
State of South Carolina
Department of Revenue
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SC INFORMATION LETTER #07-2

SUBJECT: Refunds Claims – Economic Impact Zone Credits
Effective Dates of Legislation

DATE: January 22, 2007

REFERENCE: S.C. Code Ann. Section 12-14-60 (2000; Supp 2006)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S.C. Code Ann. Section 1-23-10(4) (Supp. 2006)
SC Revenue Procedure #05-2

SCOPE: An Information Letter is a written statement issued to the public to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value.

On November 14, 2006, the Circuit Court issued an order in *SCANA Corporation and Subsidiaries vs. South Carolina Department of Revenue*, Case Number 2006-CP-50-2739, following the appeal by both parties of an Administrative Law Court (ALC) decision. The case involves two issues: 1) whether unused Economic Impact Zone Credits (EIZ credits) earned in 1996 can be carried forward to future years and 2) whether the EIZ credit applies to investments made during tax year 1995, but before April 4, 1995.

The Department argued that under S.C. Code Ann. Section 12-14-60(D) unused EIZ credits from 1996 could not be carried forward to future years and that the EIZ credit did not apply to investments made before April 4, 1995, the effective date of the Act. SCANA challenged both of these positions. The ALC ruled in favor of the Department on the first issue and in favor of SCANA on the second issue. Both parties appealed to the Circuit Court. The Circuit Court ruled in favor of SCANA on both issues.

The Department has appealed the first issue involving the carry forward to the South Carolina Court of Appeals. The Department takes the position that based on the effective date of “tax years beginning after 1996,” credits generated in 1996 cannot be carried forward to 1997. Since the Department is appealing the Circuit Court’s order on this issue, that decision is not a final decision and the Department will not apply that decision to other taxpayers while the appeal is ongoing.

Although the Department does not agree with the reasoning of the Circuit Court and ALC on the second issue, the Department has decided not to appeal the issue of whether the EIZ credit applies to investments made before April 4, 1995.

The EIZ credit was created as part of 1997 Act No. 25. The Act provides that it takes effect upon approval by the Governor. The Governor approved the Act on April 4, 1995. As a result, the Department argued that any property placed in service before April 4, 1995, did not qualify for the EIZ credit.

The ALC held that the credit applied to investments made during the entire 1995 tax year. The Circuit Court affirmed the ALC decision. The Department does not intend to appeal this issue.

The Director has instructed Department personnel that in interpreting statutes, including the effective date of the statute, the Department will view the legislation as a whole to determine the intent of the Legislature. In the process, the Department will not assume that an effective date stated by the General Assembly is merely an enactment date. Additionally, the Department will continue to recognize that the General Assembly has the power to provide an effective date in a provision of an act that is not codified. The Department will also not assume that income tax legislation is automatically effective for the entire taxable year in which it is enacted. The Department's determination of the effective date will be based on the language used in the act and legislative intent based on a review of the entire act.

Based on the foregoing, the Department will grant timely, properly filed refund claims for EIZ credits for qualifying property placed in service from January 1, 1995 through April 4, 1995. In other cases or in interpreting any other provisions of the law, the Department will continue to review the entire legislation to determine the effective date and the meaning of the statute.