

SC REVENUE RULING #05-5

SUBJECT: Job Tax Credit – Meaning of “Expansion”
(Income Tax)

EFFECTIVE DATE: Applies to all periods open under the statute.

REFERENCES: S. C. Code Ann. Section 12-6-3360 (Supp. 2004)

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

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of tax law to a specific set of facts or a general category of taxpayers. **A Revenue Ruling is an advisory opinion; it does not have the force or effect of law and is not binding on the public.** It is, however, the Department’s position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Introduction:

South Carolina Code §12-6-3360 provides a tax credit against South Carolina income tax or insurance premium tax for a taxpayer creating new jobs in South Carolina at the time a new facility or expansion is initially staffed.

To qualify for the job tax credit, a taxpayer must meet the specific statutory requirements of Code Section 12-6-3360. These requirements include:

1. operating a manufacturing, tourism, processing, warehousing, distribution, research and development, qualifying service related or technology intensive facility, a corporate office facility in South Carolina, or operating a retail facility or service related industry in a distressed county or least developed county.
2. creating and maintaining the required monthly average minimum number of new jobs during a tax year.

In general, a facility of the taxpayer must increase employment by 10 new full time jobs during a tax year. Exceptions to the 10 new, full time job requirement are:

- (a) tourism facilities that consist of new hotels and motels must create 20 new jobs;
- (b) qualifying service related facilities¹ must create at least:
 - (i) 250 jobs at a single location;
 - (ii) 125 jobs at a single location where the average cash compensation for those jobs is 1.5 times the county average;
 - (iii) 75 jobs at a single location where the average cash compensation for those jobs is 2 times the county average; or
 - (iv) 30 jobs at a single location where the average cash compensation for those jobs is 2.5 times the county average.

NOTE: A retail facility located in a distressed county or least developed county, a service related industry located in a distressed county or least developed county, or a qualifying service related facility classified as a health related facility under North American Industry Classification System Manual Section 62, subsectors 621 (ambulatory health care services), 622 (hospitals), and 623 (residential care facilities) located in South Carolina must create only 10 new full time jobs.

These and other requirements detailing the qualifications for, and the computation of, the job tax credit are explained in detail in SC Revenue Ruling #99-5. A copy is available on the Department's website at www.sctax.org.

Law and Discussion:

Code Section 12-6-3360(M)(3) defines the term "new job" as follows:

"New job" means a job created in this State at the time a new facility or an expansion is initially staffed. Except as otherwise provided in this item, the term does not include a job created when an employee is shifted from an existing location in this State to a new or expanded facility whether the transferred job is from, or to, a facility of the taxpayer or a related person. A related person includes any entity or person that bears a relationship to the taxpayer as described in Section 267 of the Internal Revenue Code. However, this exclusion of a new job created by employee shifting does not extend to a job created at a new or expanded facility located in a county in which is located an "applicable federal facility" as defined in Section 12-6-3450(A)(1)(b). The term "new job" also includes an existing job at a facility of an employer which is reinstated after the employer has rebuilt the facility due to:

¹ A qualifying service related facility may not be engaged in legal, accounting, or investment services, or retail sales.

- (a) its destruction by accidental fire, natural disaster, or act of God;
- (b) involuntary conversion as a result of condemnation or exercise of eminent domain by the State or any of its political subdivisions or by the federal government.

Destruction for purposes of this provision means that more than fifty percent of the facility was destroyed. For purposes of this section, involuntary conversion as a result of condemnation or exercise of eminent domain includes a legally binding agreement for the purchase of a facility of an employer entered into between an employer and the State of South Carolina or a political subdivision of the State under threat of exercise of eminent domain by the State or its political subdivision. The year of reinstatement is the year of creation of the job. All reinstated jobs qualify for the credit pursuant to this section, and a comparison is not required to be made between the number of full-time jobs of the employer in the taxable year and the number of full-time jobs of the employer with the corresponding period of the prior taxable year.

Notwithstanding any other provision of law, “new job” includes jobs created by a taxpayer when the taxpayer hires more than five hundred full-time individuals:

- (a) at a manufacturing facility located in a county classified as least developed;
- (b) immediately before their employment by the taxpayer, the individuals were employed by a company operating under Chapter 11 of the United States Bankruptcy Code; and
- (c) the taxpayer, as an unrelated entity, acquires as of July 10, 2002, substantially all of the assets of the company operating under Chapter 11 of the United States Bankruptcy Code. [Emphasis added.]

Based upon the above, for purposes of job tax credit eligibility, a new job is a new job created in South Carolina at the time a new facility or an expansion is initially staffed; it does not generally include transferred or shifted employees.

Regulation 117-750.1 defines facility for purposes of Chapter 6 of Title 12 and reads:

A “facility” is generally a single physical location, where a taxpayer’s business is conducted or where its services or industrial operations are performed. Where two or more distinct and separate economic activities are performed at a single physical location, each separate economic activity will be treated as a separate facility when: (1) each activity has its own separate and dedicated personnel; (2) separate reports can be prepared on the numbers of employees, their wages and salaries, sales, or receipts and expenses; (3) and employment and output are significant as to the activity. For purposes of item (2) above, it is irrelevant if separate reports are actually prepared, so long as separate reports can be prepared, this criteria is met. [Emphasis added.]

Based upon the above, a new facility is a new physical location where a taxpayer’s business is conducted or where its services or industrial operations are performed.

Meaning of “Expansion” for Job Tax Credit Eligibility:

The term “expansion,” as used in the context of the job tax credit, is not defined in Code Section 12-6-3360 or in South Carolina case law. Accordingly, the dictionary is useful in defining the term. See *Heilker v. Zoning Board of Appeals for City of Beaufort*, 346 SC 401, 552 S.E. 2d 42 (Ct. App. 2001).

The *American Heritage Dictionary, Second College Edition*, defines “expansion,” in part, as:

1. The act or process of expanding.
2. The state of being expanded.
- 3.a. An expanded part.
- b. A product of expanding.
4. The extent or amount by which something has expanded.
5. Increase in the dimensions of a body.

Further, the *American Heritage Dictionary* defines “expand,” in part, as follows: “to increase the size, volume, quantity, or scope of.”

Based upon the plain and ordinary meaning of the term “expansion” and a reasonable and practical construction consistent with the purpose of the statute, it is the Department’s opinion that an “expansion,” for purposes of determining job tax credit eligibility, is an increase in the size of a facility, an increase in certain capital assets, or an increase in the number of new, full time jobs. Over the many years the job tax credit statute has been enacted, the Department has interpreted “expansion” to mean the following: (1) a physical expansion, (2) a capital expansion, or (3) a labor force expansion, unless otherwise provided by the statute, *e.g.*, new hotels and motels. Examples of the Department’s interpretation of “expansion” for job tax credit purposes are discussed below.

1. Physical expansion (New Facility)

A physical expansion is a physical enlargement of the taxpayer’s existing building or facility where a taxpayer’s qualifying business is conducted or where its qualifying services or activities are performed by increasing the square footage of an existing building, or constructing, leasing, or acquiring a new building. Examples include the addition of a new wing, construction of a separate building, addition of another floor, or relocation to a larger facility.

2. Capital Expansion (Capital Expenditures)

A capital expansion is a capital expenditure for real or tangible personal property for a qualifying facility that necessitates the hiring of new employees. Examples include the occupancy of a floor that was previously leased or used by another taxpayer, the occupancy of a basement area that was unoccupied, the purchase or acquisition of additional capital equipment and machinery, the capital acquisition or purchase of equipment and machinery required by industrial advances and technological improvements provided such property directly results in the hiring of new, full time jobs at the facility. The new jobs do not have to work directly in the expansion, but the capital expenditures must necessitate the hiring of new employees. A capital expenditure does not include the repairing or upgrading of capital equipment or property.

3. Labor Force Expansion (Creation of New Jobs)

A labor force expansion is the increase in the labor force at an existing facility of a qualifying taxpayer of at least the average minimum monthly average of new, full time jobs required in a taxable year. Examples include creating new, full time qualifying jobs upon the addition of a second or third shift, or in response to the taxpayer's increase in production. It does not include jobs created by closing operations at one location and reopening the operations at the same or another location.

Note: For purposes of a tourism facility defined in Code Section 12-6-3360(M)(12), an "expansion" of a hotel or motel means new, full time jobs created at "new hotel or motel construction." For example, jobs created at an existing hotel or at a renovated motel do not qualify as an "expansion" for job tax eligibility purposes.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III

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Columbia, South Carolina