

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **May 6, 2015**

SC REVENUE RULING #15-x (DRAFT –4/15/2015)

SUBJECT: Retail Facilities Revitalization Tax Credit
(Income and Property Taxes)

EFFECTIVE DATE: Applies to all periods open under statute.

REPEAL DATE: July 1, 2016

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

REFERENCES: Chapter 34, Title 6 (Supp. 2014)
Act. No. 285, Section 2 (2006)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or a general category of taxpayers. It is the Department’s position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

GENERAL OVERVIEW OF THE ACT

The “South Carolina Retail Facilities Revitalization Act” (“Act”) was enacted in Title 6, Chapter 34 to create an incentive for the improvement, renovation, and redevelopment of abandoned retail facilities located in South Carolina.

The Act provides that the restoration of abandoned retail facilities into productive assets for the communities in which they are located serves a public and corporate purpose and results in job opportunities within the community. To remove and alleviate adverse conditions, including disproportionate expenditures of public funds, unmarketability of property, area crime, and abnormal exodus of families and businesses, it is necessary to encourage private investment and restore the tax base of the taxing districts in which these retail facilities are located by the redevelopment of these abandoned retail facilities.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **May 6, 2015**

The Act provides that a taxpayer who improves, renovates, or redevelops a qualifying abandoned retail facility site in South Carolina (“eligible site”) and meets the requirements of the Act is eligible for a credit against income taxes or real property taxes. The income tax credit is allowed against income taxes imposed under Chapter 6, bank taxes under Chapter 11, or savings and loan income taxes under Chapter 13.¹ The amount of the income tax credit is equal to 10% of the rehabilitation expenses incurred in rehabilitating the eligible site.

The entire income tax credit may not be taken for the taxable year in which the eligible site is placed in service, but must be taken in equal installments over 8 years beginning with the year the eligible site is placed in service. Any unused credit installment can be carried forward for 5 years.

For the property tax credit, the process and credit provisions differ. The property tax credit requires local government approvals and a public hearing. If allowed, the property tax credit is equal to 25% of the rehabilitation expenses multiplied by the local taxing entity ratio for each local taxing entity that has consented to the property tax credit. The property tax credit can be taken against up to 75% of the real property taxes due on the eligible site each year for up to 8 years, however, the entire property tax credit vests in the year that the property is placed in service.

The Act contains a number of requirements including qualification of the eligible site, qualification of the rehabilitation expenses incurred in the redevelopment of the eligible site and procedures for providing notice to the Department relating to the credit. This advisory opinion is limited to basic principles. It provides guidance regarding the income tax credit under the Act and only a general overview of the property tax credit.

NOTE: The Act is repealed on July 1, 2016.

This question and answer document is divided into the following categories:

1. Definitions and Qualifications
2. Notice of Election of the Income Tax Credit or Property Tax Credit
3. Income Tax Credit
4. Transfer of Income Tax Credit and Notification to the Department
5. Property Tax Credit Overview
6. Examples

¹ Although the bank tax is a franchise tax and not an income tax, because the bank tax chapter is titled “Income Tax on Banks,” the Department believes that the legislative intent was to allow income tax credits against the bank tax if the language of the credit does not limit the credit to income taxes in Chapter 6. However, a taxpayer may not claim the income tax credit against license fees under Chapter 20.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **May 6, 2015**

PART 1 – DEFINITIONS AND QUALIFICATIONS

1. Q. What is an “eligible site”?

A. An “eligible site” is either:

- a. a shopping center whose primary use was as a retail sales facility with at least one tenant or occupant located in a 40,000 square foot or larger building or structure;
- b. a mall whose primary use was as a retail sales facility with at least one tenant or occupant located in a 40,000 square foot or larger building or structure; or,
- c. a free standing site whose primary use was as a retail sales facility with at least one tenant or occupant located in a 40,000 square foot or larger building or structure.

Note: If a taxpayer chooses the property tax credit, the governing body of the county or municipality in which the eligible site is located may reduce the 40,000 square foot requirement; however, the requirement may not be reduced to less than 25,000 square feet. Code Section 6-34-40(F).

To qualify as an eligible site, the shopping center, mall or free standing site must be abandoned. Code Section 6-34-30(2). Further, the entire eligible site must be rehabilitated to qualify for the credit.

2. Q. What is an “abandoned” shopping center, mall or free standing site?

A. To be abandoned, at least 80% of the eligible site’s facilities must have been continuously closed to business or otherwise nonoperational for a period of at least one year immediately preceding the time the determination is made. The eligible site’s facilities only include the site’s building or structure. Section 6-34-30(1). During the abandonment, the eligible site may serve as a wholesale facility, provided the eligible site serves as a wholesale facility for no more than one year. Code Section 6-34-30(2). The burden of proof of the abandonment time period is on the taxpayer. For property tax eligibility, see Q. 29.

3. Q. Can an eligible site be divided into multiple units or parcels for purposes of the credit?

A. No. The statute does not provide that an eligible site may be divided into units or parcels.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **May 6, 2015**

4. Q. When is the eligible site “placed in service”?
 - A. The eligible site is placed in service on the date that the eligible site is suitable for occupancy for the purposes intended. Code Section 6-34-30(5). Note, any new facility does not have to conduct retail sales and does not have to be a retail sales facility. Note: The site may be placed in service in phases, but the credit is not earned until the entire site is placed in service. See, Q.10. below.

5. Q. Can an abandoned shopping center, mall or free standing site be demolished (*i.e.*, the complete destruction or removal of the facility) and a new facility built in its place and still qualify for the credit?
 - A. Yes. The existing facility may be demolished and a new facility built at the eligible site. (See, Part 7, Examples A, B, and C).

6. Q. What are “rehabilitation expenses”?
 - A. Rehabilitation expenses are the expenses incurred in the rehabilitation of the eligible site Among the items that may be included in rehabilitation expenses are expenses for environmental remediation (*e.g.*, abatement of lead paint, removal of asbestos or mold); site improvements (*e.g.*, sidewalks and parking); demolition expenses and, new building construction or renovations to an existing building (*e.g.*, walls, floors, ceilings, HVAC systems, wall to wall carpeting, plumbing, electrical wiring, fixtures, sprinkler systems and elevators).

Rehabilitation expenses do not include the cost of acquiring the eligible site or the cost of personal property located at the eligible site. Code Section 6-34-30(6). (See Q.8. below for expenses incurred prior to the notice of election.)

7. Q. How are real property costs and personal property costs distinguished?
 - A. Whether an expense is for personal property or real property depends on the facts and circumstances. Generally, personal property is a movable item of property that is not permanently affixed to, or part of, real estate. In making this determination, the Department will consider (1) the mode of attachment; (2) the character of the structure or article; (3) the intent of the parties making the annexation; and, (4) the relationship of the parties. *City of North Charleston v. Claxton*, 431 S.E. 2d 610 (S.C. 1993). In addition, the Department may consider

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **May 6, 2015**

whether the removal of the property in question would be costly, time consuming, and/or destructive to the building. Note: This determination may be different for other income tax purposes, such as Internal Code Section 1245 property.

PART 2 –NOTICE OF ELECTION OF INCOME TAX CREDIT OR PROPERTY TAX CREDIT

8. Q. Are there any notification requirements for claiming the income tax credit or property tax credit?
- A. Yes. Prior to the eligible site being placed in service, the taxpayer shall elect the mode of credit (either the income tax credit or the property tax credit) by providing written notification of its intent to the Department. This can be done by sending a letter to the Department indicating whether the taxpayer plans to claim the property tax credit or the income tax credit. Code Section 6-34-40(D). The letter should be mailed to:

Retail Facilities Credit
SC Department of Revenue
Attn: Research and Forms Development
Columbia, SC 29214-0019

If the taxpayer fails to make the election by failing to receive the approvals necessary to claim the property tax credit, or by failing to send the letter to the Department, the taxpayer will be deemed to have made an election to claim the income tax credit. Code Section 6-34-40(D).

Unlike the abandoned buildings tax credit (Chapter 67, Title 12) or the textile revitalization tax credit (Chapter 65, Title 12), the retail facilities revitalization tax credit does not require a “Notice of Intent to Rehabilitate”. Additionally, expenses incurred prior to the filing of the election letter with the Department are eligible to be included as “rehabilitation expenses” for purposes of the retail facilities revitalization tax credit.

9. Q. Who must file the credit election letter?
- A. The credit election letter must be filed by the taxpayer who actually improves, renovates or redevelops the eligible site. This may be the developer, the owner of the eligible site, or a pass through entity owning the building (not the individual member of the pass through entity).

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **May 6, 2015**

PART 3 - INCOME TAX CREDIT

10. Q. When is the income tax credit earned?
- A. The income tax credit is earned in the tax year in which the eligible site is placed in service. The income tax credit, however, is taken in equal installments over an 8 year period beginning with the tax year in which the property is placed in service. Code Section 6-34-40(C)(1).
11. Q. What form is used to compute and claim the income tax credit?
- A. Form SC SCH. TC-31, "Retail Facilities Revitalization Credit", is used to compute and claim the income tax credit.
12. Q. What is the amount of the income tax credit?
- A. The amount of the income tax credit is 10% of the rehabilitation expenses. Code Section 6-34-40(A)(2). (See Q.6. above for an explanation of "rehabilitation expenses".)
13. Q. Is the annual income tax credit installment limited to a percentage of the taxpayer's tax liability?
- A. No. The income tax credit may offset a taxpayer's entire state income tax liability; it is not limited to 50% of the taxpayer's income tax liability. This differs from the textile rehabilitation tax credit. The credit is not refundable. (See General Overview of the Act, footnote #1 for taxes qualifying as income taxes for purposes of the income tax credit.)
14. Q. How is the income tax credit allocated if the credit is earned by an S corporation, partnership or limited liability company taxed as a partnership?
- A. An income tax credit earned by an "S" corporation owing corporate level tax is used first at the entity level. Any remaining income tax credit is then passed through to its shareholder based on their percentage of stock ownership. Code Section 6-34-40(C)(2).

If the income tax credit is earned by a general partnership, limited partnership, limited liability company taxed as a partnership, or any other entity taxed as a partnership, the income tax credit must be passed through to the partners or members and may be allocated among any of its partners or members, including,

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **May 6, 2015**

without limitation, an allocation of the entire credit to one partner or member, in a manner agreed to by the partners or members that is consistent with Subchapter K of the Internal Revenue Code. Code Section 6-34-40(C)(3).

15. Q. What is the carry forward period?

A. Unused portions of an income tax credit installment may be carried forward for 5 years. Code Section 6-34-40(C)(1).

The income tax credit installment and the carry forward are illustrated below.

Credit Installment	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8
Amount	12.5%	12.5%	12.5%	12.5%	12.5%	12.5%	12.5%	12.5%
Carryforward of Installment	Years 2-6	Years 3-7	Years 4-8	Years 5-9	Years 6-10	Years 7-11	Years 8-12	Years 9-13

16. Q. Can the retail facilities revitalization income tax credit and the state historic tax credit in Code Section 12-6-3535, both be claimed if the eligible site otherwise qualifies for both credits?

A. Yes. The retail facilities revitalization income tax credit may be claimed in addition to, and does not offset, the state historic credit contained in Code Section 12-6-3535. Code Section 6-34-40(C)(4).

Note: The specific provisions of any other income tax credit should be reviewed to determine if that credit can be claimed in addition to the retail facilities revitalization income tax credit. (For example, see Code Section 12-67-140(A)(4), the abandoned building tax credit which cannot be claimed with the retail facilities tax credit.)

17. Q. What is the practical effect of the repeal of the retail facilities revitalization income tax credit?

A. The Act is repealed on July 1, 2016. Accordingly, an income tax credit earned on July 1, 2016 or thereafter does not qualify for the credit. The repeal does not affect remaining installments for an income tax credit earned before July 1, 2016. Further, it does not affect the 5 year carry forward period of any credit installment earned but unused. Act No. 285, 2006 S.C. Acts, Section 2.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **May 6, 2015**

18. Q. Is the income tax basis in the eligible site reduced by the amount of the income tax credit claimed?

A. No.

PART 4—TRANSFER OF INCOME TAX CREDIT AND NOTIFICATION TO THE DEPARTMENT

19. Q. Can a taxpayer/lessor transfer the income tax credit earned to a tenant/lessee of the eligible site after it has been placed in service?

A. Yes. If the taxpayer/lessor rehabilitates the eligible site and then leases all or part of the eligible site, the taxpayer/lessor may transfer any remaining income tax credit earned with respect to that leased portion of the eligible site to the tenant/lessee. Code Section 6-34-40(E).

Note: There are no other transfer provisions specified in the Act, therefore, a taxpayer who subsequently sells the eligible site or part of the eligible site to a new buyer cannot transfer all or part of the income tax credit to the new buyer.

20. Q. When can a credit be transferred?

A. A credit can be transferred to a tenant/lessee once the taxpayer rehabilitating the site has earned the credit (*i.e.*, after placing the site in service.) A transfer may take place prior to the time the South Carolina income tax return is filed for the year in which the credit is earned.

21. Q. Can an earned income tax credit be transferred more than one time?

A. Yes, provided the transfer of the earned credit is to a new tenant/lessee of the eligible site. The Act does not contain any other transfer provisions. The credit by itself cannot be bought and sold. Unused credits carryforwards may not be transferred.

Note: If the site has not been placed in service, a credit has not been earned.

22. Q. When and how does a taxpayer/lessor notify the Department of an income tax credit transfer?

A. The taxpayer/lessor must notify the Department in writing at least 30 days before the transfer. The request will be deemed approved two weeks after the

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **May 6, 2015**

taxpayer/lessor has submitted all information requested below in complete form and the transfer is carried out consistent with the information submitted in the request. Failure of the taxpayer/lessor to notify the Department of the transfer results in disallowance of the transferred income tax credit until the taxpayer/lessor complies. (See Question 27 below for the information that must be provided in the notification.)

Certain events do not constitute a credit transfer, such as the allocation of the credit through a partnership.

23. Q. What form is used to claim a transferred income tax credit?

A. The tenant/lessee claims a transferred income tax credit on Form SC SCH. TC-31, "Retail Facilities Revitalization Credit," by completing the applicable portions of the form.

24. Q. What income tax credit amount may the tenant/lessee claim?

A. The original income tax credit is earned in the year the eligible site is placed in service, but is claimed over an 8 year period in equal installments. As such, the transfer to a tenant/lessee may be for any applicable remaining income tax credit that the taxpayer/lessor has that is associated with the applicable rehabilitation expenses.

For example, if the original taxpayer/lessor leases the eligible site in Year 3, the taxpayer/lessor may transfer the income tax credit installments for Years 3 - 8. (See Q. 19 above for limitations on the amount of income tax credit that can be transferred to the tenant/lessee).

Any credit carry forward resulting from the installments for Years 1 and 2 remains with the original taxpayer/lessor and may not be transferred. Code Section 6-34-40(C)(1).

25. Q. Can a tenant/lessee claim the entire income tax credit in the year of transfer?

A. A tenant/lessee to whom an income tax credit has been transferred may only claim that year's credit installment. Code Section 6-34-40(C)(1). (See Q.13 above for limitations on use of the income tax credit).

26. Q. What is the income tax credit carry forward period for a transferred income tax credit?

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **May 6, 2015**

- A. Each annual installment of the income tax credit may be carried forward for 5 years. A transfer does not extend the time period an income tax credit can be used. Code Section 6-34-40(C)(1).
27. Q. How does a taxpayer/lessor notify the Department of a transfer of the income tax credit?
- A. The taxpayer/lessor must send a written “Notice of Transfer” to the Department containing the following information:
 - a. The complete name, address, telephone number, and tax identification number of the taxpayer/lessor transferring the income tax credit.
 - b. The complete name, address, telephone number, and tax identification number of the tenant/lessee transferred an income tax credit.
 - c. The complete address and tax map number of the eligible site.
 - d. The total available credit for the eligible site and any credit used by the taxpayer/lessor.
 - e. The date the original income tax credit was earned (the date the eligible site was placed in service) and the amount of each income tax credit installment;
 - f. The date the transfer of the income tax credit will be made;
 - g. The amount of the income tax credit to be transferred;
 - h. The taxpayer/lessor must provide a waiver of the right to claim that portion of the income tax credit being transferred;
 - i. The taxpayer/lessor’s remaining income tax credit balance after the transfer;
 - j. The consideration paid by the tenant/lessee for the income tax credit, if any; and
 - k. Any other information requested by the Department.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **May 6, 2015**

The written notice should be mailed to:

Notice of Transfer for Retail Facilities
Revitalization Income Tax Credit
Research and Forms Development
South Carolina Department of Revenue
Columbia, SC 29214-0019

PART 5 – PROPERTY TAX CREDIT OVERVIEW

28. Q. What is the amount of the property tax credit?
- A. The property tax credit is equal to 25% of the rehabilitation expenses made at the eligible site multiplied by the local taxing entity ratio of each local taxing entity that has consented to the property tax credit. The “local taxing entity ratio” is the percentage computed by dividing the millage rate of each local taxing entity for the eligible site by the total millage rate for the eligible site. Code Sections 6-34-40(A)(1) and 6-34-30(4).
29. Q. How is the property tax credit approved by the local taxing entities?
- A. The taxpayer must ask the municipality or, if the eligible site is located in an unincorporated area, the county to determine the eligibility of the eligible site and the eligibility of the proposed project seeking the property tax credit. The municipality or the county will determine if the eligible site and the proposed project are eligible by passing a resolution by a positive majority vote of the county or city council. If the eligible site is found to be eligible by resolution, a public hearing must be held and the county or municipality must approve the eligible site for the property tax credit by ordinance. The ordinance may allow an approved eligible site a property tax credit which can offset up to 75% of the real property taxes due on the property for the eligible site for each year for up to 8 years. The municipality or county must also make a finding that the property tax credit does not violate a covenant, representation, or warranty in any of its tax increment financing transactions or an outstanding general obligation bond issued by the county or municipality. Code Section 6-34-40(B)(1).

NOTE: Prior to the date the eligible site is placed in service, the taxpayer must send a Notice of Credit Election to the Department indicating that it will be claiming the property tax credit in order to claim the credit. If the taxpayer fails to get the proper county or municipal approvals or if it fails to send the Notice of Election to the Department, it will be deemed to have elected the income tax credit. Code Section 6-34-40(D).

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **May 6, 2015**

30. Q. May a local taxing entity, such as a school district or municipality, object to the allowance of the property tax credit?
- A. Yes. At least 45 days before the public hearing is held, any affected local taxing entities must be notified of the county's or municipality's intention to grant a credit for an eligible site and the amount of the credit to provide them with an opportunity to object to the allowance of the credit. A local taxing entity is "a county, municipality, school district, special purpose district, and any other entity or district with the power to levy ad valorem property tax against the eligible site". Code Section 6-34-30(3). If the local taxing entity does not file an objection to the property tax credit with the applicable municipality or county on or before the date of the public hearing, the local taxing entity is considered to have consented to the property tax credit provided that the actual property tax credit granted is equal to or less than the property tax credit stated in the notice of public hearing. Code Section 6-34-40(B)(2). If it does file an objection, that local taxing entity's property taxes will not be offset by the credit.

PART 6 – EXAMPLES

The following scenarios provide additional guidance on the general rules discussed in this advisory opinion regarding requirements of the credit.

- A. Demolish Building and New Construction by Same Taxpayer. A taxpayer demolishes (completely destroys) an eligible site and constructs a new building meeting all the Act requirements. The taxpayer is eligible for the credit.
- B. Demolish Building and New Construction by Different Owners. A developer purchases an eligible site and demolishes the mall located on the site. The developer sells the land to a business owner that will construct an office building on the land. Since the developer did not redevelop the eligible site with a new building and the business owner purchased vacant land and not an abandoned shopping center, mall, or free standing retail sales facility, neither meets the Act requirements. Accordingly, neither the developer nor the business owner is eligible for the credit.
- C. Abandoned Building Site – Condition of Site. A shopping center, mall, or free standing retail sales facility whose ceiling has fallen in and whose walls are collapsing meets the definition of an eligible site. In contrast, if the facility has been cleared except for the concrete foundation, the facility will not meet the definition of an eligible site.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **May 6, 2015**

- D. Abandoned Building – 80% Abandonment Requirement. A shopping center consisting of 400,000 square feet of space, had 4 stores each occupying 25% of the square footage of the shopping center, has been closed from making retail sales of over a year. However, one of the stores has been renting out its space to allow a third party retailer to store excess inventory in the store. The shopping center does not meet the requirement that at least 80% of the eligible site's facilities be continuously closed for business or otherwise nonoperational for at least one year immediately preceding the time at which the determination is to be made.
- E. Property Sold After Being Completed. Taxpayer John renovates and rehabilitates an eligible site and meets all the Act requirements. The Taxpayer John then sells the site to Purchaser Jason. Pursuant to Code Section 6-34-30(5), Taxpayer John is deemed to have "placed in service" the eligible site and is eligible for the credit. Taxpayer John may not transfer the credit to Purchaser Jason; however, if the instead of purchasing the site, Jason leases the site, Taxpayer John may transfer the credit associated with the site to Jason as a lessee.