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

SC REVENUE RULING # 98-10

SUBJECT: Job Tax Credit and the Corporate Office Facility Definition
(Income and Property Tax)

EFFECTIVE DATE: Applies to all periods after June 1, 1998

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

REFERENCES: S. C. Code Ann. Section 12-6-3360 (Supp. 1997)
S.C. Code Ann. Section 12-37-220(B)(32) (Supp. 1997)

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

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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

QUESTION:

What criteria need to be met in order for a taxpayer to qualify as a “corporate office facility” under Sections 12-6-3360(M)(10)(jobs income tax credit) **and 12-37-220 (B)(32)(6)(property tax exemption)** of the South Carolina Code of Laws (“Code”)?

CONCLUSION:

In order to qualify as a “corporate office facility”, a taxpayer will need to have present at a single location all four of the types of employees listed in the statutes: managerial, technical, professional and administrative personnel as described in the discussion. Additionally, all of the corporate functions listed in the statutes (corporate financial, personnel, legal, technical, support services and other business functions as described in the discussion) must be performed at the location. These functions must be performed for the entire corporate entity, and not for a segregated group or division of the corporation.

Therefore, to the extent that these functions are performed only for a region or division of a corporation, and not for the corporate entity as a whole, the facility will not qualify as a “corporate office facility”.

DISCUSSION:

Background on the South Carolina Job Tax Credit

South Carolina Code Section 12-6-3360 provides a tax credit against South Carolina income tax or insurance premium tax for a business creating jobs in this State. To qualify for the job tax credit, a business must: (1) be a certain type of “facility” and (2) must generally create a minimum number of ten new jobs using the method of calculation set forth in the statute (more than ten jobs are required for certain “tourism facilities” and “qualified service-related facilities”.)

In order to claim the credit, a facility must qualify as a manufacturing, processing, tourism, warehousing, distribution, or research and development facility or must be a qualifying service related facility or a corporate office facility as those terms are defined in the statute.

Background on the Property Tax Exemption for Corporate Office Facilities

Under Code Section 12-37-220(B)(32), all new corporate headquarters, corporate office facilities, distribution facilities and all additions to these facilities, are exempt from nonschool ad valorem property taxes for a five year period beginning with the date that the facility is established, constructed or placed in service.

In order to qualify under Code Section 12-37-220(B)(32), the cost of the new construction or addition must equal or exceed \$50,000 and the taxpayer must be creating 75 or more new full-time jobs (or 150 substantially equivalent jobs) at the new facility.

The Department has been asked to clarify what criteria must be met in order for a facility to qualify as a “corporate office facility”.

The Corporate Office Facility Definition under Code Section 12-6-3360(M)(10)

Code Section 12-6-3360(M)(10) states that:

‘corporate office facility’ means the location where corporate managerial, professional, technical, and administrative personnel are domiciled and employed, and where corporate financial, personnel, legal, technical, support services, and other

business functions are handled. Support services include, but are not limited to, claims processing, data entry, word processing, sales order processing, and telemarketing. The term does not include an establishment where retail sales of tangible personal property or retail services are made to retail customers except for a facility which processes customer sales orders by mail, telephone, or electronic means, if the facility also processes shipments of tangible personal property to customers and if at least seventy-five percent of the dollar amount of goods sold through the facility are sold to customers outside the state.

The Corporate Office Facility Definition under Code Section 12-37-220(B)(32)(6)

Code Section 12-37-220(B)(32)(6) states that:

‘corporate office facility’ means the location where corporate managerial, professional, technical, and administrative personnel are domiciled and employed, and where corporate financial, personnel, legal, technical, support services, and other business functions are handled. Support services include, but are not limited to, claims processing, data entry, word processing, sales order processing, and telemarketing.

“Corporate Office Facility” as Distinct From “Qualified Service Related Facility” Under the Job Tax Credit

The job tax credit also allows a service related industry to qualify for the job tax credit¹ A “qualified service related facility” is defined as:

- (a) an establishment engaged in an activity or activities listed under the Standard Industrial Classification (SIC) Code 80 according to the Federal Office of Management and Budget Standard Industrial Classification Manual, 1987 edition; or
- (b) a business for which over fifty percent of the gross receipts are from providing services as opposed to manufacturing or selling or dealing in tangible personal property and which creates at least 250 jobs at a single location.

Under the “qualified service related facility” definition, there are no restrictions on the type of jobs that must be present at the facility and there is no requirement that certain functions be performed at the facility. While there are some similarities between a “corporate office facility” and a “qualified service related facility” in that both address facilities that are traditionally considered service oriented, there must be a distinction between the two definitions since as a rule of statutory construction, it is presumed that the legislature did not intend to enact a meaningless provision. See, Fulghum v. Bleakley, 177 S.C. 286 (1935).

¹ “Tourism facilities” are another service related industry that may qualify for the job tax credit.

Criteria for Corporate Office Facility

For purposes of the definitions contained in both 12-6-3360(M)(10) **and 12-37-220(B)(32)(6)**, there are two criteria used to evaluate “corporate office facilities”: (1) the types of employees that must be employed at the location and (2) the types of functions that must be performed at the location. “Corporate office facilities” are limited to those facilities which contain all of the types of employees and all of the types of functions described in the statute.

The Type of Personnel that Must be Present at the Location

The statutes require that the location include corporate managerial, professional, technical, and administrative personnel. A management employee is one who formulates and effectuates management policy by making operative the decisions of the employer and one who is designated with general conduct and control of his employer’s business². A professional employee is defined as one who has knowledge in a given field of science or learning gained by a prolonged course of specialized instruction and study and who exercises discretion and judgement.³ *Words and Phrases* defines a technical employee as one whose work involves independent judgement and requires specialized training usually acquired through an advanced course of study.⁴ An administrative employee is an employee whose work directly relates to the general business operations of the employer and who devotes a majority of time to that endeavor.⁵

In order to qualify as a “corporate office facility”, the location must have *all* of the listed types of personnel present at the location since the statutes use the conjunctive term “and” and not the disjunctive term “or” in listing the type of personnel that must be present at the location. (See, Am Jur 2d *Statutes* '241 (1974). Where “and” is used in a statute such items are to be considered jointly.)

Thus, in order to qualify as a “corporate office facility” a facility must have all of the following present at the location: (1) employees who formulate management policy and manage other persons and who are charged with the general conduct of the corporation (managerial)(example: vice-president); (2) employees who have knowledge in a given field of science or learning gained by a prolonged course of specialized instruction and study and who exercise discretion and judgement (professional) (example: accountant / lawyer); (3) employees whose work involves independent judgement and requires specialized training usually acquired through an advanced course of study (technical) (example: engineer, scientist, computer programmer); and, (4) employees whose work is directly related to management policies or operations (administrative) (example: personnel manager, administrative assistant to the vice-president.)

²*Words and Phrases*, Vol. 26 (1953).

³*Words and Phrases*, Vol. 34 (1953).

⁴*Words and Phrases*, Vol. 41 (1953).

⁵*Words and Phrases*, Vol. 2 (1953).

The Type of Functions That Must Be Performed at the Location

The second part of the “corporate office facility” definition requires that it be the location where “corporate financial, personnel, legal, technical, support services and other business functions are handled.” In South Carolina, it is an acceptable practice to resort to the dictionary to determine the literal meaning of words used in a statute. 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). The American Heritage Dictionary, Second College Edition (1985) defines “financial” as “of or pertaining to finance, finances, or financiers” while “personnel” is defined as “an administrative division of an organization concerned with the body of persons employed by or active in it”. The definition of “legal” is “of, relating to, or concerned with law” while the definition of “technical” is “specialized, scientific or industrial and mechanical”.

There are no dictionary definitions for “support services” and “other business functions”, although the statutes provide their own guidelines as to what constitute “support services” by providing that “support services” include, but are not limited to, claims processing, data entry, word processing, sales order processing and telemarketing. The “corporate office facility” definition for job tax credit purposes is further limited by the requirement that the facility cannot be making retail sales or retail services, except for a facility that makes sales through mail, telephone or other electronic means where the sales are also processed at the location and where more than seventy five percent of the dollar amount of goods sold through the facility are sold to customers outside the State.

In stating the corporate functions that must be performed at the location, the statute uses the conjunctive term “and”, therefore ***all*** of the listed functions must be present at the location in order for the facility to qualify as a “corporate office facility”, although it is possible that one employee may perform more than one function at the facility. However, this does not mean that the facility must have a lawyer on staff in order to satisfy the legal function requirement, but rather it only requires that the facility have an employee that handles legal matters on behalf of the corporation, even if that results in the employee referring the matter to outside legal counsel.

Using the dictionary provides a framework for determining the different types of functions that must be performed at the facility: corporate financial function means the handling of corporate financial matters such as accounting, bookkeeping and bill paying; and corporate personnel function would include the hiring and benefits management of corporate employees. A corporate legal function would involve directing or reviewing legal matters; and performing a corporate technical function would include developing new products, computer operations and handling strategic planning for the corporation. Support services and other business functions would include all the items listed as such in Code Section 12-6-3360(M)(10) **and 12-37-220(B)(32)(6)** and may also include training functions, computer functions, and purchasing and shipping.

The definitions provide that “‘corporate office facility’ means the location where corporate managerial, professional, technical, and administrative personnel are domiciled and employed, and where corporate financial, personnel, legal, technical, support services and other business functions are handled....”. The use of the article *the*, along with the reference to “corporate” functions in the statute, implies that this is the location where substantially all of these functions are performed on behalf of the corporation. ***Therefore, to the extent that these functions are performed only for a region or division of a corporation, and not for the corporate entity as a whole, the facility will not qualify as a “corporate office facility”.***

Examples^{6, 7}

Unless the example states otherwise, assume that no jobs have been transferred from another location in this State and that all jobs created are full-time jobs.

Example One

ABC, Inc., is a corporation whose business is waste processing. ABC, Inc. is establishing its corporate headquarters in the State of South Carolina. ABC, Inc. has twenty plants in the United States in a fifteen state territory. This new location will serve as the sole corporate headquarters for ABC, Inc. ABC, Inc.’s president will be located at the facility, as will the majority of ABC, Inc.’s human resources department. The corporation does not have an attorney on its staff, but the president handles and will continue to handle all legal matters on behalf of the corporation, including hiring outside legal counsel, if necessary. The controller and his professional staff, accountants and administrative assistants, will be located at the facility as well. The headquarters will also have fifteen managers that oversee specific aspects of the operations of each of the twenty plants (such as manager of recycling, manager of hazardous nuclear waste disposal, etc.). Many of these managers are engineers and have specialized training in their areas of expertise. The facility will also concentrate all of its billing and purchasing functions at this location. There will be a number of administrative staff (including an office administrator and several office assistants) at the location. The facility will cost in excess of \$1,000,000 and there will be a total of eighty full-time employees (jobs) located at the facility.

⁶No opinion is expressed as to whether the facts presented in either of the examples would qualify the location for the corporate headquarters credit allowed under Code Section 12-6-3410.

⁷All names used in this document are fictitious and are not meant to represent real companies.

The location has the following personnel that meet the requirements of the statute:

1. Managerial Personnel - (president)
2. Professional Personnel - (controller and accounting staff)
3. Technical Personnel - (engineers)
4. Administrative Personnel - (office administrator)

The following functions are performed at the location:

1. Corporate financial function - (controller and staff will perform accounting, bookkeeping and other financial functions)
2. Personnel function - (personnel manager will hire and fire employees and will administer benefits for management and headquarters employees)
3. Legal function - (president performs legal function on behalf of corporation)
4. Technical function - (managers who handle oversight of recycling and waste management perform technical function)
5. Support services - (performed by office administrators and assistants)
6. Other business functions - (purchasing and billing).

The facility will qualify as a “corporate office facility” and all the jobs created at the facility will be eligible for the job tax credit under Code Section 12-6-3360. **The facility will be eligible for the five year exemption from county ad valorem property taxes as provided in Code Section 12-37-220(B)(32).**

Example Two

Craftex is a large corporation which is functionally divided into four separate divisions: a glassware division, a medical appliance division, a home products division and a computer manufacturing division. Craftex has traditionally treated these divisions as separate and has accounted for them separately. All public materials that have been published by Craftex clearly identify each of its separate divisions. Each of its separate divisions has over 3,000 employees located throughout the United States. The computer manufacturing division has ten plants located throughout the United States. Craftex will locate the headquarters for its computer manufacturing division in South Carolina. The facility will house all managerial, professional, technical and administrative personnel for the computer manufacturing division at this facility, and the facility will perform all financial, personnel, legal, technical, support services and other business functions for the computer manufacturing division. The location will employ 75 people.

The facility will not qualify as a “corporate office facility” because the employees located at the facility are not performing the required functions for the entire corporate entity, but rather for only one segment of the corporate entity.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

Columbia, South Carolina
April 29 , 1998