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Comments Due by: **July 28, 2023**

SC REVENUE RULING #23-X [DRAFT – 7/07/2023]

- SUBJECT:** South Carolina Income Tax Credit for Hiring Formerly Incarcerated Individuals
(Income, Corporate License, and Bank Tax)
- EFFECTIVE DATE:** Tax years beginning after 2021
- REFERENCES:** S.C. Code Ann. § 12-6-3710 (Act No. 237 of 2022) (enacted June 22, 2022)
- AUTHORITY:** S.C. Code Ann. § 12-4-320 (2014)
SC Revenue Procedure #09-3
- SCOPE:** The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department’s position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

INTRODUCTION

S.C. Code Ann. § 12-6-3710 provides a tax credit for any taxpayer who hires a formerly incarcerated individual after 2021 but before 2027 to participate in a registered apprenticeship program certified by the United States Department of Labor. An employer may claim the credit for up to three years if all statutory requirements are met. The amount of the credit for each eligible employee is \$3,000 for the first year of employment; \$2,500 for the second year of employment; and \$1,000 for the third year of employment; but may not exceed the taxpayer’s liability for that year.

The purpose of this advisory opinion is to provide an overview of and to address general questions about this new South Carolina credit.

OVERVIEW OF THE FORMERLY INCARCERATED INDIVIDUAL TAX CREDIT

An employer who hires a formerly incarcerated individual as a new employee after 2021 to participate in a registered apprenticeship program is eligible for this tax credit. The credit is first earned in the year in which the formerly incarcerated individual completes his/her first 12 consecutive months of employment. A partial month does not count as a month. The amount of the credit is \$3,000 for the first year after the new employee remains employed for 12 consecutive months. The credit amount changes to \$2,500 for the tax year after the employee remains employed for 24 consecutive months and to \$1,000 for the tax year after the employee remains employed for

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36 consecutive months. The credit is not available if the individual was an employee of the employer prior to January 1, 2022.

The employer may only earn the credit for individuals hired on or prior to December 31, 2026, although the credit may be claimed after that date on the same schedule and in the same amount as provided in the statute. The credit may be used against individual income taxes, corporate income taxes, corporate license taxes, bank franchise taxes, income taxes imposed on building and loan associations, and insurance premium taxes.

For reference, S.C. Code Ann. § 12-6-3710 is attached.

QUESTIONS AND ANSWERS

PART 1 – FORMERLY INCARCERATED INDIVIDUAL

1. Q. Who is eligible for the credit?
 - A. The credit is allowed for any employer that hires a formerly incarcerated individual for a registered apprenticeship program, as described in Question 6 below. A formerly incarcerated individual is someone who within three years of the date of hire was held in a South Carolina state or county prison, jail, or detention center for at least ninety consecutive days for a nonviolent crime; or for a violent crime for which he/she received a sentence of ten years or less or received a pardon. S.C. Code Ann. § 12-6-3710(H)(2).
2. Q. What is a violent crime?
 - A. For purposes of this credit, only the crimes listed in S.C. Code Ann. § 16-1-60 are considered violent crimes. Some examples of violent crimes include murder, criminal sexual conduct, assault and battery with intent to kill, assault and battery of a high and aggravated nature, kidnapping, trafficking in persons, voluntary manslaughter, armed robbery, carjacking, drug trafficking, and burglary. A complete list is set forth in S.C. Code Ann. § 16-1-60, which is attached.
3. Q. Will hiring an individual who was incarcerated in a federal correctional facility or in a correctional facility in another state make an employer eligible for the tax credit?
 - A. No. The employer must hire an individual who was held in a South Carolina state or county prison, jail, or detention center.
4. Q. What is the eligible hiring period for employers who want to earn the credit?
 - A. An employer must hire formerly incarcerated individuals on or after January 1, 2022, and on or prior to December 31, 2026, to qualify for the credit.

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5. Q. If an employer meets all the requirements and claims the credit, can a second employer hire the same formerly incarcerated individual and claim the credit?
- A. No. The credit may be claimed only once for an eligible employee, regardless of the employer. See Question 11 below for instructions regarding how to determine if a previous employer has claimed the credit. A second employer is ineligible to claim the credit even if the first employer claimed the credit for only one or two years.

PART 2 – REGISTERED APPRENTICESHIP PROGRAM

6. Q. What is a “registered apprenticeship program that has been validated by the United States Department of Labor”?
- A. Registered apprenticeships are industry-vetted and approved programs with jobs that pay progressive wages as the employee’s skills and productivity increases. They provide structured on-the-job training, which includes instruction from an experienced mentor. For more information about registered apprenticeship programs, you may consult Apprenticeship Carolina (apprenticeshipcarolina.com), which is a division of the South Carolina Technical College System. For more information about the Department of Labor’s validation of apprenticeship programs, you may consult Apprenticeship USA (apprenticeship.gov) or the Department of Labor’s Office of Apprenticeship located at 1835 Assembly Street in Columbia.
7. Q. Must the apprenticeship program last for three years in order for the employer to qualify for all three years of the tax credit?
- A. No. Credit qualification is determined annually based upon consecutive months of employment; it is not dependent on the length of the apprenticeship program itself. The appropriate term of the apprenticeship program should be determined by the employer with guidance from Apprenticeship Carolina and the Department of Labor.
8. Q: May an employee participate in an apprenticeship remotely?
- A: To earn the credit, an employer must hire a formerly incarcerated individual as a new employee in a registered apprenticeship program that has been validated by the Department of Labor. According to the Department of Labor’s website, “Apprenticeships produce skilled workers through a combination of on-the-job learning and classroom training (virtual or in-person).” Therefore, an employee could participate in part of the apprenticeship remotely. The apprenticeship program must be validated by the Department of Labor, so its standards control the extent to which the apprenticeship might be accomplished by virtual participation.

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9. Q. Can an employer qualify for the credit with two half-time apprentice-employees instead of one full-time apprentice-employee?

A: Yes. Subsection (H) of S.C. Code Ann. § 12-6-3710 states that “full-time” has the same meaning as provided in S.C. Code Ann. § 12-6-3360, the Job Tax Credit statute. The Job Tax Credit states that two half-time jobs are considered one full-time job. S.C. Code Ann. § 12-6-3360(M)(4). A “half-time job” is a job requiring a minimum of twenty hours of an employee's time a week for the entire normal year of the company's operations. A “full-time job” is one that requires a minimum of thirty-five hours of an employee's time a week for the entire normal year of company operations. Because two half-time employees equal a full-time employee under the Job Tax Credit, two half-time apprentice-employees can qualify for one full-time apprentice-employee under this credit. However, both apprentice-employees who hold a half-time apprenticeship must be employed for 12 consecutive, complete months before an employer will be eligible for the credit. In other words, if one half-time employee was hired before the second half-time employee, the employer is not eligible for the credit until the second employee has worked for 12 consecutive months.

PART 3 – HOW TO CLAIM THE CREDIT

10. Q. When does an employer become eligible for the credit?

A. An employer becomes eligible for the credit in the tax year in which the employee/apprentice completes his/her twelfth consecutive month of employment after commencing participation in the apprenticeship program. If the employee participates in the apprenticeship program immediately upon starting the job, the employer becomes eligible after the twelfth full month of employment.

If, on the other hand, there is a delay between the start of the job and the employee's participation in the apprenticeship program, the employer is not eligible to take the credit until the employee's twelfth full month of employment after beginning the apprenticeship. For example, if an employee starts a new job on December 1, 2022 but does not enroll in the apprenticeship program until February 1, 2023, the employer is first eligible for the credit in the 2024 tax year.

11. Q. How does an employer claim the credit?

A. An employer can confirm the eligibility of a potential employee once the potential employee has completed Part A of the *Pre-Screening for Formerly Incarcerated Apprenticeship Credit* form (I-64). The employer can check the potential employee's status on MyDORWAY at dor.sc.gov to confirm that no other employer has previously claimed the credit for this employee.

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If the employer hires the prospective employee, the employer should complete Part B of Form I-64.

At the end of the tax year in which an employee completes the twelfth consecutive month of employment, the employer should return to MyDORWAY and complete the information necessary to show he/she has fulfilled the credit's requirements. The Department, through MyDORWAY, will then issue a letter to the employer explaining the amount of the credit based upon the information the employer provided.¹ The credit amounts for each eligible employee should be entered on the *Formerly Incarcerated Apprenticeship Credit* form (SC SCH.TC-64) and submitted with the employer's tax return.

12. Q. If an employer receives the letter from the Department explaining the amount of the credit, is the employer assured of getting the credit?
- A. No. The letter from the Department, which is issued through MyDORWAY, is a statement of the amount of the credit based on information provided by the employer. This letter is **not** guaranteed approval of the credit. The statutory requirements must be met for the credit to be properly claimed, and the employer is responsible for entering accurate information into MyDORWAY.

PART 4 - OTHER ISSUES

13. Q. What is the amount of the credit?
- A. For each eligible formerly incarcerated individual still employed after 12 consecutive months, the employer will qualify for a credit of up to \$3,000 for that employee for that tax year. If the formerly incarcerated individual is still employed after 24 months, the employer will qualify for a credit of up to \$2,500 in the second tax year. If the formerly incarcerated individual is still employed after 36 months, the employer will qualify for a credit of up to \$1,000 in the third tax year. The yearly aggregate amount of the credit is limited by the employer's tax liability.
14. Q. Which taxes may be offset by this credit?
- A. The credit may be claimed against individual income tax (S.C. Code Ann. § 12-6-510), corporate income tax (S.C. Code Ann. § 12-6-530), corporate license tax (S.C. Code Ann. Chapter 20, Title 12), bank franchise tax (S.C. Code Ann. Chapter 11, Title 12), income tax imposed on building and loan associations (S.C. Code Ann. Chapter 13, Title 12), and

¹ The letter from MyDORWAY does not guarantee that the employer qualifies for the credit. See Question 12 for further discussion.

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insurance premium taxes (S.C. Code Ann. Chapter 7, Title 38)². S.C. Code Ann. § 12-6-3710(B).

15. Q. Are there limits on the amount of the credit?
- A. Yes. The aggregate amount of the credit for all eligible employees in a taxable year may not exceed the taxpayer's tax liability for that year.
16. Q. Can unused credit amounts be carried forward?
- A. No. There is no carry forward provision for the credit, so any unused credit amounts may not be applied to a succeeding year's liability. If the credit is not fully used in the applicable year, it is forfeited.
17. Q. How many years can an employer take the credit?
- A. Three. There is no credit after an employee's third year of employment. The employer cannot take the credit in all three years unless the eligible employee remains employed for the entire period.
18. Q. Is the credit refundable?
- A. No. The credit is not refundable.
19. Q. Can an employer claim the credit for hiring a formerly incarcerated individual and also claim other credits?
- A. Yes, an employer can claim the credit for hiring a formerly incarcerated individual and combine it with other credits if the employer meets the requirements for the additional credits. Unless otherwise provided in the particular credit statute, a taxpayer may apply Chapter 6 tax credits in any order. S.C. Code Ann. § 12-6-3480(3).³

Example

Employer X is a taxpayer with a manufacturing facility in a multicounty industrial park in a Tier II County. Employee A is hired for a full-time job at X's facility, starting with an apprenticeship program that was approved by the United States Department of Labor. Employee A begins employment on the first day of Year 1 and works for 36 consecutive months. Employee A qualifies as a formerly incarcerated individual so that Employer X is eligible for the tax credit for hiring formerly incarcerated individuals for an apprenticeship program (FII credit) pursuant to S.C. Code Ann. § 12-36-3710.

Employee A's employment also makes Employer X eligible for the apprentice income tax credit (Apprenticeship credit) equal to \$1,000 a year for four years pursuant to S.C. Code

² SCDOR does not administer insurance premium taxes.

³ S.C. Code Ann. §§ 12-6-3477, 12-6-3710, and 12-6-3360 do not require taxpayers to apply these credits in any particular order.

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Ann. § 12-6-3477. Additionally, in Year 1, by hiring Employee A, Employer X generates a traditional annual job tax credit (Job Tax credit) pursuant to S.C. Code Ann. § 12-6-3360(C)(1) equal to \$3,750 (\$2,750 plus an additional \$1,000 credit because the facility is located in a multicounty industrial park). The Job Tax credit cannot be claimed until Year 2 and is limited each year to 50% of tax liability. S.C. Code Ann. § 12-6-3360. In Year 2, Employer X generates another Job Tax credit equal to \$3,750, which can be claimed in Year 3. The following chart reflects X's tax liability for Year 1 through Year 3:

	Year 1
Tax Liability	\$2,500
FII credit	3,000
Apprenticeship credit	1,000
Job Tax credit	0
Final Tax Liability	\$0

In Year 1, Employer X earns an FII credit equal to \$3,000 and an Apprenticeship credit equal to \$1,000. Employer X's tax liability is only \$2,500, so the FII credit will reduce the liability to \$0. The remaining \$500 of the FII credit and the \$1,000 of the Apprenticeship credit will be lost because they cannot be carried forward to the following year.⁴

	Year 2
Tax liability	\$7,000
Job Tax credit	3,750
FII credit	2,500
Apprenticeship credit	1,000
Final Tax Liability	\$0

In Year 2, it will benefit Employer X to apply the Job Tax credit first because it is limited to 50% of the tax liability and unused amounts may also be carried forward. Applying \$3,500 of the available \$3,750 Job Tax credit⁵ reduces Employer X's tax liability before the FII credit and the Apprenticeship credit are applied from \$7,000 to \$3,500. The remaining \$250 of the Job Tax credit may be carried forward to Year 3. The \$2,500 FII credit and the \$1,000 Apprenticeship credit can be applied in any order to reduce Employer X's final tax liability to \$0.

⁴ The example demonstrates that the FII credit is applied first, but the order of applying the available tax credits will not affect Employer X's tax liability for Year 1 because neither credit is limited or able to be carried forward. If the Apprenticeship credit is applied first, Employer X's liability is reduced to \$1,500. The \$3,000 FII credit is then applied to reduce the remaining liability to zero. The \$1,500 of FII unused credit will be lost.

⁵ The Job Tax credit amount is limited to 50% of Employer X's tax liability.

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	Year 3
Tax Liability	\$12,000
FII credit	1,000
Apprenticeship credit	1,000
Job Tax credit	4,000 (3,750 plus 250 carry forward from Year 2)
Final Tax Liability	\$6,000

In Year 3, the order of applying tax credits will not affect Employer X's tax liability. The FII credit of \$1,000 and the Apprenticeship credit of \$1,000 will reduce Employer X's tax liability to \$10,000 and the limit for the Job Tax credit to \$5,000, allowing all of the \$4,000 Job Tax credit to be applied to reduce Employer X's tax liability to \$6,000. Alternatively, Employer X could apply the \$4,000 Job Tax credit first, reducing his or her tax liability to \$8,000, and then apply the FII credit of \$1,000 and the Apprenticeship credit of \$1,000 to reduce Employer X's tax liability to \$6,000. However, because the Apprenticeship credit and the FII credit cannot be carried forward, the taxpayer will usually benefit from applying these credits first.

20. Q. If an employer hires a formerly incarcerated individual who works for less than one year but returns to work after a separation in service and works for a total of one year, may the employer claim the credit?

A. No. An employer may only claim the credit if the formerly incarcerated individual is a new employee and works for twelve consecutive months.

21. Q. May an employer claim the credit if the formerly incarcerated individual begins his employment as a part-time employee but is then made a full-time employee?

A: Yes, the employer may claim the credit. However, while a half-time employee, the formerly incarcerated individual may only be counted as half of an employee for purposes of this credit. The employer may only claim the credit if there is another half-time employee to pair with the first half-time employee. The statute does not allow an employer to earn half of the credit with one half-time employee. Additionally, the credit will not be earned until the new employee works in a full-time capacity for 12 consecutive months.

22. Q. Can an employer qualify for the credit with leased employees?

A. No. Leased employees or other employees of another company who are on the payroll of that company, such as a temporary employment agency or professional employer organization, will not qualify as an employer for the FII credit. Only employees of the employer will count toward the credit (i.e., employees subject to withholding by the employer.) If, however, an employer subsequently hires employees who were previously leased, then they are considered new employees who can be counted toward the FII credit if all other statutory requirements are met.

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23. Q. Can the employer qualify for the credit if the formerly incarcerated individual takes one month of leave during his first year of employment pursuant to the Family Medical Leave Act (FMLA)?

A. Yes. Because the formerly incarcerated individual remains employed while he/she is on leave pursuant to FMLA, the month he/she is on leave will be counted toward the consecutive month requirement for the FII credit.

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S.C. Code Ann. § 12-6-3710

Income tax credit for taxpayers that hire formerly incarcerated individuals; eligibility; regulations; definitions.

(A) For tax years beginning after 2021, there is allowed a tax credit for any taxpayer that hires a formerly incarcerated individual, after 2021 but before 2027, as a new employee in a registered apprenticeship program that has been validated by the United States Department of Labor. An employer who has one or more eligible employees is eligible to apply for and receive a credit against the taxes set forth in subsection (B). In the first year in which the credit is earned pursuant to subsection (D), the amount of the credit is three thousand dollars for each eligible employee. If the eligible employee remains employed and otherwise meets the requirements of this section thereafter, the credit is two thousand five hundred dollars in the second year, and one thousand dollars in the third year. The credit may not be claimed beyond the third year.

(B) The credit allowed pursuant to this section may be taken against the income taxes imposed pursuant to this chapter, the bank tax imposed pursuant to Chapter 11 of this title, the savings and loan association tax imposed pursuant to Chapter 13 of this title, the corporate license tax imposed pursuant to Chapter 20 of this title, and insurance premium taxes imposed pursuant to Chapter 7, Title 38.

(C) The total amount of the tax credit for a taxable year may not exceed the taxpayer's tax liability. Any unused credit may not be carried over to apply to the taxpayer's succeeding year's liability.

(D) (1) The tax credit is earned in the year in which the formerly incarcerated individual first completes the twelfth consecutive month of employment with the taxpayer. The credit is earned in the same manner and on the same schedule in the second and third year of employment.

(2) The tax credit allowed by this section only may be claimed for an eligible individual once, regardless of the employer. The department shall consult with the Department of Commerce, Apprenticeship Carolina of the South Carolina Technical College System, and any other agency or entity necessary to establish a process by which employers are aware of an individual's eligibility for the credit allowed by this section.

(E) Notwithstanding any other provision of this section, the credit allowed by this section only may be claimed if the formerly incarcerated individual is hired by the employer, after 2021 but before 2027, as a new employee in the registered apprenticeship program. If the individual is hired before 2027, then the employer may claim the credit for each year the individual is eligible and on the same schedule as provided in this section.

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(F) The department may prescribe forms and promulgate regulations necessary to implement the provisions of this section, including requiring the necessary documentation to prove eligibility.

(G) Nothing in this section may be construed to allow an employer to claim this credit for a formerly incarcerated individual if the individual was hired before 2022.

(H) For purposes of this section:

(1) “Full-time” has the same meaning as provided in Section 12-6-3360.

(2) “Incarcerated individual” means an individual that, within three years of being hired in a qualifying apprenticeship program, was held in a state or county prison, jail, or detention center for at least ninety consecutive days, but does not include an individual incarcerated for a violent crime set forth in Section 16-1-60, unless such individual received a pardon for the offense or unless the only disqualifying violent crime resulted in a sentence of ten years or less under Section 44-53-370(E) or Section 44-53-375(C).

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S.C. Code Ann. § 16-1-60

Violent crimes defined.

For purposes of definition under South Carolina law, a violent crime includes the offenses of: murder (Section 16-3-10); attempted murder (Section 16-3-29); assault and battery by mob, first degree, resulting in death (Section 16-3-210(B)), criminal sexual conduct in the first and second degree (Sections 16-3-652 and 16-3-653); criminal sexual conduct with minors, first, second, and third degree (Section 16-3-655); assault with intent to commit criminal sexual conduct, first and second degree (Section 16-3-656); assault and battery with intent to kill (Section 16-3-620); assault and battery of a high and aggravated nature (Section 16-3-600(B)); kidnapping (Section 16-3-910); trafficking in persons (Section 16-3-2020); voluntary manslaughter (Section 16-3-50); armed robbery (Section 16-11-330(A)); attempted armed robbery (Section 16-11-330(B)); carjacking (Section 16-3-1075); drug trafficking as defined in Section 44-53-370(e) or trafficking cocaine base as defined in Section 44-53-375(C); manufacturing or trafficking methamphetamine as defined in Section 44-53-375; arson in the first degree (Section 16-11-110(A)); arson in the second degree (Section 16-11-110(B)); burglary in the first degree (Section 16-11-311); burglary in the second degree (Section 16-11-312(B)); engaging a child for a sexual performance (Section 16-3-810); homicide by child abuse (Section 16-3-85(A)(1)); aiding and abetting homicide by child abuse (Section 16-3-85(A)(2)); inflicting great bodily injury upon a child (Section 16-3-95(A)); allowing great bodily injury to be inflicted upon a child (Section 16-3-95(B)); domestic violence of a high and aggravated nature (Section 16-25-65); domestic violence in the first degree (Section 16-25-20(B)); abuse or neglect of a vulnerable adult resulting in death (Section 43-35-85(F)); abuse or neglect of a vulnerable adult resulting in great bodily injury (Section 43-35-85(E)); taking of a hostage by an inmate (Section 24-13-450); detonating a destructive device upon the capitol grounds resulting in death with malice (Section 10-11-325(B)(1)); spousal sexual battery (Section 16-3-615); producing, directing, or promoting sexual performance by a child (Section 16-3-820); sexual exploitation of a minor first degree (Section 16-15-395); sexual exploitation of a minor second degree (Section 16-15-405); promoting prostitution of a minor (Section 16-15-415); participating in prostitution of a minor (Section 16-15-425); aggravated voyeurism (Section 16-17-470(C)); detonating a destructive device resulting in death with malice (Section 16-23-720(A)(1)); detonating a destructive device resulting in death without malice (Section 16-23-720(A)(2)); boating under the influence resulting in death (Section 50-21-113(A)(2)); vessel operator's failure to render assistance resulting in death (Section 50-21-130(A)(3)); damaging an airport facility or removing equipment resulting in death (Section 55-1-30(3)); failure to stop when signaled by a law enforcement vehicle resulting in death (Section 56-5-750(C)(2)); interference with traffic-control devices, railroad signs, or signals resulting in death (Section 56-5-1030(B)(3)); hit and run resulting in death (Section 56-5-1210(A)(3)); felony driving under the influence or felony driving with an unlawful alcohol concentration resulting in death (Section 56-5-2945(A)(2)); putting destructive or injurious materials on a highway resulting in death (Section 57-7-20(D)); obstruction of a railroad resulting in death (Section 58-17-4090); accessory before the fact to commit any of the above offenses (Section 16-1-40); and attempt to commit any of the above offenses (Section 16-1-80). Only those offenses specifically enumerated in this section are considered violent offenses.