
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214
Website Address: <http://www.sctax.org>

SC REVENUE PROCEDURE #04-6

SUBJECT: Tax Moratorium - Code Section 12-6-3365
(Corporate Income Tax and Insurance Premium Tax)

EFFECTIVE DATE: Applies to all periods open under statute.

SUPERSEDES: All previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-6-3365 (Supp. 2003)
S. C. 12-6-2320(B) (2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2003)
SC Revenue Procedure #03-1

SCOPE: The purpose of a Revenue Procedure is to provide procedural guidance to the public and Department personnel. It is a written statement issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. **A Revenue Procedure is an advisory opinion; it does not have the force or effect of law, and is not binding on the public.** It is, however, binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

INTRODUCTION

This revenue procedure provides information about how a taxpayer petitions for, and claims, the tax moratorium established in Code Section 12-6-3365.^a In addition, this document sets forth what procedures the Department of Revenue (“Department”) will use to certify that a taxpayer may claim the moratorium in future years even if the county in which the taxpayer has located its facility has been removed from the list of moratorium counties.

^a The statute was amended effective June 18, 2003 to include insurance premium taxes within the scope of the taxes that may be subject to the moratorium and to require that a taxpayer petition for the moratorium using the procedures set forth in Code Section 12-6-2320(B). During the same legislative session, the corporate moratorium under Code Section 12-10-35 was repealed effective for tax years beginning after 2003.

LAW

Code Section 12-6-3365 establishes a corporate income tax or insurance premium tax moratorium for job creation in certain counties. Code Section 12-6-3365 reads as follows:

(A) A taxpayer creating and maintaining at least one hundred full-time new jobs, as defined in Section 12-6-3360(M), at a facility of a type identified in Section 12-6-3360(M) may petition, utilizing the procedure in Section 12-6-2320(B), for a moratorium on state corporate income or insurance premium taxes imposed pursuant to Section 12-6-530^b for the ten taxable years beginning the first full taxable year after the taxpayer qualifies and ending either ten years from that year or the year when the taxpayer's number of full-time new jobs falls below one hundred, whichever is earlier.

(B) To qualify for the moratorium pursuant to subsection (A), a taxpayer shall create at least one hundred full-time new jobs at a facility in a county:

(1) with an average annual unemployment rate of at least twice the state average during the last twenty-four months, based on the unemployment rate data on November first or that is one of the three lowest per capita income counties, based on the average of the three most recent completed calendar years of per capita income data that are available on November first; and

(2) in which at least ninety percent of the taxpayer's total investment in this State is located.

(C) The moratorium applies to that portion of the taxpayer's corporate income or premium tax that represents the ratio of the company's new investment in the qualifying county to its total investment in this State.

(D) The department shall prescribe certification procedures to ensure that the taxpayer may claim the moratorium in future years even if a particular county is removed from the list of moratorium counties.

(E) If the taxpayer creates and maintains at least two hundred full-time new jobs within five years from the date the taxpayer creates the first full-time new job at the facility, the moratorium period is fifteen taxable years, beginning the first full taxable year after the taxpayer qualifies and ending either fifteen years from that year or the year when the taxpayer's number of full-time new jobs falls below two hundred, whichever is earlier.

(F) The taxpayer must create the one hundred full-time new jobs within five years from the date it creates the first full-time new job, except that the taxpayer must have hired its first full-time new employee by July 1, 2005, to be eligible for either the ten-year or fifteen-year moratorium.

(G) The department shall designate the moratorium counties by December thirty-first each year using data from the South Carolina Employment Security Commission and the United States Department of Commerce. The designations are effective for taxable years that begin in the following calendar year.^c

^b Insurance premium taxes are imposed pursuant to Title 38 and not Code Section 12-6-530.

^c Code Section 12-6-3360(H), the job tax credit statute, also addresses the moratorium provisions. Code Section 12-6-3360(H) provides that a taxpayer that is subject to the

The taxpayer must petition to have the moratorium apply. The procedure that the taxpayer must use to petition for the moratorium is the same procedure that the taxpayer must use in petitioning for a special method of allocation and apportionment under Code Section 12-6-2320(B). Under the procedure specified in Code Section 12-6-2320(B), the taxpayer must:

1. Ask the Department of Revenue to enter into a contract to use the new method, or in the case of the moratorium, have the moratorium apply;
2. Request the South Carolina Coordinating Council for Economic Development (“Council”) at the Department of Commerce certify that the taxpayer’s facility will have a significant beneficial economic effect on the region for which it is planned and that the benefits of the facility to the public exceed its costs to the public.

PROCEDURES

A) Petitioning for the Moratorium

A taxpayer seeking a moratorium should first submit an “Application for Qualification for Corporate Moratorium” (“Application”)^d to the Council requesting the Council to certify that the taxpayer’s facility will have a significant beneficial economic effect on the region for which it is planned and that the benefits to the public exceed the costs to the public. The Council may request in the Application any information that it determines is necessary to determine if the taxpayer’s facility will have a significant beneficial economic effect on the region for which it is planned and that the benefits to the public of the project will exceed the costs to the public.

The information the Council may request the taxpayer to provide includes, but is not limited to:

- (a) information about the facility;
- (b) information about the number of jobs to be created at the facility;
- (c) information about the taxpayer’s other facilities and investments in South Carolina as well as the amount of investment that will occur at the facility located in the moratorium county.

It is within the sole discretion of the Council to determine whether the taxpayer’s project will have a significant beneficial economic effect on the region for which it is planned. The Council will conduct a cost/benefit analysis to determine if the benefits of the project to the public outweigh the costs to the public. The Application and any applicable guidelines of the Council concerning the moratorium may be obtained from the Council staff by calling (803)737-1998 or writing to them at the below address.

moratorium in Code Section 12-6-3365 but who is also entitled to claim the job tax credit on its new employees, may claim the job tax credits and carry them forward for 15 years beginning after the moratorium period has expired.

^d Taxpayers who are seeking a moratorium against insurance premium taxes will need to consult with the Council as to the appropriate modifications to be made to the Application.

The application should be sent to:

South Carolina Coordinating Council for Economic Development
P.O. Box 927
1201 Main Street
Suite 1600
Columbia, SC 29202

B) Negotiation of the Agreement

If the taxpayer's facility is certified by the Council, the Council staff will forward to the Department a copy of the taxpayer's application along with the certification of the Council. The Department will review the application along with the certification of the Council and if appropriate, enter into agreement with the taxpayer to have the moratorium apply. In making its determination, the Department may request any additional information it deems necessary from the taxpayer in order to determine if it's appropriate to enter into an Agreement allowing the taxpayer to obtain the moratorium. It is within the discretion of the Department as to whether to enter into an Agreement allowing the moratorium to apply.

In the Agreement, the Department will certify that the taxpayer may claim the moratorium even if the county in which its facility is located is removed from the list of moratorium counties, provided the jobs are maintained.^e

Any Agreement allowing the moratorium to be used must be executed prior to the beginning of the first year in which the moratorium will apply. The taxpayer may enter into an Agreement prior to the required number of jobs being filled, however, the first full-time employee must be hired prior to July 1, 2005 as discussed below. A taxpayer may not take advantage of the moratorium until the year after all of the required number of jobs have been created. As required by the statute, the taxpayer must create the required number of jobs within five years from the date it creates its first full-time new job at the project.

C) Filing of the Tax Returns:

For each year in which the taxpayer intends to take advantage of the corporate income tax moratorium, the taxpayer should file Form TC-16, "Corporate Tax Moratorium Per Section 12-6-3365," with its tax return. The taxpayer must file an income tax return even though the taxpayer may be using the corporate income tax moratorium to eliminate its entire corporate income tax. The corporate moratorium does not apply to any license tax fees that are due under Code Sections 12-20-50 or 12-20-100.

^e The Department publishes a list of the qualifying moratorium counties on an annual basis. The rankings can be found at the Department's website at www.sctax.org under the Tax Policy Section.

Taxpayers claiming the insurance premium tax moratorium, should consult the Department of Insurance at the number listed below for information on claiming the moratorium to offset insurance premium taxes.

D) Deadline for Obtaining Moratorium:

The taxpayer must create the applicable number of full-time new jobs within 5 years from the date it creates the first full-time new job. A taxpayer must have hired its first full-time new employee by July 1, 2005 in order to qualify for the moratorium. The moratorium in Code Section 12-6-3365 sunsets effective July 1, 2005. Its repeal does not affect any approved moratorium.

E) Certification Provisions for Taxpayers Who Qualified for the Income Tax Moratorium Under Code Section 12-6-3365 Prior to June 18, 2003^f

Taxpayers who qualified for the moratorium under Code Section 12-6-3365 prior to the June 18, 2003 amendments may write to the Department and request a letter certifying that they will be eligible to continue to use the moratorium for the applicable period, even if the county in which their project is located is removed, or has been removed, from the list of moratorium counties. The taxpayer should include information as to the county in which the project is located, the date that the first job at the project was created, the date on which the minimum job requirement was met, and the current number of jobs at the facility. The taxpayer should also include a representation that for the year in which the taxpayer qualified for the corporate moratorium, at least 90% of the taxpayer's investment in the State was in the moratorium county. Taxpayers should write to the South Carolina Department of Revenue, Processing Document and Management Services - Research Section, P.O. Box 125, Columbia, SC 29214.

F) Transitional Rules for Taxpayers

Taxpayers that created their first job prior to June 18, 2003, the effective date for the change in the law that requires a taxpayer to petition for the moratorium using the procedure provided for in Code Section 12-6-2320(B), but which have not reached the minimum job requirement to obtain the corporate moratorium (100 or 200 jobs, as applicable), should petition for the corporate moratorium using the method provided in Section A of this revenue procedure.

G) Contact Information

For questions concerning this revenue procedure, contact Jerilynn VanStory at (803)898-5151. For questions concerning certification for a taxpayer that has already qualified for the corporate moratorium under Code Section 12-6-3365, contact Linda May at (803)898-5786.

^f This Section E. is not applicable to taxpayers that are seeking a moratorium on insurance premium taxes as those taxpayers did not qualify for the moratorium incentive until on or after June 18, 2003 and must petition for the moratorium to apply.

For information about filing insurance premium tax returns, please contact Judy Kizer of the Department of Insurance at (803)737-6088. To obtain an “Application for Qualification for Corporate Moratorium” or to check on the status of an application, you may contact the Coordinating Council Staff at the Department of Commerce at (803)737-1998.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III
Burnet R. Maybank III, Director

December 2, 2004
Columbia, South Carolina