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

SC PRIVATE LETTER RULING #98-2

TO: XYZ Company, Inc.

SUBJECT: Qualification for the Economic Impact Zone Investment Tax Credit

DATE: March 3, 1998

REFERENCE: S.C. Code Ann. Section 12-14-30 (Supp. 1997)
S.C. Code Ann. Section 12-14-60 (Supp. 1997)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1997)
SC Revenue Procedure #97-8

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.

Question:

Is property owned by XYZ Company, Inc. that qualifies under section 1245 of the Internal Revenue Code (“IRC”), is depreciable under Section 168 of the Internal Revenue Code and which is placed in service in an economic impact zone, an integral part of furnishing communications, thereby qualifying for the economic impact zone investment tax credit under Section 12-14-60 of the South Carolina Code of Laws (“Code”)?

Conclusion:

Based on the facts submitted, XYZ Company, Inc. will be entitled to the economic impact zone investment tax credit allowed under Code Section 12-14-60 for certain of its property as described below, including switching equipment, public telephone terminal equipment, satellite towers, buried cable, repair trucks and equipment provided such property is described in Section 1245 of the Internal Revenue Code (“IRC”), the property is depreciable under Section 168 of the IRC, the original use of the property commences inside the economic impact zone and the property is used as an integral part of furnishing communications as described in the discussion.

Facts:

XYZ Company, Inc. (herein referred to as “Company”) provides residential and business telephone service to clients in “A” and “B” Counties. Company is regulated by the State Public Service Commission and is subject to the rules and regulations of the Federal Communications Commission.

Company owns two 100% owned subsidiaries, ABC, Inc. and 123, Inc. ABC, Inc. owns a 25% interest in a cellular telephone partnership. Company and its two subsidiaries file a South Carolina consolidated income tax return.

Company has represented that each year it acquires property that is used in Company’s business. This property includes central office equipment, distribution plant equipment, furniture and office equipment, aerial cable, underground cable, fiber optic cable and aerial wire and conduit systems. For example, for its tax year ending December 31, 1995, Company placed into service the following items of property: central office equipment, vehicles, public telephone terminal equipment, furniture and fixtures, tools, station equipment (consisting primarily of switching equipment), distribution and CATV equipment (consisting of items such as satellite towers, satellite wires and buried cables.) Company has represented that the property listed above is property described in Section 1245 of the Internal Revenue Code (herein referred to as the “IRC”) that is depreciable under IRC Section 168 and that the original use of such property will commence within the economic impact zone

Law and Discussion:

Code Section 12-14-30 provides that:

“(1) An “economic impact zone” is a county or municipality, any portion of which is located within fifty miles of the boundaries of an applicable federal military installation or an applicable federal facility, and any area not otherwise included as part of the economic impact zone if the State Budget and Control Board determines the area to be adversely impacted by the closing, realignment, or downsizing of an applicable federal military installation or an applicable federal facility.

(2) 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 of 1990; or
- (c) Section 2687 of Title 10, United States Code.

- (3) An “applicable federal facility” is one which is:
 - (a) a federal facility that has reduced its permanent employment by three thousand or more jobs after December 31, 1990;
 - (b) Reserved.
- (4) “Internal Revenue Code” has the meaning provided in Section 12-6-40(A).

Both “A” and “B” Counties are South Carolina economic impact zones as defined in Code Section 12-14-30 (See SC Information Letter #96-23) and Company has represented that the original use of all relevant property commences and continues within a South Carolina economic impact zone.

Code Section 12-14-60 provides as follows:

(A) There is allowed as a credit against the tax imposed pursuant to Chapter 7 of this title an economic impact zone investment tax credit for any taxable year in an amount equal to five percent of the aggregated bases of economic impact zone qualified manufacturing and productive equipment properties placed in service during such taxable year in the economic impact zone.

(B) For purposes of this section:

(1) “economic impact zone qualified manufacturing and productive equipment property” means any property:

(a) which is used as an integral part of manufacturing, production, or extraction of or furnishing transportation, communications, electrical energy, gas, water or sewage disposal services in the economic impact zone;

(b) which is tangible property to which Section 168 of the Internal Revenue Code applies;

(c) which is Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code); and

(d)(i) the construction, reconstruction, or erection of which is completed by the taxpayer in the economic impact zone; or,

(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer inside the economic impact zone.

(2) In the case of any computer software which is used to control or monitor a manufacturing or production process inside the economic impact zone with respect to which depreciation (or amortization in lieu of depreciation) is allowable, the software must be treated as qualified manufacturing and productive equipment property.

(C) This section does not apply to any property to which the other tax credits would apply unless the taxpayer elects to waive the application of the other credits to the property.

Company has represented that the property and equipment described in the facts is described in Section 1245 of the Internal Revenue Code, such property is depreciable under IRC Section 168 and that the original use of such property will commence within the economic impact zone, therefore, Company has met the requirements of subsections 12-14-60(B)(1)(b),(c), and (d) of the Code. However, Company must also meet the requirements of subsection 12-14-60(B)(1)(a) which requires that the property be used as an integral part of manufacturing, production, or extraction of or furnishing transportation, communications, electrical energy, gas, water or sewage disposal services in the economic impact zone. Two questions arise in connection with this provision: (1) whether the business of providing telephone service is the business of “furnishing communications”; and (2) if so, is the property (all or part thereof) used as an integral part of providing those communications.

Is Providing Telephone Service the Business of Furnishing Communications?

The Department of Revenue has consistently viewed the providing of telephone services as the business of providing communications. In SC Information Letter #89-28, the Department of Revenue provided a list of communication services that the Department had consistently held subject to the sales and use tax. Such services included telephone services (unless such services were specifically exempted by Code Section 12-36-2120(11) which addresses a limited exception for toll charges for transmissions between telephone exchanges and carrier and customer access charges established by the Federal Communications Commission or South Carolina Public Service Commission)).

In South Carolina, it is an accepted practice to resort to the dictionary to determine the literal meaning of words used in statutes. For cases where this has been done, see Hay v. South Carolina Tax Commission, 273 S.C. 2d 269, 255 S.E. 2d 837 (1979); Fennell v. South Carolina Tax Commission, 233 S.C. 43, 103 S.E. 2d 424 (1958); Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217 S.C. 484, 60 S.E. 2d 682 (1950). The American Heritage Dictionary, Second College Edition (1985) defines the word “communications” as a means of communicating, esp. a system for sending and receiving messages, such as mail, telephone or television.”[emphasis added] Thus, Company’s business of providing telephone services in “A” and “B” Counties is considered to be the “furnishing of communications,” making Company eligible for the economic impact zone investment tax credit allowed pursuant to Code Section 12-14-60.

Is the Property an Integral Part of Furnishing Communications in an Economic Impact Zone?

Code Section 12-14-60 provides that the tangible personal property be used as an integral part of manufacturing, production, or extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services in the economic impact zone.

The statute does not contain any guidance as to what materials constitute an integral part of furnishing communications. In South Carolina, it is an accepted practice to resort to the dictionary to determine the meaning of words used in statutes. For cases where this has been done, see Hay v. South Carolina Tax Commission, 273 S.C. 269, 255 S.E. 2d 837 (1979); Fennell v. South Carolina Tax Commission, 233 S.C. 43, 103 S.E. 2d 424 (1958); Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217 SC 484, 60 S.E. 2d 682 (1950).

The American Heritage Dictionary, Second College Edition (1985) defines “integral” as “essential or necessary for completeness; constituent; possessing everything essential; entire”.

For purposes of determining whether specific equipment of Company may qualify for the economic impact zone investment tax credit, items such as switching equipment, public telephone terminal equipment, station equipment and items such as satellite towers and wires and buried cable are an integral part of furnishing communications since transmissions could not be initiated or completed without such property. Likewise, trucks and tools used to repair and construct phone lines, cables and equipment can be said to be an integral part of furnishing communications since transmissions could not be completed without working lines and equipment. However, automobiles used by the Company’s executives or salesmen would not qualify for the credit since the automobiles are not integral to Company’s furnishing communications. Office furniture, fixtures and equipment must be reviewed with an eye towards the purpose of the use of such equipment. Desks, chairs, computers, etc, used by operators to handle customer calls and make connections on behalf of customers is considered as used as an integral part of furnishing communications. However, desks, chairs and other equipment used by Company’s salesmen or others in selling Company’s services are not used as an integral part of furnishing communications, rather they are only necessary for the sale of the Company’s services. Likewise, furniture and equipment used by other Company employees that are not necessary for the completion of the communication services offered to its customers will not be considered an integral part of furnishing communications and will not qualify for the economic impact zone investment tax credit allowed by Code Section 12-14-60.