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

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SC REVENUE RULING #96-11 (TAX)

**SUBJECT:** Credit Against License Tax for Utilities  
(License Tax)

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

**SUPERSEDES:** All previous documents and any oral directives in conflict herewith.

**REFERENCES:** Section 12-6-3490 of the S.C. Code of Laws 1996 S.C. Acts 462

**AUTHORITY:** S. C. Code Ann. Section 12-4-320 (Supp. 1995)  
SC Revenue Procedure #94-1

**SCOPE:** A Revenue Ruling is the Department of Revenue's official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Section 12 of the South Carolina Rural Development Act, Act. No. 462 of the 1996 legislative session, added a new provision, Section 12-6-3490, to the South Carolina Code of Laws ("Code"). Section 12-6-3490 of the Code reads as follows:

“(A) Any company subject to a license tax under Section 12-20-100 may apply for a credit against its tax liability for amounts paid in cash to provide infrastructure for a project qualifying for income tax credits under Chapter 6 of Title 12, withholding tax credits under Chapter 10 of Title 12, income tax credits under Chapter 14 of Title 12, and fees in lieu of property taxes under Chapter 12 of Title 4.

(B) For the purpose of this section ‘infrastructure’ means improvements to a building or the land for water, sewer, gas, steam, electric energy, and communications services which are considered necessary, suitable, or useful to a project qualifying for income tax credits under Chapter 6 of Title 12, withholding tax credits under Chapter 10 of Title 12, income tax credits under Chapter 14 of Title 12, and fees in lieu of property taxes under Chapter 12 of Title 4. These improvements include, but are not limited to:

- (1) improvements to both public or private water and sewer systems;
- (2) improvements to both public or private electric, natural gas, and telecommunications systems including, but not limited to, ones owned or leased by an electric cooperative, electrical utility, or electric supplier as defined by Chapter 27, Title 58;
- (3) fixed transportation facilities including highway, rail, water and air.

(C) A company is not allowed the credit provided by this section for actual expenses it incurs in the construction and operation of electric system improvements or building electric facilities it owns, leases, manages or operates.

(D) The maximum aggregate credit that may be claimed in any tax year by a single company is three hundred thousand dollars.

(E) The credits allowed by this section may not reduce the license tax liability of the company below zero. If the applicable credit exceeds the liability and is otherwise deductible under subsection (D) the amount of the excess may be carried forward and deducted in the succeeding taxable year.”

Numerous questions have arisen concerning the administration of this statute by the Department of Revenue. The following addresses a few of the questions raised by taxpayers concerning the statute.

1. Question: Must a project qualify for benefits under all four of the provisions (income tax credits under Chapter 6, Title 12; withholding tax credits under Chapter 10, Title 12; income tax credits under Chapter 14, Title 12; and fees in lieu of property taxes under Chapter 12, Title 4) listed in Code Section 12-6-3490(A) or is it sufficient if the project qualifies under only one of these provisions?

Answer: Code Section 12-6-3490(A) provides that “Any company subject to a license tax under Section 12-20-100 may apply for a credit against its tax liability for amounts paid in cash to provide infrastructure for a project qualifying for income tax credits under Chapter 6 of Title 12, withholding tax credits under Chapter 10 of Title 12, income tax credits under Chapter 14 of Title 12, and fees in lieu of property taxes under Chapter 12 of Title 4.”

As a general rule, the use of the word “and” within a statute connotes that all the requirements listed must be met in order to qualify under the statute, while the use of “or” within a statute means that only one of the requirements need be met in order to satisfy the particulars of the statute. However, when those meanings are inconsistent with the perceived intent of the legislature or the purpose of the legislation itself, “and” has been construed to mean “or”, and “or” has been construed to mean “and.” See, Cain et. al. v. South Carolina Public Service Authority, 222 S.C. 200, 72 S.E. 2d 177 (1952); McKenzie v. McLeod, 251 S.C. 226, 161 S.E. 2d 659 (1968).

Section 12-6-3490 of the Code was enacted as part of the South Carolina Rural Development Act of 1996. The stated purposes of the Rural Development Act include promoting positive economic development momentum in rural areas of the State and encouraging significant incentives to induce capital investment and job creation within rural counties. To read the provision of Code Section 12-6-3490(A) narrowly to require a project to meet all the requirements listed in the statute would severely limit the number of projects that could qualify and would exclude projects located in eleven of the least developed and underdeveloped counties from qualifying under the statute.

Thus, based upon the intent of the Rural Development Act and the long standing principle of construing “and” to mean “or” when necessary to further legislative intent, a project that qualifies under any one of the provisions listed in Code Section 12-6-3490(A) of the statute will be considered a qualifying project for purposes of the statute if it meets the other requirements of the statute. See Question 2.

2. Question: Code Section 12-6-3490(B) requires that the infrastructure be necessary, suitable or useful to the project, how can a taxpayer determine if the infrastructure is necessary, suitable or useful to the project?

Answer: Code Section 12-6-3490(B) reads in part, “For the purpose of this section ‘infrastructure’ means improvements to a building or the land for water, sewer, gas, steam, electric energy, and communications services which are considered necessary, suitable, or useful to a project qualifying for income tax credits under Chapter 6 of Title 12, withholding tax credits under Chapter 10 of Title 12, income tax credits under Chapter 14 of Title 12, and fees in lieu of property taxes under Chapter 12 of Title 4.”

In accordance with Section 12-6-3490(B) of the Code, the infrastructure must be necessary, suitable or useful to the project. In order to be constitutional, Code Section 12-6-3490(B) must be construed to achieve a public purpose. Elliot v. McNair, 250 S.C. 75 ,156 S.E. 2d 421(1967). Therefore, the infrastructure committed to the project must serve the public purpose of economic development and its scope and cost must be reasonable considering the scope and cost of the project. For example, if a project is placing in service “economic impact zone qualified manufacturing and productive equipment property” in accordance with Chapter 14 of Title 12 and such equipment costs \$5,000, infrastructure for a helicopter pad which costs \$200,000 would not be considered necessary, suitable or useful to the project. The project is the expenditures and/or the new jobs which qualify for income tax credits under Chapter 6, Title 12 of the Code, withholding credits under Chapter 10, Title 12, income tax credits under Chapter 14, Title 12, or the fee-in-lieu of taxes under Chapter 12, Title 4. In this example, the equipment placed in service that meets the requirements of Chapter 14, Title 12 of the Code would be considered the project. If a company has questions about whether infrastructure is necessary, suitable and useful for a project, they should write to the Economic Development Projects Coordinator at the Department of Revenue at P.O. Box 125, Columbia, S.C. 29214.

3. Question: Does the use of the words “qualifying for” as used in Code Sections 12-6-3490(A) and (B) of the statute mean that a project must be approved for the benefit listed in those sections, or merely that the project must be eligible to receive the benefit described in those sections?

Answer: Words used in a statute should be taken in their ordinary and popular meaning, unless there is something in the statute which requires a different interpretation. Hughes v. Edwards, 265 S.C. 529, 220 S.E. 2d 231(1975); See also, Investors Premium Corp. v. South Carolina Tax Commission, 260 S.C. 13, 193 S.E. 2d 642 (1973). It is an accepted practice in South Carolina to resort to the dictionary to determine the literal meaning of words used in statutes. See, Hay v. South Carolina Tax Commission, 273 S.C. 269, 255 S.E. 2d 837 (1979).

The American Heritage Dictionary, Third College Edition (1993) in defining the word “qualify” provides as the second definition listed that “qualify” means “to make competent for or eligible for an office, position or task.”[emphasis added]. Using the word “qualify” in its ordinary and popular meaning dictates the conclusion that a project need only be eligible for one of the sections enumerated in Code Sections 12-6-3490(A) and (B) in order to be considered a qualifying project.

However, eligibility requires that a project be able to meet all the requirements of the appropriate section or chapter, even though it may not have received approval under the statute. For example, in order to qualify for the fee in lieu of property taxes under Chapter 12 of Title 4, a project must be investing at least five million dollars and the county council must make the findings required by Code Section 4-12-30(B)(5).

4. Question: Can a company eligible to claim the credit under Section 12-6-3490 of the Code, claim the credit for amounts paid in cash in the current year, even though construction of the infrastructure will not commence until the next year?

Answer: Yes. Code Section 12-6-3490 provides that the credit is available for amounts paid in cash to provide infrastructure to a qualifying project. The statute does not require that the infrastructure must be in place or under construction in the year in which such amounts are paid. However, in order to claim the credit allowed by Section 12-6-3490 of the Code, the amounts must actually be paid in cash for infrastructure and cannot just be accrued by the company claiming the credit.

If the infrastructure has not been substantially constructed, the company must confirm that the amounts paid will be used for infrastructure at the project, otherwise the credit may not be claimed by the company. In order to meet this requirement, a company claiming the credit must execute a waiver of the statute of limitations under Section 12-54-85 allowing the Department of Revenue the right to assess the tax for a period commencing with the date that the return on which the credit is claimed is filed and ending three years after the company notifies the Department of Revenue that the infrastructure has been built. Any waiver of the statute of limitations should accompany the return on which the credit is claimed.

5. Question: May only projects located in rural counties of South Carolina qualify as eligible projects?

Answer: No. The only restrictions on which projects may qualify are contained in Sections 12-6-3490(A) and (B). Neither of these sections limit qualifying projects to those located in rural counties.

6. Question: How does a company apply for the credit allowed by Section 12-6-3490?

Answer: A company may apply for the credit allowed by Section 12-6-3490 by claiming it on the proper line of the company's CL-4 or SC1120U and by attaching a schedule to the return setting forth the name of the person completing the project, a description of the project, under what section or sections of the statute the project qualifies, the amounts in cash that were paid for infrastructure and to whom and when paid, a description of the infrastructure, and the date the infrastructure was completed or is expected to be completed. If the infrastructure has not been completed as of the date of the return is filed, the taxpayer must also include the waiver of the statute of limitations as described in Question 4.

7. Question: Does the project have to be within the service area of the taxpayer?

Answer: No. There is no restriction in the statute that requires that a project be within the service area of the company claiming the credit and companies subject to license tax under Section 12-20-100 of the Code may contribute cash to any project that meets the requirements of the statute. Two or more companies subject to license tax under Section 12-20-100 may jointly contribute to a single project, provided that all the infrastructure provided to the project satisfies a public purpose.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

Columbia, South Carolina  
December 9, 1996