
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC INFORMATION LETTER #95-13 (TAX)

SUBJECT: Legislative Changes Update

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AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1994)
SC Revenue Procedure #94-1

SCOPE: An Information Letter is a document issued for the purpose of disseminating general information or information concerning an administrative pronouncement.

Information Letters issued to disseminate general information have no precedential value and do not represent the official position of the Department. Information Letters designated as administrative pronouncements are official advisory opinions of the Department.

Attached is a brief summary of House Bill 3534 and House Bill 3775 enacted by the General Assembly during the past legislative session.

Act No. 25, House Bill 3534, was signed by the Governor on April 4, 1995. The bill: (1) enacted the Enterprise Zone Act of 1995, (2) enacted the Economic Impact Zone Community Development Act of 1995, and (3) amended Code Section 12-7-1200 pertaining to the allocation and apportionment provisions of multistate taxpayers.

Act No. 32, House Bill 3775, was signed by the Governor on April 6, 1995, and contained various tax incentives for qualified recycling facilities, including: (1) tax credits, (2) sales tax exemptions, (3) fee-in lieu, and (4) property tax incentives. The bill also amended a property tax statute and job tax credit statute that pertains to other taxpayers.

The Department of Revenue will issue another information letter in the near future that summarizes other significant changes in laws administered by the Department of Revenue that were enacted in 1995.

ENTERPRISE ZONE ACT OF 1995

This legislation added Chapter 10 of Title 12 to enact the Enterprise Zone Act of 1995.¹ This Act provides for the establishment of enterprise zones (in which various tax incentives may apply for businesses), provides criteria for areas to qualify for enterprise zones, and provides that businesses qualify for enterprise zone incentives by means of entering into a revitalization agreement with the Advisory Coordinating Council for Economic Development.

QUALIFICATION FOR BENEFITS

In order to qualify for enterprise zone benefits the business must:

- (1) reside in an enterprise zone as designated by the State Budget and Control Board;
- (2) be primarily engaged in one of the following activities:
 - (a) manufacturing,
 - (b) tourism,
 - (c) processing,
 - (d) warehousing,
 - (e) distribution,
 - (f) research and development,
 - (g) corporate office facility, or
 - (h) providing medical, surgical, and other health services to persons. Establishments of associations or groups, such as HMO's, primarily engaged in providing medical or other health services to members are included, but those which limit their services to the provision of insurance against hospitalization or medical costs are not included. (See Standard Industrial Classification Manual, 1987 Edition);
- (3) provide a benefits package to full-time employees that includes health care;
- (4) enter into a revitalization agreement with the Advisory Coordinating Council for Economic Development, (Note: No revitalization agreement is required for a business: (a) to retain a job development fee from the withholding of production employees being retrained, (b) to obtain fee-in lieu benefits, or (c) to use special source revenue bonds); and,
- (5) receives certification from the Coordinating Council that the available incentives are appropriate for the project, and the total benefits of the project exceed the costs to the public.

¹ The Enterprize Zone Act provisions in House Bill 3534 have been amended by House Bill 3775 and the Appropriations Bill. These amendments are reflected in this information letter.

BENEFITS

There are significant income tax, fee-in-lieu of property taxes, and financial incentives available to qualifying businesses locating or expanding in an enterprise zone. Briefly, these incentives are:

1. An additional \$1000 job tax credit;
2. An additional \$500 job tax credit in years three, four and five for recipients of Aid to Families with Dependent Children (AFDC) that continue to be employed by the business;
3. A job development fee collected by retaining employee withholding and used for approved expenditures, such as training costs or real estate improvements; and,
4. The ability to qualify for fee-in-lieu of property tax advantages by meeting one-half of the requirements of the current fee-in-lieu requirements of Code Section 4-29-67, and, the use of special revenue bonds authorized under Code Sections 4-29-68 and 4-1-75.

Each incentive is discussed below in more detail.

JOB TAX CREDIT INCENTIVES

Additional \$1000 job tax credit per job

A qualifying business located in an enterprise zone is entitled to an increased job tax credit, in addition to the job tax credit allowed under Code Section 12-7-1220, if the business creates 10 or more new full-time jobs in the enterprise zone and at least 51% of the full-time employees hired for the project:

- (a) reside in an enterprise zone at the time of employment;
- (b) have a household income that is 80% or less of the median household income for the county prior to employment; or
- (c) have been a recipient of Aid to Families with Dependent Children payments within the past 12 months.

This additional job tax credit is \$1000 a year for 5 years, which is for the same period and same amount as the job tax credit provided in Code Section 12-7-1220(B).

Additional \$500 job tax credit per job

A qualifying business is also entitled to an additional \$500 a year job tax credit in the third, fourth, and fifth year of any AFDC recipient's continued employment with the qualifying business, based upon the status of the employee at the time of being employed. In order to qualify for the \$500 additional job tax credit, the qualifying business must: (1) continue to employ the recipient of AFDC payments in years 3, 4, and 5 of the job tax credit, and (2) determine that the employee was receiving AFDC payments when hired.

For purposes of the job tax credit incentives provided by the Enterprise Zone Act, a new job is not considered a new job if it replaces the same job that was part of a reduction in force in the previous 12 months.

JOB DEVELOPMENT FEE

A qualifying business located in an enterprise zone is entitled to collect a job development fee by retaining an amount of employee withholding. Employers have the option of selecting one of two, but not both, statutorily provided withholding amounts designated for certain expenditures. Funds withheld under either option must be held in an escrow account with a FDIC insured bank.

Withholding Option 1 - For New Projects

Amount. A qualifying business may retain from withholding a percentage of the gross wages of each new employee. The percentage allowed to be retained ranges from 2% to 5% and is computed on the hourly wage of an employee, not on the average pay of all employees. A new employee does not include an employee whose job was created in South Carolina before the entry of the qualifying business into a revitalization agreement. The fee may be collected for 15 years.

Requirements. Prior to retaining any employee withholding the business must: (1) enter into a revitalization agreement, (2) create at least 10 new, full-time jobs at the South Carolina facility described in the revitalization agreement, and (3) meet the other qualifications for enterprise zone benefits discussed on page 2. Withholding is computed as a percentage of each new employee's hourly wages as set forth in Code Section 12-10-80(C).

Use of Funds. The funds retained from withholding may be used for any of the following purposes: (a) training costs and facilities; (b) acquiring and improving real estate; (c) improvements to public and private utility systems, including water, sewer, electricity, natural gas, and telecommunications; (d) fixed transportation facilities, including highway, rail, water, and air; and (e) construction or improvements of real property and fixtures for the purpose of complying with environmental laws and regulations.

Withholding Option 2 - For Existing Businesses

Amount. A qualifying business in an enterprise zone may retain from employee withholding \$500 per year, not to exceed \$2000 over five years, for each production employee being retrained. This retraining must be performed by the technical college serving the enterprise zone.

Requirements. A qualifying business may negotiate with the Advisory Coordinating Council for Economic Development to retain withholding for retraining production employees when necessary for the business to remain competitive or to introduce new technologies. Unlike option 1 above, the qualifying business does not have to enter into a revitalization agreement, or create 10 or more new, full-time jobs. The business is required to match any withholding retained dollar-for-dollar.

Use of Funds. The funds retained from withholding must be used to retrain production employees. The total retained and the matching funds must be paid to the technical college that provides the training to defray training costs.

General Record Keeping Requirements

A business retaining employee withholding under either option must make its payroll books and records available for inspection, and, also file documentation regarding the retention and use of the withholding with the Advisory Coordinating Council for Economic Development and the Department of Revenue.

Any business retaining over \$10,000 in a calendar year must furnish the Council and the Department an audited report prepared by an independent certified public accountant which itemizes the sources and uses of the funds. This report must be filed **no later than April 15** following the calendar year of the retention. An extension of time is not available.

Credit for Withholding and Deposit of Unused Funds

For South Carolina withholding tax purposes, the employer receives credit for the employee withholding retained. Likewise, for state income tax purposes, the employee receives a credit for the amounts withheld by the employer.

Upon expiration or termination of the revitalization agreement the business must: (a) stop retaining employee withholding, (b) stop spending funds in escrow, and (c) pay all remaining funds to the Department of Revenue within 30 days.

Application Fees

Code Section 12-10-100 provides for the establishment of an application fee schedule. Currently, the Council has established a \$2000 fee to be paid by each business upon application

FEE-IN-LIEU INCENTIVES

Code Section 4-29-67, the fee-in-lieu of property tax statute, provides a mechanism by which a business which makes a requisite investment within a 5 year period may enter into an agreement with a county under which the business pays a reduced fee instead of the usual county property taxes.

The benefits provided in the Enterprise Zone Act can save a business substantial property taxes by allowing the business to negotiate an assessment ratio as low as 6%, instead of 10.5%, as well as "freeze" the applicable millage rate and the value of the real property for up to 20 years.

A qualifying business located in an enterprise zone may negotiate with the respective county government for a fee-in-lieu of property tax arrangement pursuant to Code Section 4-29-67 if the business meets certain reduced investment and employment requirements. See Code Sections 4-29-67 and 4-12-40 for further information. Also, the business may be able to use special source revenue bonds authorized in Code Sections 4-29-68 and 4-1-175.

ENTERPRISE ZONE DESIGNATION

The Budget and Control Board will designate enterprise zones each year. A South Carolina enterprise zone must be one of the following:

- (1) a census tract in which either the median household income is 80% or less of the state average (\$25,771 in 1995) or at least 20% of the households are below poverty level;
- (2) a county classified as "less developed" for purposes of the job tax credit under Code Section 12-7-1220;
- (3) a federal military base or installation which was closed or designated to be closed or a federal facility in which employment was reduced by 3000 or more jobs after December 31, 1990;
- (4) a census tract with 100 or more manufacturing jobs in which at least 50% of the employment is in textile or apparel jobs;
- (5) a census tract in which a manufacturing facility has closed resulting in job losses of at least 25% of the workforce;
- (6) a census tract any part of which is within 20 miles of a federal facility which has reduced its civilian workforce by 3000 or more jobs after December 31, 1990;
- (7) a census tract in which a penal institution operated by the South Carolina Department of Corrections has closed; or,
- (8) a research park established pursuant to Section 13-17-30 while the park is operated or controlled by the South Carolina Research Authority.

ECONOMIC IMPACT ZONE COMMUNITY DEVELOPMENT ACT OF 1995

This legislation added Chapter 14 of Title 12 to enact the Economic Impact Zone Community Development Act of 1995. This Act provides for the establishment of economic impact zones on or in the vicinity of closed or realigned military installations in which various tax incentives may apply to businesses and individuals located in the economic impact zone in order to economically revitalize the area.

Definitions

Economic Impact Zone means:

1. a county or municipality located within 50 miles of the boundaries of an applicable federal military installation. An applicable federal military installation is one which is closed or realigned under: (a) the Defense Base Closure and Realignment Act of 1990; (b) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act; or (c) Section 2687 of Title 10, United States Code; or

2. an area determined by the State Budget and Control Board to be adversely impacted by the closing or realignment of a federal military installation.

Designation

The State Budget and Control Board must designate an area as an economic impact zone. This designation remains in effect for 15 years unless the General Assembly provides for an earlier termination date.

Individual Deduction

An individual may receive a South Carolina income tax deduction for 20% of the purchase price of economic impact zone stock. In general, "economic impact zone stock" is original issue stock of a small C corporation (less than \$5 million) which conducts an active trade or business in the economic impact zone and at least one-third of the business's employees reside in the economic impact zone. The corporation must use the stock proceeds during the following 12 month period to purchase qualified impact zone property.

The maximum amount that may be allowed as a deduction per taxpayer is \$10,000 per year and \$100,000 for all tax years. A taxpayer's family (i.e. spouse and minor children) is treated as one person. For partnerships and S corporations, the dollar limitations apply at the partner or shareholder level, and not at the entity level. Estates and trusts are not treated as individuals.

A taxpayer must reduce the basis of the economic impact zone stock by the amount of the deduction taken.

Definitions Applicable to the Individual Deduction

Technical rules exist regarding the qualification of stock as "economic impact zone stock" eligible for this deduction. Refer to the definitions in the Act for the terms "economic impact zone stock", "qualified economic impact zone property", "economic impact zone business", "qualified business", and "nonqualified financial property".

Economic Impact Zone Investment Tax Credit

An economic impact zone investment tax credit of 5% of the total basis of qualified manufacturing and productive equipment properties and qualified computer software which is constructed or acquired for original use in the economic impact zone is available. This credit does not apply to any property to which other tax credits apply, unless the use of such credits are waived.

"Economic impact zone qualified manufacturing and productive equipment property" is any property which is: (a) used as an integral part of manufacturing, production or extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services; (b) tangible personal property depreciable under Internal Revenue Code Section 168; and (c) Internal Revenue Code Section 1245 property. Computer software used to control or monitor a manufacturing or production process may also be qualified manufacturing and productive equipment property.

ACCOUNTING METHOD FOR TAX RETURNS

Code Section 12-7-1200 has been amended to provide for alternative methods to fairly determine a multistate taxpayer's South Carolina business activity. In so doing, a taxpayer may request, or the Department of Revenue may require, one of the following alternatives of reporting:

1. separate accounting;
2. the exclusion of one or more factors;
3. the inclusion of one or more factors; or,
4. the use of another allocation and apportionment method.

Further, Code Section 12-7-1200 has been amended to provide that the Department of Revenue may enter into an agreement for 5 years² to establish a taxpayer's allocation and apportionment method providing:

- (1) the taxpayer is planning a new facility or an expansion of an existing facility in South Carolina; and,
- (2) the Advisory Coordinating Council for Economic Development 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 The number of years may be longer for a "qualified recycling facility". See discussion on separate accounting on page 11.

Effective Date: House Bill 3534 is effective April 4, 1995.

House Bill 3775, (Act No. 32)

House Bill 3775 added provisions for tax incentives for a taxpayer constructing or operating a "qualified recycling facility". In addition, the bill provided amendments to Code Section 12-37-930 and Code Section 12-7-1220 that affect taxpayers in general. This summary is divided into two sections - one affecting qualified recycling facilities and one affecting other taxpayers.

QUALIFIED RECYCLING FACILITY

QUALIFICATION FOR BENEFITS

In order to qualify as a "qualified recycling facility" the facility must:

- (1) manufacture products composed of 50% or more postconsumer waste material, such as scrap metal and iron, used plastics, paper, glass, and rubber;
- (2) invest at least \$300 million in the acquisition, construction, erection, and installation of real and personal property by the end of the fifth year after the first year of construction or operation; and,
- (3) receive certification from the Department of Revenue that the facility is a qualified recycling facility.

BENEFITS

There are significant income tax, fee-in lieu of property tax, property tax, and sales tax incentives available to qualifying recycling facilities. These benefits are discussed below.

A 30% TAX CREDIT FOR INVESTMENT

A business constructing or operating a qualified recycling facility is entitled to a 30% credit each year for an investment in recycling property. The credit may be used against: (1) corporate income tax imposed under Section 12-7-230; (2) corporate license fees imposed by Section 12-19-70; (3) South Carolina sales or use tax; or, (4) any similar tax.

Any unused credit may be carried forward indefinitely. If the facility does not meet the minimum investment as required by the statute, all credits used must be recaptured.

FEE-IN-LIEU INCENTIVES

Code Section 4-29-67, the fee-in-lieu of property tax statute, provides a mechanism by which a business which makes at least a \$300 million investment within a 5 year period may enter into an agreement with a county under which the business pays a reduced fee instead of the usual county property taxes.

The benefits provided in this amendment can save a business substantial property taxes by allowing the business to: (1) negotiate an assessment ratio as low as 3%, (2) "freeze" the applicable millage rate and value of the property for up to 30 years, and, (3) negotiate a special calculation of net present value.

SEPARATE ACCOUNTING

Code Section 12-7-1200 provides that a business, upon approval by the Department, may be allowed to use separate accounting to determine South Carolina net income.

This section has been amended to allow a qualified recycling facility to petition the Department to use a separate accounting for all or any of its divisions' or subsidiaries' taxable income.

The Department of Revenue will review the petition and may approve the petition upon certification of the Advisory Coordinating Council for Economic Development that the benefits exceed the costs.

SALES TAX EXEMPTION

Code Section 12-36-2120 has been amended to provide an exemption from South Carolina sales and use tax for the following tangible personal property used by a qualified recycling facility:

1. recycling property;
2. electricity, natural gas, fuels, gasses, and fluids and lubricants;
3. ingredients or component parts of manufactured products;
4. property used for the handling or transfer of postconsumer waste or manufactured products or, in or for the manufacturing process; and,
5. machinery and equipment foundations.

TAX CREDIT EQUAL TO JOB DEVELOPMENT FEE COLLECTED UNDER THE ENTERPRISE ZONE ACT OF 1995

Under the Enterprise Zone Act of 1995, a qualifying business located in an enterprise zone is entitled to collect a job development fee by retaining an amount of employee withholding. This amendment provides that a qualified recycling facility is entitled to a credit in the amount of all job development fees collected under Code Section 12-10-80 of the Enterprise Zone Act.

This credit may be used by the qualified recycling facility to reduce: (1) corporate income tax imposed under Code Section 12-7-230; (2) South Carolina sales and use tax; (3) corporate license fee imposed under Code Section 12-19-70; and (4) any similar tax.

Any unused credit can be carried forward indefinitely.

BENEFITS TO OTHER TAXPAYERS

House Bill 3775 contained two other amendments that apply to qualified recycling facilities as well as other types of businesses. These amendments are described below.

DEPRECIATION FOR PROPERTY TAX PURPOSES

Code Section 12-37-930 has been amended to provide that electronic interconnection component assembly devices for computers and peripherals are allowed a 30% depreciation allowance annually.

Also, this code section has been amended to provided that the original cost of custom molds and dies used in manufacturing electronic interconnection component assembly devices for computers and peripherals may be reduced to 90% of cost, instead of 80%.

JOB TAX CREDIT

Code Section 12-7-1220(H)(2) has been amended to provide that two "half time" jobs are considered one "full-time" job for purposes of the job tax credit. A half time job requires at least 20 hours of an employees time per week for: (1) the entire normal year of the company's operations or (2) a year in which the employee was hired initially for or transferred to the South Carolina facility.

Effective Date: House Bill 3775 is effective April 6, 1995.