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

SC REVENUE RULING #15-x (Draft - 4/15/15)

SUBJECT: Textiles Communities Revitalization Act
(Income and Property Taxes)

EFFECTIVE DATE: Applies to rehabilitation, renovation, and redevelopment of abandoned textile mill sites placed in service on January 1, 2008, and thereafter, except as otherwise provided.¹

For a taxpayer who has filed a Notice of Intent to Rehabilitate with the Department for a textile mill site and has not placed the site in service, the provisions in Part 2 regarding amendments to the Notice of Intent to Rehabilitate are effective 90 days after the issuance date of this advisory opinion.

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

REFERENCES: Chapter 65 of Title 12 (2014)

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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.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 ACT

The South Carolina Textiles Communities Revitalization Act (Act) was enacted in Title 12, Chapter 65 to create an incentive for the rehabilitation, renovation, and redevelopment of abandoned textile mill sites located in South Carolina.²

¹ For textile mill sites placed in service on or before December 31, 2007, see Part 4 "Special Provisions and Transitional Rules."

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

The Act provides that a taxpayer who rehabilitates an abandoned textile mill site and meets the other Act requirements is eligible for either a credit against income taxes³ or real property taxes. A taxpayer selects the credit type by filing a “Notice of Intent to Rehabilitate” (Notice of Intent).

Certification of Site. A taxpayer may apply to the municipality or county in which the textile mill site is located for a certification of the textile mill site made by ordinance or binding resolution of the governing body of the municipality or county. The certification shall include findings that the textile mill site was a “textile mill” as defined in Code Section 12-65-20(3), that the textile mill site has been “abandoned” as defined in Code Section 12-65-20(1), and that the geographic area of the site is consistent with Code Section 12-65-20(4) (defining “textile mill site”). The taxpayer may conclusively rely upon the certification in determining the credit allowed; provided, however, that if the taxpayer is relying upon the certification, the taxpayer shall include a copy of the certification on the first return for which the credit is claimed. Code Section 12-65-60.

Income Tax Credit. A taxpayer seeking an income tax credit must file a Notice of Intent with the Department prior to receiving the building permits for the applicable rehabilitation of the textile mill site or phase thereof. Failure to provide the Notice of Intent prior to receiving the building permits results in qualification of only those rehabilitation expenses incurred after the Notice of Intent is provided. The income tax credit is equal to 25% of the actual rehabilitation expenses incurred for the textile mill site (even if actual rehabilitation expenses are below 80% of the estimated rehabilitation

² The original Act was enacted in 2004 in Title 6, Chapter 32. In 2008, the Act was amended and moved to Title 12, Chapter 65. The original Act still applies to entire textile mill sites placed in service on or before December 31, 2007. Code Section 12-65-50(A).

³A credit is allowed against the income tax imposed under Chapter 6, bank franchise tax under Chapter 11, corporate license fee under Chapter 20, insurance premium taxes under Title 38, Chapter 7, or any combination of these taxes. While all of these taxes are not income taxes, the credit allowed against all of these taxes is referred to in this advisory opinion as the “income tax credit” for simplicity.

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expense amount reported in the Notice of Intent). However, if the actual rehabilitation expenses exceed 125% of the estimated rehabilitation expense reported in the Notice of Intent, then the credit amount for the textile mill site is limited to 25% of 125% of the estimated rehabilitation expense amount.⁴

The entire income tax credit is earned in the tax year the applicable phase or portion of the textile mill site is placed in service. (There is no cap on the amount of credit that can be earned.) It is taken, however, in equal installments over 5 years beginning with the tax year the applicable phase or portion of the textile mill site is placed in service.

The income tax credit claimed is limited to 50% of the taxpayer's income tax, bank tax, corporate license fee, and/or insurance premium tax liability for the tax year. Any unused credit can be carried forward for 5 years.

Property Tax Credit. For taxpayers seeking the property tax credit the approval process and credit provisions differ.⁵ A taxpayer seeking a property tax credit must file a Notice of Intent with the municipality or county where the textile mill site is located prior to incurring any rehabilitation expenses at the site. Failure to provide the Notice of Intent results in qualification of only those rehabilitation expenses incurred after the Notice of Intent is provided. If the actual rehabilitation expenses are between 80% and 125% of the estimated rehabilitation expense amount reported in the Notice of Intent, then the property tax credit is based on 25% of the actual expenses for each site. If the actual rehabilitation expenses exceed 125% of the estimated rehabilitation expense reported, then the credit is based on 25% of 125% of the estimated rehabilitation expense amount. If the actual rehabilitation expenses are below 80% of the estimated rehabilitation expense amount, then no credit is allowed. There is no cap on the amount of credit that can be earned.

The property tax credit may be claimed beginning with the property tax year in which the applicable phase or portion of the textile mill site is placed in service. The credit may be taken against up to 75% of the real property taxes due on the textile mill site each year for up to 8 years.

Purpose of Advisory Opinion. The Act contains a number of requirements including qualification of the textile mill site, qualification of the expenses incurred in the rehabilitation, and information required in the Notice of Intent. The rules and

⁴ For textile mill sites acquired before January 1, 2008, see Question 26 for special rules that include the Notice of Intent requirement and the income tax credit amount.

⁵ See Part 6, "Property Tax Credit Overview" for a brief discussion of Act provisions applicable to taxpayers seeking the property tax credit.

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requirements can be complex. This advisory opinion is limited to the basic credit principles. It provides guidance and examples regarding the provisions of the income tax credit under the Act and only a general overview of the property tax credit.

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

1. Definitions and Qualifications
2. Notice of Intent to Rehabilitate
3. Income Tax Credit
4. Special Provisions and Transitional Rules
5. Transfer of Credit and Notification to the Department
6. Property Tax Credit Overview
7. Examples and Additional Guidance

PART 1 - DEFINITIONS and QUALIFICATIONS

1. Q. What is a “textile mill”?

A. Textile mill means a facility or facilities that were initially used for textile manufacturing, dyeing, or finishing operations and for ancillary uses to those operations. Code Section 12-65-20(3).

2. Q. When is a textile mill considered “abandoned”?

A. A textile mill is considered abandoned when at least 80% of the textile mill has been closed continuously to business or otherwise nonoperational as a textile mill for a period of at least one year immediately preceding the date on which the taxpayer files a Notice of Intent. Code Section 12-65-20(1).⁶

Note: A taxpayer may apply to the municipality or county in which the textile mill site is located for a certification of the textile mill site made by ordinance or binding resolution of the governing body of the municipality or county. The certification shall include findings that the textile mill site was a “textile mill” as defined in Code Section 12-65-20(3), that the textile mill site has been “abandoned” as defined in Code Section 12-65-20(1), and that the geographic area

⁶ The 1 year time period of abandonment is a consecutive period based on calendar days; it is not simply 1 calendar year. For example, the 1 year time period for a textile mill abandoned on April 1, 2014 ends March 31, 2015. The burden of proof of the abandonment time period is on the taxpayer. However, if the taxpayer obtains a certification from the municipality or county in which the textile mill site is located, the burden of proof has been met. See Code Section 12-65-60.

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of the textile mill site is consistent with Code Section 12-65-20(4) (defining “textile mill site”). The taxpayer may conclusively rely upon the certification in determining the credit allowed; provided, however, that if the taxpayer is relying upon the certification, the taxpayer shall include a copy of the certification on the first return for which the credit is claimed. Code Section 12-65-60.

3. Q. What is the definition of a “textile mill site”?

A. Textile mill site means the textile mill together with the land and other improvements on it that were used directly for textile manufacturing, dyeing, or finishing operations or ancillary uses. However, the area of the site is limited to the land located within the boundaries where the textile manufacturing, dyeing, or finishing facility structure is located and does not include land located outside the boundaries of the structure or devoted to ancillary uses. Code Sections 12-65-20(4) and 12-65-35.

Exception: For sites acquired before January 1, 2008, or a site located on the Catawba River near Interstate 77, the textile mill site includes the textile mill structure, together with all land and improvements which were used directly for textile manufacturing operations or ancillary uses, or were located on the same parcel within 1,000 feet of any textile mill structure or ancillary uses. Code Section 12-65-20(4).

4. Q. What are “ancillary uses”?

A. Ancillary uses are uses related to the textile manufacturing, dyeing, or finishing operations on a textile mill site consisting of sales, distribution, storage, water runoff, wastewater treatment and detention, pollution control, landfill, personnel offices, security offices, employee parking, dining and recreation areas, and internal roadways or driveways directly associated with such uses. Code Section 12-65-20(2).

5. Q. Can a textile mill site be divided into separate parcels?

A. Yes. A textile mill site that otherwise qualifies as abandoned may be subdivided into separate parcels, which parcels may be owned by the same taxpayer or different taxpayers, and each parcel is deemed to be a textile mill site for purposes of determining whether each subdivided parcel is considered to be abandoned. Code Section 12-65-20(1).

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Note: For any parcel on which there is a building, the building must be renovated or demolished. Code Section 12-65-20(8).

6. Q. What are “rehabilitation expenses”?

- A. Rehabilitation expenses are the expenses or capital expenditures incurred in the rehabilitation, renovation or redevelopment of the textile mill site, including the demolition of existing buildings, environmental remediation, site improvements and the construction of new buildings and other improvements on the textile mill site. Rehabilitation expenses do not include the cost of acquiring the textile mill site or the cost of personal property located at the textile mill site. For expenses associated with a textile mill site to qualify for the credit, the textile mill and buildings on the textile mill site must be renovated or demolished. Code Section 12-65-20(8).

Below are examples of expenses that qualify and expenses that do not.

Rehabilitation Expenses Include:	Rehabilitation Expenses Do Not Include:
Renovation costs of existing building (e.g., interior demolition, movement of walls, replacing floors, ceilings, or roofs, wall to wall carpet, permanent tiles and paneling, central HVAC systems, plumbing, electrical wiring, fixtures, sprinkler systems and elevators)	Cost of acquiring the textile mill, land and other improvements, including the purchase price
Redevelopment costs of existing buildings	Expenses incurred prior to sending the Notice of Intent to Rehabilitate the textile mill site
Demolition costs of an existing building, (i.e., the complete destruction or removal of the building) when a site is rehabilitated	Cost of personal property at the textile mill site (e.g., furniture, appliances, window treatments). See below for guidance on distinguishing real property costs from personal property costs.
Construction of new buildings	Professional fees associated with the purchase of the site (e.g., title work, surveying, closing costs)
Environmental remediation (e.g., abatement of lead paint, removal of asbestos or mold, removal of underground oil tanks)	Interest costs to purchase the site
Site improvements (e.g., sidewalks,	Expenses paid from nontaxable grant money

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fences, and docks)	
Other improvements on the textile mill site (e.g., landscaping, drainage, or paving)	Expenses paid under a “tenant improvement allowance” for personal property costs (e.g., cubicles, office furniture, etc.) or moving costs
Professional fees associated with redevelopment of the site, including engineering and architectural fees	
Interest costs on construction loan	
Expenses paid from grant proceeds when the grant money is taxable	
Expenses paid by the taxpayer under a “tenant improvement allowance” with the lessee for improvements to the real property to customize the space to fit a tenants needs (e.g., costs incurred for adding permanent walls, permanent paneling or tiling, lighting, wiring, and cable)	

Additional guidance concerning specific costs as qualifying expenses are discussed below.

- A. Distinguishing Real Property Costs from Personal Property Costs. Whether an expense is for personal 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 the 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 whether the removal of the property in question would be costly, time consuming, and/or destructive to the building.⁷ Note: This determination may be different for other income tax purposes, such as Internal Revenue Code Section 1245 property.

⁷ The Department has used these guidelines in advisory opinions concerning sales and use taxes and property taxes. See RR #98-2 (Banks), PLR #09-1 (Residential Water Heater Repair Program), PLR #07-3 (Equipment and Services for Enhancement of Wireless Communications) and PLR #07-4 (Signs).

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B. Determination of When an Expense is Incurred. An expense is incurred by the taxpayer on the date such expenditure would be considered incurred under the accrual method of accounting, regardless of the method of accounting used by the taxpayer with respect to other items of income and expense.

7. Q. Against which taxes may a taxpayer use the credit?

A. A taxpayer who rehabilitates a textile mill site is eligible for either:

a. Income Tax Credit.⁸ A credit against taxes imposed under Title 12, Chapter 6 (income tax), Chapter 11 (bank tax), Chapter 20 (corporate license fees), Title 38, Chapter 7 (insurance premium tax) or any combination of these taxes or

b. Property Tax Credit. A credit against real property taxes levied by local taxing entities. Code Section 12-65-30(A).

A taxpayer's selection of the credit type is made when filing the Notice of Intent with the Department or with the county or municipality in which the textile mill site is located.

8. Q. What taxpayers are specifically disqualified from the credit?

A. The following taxpayers may not claim the textile credit:

a. A taxpayer seeking to rehabilitate an otherwise eligible textile mill site who owned the site when it was operational and immediately prior to its abandonment. Code Section 12-65-30(D).

b. A taxpayer that qualifies for the textile credit and the abandoned buildings credit for the site who chooses to claim the abandoned buildings credit. Code Section 12-67-140(B)(4).

Note: If the taxpayer qualifies for both the textile income tax credit and the certified historic structure rehabilitation credit under Code Section 12-6-3535, the taxpayer may claim both credits.

9. Q. Are there any textile mills specifically disqualified from the credit?

⁸For simplicity, this credit is referred to as an "income tax credit," although the bank tax, corporate license fee, and insurance premium tax are not income taxes.

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- A. Yes, if the textile mill has previously received textile mill credits, then it is not eligible for the credit. Code Section 12-65-30(D).

PART 2 - NOTICE OF INTENT TO REHABILITATE

10. Q. What is the “Notice of Intent to Rehabilitate”?

- A. The Notice of Intent to Rehabilitate a textile mill site, including a separate parcel, is a letter from the taxpayer to the Department or municipality or county indicating the following information. The Notice must contain:
- a. A statement of the taxpayer’s intent to rehabilitate the textile mill site;
 - b. The location of the textile mill site;
 - c. The amount of acreage involved in the textile mill site;
 - d. Which building(s) the taxpayer intends to renovate;
 - e. Which building(s) the taxpayer intends to demolish;
 - f. Whether new construction is to be involved; and
 - g. The estimated expenses to be incurred in connection with rehabilitation of textile mill site. Code Section 12-65-20(9).

Note: See Question 17 for guidelines to consider when filing the Notice of Intent to avoid any credit reduction or ineligibility.

11. Q. When should a taxpayer file a Notice of Intent?

- A. This depends upon whether the taxpayer is seeking the income tax credit or the property tax credit. The requirements are:

Income Tax Credit. The taxpayer must file a Notice of Intent with the Department prior to receiving the building permits for the rehabilitation of the textile mill site or phase thereof. Failure to provide the Notice of Intent prior to receiving the building permits for the applicable rehabilitation at the textile mill site results in qualification of only those rehabilitation expenses incurred after the Notice of Intent is provided. Code Section 12-65-30(C)(2).

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The written Notice of Intent for the income tax credit should be mailed to:

Textiles Credit Notice
Research and Forms Development
South Carolina Department of Revenue
Columbia, SC 29214-0019

Property Tax Credit. The taxpayer must file a Notice of Intent with the municipality, or the county if the textile mill site is located in an unincorporated area, where the textile mill site is located before incurring its first rehabilitation expenses at the textile mill site. Rehabilitation expenses incurred before the Notice of Intent is provided do not qualify. Code Section 12-65-30(B)(1).

Note: If the taxpayer later decides to choose the alternative credit, then a new Notice of Intent should be filed with the other governmental agency and written notification of withdrawal of the first Notice of Intent should be provided. Expenses incurred prior to sending the second Notice of Intent may not be eligible for the credit. A Notice of Intent for a textile mill site may not be sent simultaneously to the Department and the county or municipality.

12. Q. Who must file the Notice of Intent?

A. The taxpayer actually rehabilitating the textile mill site and placing the site in service for its intended use must file the Notice of Intent. In some instances, this may be the developer, the owner of the textile mill, one or more lessees of the site, or a pass through entity (not the individual members of the pass through entity).

13. Q. Why is the estimated rehabilitation expense amount reported in the Notice of Intent important?

A. The estimated rehabilitation expense amount reported in the Notice of Intent is important because it affects the amount of credit a taxpayer is eligible for depending on whether the taxpayer is seeking to take the income tax credit or property tax credit. (See Question 11 regarding the timing of the filing of the Notice of Intent and its effect on expenses eligible for the credit.)

Income Tax Credit. The income tax credit amount is equal to 25% of the actual rehabilitation expenses incurred for the rehabilitation of the textile mill site (even if actual rehabilitation expenses are below 80% of the estimated rehabilitation expense amount reported in the Notice of Intent.) However, if the actual

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rehabilitation expenses exceed 125% of the estimated rehabilitation expenses reported in the Notice of Intent, then the credit is capped at 25% of 125% of the estimated rehabilitation expense amount.

Property Tax Credit. The property tax credit is equal to 25% of the actual rehabilitation expenses incurred for the rehabilitation of the textile mill site times the local taxing entity ratio of each local taxing entity that has consented to the credit if the actual rehabilitation expenses are between 80% and 125% of the estimated rehabilitation expense amount reported in the Notice of Intent. If the actual rehabilitation expenses exceed 125% of the estimated rehabilitation expenses reported, then the credit is based on 25% of 125% of the estimated rehabilitation expense amount. If the actual rehabilitation expenses are below 80% of the estimated rehabilitation expense amount, then no credit is allowed. (See Part 6, "Property Tax Overview.")

14. Q. Can the Notice of Intent be amended to restate estimated expenses?

A. No. A Notice of Intent cannot be amended to revise the estimated rehabilitation expense amount to be incurred in connection with the rehabilitation of the textile mill site once submitted to the Department. Accordingly, the accuracy of the estimated expense amount listed in the Notice of Intent is important since the credit calculation is based on the amount of actual expenses compared to the estimated expense amount reported in the Notice of Intent (even if a taxpayer inadvertently includes other expenses in the Notice of Intent, such as personal property costs or acquisition costs). Note: See Effective Date on page 1 for the 90 day time period allowed to amend a Notice of Intent.

15. Q. Does a Notice of Intent have to be filed for each parcel if a textile mill site is divided into separate parcels?

A. Yes. If a taxpayer chooses to subdivide a textile mill site into separate parcels, then each parcel is deemed a textile mill site and a separate Notice of Intent must be filed for each parcel.

16. Q. Can the Notice of Intent be amended to restate the number of parcels?

A. No. A Notice of Intent cannot be amended to revise the number of parcels being rehabilitated. Note: See Effective Date on page 1 for the 90 day time period allowed to amend a Notice of Intent.

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17. Q. What are some guidelines to consider when filing the Notice of Intent to avoid any credit reduction or ineligibility?
- A. Guidelines to consider when filing the Notice of Intent include:
- a. The Notice of Intent must contain a specific dollar amount of estimated rehabilitation expense for the textile mill site. A range of expenses, such as “\$1 million to \$5 million,” is not acceptable.
 - b. The specific amount of estimated rehabilitation expenses reported in the Notice of Intent should include only those expenses that qualify as rehabilitation expenses under the Act (see Question 6 above).
 - c. Carefully consider and designate whether the textile mill site is to be renovated or demolished by the taxpayer as one or more parcels (i.e. sites).
 - d. File a separate Notice of Intent for each parcel of a textile mill site. The separate Notices of Intent for the income tax credit may be mailed together. In multiple parcel rehabilitations, it is possible for the taxpayer to select the income tax credit for one or more parcels and the property tax credit for other parcel(s). In such cases, taxpayers selecting the property tax credit should notify the Department that a Notice of Intent has been submitted to the county or municipality.
 - e. File one Notice of Intent for a textile mill site that is anticipated to be completed in phases. The one Notice of Intent should report a total of expenses for the entire rehabilitation; it should not report estimated costs by phases. The answer is different for a site divided into parcels.
 - f. A taxpayer may not file a “protective” Notice of Intent with both the Department and the county or municipality while deciding whether to take the income tax credit or the property tax credit.
 - g. A Notice of Intent provided to the Department does not represent approval of the taxpayer’s eligibility for the credit, approval of the estimated rehabilitation expenses, or approval of the credit amount.
 - h. The appropriate taxpayer(s) should file the Notice of Intent. The person who will be incurring the rehabilitation expenses and placing the site in service is the person who should file the Notice of Intent. For example, the taxpayer may be the developer, the building owner, the tenant with a ground lease, or the pass through

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entity (not the individual partners, shareholders or members) incurring the rehabilitation expenses.

- i. The Notice of Intent cannot be amended to restate estimated expenses to be incurred in connection with the rehabilitation of the textile mill site or to change the number of sites or parcels to be rehabilitated.

PART 3 - INCOME TAX CREDIT

18. Q. When is the income tax credit earned?

- A. The entire credit is earned in the taxable year the applicable phase or portion of the textile mill site is placed in service. The credit, however, is taken in equal installments over 5 years beginning with the tax year the applicable phase or portion of the textile mill site is placed in service. Code Section 12-65-30(C)(3).

19. Q. What is the definition of “placed in service”?

- A. Placed in service means the date upon which the textile mill site is completed and ready for its intended use. If the textile mill site is completed and ready for use in phases or portions, each phase or portion is considered to be placed in service when it is completed and ready for its intended use. Code Section 12-65-20(7).

20. Q. What form is used to compute and claim the income tax credit?

- A. Form TC-23, “Credit for Textiles Rehabilitation,” is used to compute and claim the credit. A separate Form TC-23 must be used for each textile mill site or each parcel deemed to be a textile mill site.

21. Q. What is the credit amount?

- A. The credit amount is equal to 25% of actual rehabilitation expenses incurred at the textile mill site (even if actual rehabilitation expenses are below 80% of the estimated rehabilitation expense amount reported in the Notice of Intent). However, if the actual expenses are more than 125% of the estimated expenses reported in the Notice of Intent, then the credit amount is equal to 25% of 125% of the estimated expenses incurred at the textile mill site. Code Section 12-65-30(C)(1) and (2).

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Rehabilitation Expenses	Income Tax Credit Amount⁹
Actual rehabilitation expenses are <u>125% or less</u> of the estimated expenses in the Notice of Intent	25% of actual rehabilitation expenses incurred at the textile mill site
Actual rehabilitation expenses are <u>more than 125%</u> of the estimated expenses in the Notice of Intent	25% of 125% of the estimated expenses incurred at the textile mill site

22. Q. Is the use of each annual credit installment limited?

A. Yes. The annual available credit installment is limited to 50% of the taxpayer's income tax, bank tax, corporate license fee, and/or insurance premium tax liability for the tax year. Code Section 12-65-30(C)(5).

For example, a corporation earns a \$500,000 credit in Year 1. The credit installment for Year 1 is \$100,000, and can be used to offset 50% of the corporation's income tax liability and 50% of the corporation's license fee liability. If the corporation has a \$140,000 income tax liability and a \$40,000 corporate license fee liability, the corporation may offset \$90,000 of its liability (\$70,000 income tax and \$20,000 corporate license fee). The unused \$10,000 credit is carried forward for 5 years.

23. Q. What are the provisions for the allocation of the credit if the taxpayer is a partnership or limited liability company taxed as a partnership?

A. If the taxpayer is a partnership or limited liability company taxed as a partnership, the credit may be passed through to the partners or members and may be allocated by the taxpayer among any of its partners or members on an annual basis, including, without limitation, an allocation of the entire credit to any partner or member who was a partner or member at any time during the year in which the credit is allocated. Code Section 12-65-30(C)(7).

Note: A partnership cannot allocate more than its current year credit installment amount to any partner in a single tax year.

24. Q. What is the carry forward period?

⁹ For textile mill sites acquired before January 1, 2008, see Question 26 for the income tax credit amount.

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- A. Any unused credit may be carried forward for 5 years. Code Section 12-65-30(C)(3).

The credit installment and the carry forward years are illustrated below.

Credit Installment	Year 1	Year 2	Year 3	Year 4	Year 5
Amount	20%	20%	20%	20%	20%
Carry forward of Installment	Years 2-6	Years 3-7	Years 4-8	Years 5-9	Years 6-10

PART 4 - SPECIAL PROVISIONS and TRANSITIONAL RULES

25. Q. What credit statute governs a textile mill site placed in service before January 1, 2008 and a textile mill site **placed in service** on or after January 1, 2008?
- A. The date a textile mill site is placed in service controls whether Title 12, Chapter 65 or the original provisions of Title 6, Chapter 32 apply. Code Section 12-65-50.
- a. For a textile mill site or portion thereof placed in service **after** December 31, 2007. The provisions of Title 12, Chapter 65 apply.
- b. For an entire textile mill site placed in service on or **before** December 31, 2007. The former provisions of Title 6, Chapter 32, in effect as of December 31, 2007, apply.
- c. For a textile mill site in which a portion, but not the entire textile mill site, was placed in service **on or before** December 31, 2007. The taxpayer may elect to:
- i. have the portion be governed by the former provisions of Title 6, Chapter 32, in effect as of December 31, 2007, as if the portion were an entire textile mill site; or
- ii. have the portion be governed by Title 12, Chapter 65 such that the portion must be deemed to be a phase of the textile mill site placed in service on a date subsequent to December 31, 2007, identified by the taxpayer.

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26. Q. What statutory differences exist in the definition of textile mill site and the Notice of Intent requirement, and the credit amount, for a textile mill site **acquired before** January 1, 2008 and a textile mill site **acquired on or after** January 1, 2008?

A. The statutory differences are summarized below.

a. Textile Mill Site Qualification – Based on Date of Acquisition

Textile Mill Site Acquired on or after January 1, 2008. Textile mill site is defined as the textile mill together with the land and other improvements on it which were used directly for textile manufacturing operations or ancillary uses. However, the area of the site is limited to the land located within the boundaries where the textile manufacturing, dyeing, or finishing facility structure is located and does not include land located outside the boundaries of the structure or devoted to ancillary uses. Code Sections 12-65-20(4) and 12-65-35.

Textile Mill Site Acquired before January 1, 2008. Textile mill site includes the textile mill structure, together with all land and improvements which were used directly for textile manufacturing operations or ancillary uses, or were located on the same parcel within 1000 feet of any textile mill structure or ancillary uses. Code Section 12-65-20(4).

b. Notice of Intent to Rehabilitate Requirement – Based on Date of Acquisition

Textile Mill Site Acquired on or after January 1, 2008. The taxpayer rehabilitating the textile mill site and placing it in service is required to file a Notice of Intent with the Department for the income tax credit. Code Sections 12-65-20(9) and 12-65-30(C)(2).

Textile Mill Site Acquired before January 1, 2008. A Notice of Intent is not required to be filed with the Department for the income tax credit. Code Sections 12-65-20(9) and 12-65-30(C)(2).

c. Income Tax Credit Amount – Based on Date of Acquisition

Textile Mill Site Acquired on or after January 1, 2008. See Question 21.

Textile Mill Site Acquired before January 1, 2008. The credit amount is 25% of actual rehabilitation expenses incurred for that site. Since the taxpayer is not

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required to file a Notice of Intent with the Department for that site, the credit is not maximized at 25% of 125% of the estimated expenses. Code Section 12-65-30(C)(2).

27. Q. Does the Act contain a repeal date of the credit?

A. No.

28. Q. Does Title 6, Chapter 31 apply to the credit?

A. The provisions of Title 6, Chapter 31 (“South Carolina Local Government Development Agreement Act”) apply to this credit, however, Code Section 6-31-40, (“Developed Property must Contain Certain Number of Acres of Highland”), does not apply. Code Section 12-65-40.

PART 5- TRANSFER of CREDIT and NOTIFICATION to the DEPARTMENT

29. Q. Can a taxpayer transfer the credit earned if he sells the textile mill site, or any phase or portion of the textile mill site that has been placed in service?

A. Yes. If a taxpayer has earned the credit and sells the textile mill site, or any phase or portion of the textile mill site, the taxpayer may transfer all or part of the remaining credit associated with the rehabilitation expenses incurred with respect to that phase or portion of the site to the purchaser of the applicable portion of the textile mill site. Code Section 12-65-30(C)(6). Note: The answer is different if the textile mill site is sold prior to the site being placed in service. In such instance, no credit has been earned and no future credit can be earned on the site. See Question 18 for a discussion of when the income tax credit is earned.

30. Q. Can a taxpayer that leases the textile mill site, or part of the site, transfer any remaining credit to the lessee of the site?

A. Yes. If the taxpayer that leases the textile mill site, or part of the site, has earned the credit, then the taxpayer may transfer any applicable remaining credit associated with the rehabilitation expenses incurred with respect to that part of the site to the lessee of the site. Code Section 12-65-30(C)(6).

31. Q. Can an earned credit be transferred more than one time?

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- A. Yes, provided the transfer of the earned credit is to a new owner or lessee of the textile mill site, or part thereof. Unused credit carryforwards may not be transferred. The Act does not contain any other transfer provision. The credit by itself cannot be bought or sold. Note: If the textile mill site, or phase or portion of the site, has not been placed in service, a credit has not been earned. See Questions 18 and 19 for a discussion of when the income tax credit is earned.

32. Q. When and how does a transferor notify the Department of a credit transfer?

- A. The transferor must notify the Department in writing at least 30 days before the transfer. The request will be deemed approved two weeks after the transferor has submitted all information requested below in a complete form and the transfer is carried out consistently with the information submitted in the request. Failure of the transferor to notify the Department of the transfer results in disallowance of the transferred credit until the transferor complies. See Question 38 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 or the proposed pledge or collateral assignment of any future credit to be earned to a lender as collateral for the project loan. If the lender later takes possession of the property after the credit is earned, then a transfer has taken place and notification to the Department is required.

33. Q. What form is used to claim a transferred credit?

- A. The transferee claims a transferred credit on Form TC-23, "Credit for Textiles Rehabilitation," by completing applicable portions of the form.

34. Q. When can a credit be transferred?

- A. A credit can be transferred once the taxpayer rehabilitating the textile mill site has earned the credit (*i.e.*, after placing the site or phase 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.

35. Q. What credit amount may the transferee claim?

- A. The original credit is earned in the year the textile mill site is placed in service, but is claimed over a 5 year period in equal installments. As such, the transfer may be for any applicable remaining credit associated with the rehabilitation expenses for

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the site. For example, if the original taxpayer sells the site in Year 3, the taxpayer may transfer the credit installments for Years 3, 4 and 5.

Any credit carry forward resulting from the installments for Years 1 and 2 remain with the original taxpayer and may not be transferred. Code Sections 12-65-30(C)(3) and (6).

36. Q. Can the transferee claim the entire credit in the year of transfer?

A. A taxpayer to whom a credit has been transferred may only claim that year's credit installment. Furthermore, that installment is limited in use to 50% of the transferee's income tax liability (e.g., the entity's, partner's, shareholder's, or member's income tax liability or married couple's income tax liability.) Code Section 12-65-30(C)(5).

37. Q. What is the credit carry forward period for a transferred credit?

A. Each annual installment of the credit transferred may be carried forward for 5 years. A transfer does not extend the time period a credit can be used. Code Section 12-65-30(C)(3).

38. Q. How does a transferor notify the Department of a transfer of all or a portion of the credit?

A. The transferor must send a written "notice of transfer" to the Department containing the following information:

- a. The complete name, address, telephone number and the taxpayer identification number of the transferor of the credit;
- b. The complete name, address, telephone number and taxpayer identification number of each transferee of the credit;
- c. The complete address and tax map number of the textile mill site;
- d. The total amount of credit currently available to the transferor (*i.e.* the total amount of credit less any credits used or carried forward by the transferor in the current or prior tax years);
- e. The date the original credit was earned (the date the site was placed in service) and the amount of each credit installment;

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- f. The date the transfer of the credit will be made;
- g. The amount of the credit to be transferred;
- h. The transferor must provide a waiver of the right to claim that portion of the credit being transferred;
- i. The transferor's remaining credit balance after the transfer;
- j. The consideration paid by the transferee, if any; and
- k. Any other information requested by the Department.

The written notice should be mailed to:

Textiles Credit Transfer Notice
Research and Forms Development
South Carolina Department of Revenue
Columbia, SC 29214-0019

Code Section 12-65-30(C)(6)(b).

PART 6 - PROPERTY TAX CREDIT OVERVIEW

39. Q. What are the requirements to file a Notice of Intent with the municipality or county?

A. The taxpayer must file a Notice of Intent with the municipality, or the county if the textile mill site is located in an unincorporated area, where the textile mill site is located before incurring its first rehabilitation expenses at the building site. Rehabilitation expenses incurred before the Notice of Intent is provided do not qualify. Code Section 12-65-30(B)(1).

40. Q. What is the property tax credit amount?

A. The amount of the property tax credit depends upon the amount of actual rehabilitation expenses compared to the estimated rehabilitation expenses reported in the Notice of Intent and is summarized below. Code Section 12-65-30(3).

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Rehabilitation Expenses	Credit Amount
If the actual expenses incurred in rehabilitating the textile mill site are between 80% and 125% of the estimated expenses in the Notice of Intent	25% of the actual rehabilitation expenses incurred at the textile mill site x the local taxing entity ratio ¹⁰ of each local taxing entity that has consented to the credit
If the actual expenses are more than 125% of the estimated expenses in the Notice of Intent	25% of 125% of the estimated expenses incurred at the building site x the local taxing entity ratio of each local taxing entity that has consented to the credit
Actual expenses under 80% of estimated rehabilitation expenses	No credit

The credit may be taken against up to 75% of the real property taxes due on the textile mill site each year for up to 8 years. Code Section 12-65-30(B)(3)(a).

PART 7 - EXAMPLES and ADDITIONAL GUIDANCE

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

A. Demolish Textile Mill and New Construction by Same Taxpayer. A taxpayer demolishes (completely destroys) an abandoned textile mill and constructs a new building meeting all the Act requirements. The taxpayer is eligible for the credit.

B. Demolish Textile Mill and New Construction by Different Owners. A developer purchases an abandoned textile mill and demolishes it. The developer sells the land to a business owner who will construct a new building on the land. The developer has not rehabilitated the site and is not eligible for the credit. The business owner purchased vacant land and not an abandoned textile mill and also is not eligible for the credit.

C. Textile Mill Site – Condition of Site. An abandoned textile mill that has fallen in but remains on the ground meets the definition of textile mill. In contrast, an abandoned textile mill that has been cleared except for the concrete foundation at the time of purchase does not meet the definition of textile mill.

¹⁰The local taxing entity ratio is set as of the time the Notice of Intent is filed and remains set for the entire period the credit may be claimed by the taxpayer. Code Section 12-65-30(B)(3)(b).

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D. Property Sold After Being Completed. A developer rehabilitates an abandoned textile mill and meets all the Act requirements. The rehabilitated building is recorded as “inventory” on his books (*i.e.*, the developer has completed rehabilitating the building and it is ready to be held for sale or lease.) He sells the building to a retailer. Pursuant to Code Section 12-65-20(7), the developer is deemed to have placed the textile mill site in service as defined in the Act, and is eligible for the income tax credit; he also may transfer the credit to the retail purchaser.

E. Property Sold Before Being Completed. A limited liability company purchases and rehabilitates a textile mill and meets all the Act requirements. The textile mill is sold to another investor during the rehabilitation. The limited liability company did not complete the rehabilitation. Accordingly, no credit has been earned and the limited liability company does not have any credit to transfer to the new owners. When the new owners complete the rehabilitation and place the textile mill site in service, they are not eligible for a credit since the textile mill they purchased was not an abandoned textile mill under the Act.