

SC PRIVATE LETTER RULING #06-3

SUBJECT: Textile Communities Revitalization Act
(Income Tax)

REFERENCES: Chapter 32 of Title 6 (Supp. 2005)
S.C. Code Ann. Section 12-6-3535(B)(2-3) (Supp. 2005)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2000)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #05-2

SCOPE: A Private Letter Ruling is an advisory opinion issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. It is the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

Questions:

1. Is ABC, Inc. (ABC) entitled to income tax credits provided by the Textile Communities Revitalization Act (Chapter 32 of Title 6) for redeveloping the textile manufacturing facility discussed in the facts where the redevelopment plan requires demolition of the primary building on the site?
2. May ABC claim the demolition costs as "rehabilitation expenses," as defined in S.C. Code § 6-32-30(6) of the Textile Communities Revitalization Act?

Conclusion:

1. ABC is entitled to income tax credits provided by the Textile Communities Revitalization Act for redeveloping the textile manufacturing facility discussed in the facts where the redevelopment plan requires demolition of the primary building on the site, provided all provisions of the Textile Communities Revitalization Act are met.

2. ABC may claim the demolition costs as “rehabilitation expenses,” as defined in S.C. Code § 6-32-30(6).

Facts:

ABC, a real estate development corporation, plans to acquire a 20-acre textile mill site. The site is in South Carolina, and it has been abandoned for more than one year. The original textile facility manufactured embroidered fabrics. The operation included the following functions: storage, bleaching and dyeing, sewing, spooling, mending, embroidery, finishing, and distribution.

The site includes a one-story structure of brick, steel and concrete. It was originally built in the 1960s and has been expanded six times. Concrete areas have been stained with spills from dyes and hydrogen peroxide. The concrete floor also features oil sumps near some of the machinery. Because the floor is not solid in these areas, the presence of the oil sumps limits the integrity of the concrete. The abandonment of the space and the damaged concrete floors have caused the building to fall into major disrepair.

The local municipality has indicated a preference that the structure be demolished and redeveloped, due to its proximity to the commercial market. ABC plans to demolish the existing structure and improve and redevelop the site by constructing new buildings on individual parcels. After redevelopment, the site will contain 125,000 square feet of new commercial space within the city. ABC anticipates that most tenants will be retail or food service. The redevelopment is expected to create approximately 260 new jobs.

Discussion:

“The abandonment of textile mill sites has resulted in the disruption of communities and increased the cost to local governments by requiring additional police and fire services due to excessive vacancies.” South Carolina Code Section 6-32-20(B).

There exists in many communities of this State abandoned textile manufacturing related or owned facilities. The stable economic and physical development of these areas is endangered by the presence of these abandoned facilities as manifested by progressive and advanced deterioration of structures. As a result of the existence of these abandoned facilities, there is an excessive and disproportionate expenditure of public funds, inadequate public and private investment, unmarketability of property, growth in delinquencies, and crime in the areas together with an abnormal exodus of families and businesses so that the decline of these areas impairs the value of private investments and threatens the sound

growth and the tax base of taxing districts in the areas, and threatens the health, safety, morals, and welfare of the public. To remove and alleviate these adverse conditions, it is necessary to encourage private investment and restore and enhance the tax base of the taxing districts in the areas by the redevelopment of these abandoned facilities.

Code Section 6-32-20(C).

Accordingly, “[a] public and corporate purpose of the local governments will be served by restoring the textile mill sites to a productive asset for the communities and result in increased job opportunities.” Code Section 6-32-20(B). The General Assembly enacted the Textile Communities Revitalization Act, Chapter 32 of Title 6, which provides an income tax credit as a “meaningful incentive for the renovation, improvements, and redevelopment of abandoned textile mill sites located in South Carolina.” Code Section 6-32-20(A). This income tax credit is available to “a taxpayer who improves, renovates, or redevelops an eligible site.” Code Section 6-32-40(A)(2).

NOTE: The Act also includes a property tax credit; however, this ruling only addresses the income tax credit.

Eligibility of the Site

Code Section 6-32-30(2) defines an “eligible site” as “a site that is designed for use or has in fact been used as a textile manufacturing facility or uses ancillary to it and is located in South Carolina,” which describes the site at issue. In this case, redevelopment of the site requires the demolition of buildings.

Although the statute does not specifically address demolition, “a statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. The real purpose and intent of the lawmakers will prevail over the literal import of the words.” *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). Notably, the language of the Act does not explicitly require the preservation of existing textile mill buildings, and the Act’s statement of legislative purpose does not list the preservation of existing textile mill buildings as a desired effect. Rather, the General Assembly intended to remove and alleviate adverse conditions created by abandoned mills and to “encourage private investment and restore and enhance the tax base of the taxing districts in the areas by the redevelopment of these abandoned facilities.” Code Section 6-32-20(C).

Accordingly, ABC is entitled to the income tax credits provided in the Textile Communities Revitalization Act for redeveloping the textile manufacturing facility discussed in the facts, even though the redevelopment plan requires demolition of the primary building on the site, provided all provisions of the Textile Communities Revitalization Act are met.

Rehabilitation Expenses

The Act defines “rehabilitation expenses” as “the expenses incurred in the rehabilitation of the eligible site, excluding the cost of acquiring the eligible site or the cost of personal property maintained at the eligible site.” Code Section 6-32-30(6). The plain meaning of “rehabilitate” is “[t]o restore to good condition, operation, or capacity.” *American Heritage College Dictionary, Fourth Ed.* (Houghton Mifflin Co. 2002). Here, even though the structure will be demolished, the site *as a whole* will be restored to a good condition, operation, or capacity and will become a “productive asset for the communities.” Code Section 6-32-20(B). Therefore, ABC may claim the demolition costs as rehabilitation expenses for purposes of the income tax credits provided in the Textile Communities Revitalization Act.

CAVEAT: This advisory opinion is issued to the taxpayer requesting it on the assumption that the taxpayer’s facts and circumstances, as stated, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the advisory opinion may not rely on it. If the taxpayer relies on this advisory opinion, and the Department discovers, upon examination, that the facts and circumstances are different in any material respect from the facts and circumstances given in this advisory opinion, then the advisory opinion will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this advisory opinion, changes in a statute, a regulation, or case law could void the advisory opinion.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens

Ray N. Stevens, Director

November 16 ____, 2006
Columbia, South Carolina