

SC REVENUE RULING #99-6

- SUBJECT:** Credit Against License Tax for Utilities  
(License Tax)
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- SUPERSEDES:** All previous documents and any oral directives in conflict herewith.
- REFERENCES:** S. C. Code Ann. Section 12-20-105 (Supp. 1997)
- AUTHORITY:** S. C. Code Ann. Section 12-4-320 (Supp. 1997)  
SC Revenue Procedure #97-8
- SCOPE:** A Revenue Ruling is the Department of Revenue’s official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

**DISCUSSION:**

Section 12 of the South Carolina Rural Development Act, Act. No. 462 of the 1996 legislative session, added a new provision, Section 12-6-3490, to the South Carolina Code of Laws (“Code”). In 1997, this statute was amended and was recodified as Section 12-20-105. Section 12-20-105 of the Code reads as follows:

- (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) In order to be considered an eligible project for purposes of this section, the project must qualify for income tax credits under Chapter 6 of Title 12, withholding tax credits under Chapter 10 of Title 12, income tax credits under Chapter 14 of Title 12, or fees in lieu of property taxes under Chapter 12 of Title 4.

(2) If a project consists of an office, business, commercial, or industrial park which is constructed by a county or political subdivision of this State, the project does not have to meet the qualifications of item (1) in order to be considered an eligible project.

(C) For the purpose of this section “infrastructure” means improvements for water, sewer, gas, steam, electric energy, and communications services made to a building or land which 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.

(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 three 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.

The Department of Revenue has recently received a number of requests concerning what may qualify as eligible infrastructure under the statute. What follows are the questions and the Department of Revenue’s response.

In considering the responses prepared by the Department of Revenue, please be aware that when the answer to a question is that the particular item provided in the example does not qualify, only one reason is usually provided even though there may be other reasons as to why the item in question would not qualify under the statute.

### ***What May Qualify as Infrastructure Under the Statute***

The American Heritage Dictionary of the English Language (1992 ed.) defines “infrastructure” as “the basic facilities, equipment, and installation needed for the functioning of a community or society, such as transportation and communication

systems, water and power lines, and public institutions.” The statute narrows those items that can qualify as infrastructure. Under the statute, improvements to both public or private water and sewer systems, improvements to both public or private electrical, natural gas and telecommunications systems, or fixed transportation facilities including highway, road, rail, water and air will be considered “infrastructure”. The infrastructure must also be considered necessary, suitable or useful for an eligible project as that term is defined in the statute. Additionally, the statute specifically states that the company that is paying for the infrastructure may not own, lease, manage or operate the infrastructure in question.

### Questions

QUESTION 1: May a retaining pond designed to prevent flooding that is built at an eligible project site qualify as eligible infrastructure?

ANSWER: No. The statute specifically states that eligible infrastructure may include A...improvements to public or private water and sewer systems.” A “system” is defined as a “network of structures and channels, as for communications, travel, or distribution.” See, American Heritage Dictionary of the English Language (1992 ed.). A single retaining pond does not constitute a water “system”, therefore, such a retaining pond will not qualify as eligible infrastructure under the statute, even though it may be necessary, suitable or useful for an eligible project.

QUESTION 2: Will wiring for computers that is placed inside a building that will be privately owned by an eligible project qualify as eligible infrastructure?

ANSWER: No. The statute states that infrastructure may include improvements to both public or private electric, natural gas, and telecommunications systems. The statute does not define what is a private “telecommunication system”; however, as a general rule credit statutes are construed strictly against the taxpayer. See, Lowenstein & Sons, Inc. v. South Carolina Tax Commission, 277 S.C. 561, 290 S.E. 2d 812 (1982).

In interpreting the meaning of “private” as used in the statute, we are cognizant of the fact that in South Carolina, as well as elsewhere, electric utility systems and telephone and cable systems may be operated by privately owned companies and not by the State or political subdivisions of the State. However, such entities are generally regulated to assure that they meet the public’s needs. The definition of “infrastructure” contained in the dictionary states that “infrastructure” is the “basic facilities, equipment, and installations needed for the functioning of a community or society”. Although the infrastructure may be privately owned, it must be necessary for the functioning of a community or society and cannot serve solely one party but must serve the public. Communications wiring inside of plant itself serves only the particular industry within the plant, and not the community as a whole. Accordingly, it cannot qualify as

“infrastructure” for purposes of Code Section 12-20-105, even though the wiring might be necessary, suitable, or useful for the eligible project.

QUESTION 3: A company is considering building an eligible project in a rural portion of County X. In order to provide water to the project, Waterworks Company, a public water company, will need to run pipe from the nearest water tap, which is located a mile from the project. Three-quarters of the pipe will be embedded in public land, however, the remaining one-quarter of pipe will be embedded on the company’s land and will extend to the building in which the project will be located. The company will pay for all water and plumbing that is inside the building where operations will be conducted. The company will grant Waterworks Company a right-of-way on its land and the pipes on the company’s land will be owned, and be the responsibility of Waterworks Company. Will the costs incurred in designing, laying and constructing the water pipes be considered eligible infrastructure for purposes of Code Section 12-20-105 assuming that such costs are paid for by an entity other than Waterworks Company?

ANSWER: Yes. The construction of the water system will qualify as eligible infrastructure under the statute. The water system serves not only to benefit the eligible project, but also to provide a line that will allow other companies and citizens within the general area to tap into the water system.

QUESTION 4: Will site grading of land for a manufacturing plant that qualifies as an eligible project under the statute, qualify as eligible infrastructure?

ANSWER: No. Site grading for a plant is not an improvement to a land or building for water, sewer, gas, steam, electric energy, or communications systems, nor is it a fixed transportation facility. Thus, it will not qualify as eligible infrastructure even though it may be necessary, suitable or useful for the eligible project.

QUESTION 5: The county is considering building a stone sign that would front the entrance to an eligible project that is a county industrial park. Is the sign considered eligible infrastructure under the statute?

ANSWER: No. The statute specifically requires that the infrastructure be for improvements to a building or the land for water, sewer, gas, steam, electric energy and communications services or for fixed transportation facilities. The sign does not qualify as eligible infrastructure under the statute, since it is not for one of these permitted improvements.

QUESTION 6: Will an impact fee for sewer paid on behalf of an eligible project qualify as eligible infrastructure under Code Section 12-20-105?

ANSWER: No. An impact fee is not an improvement for a sewer system; it is a fee that the political subdivision or a company may charge because of the additional stress that the project may put on the current system.

Question 7: Company is considering building an eligible project in a rural location of County A. Electric Cooperative is considering donating cash to County A so that County A may build an electrical system in the rural part of County A, an area that does not currently have electric power. The electric system will serve as an inducement to have other companies and projects locate in the rural portion of County A and will also serve Company's eligible project. May Electric Cooperative donate the money to County A and claim the credit allowed by Code Section 12-20-105?

ANSWER: Electric Cooperative may donate the money and claim the credit if Electric Cooperative does not own, lease, manage or operate the electrical system that will be placed in the rural section of County A. For example, if Electric Cooperative operates an electric system in County B and does not intend to have any connection with the electric system in County A, the Electric Cooperative may donate the money for the electrical system in County A and claim the credit allowed by Code Section 12-20-105.

QUESTION 8: May improvements to the shell of a building, such as the addition of floors, walls or other structural additions for an eligible project, qualify as eligible infrastructure under the statute?

ANSWER: No. These improvements are not improvements to a land or a building for water, sewer, gas, steam, electric energy or communication systems, nor are they "fixed transportation facilities".

For questions about this revenue ruling, please contact Jerilynn VanStory at (803)898-5151.

s/Burnet R. Maybank III  
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Burnet R. Maybank, III, Director

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