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

SC PRIVATE LETTER RULING #95-5 (TAX)

TO: XYZ Corporation

SUBJECT: Job Tax Credit and Job Development Fee
(Income Tax and Enterprise Zone Benefits)

DATE: June 13, 1995

REFERENCE: S. C. Code Ann. Section 12-7-1220 (Supp. 1994)
S. C. Code Ann. Section 12-10-10, et seq. (House Bill 3534)

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

SCOPE: A Private Letter Ruling is an **official advisory opinion** issued by the Department of Revenue to a specific person.

NOTE: A Private Letter Ruling may only be relied upon by the person to whom it is issued and only for the transaction or transactions to which it relates. A Private Letter Ruling has no precedential value.

Facts:

XYZ Corporation is locating a division, X, in a South Carolina multi-county industrial park over the next three years. The industrial park will include a less developed county. This area has been designated an enterprise zone by the State Budget and Control Board.

XYZ will employ 25 people at this new location in 1995 who will be permanent, full-time XYZ employees at this facility. In 1996, one portion of XYZ's facility will be operational, and employment will increase to 175. The facility will be fully operational in 1997, and employment will total 500 full-time employees at this new location.

At least 51% of XYZ's full time employees at this new facility will reside in an Enterprise Zone. The new employees will earn, on average, \$15.00 or more an hour.

Discussion:

The following questions and answers concern the job tax credit provided in Code Section 12-7-1220 and the Enterprise Zone Act provided in Code Section 12-10-10, et seq. (See House Bill 3534.)

JOB TAX CREDIT

Code Section 12-7-1220(B) reads:

Corporations operating manufacturing...facilities in counties designated by the commission as less developed are allowed a job tax credit for taxes imposed by Section 12-7-230...equal to one thousand dollars annually for each new full-time employee job for five years beginning with years two through six after the creation of the job...Only those corporations that increase employment by ten or more in a less developed county are eligible for the credit. Credit is not allowed during the five years if the net employment increase falls below ten. The appropriate commission shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of ten.

Code Section 12-7-1220(H)(1) provides that for the purpose of the job tax credit:

"new job" means a job created by an employer in South Carolina at the time a new facility or an expansion initially is staffed but does not include a job created when an employee is shifted from an existing South Carolina location to a new or expanded facility.

Q1. What is XYZ's "first year" for purposes of the job tax credit?

A1. Code Section 12-7-1220(H)(1) states that a "new job" means a job created at the time a new facility is initially staffed. Since XYZ will initially staff the new facility in 1995 with a staff that will run the daily business activities during and after construction of the new facility, the "first year" is 1995.

Q2. What are the statutory requirements regarding the number of employees required to be hired in order to qualify for the credit and the dollar amount of the job tax credit per employee?

A2. XYZ is locating in a South Carolina multi-county industrial park that will include a less developed county. Code Section 12-7-1220(I) provides that notwithstanding which of the participating counties where the permanent business is located, for purposes of the regular job tax credits authorized by subsections (B), (C), and (D), the participating county which would qualify for the greatest dollar amount of the job tax credit is the county the permanent business enterprise is deemed to be located in regardless of whether or not it actually is located in another participating county. Based upon this statute, XYZ is deemed to be located in a less developed county and qualifies for the job tax credit allowed in Code Section 12-7-1220(B). This section provides that facilities in less developed counties increasing employment by 10 or more are allowed a \$1000 job tax credit for each new full-time job.

Further, Code Section 12-7-1220(I) provides that a business located in a multi-county industrial park is allowed an additional \$500 job tax credit annually for each new full-time employee job for five years beginning with years two through six after the creation of the job.

Based upon Code Section 12-7-1220(B) and 12-7-1220(I), XYZ is allowed a \$1500 job tax credit for each new, full-time job created at the new XYZ facility, providing employment is increased by 10 or more, and all other statutory requirements are met.

Q3. How many years is the credit allowed?

A3. As provided in Code Section 12-7-1220(B), the job tax credit is allowed for each new full-time employee job for five years beginning with years two through six after the creation of the job. Since XYZ meets the statutory requirements of Code Section 12-7-1220 in 1995, XYZ will begin claiming the job tax credit in 1996. This credit will continue until 2000, providing XYZ continues to meet all statutory requirements of Code Section 12-7-1220. Code Section 12-7-1220(G) provides that the credit claimed but not used in a taxable year may be carried forward 10 years from the close of the taxable year in which it is earned. The credit is limited to 50% of the corporation's state income tax liability.

As stated in the facts, XYZ will increase employment in 1996 and 1997. Code Section 12-7-1220(E) provides that tax credits for five years must be awarded for additional new full-time jobs created by corporations qualified under subsections (B), (C), (D), and (I). Additional new full-time jobs must be determined by subtracting highest total employment of the corporation during years two through six, or whatever portion of years two through six which have been completed, from the total increased employment. The department will adjust the credit allowed each year for the net new employment fluctuations above the minimum level of ten.

An increase of 150 new jobs by XYZ in 1996 will result in a new job tax credit with a new 5 year period, beginning in 1997. Likewise, an increase of 350 new jobs by XYZ in 1997 will result in another new 5 year period, beginning in 1998. These additional job credits are allowed for a five year period provided they are maintained. If the increase falls below ten, no credit is allowed for that year or any subsequent year two through six unless the minimum is met again. (See Information Letter #87-2 for a more detailed discussion of job fluctuations and job additions.)

NOTE: See exhibit 1 for a computation of the job tax credit available to XYZ based upon the facts presented.

ENTERPRISE ZONE ACT

Code Section 12-10-70 reads:

Qualifying businesses are entitled to the following benefits in addition to all others provided by law:

(1) If at least fifty-one percent of the full-time employees hired for the project either reside in an enterprise zone at the time of employment, have a household income that is eighty percent or less of the median household income for the county prior to employment or have been a recipient of Aid to Families with Dependent Children (AFDC) payments within the past twelve months, the qualifying business is entitled to the jobs tax credit for the period and in the amount provided in Section 12-7-1220(B); in addition, a qualifying business is entitled to an additional five hundred dollars a year tax credit in the third, fourth, and fifth year of any AFDC recipient's continued employment with the qualifying business, based on the status of the employee at the time of beginning employment. A new job is not considered a new job for the purpose of this credit if it replaces the same job that was part of a reduction in force in the preceding twelve months....

Code Section 12-10-80 reads:

(A) Upon certification by the council to the department of the council's determination that a business is a qualifying business, a qualifying business may collect a job development fee by retaining an amount of employee withholding permitted by subsection (C) or (D), but not both, for the purposes permitted by subsection (B) or (D), respectively....Employee withholding may not be retained from an employee whose job was created in this State before the entry of the qualifying business into a revitalization agreement...

(B) A qualifying business may collect a job development fee under the revitalization agreement for a period not to exceed fifteen years. A qualifying business must create at least ten new, full-time jobs at the South Carolina facility described in the revitalization agreement....

(C) The total amount retained from employee withholding by the qualifying business may not exceed the sum of the following amounts:

(1) two percent of the gross wages of each new employee who earns six dollars or more an hour but less than eight dollars an hour;

(2) three percent of the gross wages of each new employee who earns eight dollars or more an hour but less than ten dollars an hour;

(3) four percent of the gross wages of each new employee who earns ten dollars or more an hour but less than fifteen dollars an hour;

(4) five percent of the gross wages of each new employee who earns fifteen dollars or more an hour....

(G) For purposes of the job development fee allowed by this section, an employee is a person whose job was created in this State.

Q1. What is XYZ's "first year" for purposes of the additional job tax credit available under the Enterprise Zone Act?

A1. Code Section 12-10-60 of the Enterprise Zone Act provides that the Advisory Coordinating Council for Economic Development may enter into a revitalization agreement with each qualifying business with respect to the project. The revitalization agreement must set a date by which the qualifying business shall have completed the project.

As provided in Code Section 12-10-70, XYZ is entitled to an additional job tax credit "for the period and in the amount provided in Section 12-7-1220(B)." We have previously concluded that Code Section 12-7-1220(B) provides that XYZ must create 10 or more new full-time jobs to qualify for the credit and that 1995 is the "first year" of the job tax credit.

Under the rule of statutory construction of statutes in pari materia, statutes are not to be considered as isolated fragments of law, but as whole, or as parts of a great, connected, homogenous system. Such statutes are considered as if they constituted but one act, so that sections of one act may be considered as though they were parts of the other act, as far as this can reasonably be done. Indeed, as a general rule, where legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature of that subject are to be carried into effect conformably to it, unless a different purpose is shown plainly. 73 Am.Jur.2D Statutes Section 188.

In reading Code Sections 12-10-60, 12-10-70, and 12-7-1220(B) together, and as a whole, the "first year" of XYZ's additional job tax credit allowed under the Enterprise Zone Act will be 1995, the same as the period for the job tax credit under 12-7-1220(B).

Q2. What are the dollar amounts of the Enterprise Zone job tax credit per employee?

A2. Code Section 12-10-70 provides that XYZ is entitled to the additional job tax credit in the amount and the period provided in Section 12-7-1220(B), \$1000, providing employment is increased by 10 or more, and all other statutory requirements are met. Further, XYZ may qualify for an additional credit of \$500 in years 3, 4, and 5 for employees who were Aid to Families with Dependent Children recipients within 12 months of being employed.

Q3. How many years is the credit allowed?

A3. As provided in Code Section 12-10-70, XYZ is entitled to the jobs tax credit in the period provided in Code Section 12-7-1220. In other words, this additional job tax credit will be taken simultaneously with the job tax credit allowed in Code Section 12-7-1220. A credit claimed but not used in a taxable year may be carried forward for 10 years from the close of the tax year in which the credit is earned.

Q4. When may the job development fee be retained from withholding?

A4. Code Section 12-10-80(A) provides that upon certification by the council to the department, a business may collect a job development fee as provided in Code Section 12-10-80(C) or (D). Employee withholding may not be retained before entry into a revitalization agreement.

Code Section 12-10-80(B) allows a business to collect the fee under a revitalization agreement for a period not to exceed 15 years. The business must create at least 10 new, full-time jobs at the South Carolina facility. This withholding may continue until the termination or expiration of the revitalization agreement.

Code Section 12-10-80(C) provides that the fee retained from withholding is calculated upon a percentage of the gross wages of each new employee, as set forth in Code Section 12-10-80(C)(1) through (4).

Based upon these statutes, XYZ, prior to withholding, must enter into a revitalization agreement, and create at least 10 new, full-time jobs at the new South Carolina facility. Further, the Advisory Coordinating Council for Economic Development must certify to the Department of Revenue that XYZ is a qualifying business. After these requirements have been met, the first year of employer withholding is considered the first year that the Department receives certification from the Council, unless the revitalization agreement provides for a later date.¹ The starting date for retaining withholding is not in the sole discretion of the employer. Further, withholding is not based upon the average salary of the new employees. Withholding is computed as a percentage of each new employee's hourly wages as set forth in Code Section 12-10-80(C).

¹ This answer may differ for the job development fee withheld under 12-10-80(D).