is an eligible project under item (II) of the “Eligible Project Requirements” section above.¹²
5. Incubator buildings whose ownership is retained by the county, political subdivision or agency of the State, if the project is an eligible project under item (II) of the “Eligible Project Requirements” section above.¹³
6. Due diligence expenditures relating to environmental conditions as described in Code Section 12-20-105(C)(5) if the project is an eligible project under item (II) of the “Eligible Project Requirements” section above and the expenditures are incurred after a county or political subdivision has acquired contractual rights to the park.¹⁴
7. Site preparation costs for a project qualifying as an eligible project under item (II) of the “Eligible Project Requirements” section above, including, but not limited to:
 - (a) clearing, grubbing, grading and stormwater retention; and

⁹ Code Section 12-20-105(C)(1).

¹⁰ Code Section 12-20-105(C)(2).

¹¹ Code Section 12-20-105(C)(3).

¹² Code Section 12-20-105(C)(4).

¹³ Code Section 12-20-105(C)(4).

¹⁴ Code Section 12-20-105(C)(5).

- (b) refurbishment of buildings that are owned or controlled by a county or municipality used exclusively for economic development purposes.¹⁵
8. Land acquisition and preparation costs, construction of facilities and venues, improvements and upgrades to existing facilities and venues, and any other capital costs associated with the acquisition, construction and operation of an eligible project qualifying under item (III) of the “Eligible Project Requirements” section above.¹⁶

Questions

General Questions

1. Q. Who is eligible to claim the Utility License Fee Credit?
- A. Only a taxpayer who pays the Utility License Fee under Code Section 12-20-100 may claim the Utility License Fee Credit. The Utility License Fee under Code Section 12-20-100¹⁷ is imposed upon every express company, street railway company, navigation company, waterworks company, power company, electric cooperative, light company, gas company, telegraph company and telephone company.
2. Q. How much is the Utility License Fee Credit annually?
- A. The maximum aggregate credit that may be claimed in a single taxable year by a taxpayer is \$400,000 for all contributions. The Utility License Fee Credit may not reduce the Utility License Fee liability of the taxpayer below zero.
3. Q. Is there any carryforward of the Utility License Fee Credit?
- A. Yes. If the applicable credit originally earned during the taxable year exceeds the taxpayer’s Utility License Fee liability, the amount of the excess may be carried forward to the next taxable year. The carryforward period is only one year for the Utility License Fee Credit.

¹⁵ Code Section 12-20-105(C)(6).

¹⁶ Code Section 12-20-105(I).

¹⁷ The license fee contained in Code Section 12-20-100 is in lieu of the license fee imposed under Code Section 12-20-50.

4. Q. May a taxpayer contribute cash to several eligible projects in a single taxable year?
- A. Yes. A taxpayer may contribute cash to any number of eligible projects, subject to the other requirements of the statute. Similarly, a single eligible project may receive cash from more than one taxpayer who is subject to the Utility License Fee. However, the total amount that may qualify for the Utility License Fee Credit by a taxpayer for all eligible projects in a single taxable year may not exceed \$400,000 for each taxpayer.
5. Q. Can a taxpayer claim the Utility License Fee Credit for amounts paid in the current tax year for an eligible project, even though construction of the qualifying infrastructure will not be completed until a future year?
- A. Yes. However, the cash contributions must be given for the eligible project in the tax year for which the taxpayer claims the Utility License Fee Credit. A promise to pay the cash amounts at a future date is insufficient to qualify for the credit.

If the qualifying infrastructure will not be completed in the tax year in which the cash is contributed, the taxpayer making the contribution must execute a waiver of the statute of limitations under Code Section 12-54-85 allowing the Department the right to assess the tax in later years. The waiver must cover a period beginning with the date that the return on which the Utility License Fee Credit is first claimed is filed and ending three years after the taxpayer notifies the Department that the qualifying infrastructure has been completed. The taxpayer may notify the Department that the infrastructure has been completed by sending a letter providing the name, address and tax identification number of the taxpayer claiming the Utility License Tax Credit, information about the qualifying eligible project and the qualifying infrastructure, and the date that the qualifying infrastructure was completed. The notice can be sent to:

South Carolina Department of Revenue
Attn: Tax Credits
P.O. Box 125
Columbia, SC 29214-0825

The notice may also be emailed to taxcredits@dor.sc.gov.

6. Q. Can a taxpayer claim the Utility License Fee Credit against the Corporate License Fee under Code Section 12-20-50 or income taxes under Chapter 6, Title 12?
- A. No. The taxpayer may only claim the Utility License Fee Credit against the Utility License Fee under Code Section 12-20-100.

Note: The credit under Code Section 12-6-3420 mentioned in the “Background on Infrastructure Credits” section of this document may only be used against corporate income taxes imposed by Code Section 12-6-530 or bank taxes imposed by Code Section 12-11-20. It may not be used against the corporate license fee under Code Section 12-20-50 or the Utility License Fee under Code Section 12-20-100.

7. Q. How does a taxpayer claim the Utility License Fee Credit?
- A. The taxpayer claims the credit on the proper line of the taxpayer’s applicable tax return, generally either the SC1120U (“Public Utility Tax Return”) or CL-4 (“Annual Report of Electric Cooperative Property and Gross Receipts”). The taxpayer should follow the instructions on the applicable return in determining what information to submit when claiming the Utility License Fee Credit.
8. Q. Can a taxpayer be pre-approved for the Utility License Fee Credit?
- A. No, a taxpayer cannot be pre-approved for the Utility License Fee Credit. However, a taxpayer can request an informal, non-binding letter concerning the project and the infrastructure. The letter is based solely on the facts presented by the taxpayer and is non-binding on the Department. The cost for the letter is \$35¹⁸. A taxpayer can request this letter by submitting a written request along with the \$35 to the Department. The request should contain all applicable information concerning the project and infrastructure and should include the required payment. The request can be sent to:

South Carolina Department of Revenue
Attn: Tax Credits
P.O. Box 125
Columbia, SC 29214-0825

The request may also be emailed to taxcredits@dor.sc.gov.¹⁹

¹⁸ The \$35 fee is authorized by Code Section 12-4-388(C).

¹⁹ If a taxpayer wishes to send this information securely, they should contact the Department to set up the appropriate method of delivery. The taxpayer should also submit a \$35 check by mail at the same time as emailing the request.

Questions Concerning Eligible Projects

9. Q. Can an eligible project be located in any county in South Carolina?
- A. Yes. An eligible project may be located in any county or group of counties in South Carolina.
10. Q. Does the project have to be in the service area of the taxpayer giving the cash to be an eligible project?
- A. No. Taxpayers that are subject to the Utility License Fee may give cash to any eligible project that meets the requirements of the statute and still be eligible for the Utility License Fee Credit. The project may be in any county and inside or outside the service area of the taxpayer.
11. Q. Can a county owned jail or administrative building that houses administrative functions of the county qualify as an eligible project?
- A. No. A county jail or an administrative building is not a project that is eligible for tax incentives; the project is not used exclusively for economic development; and the project is not a county or municipality-owned multiuse sports and recreation complex and therefore cannot meet the requirements of an eligible project.
12. Q. Town C would like to make some upgrades to its water system by replacing old pipes for safety reasons and expanding water capacity for the Town. The upgrades will benefit all Town C residents. Do the upgrades to the water system qualify as an eligible project?
- A. No. The water system upgrades improvement project is not a project that is eligible for tax incentives; the project is not used exclusively for economic development; and the project is not a county or municipality-owned multiuse sports and recreation complex and therefore cannot meet the requirements of an eligible project.

Questions Concerning Qualifying Infrastructure

13. Q. What are examples of infrastructure that qualify for the Utility License Fee Credit?

A. The following chart provides information about qualifying infrastructure and nonqualifying infrastructure. While the chart does not address every type of infrastructure that may be necessary for a project, it does provide guidance that taxpayers can consider in determining what types of infrastructure may qualify for the Utility License Fee Credit.²⁰

Qualifying Infrastructure
1. Water, sewer, electric, gas or telecommunications lines in a county owned or constructed industrial park
2. Land to construct a county owned industrial park
3. Due diligence expenses for environment studies associated with acquiring land for a county owned or constructed industrial park after contractual rights for the park have been acquired by a county
4. Costs associated with a shell building to be located inside a county owned or constructed industrial park
5. Roads constructed in a county owned or constructed industrial park
6. Refurbishment of a county owned building which is located inside a county owned or constructed industrial park so long as the building is used exclusively for economic development purposes
7. Costs associated with site preparation including clearing, grubbing, grading, and stormwater retention for a county owned or constructed industrial park
8. Costs associated with the construction of an incubator building to be located inside a county owned or constructed commercial park so long as ownership of the building is retained by the county
9. Upgrades to existing facilities for a county or municipality-owned multiuse sports and recreation complex in a county which collects at least \$5 million in state accommodations tax pursuant to Code Section 12-36-920 in a single fiscal year

²⁰ This assumes that all other requirements for the Utility License Fee Credit have been met.

Non-Qualifying Infrastructure
1. Water, sewer, electric, gas or telecommunications lines within a privately owned building
2. Repairs to a privately owned building
3. Costs associated with certifying a site
4. Wiring, flooring, air conditioning or heating systems inside a new building unless part of refurbishment of a building owned or controlled by a county or municipality and used exclusively for economic development
5. Signage, landscaping, or curbs
6. Facilities at a local technical college that might indirectly support a particular industry in the State
7. Costs associated with site preparation including clearing, grubbing, grading and stormwater retention for a project which does not qualify under items (II) or (III) of the “Eligible Project Requirements” section above
8. Impact fees for water and sewer
9. Payment for an option to acquire land even if the land may be used to develop a qualifying park

14. Q. May qualifying infrastructure still qualify for the Utility License Fee Credit if a portion of the infrastructure is located on private property?
- A. Yes. However, the infrastructure must be primarily located on public property and the portion of the infrastructure located on private property must be de minimis as compared to the total of that type of qualifying infrastructure for the project.
15. Q. May a taxpayer who qualifies as a public electric company contribute cash to help lay electric lines at an eligible project if those electric lines are to be used by the taxpayer to provide electricity to the eligible project?
- A. No. The statute provides that a taxpayer may not provide cash in support of any building or infrastructure it owns, leases, manages or operates, even if the infrastructure otherwise qualifies.²¹

²¹ Code Section 12-20-105(D).

16. Q. If a taxpayer provides cash for a county to construct a shell building for an eligible project qualifying under Code Section 12-20-105(B)(2) (eligible projects under Item (II) of the “Eligible Project Requirements” section above), may the county sell the shell building after the shell building’s construction without invalidating the Utility License Fee Credit for the taxpayer?
- A. Yes. After the shell building has been completed, the county may sell the shell building at any time after the taxpayer has paid the cash for the qualifying project without disqualifying the taxpayer from claiming the Utility License Fee Credit. The county may also sell land located in a qualifying park after the cash for the qualifying project has been provided.²²

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

June 7 _____, 2018
Columbia, South Carolina

²² Code Sections 12-20-105(B)(2) and (C)(4).

Exhibit A

CHAPTER 20 Corporation License Fees

SECTION 12-20-10. Definitions.

For the purposes of this chapter:

- (1) "Department" means the South Carolina Department of Revenue.
- (2) "Taxable year" means the calendar year or the fiscal year used in computing taxable income under Chapter 6 of this title.
- (3) "Domestic corporation" means a corporation incorporated under the laws of this State.
- (4) "Foreign corporation" means a corporation not incorporated under the laws of this State.

HISTORY: 1995 Act No. 76, Section 3.

SECTION 12-20-105. Tax credits.

(A) Any company subject to a license tax under Section 12-20-100 may claim a credit against its license tax liability for amounts paid in cash to provide infrastructure for an eligible project.

(B)(1) To be considered an eligible project for purposes of this section, the project must qualify for income tax credits under Chapter 6, Title 12, withholding tax credit under Chapter 10, Title 12, income tax credits under Chapter 14, Title 12, or fees in lieu of property taxes under either Chapter 12, Title 4, Chapter 29, Title 4, or Chapter 44, Title 12.

(2) If a project is located in an office, business, commercial, or industrial park, or combination of these, and is used exclusively for economic development and is owned or constructed by a county, political subdivision, or agency of this State when the qualifying improvements are paid for, the project does not have to meet the qualifications of item (1) to be considered an eligible project. As provided in subsection (C)(4), the county or political subdivision may sell all or a portion of the business or industrial park.

(3) In a county in which at least five million dollars in state accommodations tax imposed pursuant to Section 12-36-920 has been collected in at least one fiscal year, a county or municipality-owned multiuse sports and recreational complex is considered an 'eligible project' promoting economic development for all purposes of the credit allowed pursuant to this section.

(C) For the purpose of this section, "infrastructure" means improvements for water, wastewater, hydrogen fuel, sewer, gas, steam, electric energy, and communication services made to a building or land that are considered necessary, suitable, or useful to an eligible project. These improvements include, but are not limited to:

- (1) improvements to both public or private water and sewer systems;
- (2) improvements to both public or private electric, natural gas, and telecommunications systems including, but not limited to, ones owned or leased by an electric cooperative, electric utility, or electric supplier, as defined in Chapter 27, Title 58;
- (3) fixed transportation facilities including highway, road, rail, water, and air;
- (4) for a qualifying project under subsection (B)(2), infrastructure improvements include shell buildings, incubator buildings whose ownership is retained by the county, political subdivision, or agency of the State and the purchase of land for an office, business, commercial, or industrial park, or combination of these, used exclusively for economic development which is owned or constructed by a county, political subdivision, or agency of this State. The county, political subdivision, or agency may sell the shell building or all or a portion of the park at any time after the company has paid in cash to provide the infrastructure for an eligible project;

(5) for a qualifying project pursuant to subsection (B)(2), infrastructure improvements also include due diligence expenditures relating to environmental conditions made by a county or political subdivision after it has acquired contractual rights to an industrial park. Due diligence expenditures include such items as Phase I and II studies and environmental or archeological studies required by state or federal statutes or guidelines or similar lender requirements. Contractual rights include options to purchase real property or other similar contractual rights acquired before the county or political subdivision files a deed to the property with the Register of Mesne Conveyances; and

(6) for a qualifying project pursuant to subsection (B)(2), site preparation costs include, but are not limited to:

(a) clearing, grubbing, grading, and stormwater retention; and

(b) refurbishment of buildings that are owned or controlled by a county or municipality and are used exclusively for economic development purposes.

(D) A company is not allowed the credit provided by this section for actual expenses it incurs in the construction and operation of any building or infrastructure it owns, leases, manages, or operates.

(E) The maximum aggregate credit that may be claimed in any tax year by a single company is four hundred thousand dollars.

(F) The credits allowed by this section may not reduce the license tax liability of the company below zero. If the applicable credit originally earned during a taxable year exceeds the liability and is otherwise allowable under subsection (D), the amount of the excess may be carried forward to the next taxable year.

(G) For South Carolina income tax and license purposes, a company that claims the credit allowed by this section is ineligible to claim the credit allowed by Section 12-6-3420.

(H) By March first of each year, the Department of Revenue shall issue a report to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Secretary of the Department of Commerce outlining the history of the credit allowed pursuant to this section. The report shall include the amount of credit allowed pursuant to this section and the types of infrastructure provided to eligible projects.

(I) For the purposes of this section, for a qualifying project pursuant to subsection (B)(3), infrastructure includes all applicable provisions of subsection (C) applying to the development and construction of the sports and recreational complex and further includes costs of land acquisition and preparation, construction of facilities and venues in the complex, improvements and upgrades to existing facilities and venues, and any other capital costs incurred in the acquisition, construction, and operation of the complex.

HISTORY: 1996 Act No. 231, Section 4A; 1997 Act No. 151, Section 9; 1999 Act No. 93, Section 15; 2003 Act No. 69, Section 3.QQ, eff June 18, 2003; 2005 Act No. 145, Section 22.A, eff June 7, 2005; 2007 Act No. 110, Section 59.A, eff June 21, 2007, applicable for tax years beginning after 2003; 2007 Act No. 116, Section 6, eff June 28, 2007, applicable for tax years beginning after 2003; 2008 Act No. 313, Section 2.I.2, eff June 12, 2008; 2010 Act No. 290, Section 18, eff January 1, 2011; 2012 Act No. 187, Section 2, eff June 7, 2012; 2014 Act No. 279 (H.3644), Sections 3.A, 3.B, eff June 10, 2014.

Editor's Note

2014 Act No. 279, Section 3.C, provides as follows:

“C. This section takes effect upon approval by the Governor and applies for contributions made for a multiuse sports and recreational complex placed in service after 2011.”

Effect of Amendment

2014 Act No. 279, Section 3.A, 3.B, inserted subsections (B)(3) and (I), relating to additional eligible project.