



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC TECHNICAL ADVICE MEMORANDUM #89-14

TO: Mr. William F. Bray, Director
Office Services Division

FROM: John Swearingen, Manager
Tax Policy and Procedures Department

DATE: May 17, 1989

SUBJECT: Infrastructure Credit

REFERENCE: S.C. Code Ann. Section 12-7-1250 (Law. Co-Op. Supp. 1988)

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)
SC Revenue Procedure #87-3

SCOPE: A Technical Advice Memorandum is a temporary document issued to an individual within the Commission, upon request, and it applies only to the specific facts or circumstances related in the request. Technical Advice Memoranda have no precedential value and are not intended for general distribution.

Questions:

1. Is a corporate taxpayer limited to one \$10,000 tax credit for one infrastructure project or is there a limitation of 50% not to exceed \$10,000 per project with no limitation on the number of projects per year which may qualify for the credit?
2. If infrastructure project expenses were incurred prior to 1988 and the project is "deeded or dedicated" (according to the statute) in 1988 or later, will the project qualify for the credit?
3. What constitutes dedication to public use as required by the statute?
4. Can the credit be claimed for a project that is deeded to a governmental entity?
5. In situations where the credit is claimed for a contribution of money to a governmental entity, will this have any effect of the corporation contribution deduction?

Discussion:

1. Section 12-7-1250(A) of the Code of Laws of South Carolina (Supp. 1988) states:

A corporate taxpayer is allowed as a credit against taxes due pursuant to Section 12-7-230 an amount equal to fifty percent, not to exceed ten thousand dollars, of expenses paid or accrued by the taxpayer in building or improving any one infrastructure project.

It is ambiguous whether the language "any one infrastructure project" means that only one project may qualify for the credit per year or whether the credit is merely limited to 50% or \$10,000 of expenses paid. Many South Carolina cases have held that tax statutes are not to be extended beyond the clear import of their language, and any substantial doubt as to its meaning is to be resolved in favor of the taxpayer. (Southeastern Fire Ins. Co. v. South Carolina Tax Commission, 253 S.C. 407, 171 S.E.2d 355 (1969); H.D. & J.K. Crosswell, Inc. v. Jones, 60 F.2d 827 (1972); Deering Milliden, Inc. v. South Carolina Tax Commission, 257 S.C. 185, 184 S.E.2d 711 (1971).

It therefore appears that the appropriate interpretation of this statute should be the one most favorable to the taxpayer. Section 12-7-1250(A) should thus be construed to mean that a taxpayer is not limited to the number of projects which will qualify for the credit.

2. In accordance with the plain wording of Section 12-7-1250, a project does not qualify for the Infrastructure Credit until it has met three criteria:

- (1) the project does not exclusively benefit the tax-payer
- (2) is built to applicable standards
- (3) it is dedicated to public use

There are exceptions to this listed in the statute however, it appears that the basic thrust of the statute is to require that the project be constructed and dedicated prior to the credit being available. The section was enacted by 1988 Act No. 488 effective for taxable years beginning after 1987. Therefore, a project dedicated in a taxable year beginning in 1988 but constructed in a prior year would qualify for the credit.

3. "Dedication" to public use rests on intention or clear assent of owner and must be under circumstances indicating abandonment to use of community.

Peterson v. Borough of Marianna,
310 Pa. 524, 165 A. 838 ()

In order to fully understand this phrase, one must also look to the meaning of "public use".

Modern trend is to expand and liberally construe the term "public use" in considering state and municipal activities sought to be within its meaning; the test of "public use" is the right of the public to receive and enjoy its benefits.

State ex rel. Taft v. Campanella,
50 Ohio St. 2d 242, 364 N.E.2d 21 ()

It therefore appears that in order for dedication to public use to occur, (1) the owner of the land must manifest a clear assent to abandon the property to the use of the community and (2) the public must receive and enjoy the benefits of the property.

4. The credit may be claimed for a project deeded to a governmental entity. The credit is available as long as the 3 criteria described in #2 are met. One of these criteria is that it be dedicated to public use. Public use has been defined in #3 to mean the right of the public to receive and enjoy its benefits. Therefore, if the project is deeded to the governmental entity, the public must receive and enjoy the benefits in order to qualify for the credit.
5. The South Carolina corporate return is based on Federal taxable income. There is no provision in South Carolina law indicating that the use of the credit excludes a charitable deduction on the same return. Therefore, it appears that a charitable deduction and a credit is available.

Conclusion:

1. A corporate taxpayer may claim a credit of 50% of the expenses incurred not to exceed \$10,000 per project with no limitation on the number of projects which may qualify for the credit.
2. Infrastructure project expenses incurred prior to 1988 and deeded or dedicated in a taxable year beginning in 1988 or later will qualify for the credit.
3. Dedication to public use will occur if (1) the owner of the land manifests a clear assent to abandon the property to the use of the community and (2) the public receives and enjoys the benefits of the property.
4. A project that is deeded to a governmental agency may qualify for the credit as long as the public receives and enjoys the benefits of the property.
5. In situations where the credit is claimed for a contribution of money to a governmental unit, there is no effect on the corporation's charitable deduction.