PART D: INDUSTRY SPECIFIC CREDITS

25. MOTION PICTURE PROJECT CREDIT

South Carolina Code §12-6-3570(A) provides an income tax credit equal to 20% of a taxpayer's cash investment in a company that develops or produces a qualified South Carolina motion picture project. For a motion picture equity fund created for the sole purpose of facilitating a slate of qualified South Carolina motion pictures projects, the credit is allocated to the fund based upon 20% of the cash value of its investment in a qualified South Carolina motion picture project. The credit is distributed to equity fund members based on their ownership interest.

To qualify for the credit, a taxpayer and the project must meet the following criteria:

1. The taxpayer must invest cash in a company that develops or produces a qualified South Carolina motion picture project intended for commercial exploitation. Only cash investments qualify for the credit. The taxpayer is the person who invests in a qualified South Carolina motion picture project. For purposes of a motion picture equity fund created for the sole purpose of facilitating a slate of qualified motion picture projects, the taxpayer is the person (*e.g.,* investor, partner, member, or shareholder) who invests in the motion picture equity fund.

2. The motion picture project must submit all required documentation to the South Carolina Film Commission ("Film Commission") at the South Carolina Department of Parks, Recreation and Tourism. Upon recommendation of the Film Commission, the motion picture project will be certified as an eligible project. For credit application and certification procedures, contact the Film Commission at 803-737-0498.

3. The qualified South Carolina motion picture project must register with the Department of Revenue and submit a record of allocation of credits and documentation required to meet the credit requirements.

4. The project must incur at least $250,000 of costs directly in South Carolina to produce a master negative motion picture for theatrical or television exhibition in the United States. At least 20% of the filming days of principal photography, but not less than 10 filming days, must be in South Carolina.

5. The cash investment must be expended for: (a) services performed in South Carolina, (b) tangible personal property dedicated for first use in South Carolina, or (c) real property in South Carolina.

A taxpayer's total credit for a single project is limited to $100,000 for all years. This credit, when combined with all the taxpayer's other South Carolina income tax credits, cannot exceed 50% of the taxpayer's South Carolina income tax liability. Any unused credit can be carried forward for 15 years. The credit is earned when the cash is spent. If the motion picture project does not meet the statutory requirements within 3 years from the end of the taxpayer's tax year when the credit was first claimed, then the taxpayers who claimed the credit must increase their income tax liability in the fourth year by the amount of the credits previously claimed. The credit is claimed on Form TC-25, "Motion Picture Credits."

26. MOTION PICTURE PRODUCTION FACILITY CREDIT

South Carolina Code §12-6-3570(B) provides an income tax credit equal to 20% of the taxpayer's investment in a company that constructs, converts, or equips a motion picture production facility or post production facility in South Carolina. The total credit claimed by all taxpayers for a single motion picture production facility or post production facility is limited to $5 million for all years.

To qualify for the credit, a taxpayer and the project must meet the following criteria:

1. The taxpayer's investment is cash and/or the fair market value of real property, including any improvements. The taxpayer is the person who invests in the company that constructs, converts, or equips a qualified South Carolina motion picture production facility or post production facility.

2. Investments in cash must be expended for: (a) services performed in South Carolina, (b) tangible personal property dedicated for first use in South Carolina, or (c) real property in South Carolina. Investments in the form of real property must be in South Carolina and the facilities must be located on such property. "Real property" can also include the fair market value of a 36 month or greater lease less the fair market value of any consideration paid for the lease.

3. The total investment in a motion picture production facility must be at least $2 million, excluding land costs. The total investment in a post-production facility must be at least $1 million, excluding land costs.

4. Application for the credit is made to the Film Commission. Documentation must be provided to the Film Commission to confirm the total amount invested. For credit application and certification procedures, contact the Film Commission at 803-737-0498.

5. A taxpayer may claim the credit only one time in connection with a single motion picture production facility and only one time for a single post production facility.

The terms “motion picture production facility” and “post production facility” are defined in South Carolina Code §12-6-3570(F). “Motion picture production facility” means a site in this state that contains soundstages designed for the express purpose of film and television production for both theatrical and video release. Production includes, but is not limited to, motion pictures, made for television movies, and episodic television to a national or regional audience. The motion picture production facility site must include production offices, construction shops/mills, prop and costume shops, storage areas, and parking for production vehicles, all of which complement the production needs and orientation of the overall facility purpose. The term does not include television stations, recording studios, or facilities predominately used to produce videos, commercials, training films, or advertising films.

“Post production facility” means a site in this state designated for the express purpose of accomplishing the post production stage of film and television production for both theatrical and video release including the creation of visual effects, editing, and sound mixing. A post production facility site is not required to contain a soundstage or be physically located at or near soundstages.

This credit, when combined with all the taxpayer’s other South Carolina income tax credits, cannot exceed 50% of the taxpayer’s South Carolina income tax liability. Any unused credit can be carried forward for 15 years. The credit is earned when the cash is spent or when qualifying real property is dedicated for use as part of a motion picture production facility or post production facility. If, however, the motion picture production facility or post production facility does not meet the statutory requirements within 3 years from the end of the taxpayer’s tax year when the credit was first claimed, then the taxpayer must increase its income tax liability in the fourth year by the amount of the credits previously claimed. The credit is claimed on Form TC-25, “Motion Picture Credits.”

See Sales and Use Tax Specific Provisions, Chapter 8, Section 17 for information on sales and use tax incentives available to the motion picture industry.

27. MOTION PICTURE WAGE/PAYROLL AND EXPENDITURE/SUPPLIER REBATES

South Carolina allows certain payroll expenses and expenditures incurred in connection with filming a motion picture in South Carolina to be rebated to a motion picture production company. The terms “motion picture production company” and “motion picture” are defined in South Carolina Code §12-62-20. These definitions are:

1. "Motion picture Production Company" is a company engaged in the business of producing motion pictures intended for a national theatrical release or for television viewing. It does not include a company owned, affiliated, or controlled, in whole or in part, by a company or person that is in default on a loan made by the state or a loan guaranteed by the state.

2. "Motion picture" is a feature length film, video, television series, or commercial made in whole or in part in South Carolina, and intended for national theatrical or television viewing or as a television pilot produced by a motion picture production company. It does not include the production of television coverage of news and athletic events or a production produced by a motion picture production company if records, as required by 18 U.S.C. 2257, are to be maintained by that company with respect to any performer portrayed in that single media or multimedia program.

a. Wage/Payroll Rebate

South Carolina Code §12-62-50 provides that the Film Commission may rebate to a qualifying and certified motion picture production company a portion of the payroll associated with the motion picture production in South Carolina. The rebate cannot exceed 20% of the total aggregate South Carolina payroll of the persons employed in connection with the production of a motion picture in South Carolina and 25% for South Carolina residents employed in connection with the motion picture.

The motion picture production company must complete an application and obtain approval as a certified production from the Film Commission. The application and certification procedures can be obtained from the Film Commission at 803-737-0498. The Film Commission administers the approval of this rebate. They have developed written guidelines concerning the rebate qualifications. A copy of the current guidelines can be obtained from the Film Commission by calling 803-737-0498.

Some of the key provisions of the wage/payroll rebate include:

1. The motion picture production company must incur total production costs in South Carolina of $1 million or more during the taxable year.

2. South Carolina Code §12-62-20 defines "payroll" as salary, wages, or other compensation subject to South Carolina income tax withholding. It does not include the salary of an employee earning $1 million or more per motion picture.

3. The total rebate for all qualifying projects is $10 million for each State fiscal year.

Important points to remember concerning the wage/payroll rebate are listed below.

- An employee is an individual directly involved in the filming or post-production of a motion picture in South Carolina and who is an employee of one of the following companies that is directly involved in the filming or post-production of a motion picture in South Carolina: (1) the motion picture production company; (2) a personal services corporation retained by a motion picture production company; or (3) a payroll services or loan out company retained by a motion picture production company.
- The rebate applies to employees subject to South Carolina income tax withholding that have South Carolina income tax withheld and remitted.
- The rebate is available only to the motion picture production company and only after all filming in South Carolina is complete.
- If a motion picture production company uses a personal services corporation, a payroll services company, or a loan out company to provide persons for the production whose payroll will be subject to the rebate, then such company must make an irrevocable assignment of its rebate to the motion picture production company. The rebate assignment must be made before filming begins in South Carolina and must be approved and certified by the Film Commission. The assignment is made on Form WH-403, "Assignment of Rebate to Motion Picture Production Company."
- After filming in South Carolina is complete, the motion picture production company must request the rebate from the Film Commission by the last day of February following the year in which the certificate of completion was obtained.

b. Expenditures/Supplier Rebate

South Carolina Code §12-62-60 provides that the Film Commission may rebate to a qualifying motion picture production company up to 30% of its expenditures made in South Carolina on a motion picture production. To qualify, the company must spend at least $1 million in South Carolina.

The Film Commission administers the approval of this rebate. They have developed written guidelines concerning the rebate qualifications. A copy of the current guidelines can be obtained from the Film Commission by calling 803-737-0498.

Important points to remember concerning the expenditures/supplier rebate are listed below.

- Expenditures eligible for the wage/payroll rebate are not also eligible for this rebate.
- Only expenditures associated with a South Carolina supplier qualify.

28. COMMERCIAL PRODUCTION CREDIT

South Carolina Code §12-6-3560 allows a production company producing commercials for multi-market distribution via television networks, cable, satellite, or motion picture theaters, an income tax credit equal to 10% of its South Carolina investment in such commercials during the calendar year. Any unused credit may be carried forward for 10 years. The credit is claimed on Form TC-24, "Commercial Credit."

The following requirements apply to the credit:

1. The credit is available to a company producing an advertisement composed of moving images and words that are recorded on film, videotape, or digital medium in South Carolina. It is not available to a company producing industrial videos, television broadcasts, cable and satellite networks, or news sporting events.

2. The production company's total base investment in state certified commercial productions must exceed $500,000 during the calendar year.

3. The production company must apply to, and obtain certification of, each production from the Film Commission. For credit application and certification procedures, contact the Film Commission at 803-737-0498.

4. South Carolina has $1 million in total tax credits to disburse annually to all eligible companies. The amount disbursed is based on the order of approval of the company's application by the Film Commission. Once a company is certified, the Film Commission will notify the production company and the Department of Revenue.

29. MILK PRODUCER CREDIT

South Carolina Code §12-6-3590 allows a resident taxpayer in the business of producing milk for sale a refundable income tax credit of (1) $10,000 based on the production and sale of the first 500,000 pounds of milk sold below the production price in a calendar year and (2) an additional $5,000 for each additional 500,000 pounds sold below the production price in a calendar year. The credit is prorated on a quarterly basis. The South Carolina Department of Agriculture determines when the USDA Class I price of fluid milk in South Carolina drops below the production price.

The Commissioner of Agriculture will certify to the Department that the producers claiming credits have met the eligibility requirements. See South Carolina Regulations 5-610 through 5-613 for definitions, production price information, and the annual production certification process.

The credit is claimed on Form I-334, "Milk Credit."

30. AGRICULTURAL USE OF ANHYDROUS AMMONIA CREDIT

South Carolina Code §12-6-3582 allows a resident taxpayer in the business of farming a refundable income tax credit equal to the amount expended to obtain the additive required to comply with South Carolina Code §44-53-375(E)(2)(a)(ii) (*i.e.,* to prevent the conversion of the active ingredient into methamphetamine, its salts, or isomers) for the agricultural use of anhydrous ammonia.

The credit is claimed on Form I-333, "Anhydrous Ammonia Additive Credit."

31. WHOLE EFFLUENT TOXICITY TESTING CREDIT FOR MANUFACTURING FACILITY

South Carolina Code §12-6-3589 allows a manufacturing facility a credit against corporate income tax for 25% of the costs incurred in complying with whole effluent toxicity testing. Any unused credits may be carried forward for 10 years. The credit is claimed on Form TC-37, "Whole Effluent Toxicity Testing."

32. SPECIAL INVESTMENT TAX CREDIT FOR RUBBER AND PLASTICS MANUFACTURERS

South Carolina Code §12-14-80 allows a qualifying taxpayer a special investment tax credit for "qualified manufacturing and productive equipment property" it places in service. To qualify for the special investment tax credit a taxpayer must be engaged in this State in an activity listed under North American Industry Classification System Section 326 (Plastics and Rubber Manufacturing) and must either:

1. Be employing 5,000 or more full-time workers in the State and have a total capital investment of at least $2 billion dollars in the State and commit to investing $500 million in capital investment in this State between January 1, 2006 and July 1, 2011; or

2. Commit to employing 1,200 full-time employees in this State by January 1, 2022 and commit to investing $400 million in this State between September 1, 2011 and January 1, 2022.

Under the statute, the following terms are defined.

(a) "Qualified manufacturing and productive equipment property" means property that satisfies the requirements of South Carolina Code §12-14-60(B)(1)(a),(b), and (c).

(b) "Taxpayer" includes the taxpayer and any person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the taxpayer. For this purpose, a person controls another person if that person holds 50% ownership interest in the other person.

(c) "Capital investment in this State" includes property that is: (1) capitalized by the taxpayer; (2) subject to a capital lease with the taxpayer; (3) subject to an operating lease with the taxpayer.

Leased qualified manufacturing and productive equipment property shall be treated as placed in service by the taxpayer on the date the lease begins. Certain certification requirements must be met if the property subject to the special investment tax credit is leased. South Carolina Code §§12-14-80(B) and (C)(2).

The special investment tax credit is equal to the aggregate amount computed based on South Carolina Code §12-14-60(A)(the regular investment tax credit). South Carolina Code §12-14-60(C). A qualifying taxpayer must first apply the special investment tax credit along with the credit allowed under South Carolina Code §12-6-3360, the South Carolina jobs tax credit, against income tax liability. If the taxpayer has excess special investment tax credit, the taxpayer can apply the excess credit and excess jobs tax credits against withholding tax on its 4 quarterly withholding tax returns for the taxable year, except that these credits cannot offset more than 50% of the withholding tax liability shown on the return after the application of all other credits, including job development credits under South Carolina Code §§12-10-80 or 12-10-81. South Carolina Code §12-14-80(D).

Unused credit can be carried forward, and for the first 10 years of each special investment tax credit carryforward, the carryforward of the credit may not reduce the taxpayer's income tax liability by more than 50%, and for subsequent years it cannot reduce income tax liability by more than 25%. All special investment credit carryforwards must first be used against income tax liability for the applicable year, as must all South Carolina jobs tax credit carryforwards. Any excess may then be used against withholding tax liability subject to the limitations against use of the credits against withholding tax liability described above. South Carolina Code §12-14-80(E).

Just like with the investment tax credit under South Carolina §12-14-60, special basis reduction rules and recapture applies for a taxpayer claiming the special investment tax credit. Special rules are provided if the "qualified manufacturing and productive equipment property" in question is subject to a lease. South Carolina Code §12-14-80(G) – (H).

All taxpayers must execute a waiver of the statute of limitations pertaining to the credits claimed under South Carolina Code §12-14-80 and credits cannot be taken under that section until a taxpayer has invested a statutorily prescribed amount of the required capital investment and has filed certain statements with the Department. The taxpayer must also agree to refund credits if the full capital and job creation requirements are not met. South Carolina Code §12-14-80(I). The taxpayer must notify the Department before taking any credits under South Carolina Code §12-14-80 and must provide continuing statements to the Department as required by the statute. South Carolina Code §12-14-80(J).