State of South Carolina
Department of Revenue
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Website Address: http://www.sctax.org

SC REVENUE RULING #05-17

SUBJECT:	Job Tax Credit – New Small Business Provisions (Income Tax)
EFFECTIVE DATE:	Tax Years Beginning On or After January 1, 2006
SUPERSEDES:	All previous advisory opinions and any oral directives in conflict herewith.
REFERENCES:	S. C. Code Ann. Section 12-6-3360 (As Amended by Act No. 157 of 2005)
AUTHORITY:	S. C. Code Ann. Section 12-4-320 (Supp. 2000) S. C. Code Ann. Section 1-23-10(4) (Supp. 2000) SC Revenue Procedure #05-2
SCOPE:	The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

INTRODUCTION:

South Carolina Code Section 12-6-3360 provides a job tax credit against South Carolina income tax or insurance premium tax for a taxpayer creating new jobs in South Carolina. Sole proprietorships, partnerships, corporations, S corporations, and limited liability companies are eligible for the credit. During the 2005 legislative session, the job tax credit was expanded to make it available to most types of small businesses (*i.e.,* a business with 99 or fewer employees) who create and maintain a required minimum monthly average number of new, full time jobs by reducing the required monthly average increase of new, full time jobs from 10 jobs to 2 jobs for most types of qualifying businesses.

The purpose of this advisory opinion is to provide small businesses that may now be eligible for the credit for the first time a general overview of the credit requirements and examples of its computation.

Caveat: This advisory opinion is limited to the basic credit principles. The job tax credit statute rules and requirements can be complex. For additional guidance on more complex principles and exceptions to the general rules discussed in this advisory opinion, see Code Section 12-6-3360, the job tax credit statute, SC Revenue Ruling #99-5, a comprehensive question and answer advisory opinion regarding the credit as the statute existed after a substantial amendment in 1996, or consult your tax advisor.

CONTENTS OF ADVISORY OPINION:

For ease of reading, this question and answer document is divided into the following categories:

●**A. Qualifying Taxpayers** – A chart summarizing the small business types that may be eligible to qualify for the credit, and the monthly average job creation requirement in counties ranked as distressed, least developed, under developed, moderately developed, or developed.

●**B. Types of Qualifying New Jobs** – The credit applicability to new full time jobs, new part time jobs, transferred jobs, and leased employees.

●**C. Determining the Monthly Average** – The computation of the monthly average increase in full time employees used to determine if a taxpayer meets the minimum job creation requirements necessary to be eligible for the job tax credit. An example is provided to illustrate the computation of “monthly average” increase in full time jobs.

●**D. County Rankings** – The county designations used to determine the credit amount and the effect of future year changes in rankings on the credit.

●**E. Credit Amount** – The job tax credit “basic” credit amount, “additional” credit amounts, and “maximum” credit amount a taxpayer with 99 or fewer employees on the first or last day of it’s tax year may be eligible to claim depending on the county where the taxpayer is located, and the amount of “gross wages” paid to each employee.

●**F. 120% “Gross Wages” Rules** – The effect of paying at or above the 120% wage threshold or below the 120% wage threshold on the eligible credit amount, a definition of “gross wages,” and the annualized method to compute the 120% threshold for each full time or part time job at the end of the taxpayer’s tax year in which the job is created. Examples are provided.

●**G. Per Capita Income Requirements** – The publication of the county and State per capita amounts on the Department’s website, www.sctax.org, and the annual figures that must be used to determine if the 120% wage threshold for each job is met.

●**H. Determining and Claiming the Credit** – The tax years to claim the credit, the repeal of the credit for tax years beginning after June 9, 2010, the credit form to compute and claim the tax credit, and the 50% income tax limitations of the job tax credit.

●**I**. **Computing the Credit and Carryforwards –** The determination of the number of jobs used to compute the credit, fluctuations in the credit for additional jobs created or jobs not maintained, and the 15 year carryforward period.

●**Examples** – Example D is a complex calculation of the job tax credit for Year 1 and Year 2 of the credit showing the use of the 120% wage threshold to calculate the credit amount for full time and part time jobs and the average increase in employees eligible for the 100% credit amount and the 50% credit amount. Example E is a general example showing the calculation for the entire 5 year credit period.

A. <u>QUALIFYING TAXPAYERS</u>

Question 1 – Examples of Qualifying Taxpayers

Q. What types of small businesses with 99 or fewer employees may be eligible to qualify for the credit?

A. The following chart summarizes the types of small businesses that may be eligible to qualify for the new credit and the number of new, full time jobs that must be created by the business in a particular South Carolina county.

Qualifying Facility	**County Ranking**			**Monthly Average Job Creation Requirement****
	Distressed	**Least Developed**	**Under Developed, Moderately Developed, & Developed**	
Retail Facility (*e.g.*, a convenience store, restaurant)	X	X	N/A	2
Service Related Industry (*e.g.*, a seamstress, barber, lawn care service, daycare)	X	X	N/A	2
Manufacturing *	X	X	X	2
Processing*	X	X	X	2
Warehousing*	X	X	X	2
Distribution*	X	X	X	2
Research & Development*	X	X	X	2
Corporate Office*	X	X	X	2
Technology Intensive*	X	X	X	2
Tourism*	X	X	X	2, except 20 for a new hotel or motel
Qualifying Service Related Facility, including health care related facilities in NAICS Manual Section 62, subsectors 621 (ambulatory health care), 622 (hospitals), and 623 (residential care facilities.)* Note: Legal, accounting, investment services, and retail sales are <u>not</u> a qualifying service related facility.	X	X	N/A	2
	N/A	N/A	X	30-250 at a single location based on certain average cash compensation amounts

***See Question 2 for definitions of certain types of "facilities."**

****Note: For illustrative purposes only, the number of new, full time jobs required to be created is referred to as "2" throughout this advisory opinion. Exceptions to this general rule are noted for certain "tourism" and "qualifying service related facilities."**

Question 2 – Definitions of Types of Taxpayers

Q. Are the qualifying small business facilities listed in Question 1 defined?

A. Yes. The facilities marked with an asterisk in Question 1 are defined in Code Section 12-6-3360(M). Code Section 12-6-3360 and Regulation 117-750.1 defining the term “facility” can be found on the Department’s website at www.sctax.org.

Question 3 – A “Small Business” With 99 or Fewer Employees

Q. When does the taxpayer determine if it has 99 or fewer employees?

A. To qualify for the new provisions available for a small business, the taxpayer has the option to determine whether it has 99 or fewer employees at either the beginning or the end of its tax year in which the new, full time jobs are created. A taxpayer with 99 or fewer employees must create at least 2 new, full time jobs to qualify for the credit allowed under Code Section 12-6-3360(C)(2). Note: A taxpayer with 100 or more employees must create at least 10 new, full time jobs to qualify for the credit allowed under Code Section 12-6-3360(C)(1). (Note exceptions in Question 1 for certain tourism and qualifying service related facilities that must create a monthly average increase of 20 - 250 jobs.)

B. TYPES OF QUALIFYING NEW JOBS

Question 4 – Definitions of “Full Time” and “New Job”

Q. What is a qualifying new, full time job?

A. A “full time” job is one requiring a minimum of 35 hours of an employee’s time each week for the entire normal year of company operations. A “new job” is a job created in the State at the time a new facility or an expansion is initially staffed. See SC Revenue Ruling #05-5 for more information on the meaning of the term “expansion.”

Question 5 – Part Time Jobs

Q. Is a part time job a qualifying new job?

A. Two half time jobs requiring a minimum of 20 hours of each employee’s time a week qualify as one “full time” job. See SC Revenue Ruling #99-5, Question 10 and Examples D and E for additional information on computing the number of half time jobs and the monthly average.

Question 6 - Transferred Jobs:

Q. Do jobs transferred from another facility or related party qualify as new jobs?

A. A new job does not include a job created when an employee is shifted from an existing location in South Carolina to a new or expanded facility whether the job is transferred to or from another facility of the taxpayer or to or from a related party's facility. See SC Revenue Ruling #99-5, Question 8 for limited exceptions to this general rule.

Question 7 - Leased Employees:

Q. Do leased employees qualify as new jobs?

A. Leased employees or other employees of another company who are working for a qualifying taxpayer, such as a trucking company, do <u>not</u> qualify for the job tax credit. Only employees of the taxpayer qualify for the credit (*i.e.,* employees subject to withholding by the qualifying taxpayer.) If, however, the trucking company in this example subsequently hires full time employees who were previously leased or temporary employees at the business, then they are considered new employees eligible for the job tax credit, if all other statutory requirements are met.

C. <u>DETERMINING THE MONTHLY AVERAGE</u>

Question 8 – Monthly Average Number of New Jobs Required to Create

Q. How is the "monthly average" number of new jobs determined?

A. The recently amended statute requires that a monthly average increase of 2 jobs or more for the tax year be created and maintained in the applicable county for the small business to qualify for the credit. The credit is <u>not</u> earned when a total of 2 jobs are created by the end of a tax year or when a total of 2 jobs are created over several years. (Note exceptions in Question 1 for certain tourism and qualifying service related facilities that must create a monthly average increase of 20 - 250 jobs and to which the 2 job general rule does not apply.)

The periods to compute the monthly average are the months that correspond to the tax year of the taxpayer; a taxpayer may not choose any other 12 month period. Note: When computing the increase in full time employees each year, the taxpayer must round down to the lowest whole number of jobs.

Question 9 – Computing Monthly Average if Year 1 in Operation is Less Than 12 Months

Q. How is the monthly average number of new jobs computed if a taxpayer's first year in operation is not a full 12 months?

A. The taxpayer has the option of computing the monthly average in the first year of operation by either dividing the total number of employees for Year 1 on the job tax credit form by (a) 12 months or (b) the actual number of months in operation. See SC Revenue Ruling #99-5, Question 5 for more information.

Question 10 – Definition of "Prior Year" Monthly Average

Q. What is the base or "prior" year used to compute the average increase in full time employees?

A. The base year is the year preceding the first year a taxpayer creates the number of new jobs necessary to qualify for the job tax credit, regardless of whether that year was the first year of operation of the facility.

EXAMPLE A – Calculation of Monthly Average of Full Time Employees

This example illustrates the basic concept of "monthly average." It assumes that each taxpayer is a calendar year manufacturing facility with one location in South Carolina, pays all employees over 120% of the county or State average per capita income, and maintains all jobs in Year 2.

	Taxpayer 1 – New Business Started 1/1/06	Taxpayer 2 – New Business Started 5/15/06	Taxpayer 3 – Existing Business Started 7/1/05
MONTHS IN YEAR 1 (*e.g.*, 2006)	CUMULATIVE TOTAL OF EMPLOYEES*	CUMULATIVE TOTAL OF EMPLOYEES*	CUMULATIVE TOTAL OF EMPLOYEES*
January	1 (hired 1)	0	5
February	2 (hired1)	0	5
March	2	0	5
April	2	0	6 (hired 1)
May	2	2 (hired 2)	7 (hired 1)
June	2	3 (hired 1)	7
July	2	3	7
August	2	3	7
September	2	3	8 (hired 1)
October	2	5 (hired 2)	8
November	2	5	9 (hired 1)
December	2	5	9
*TOTAL EMPLOYEES (*i.e.*, cumulative total of full time employees in each county for each month (number of employees in January plus number in February, etc. It is not the number of new jobs created in each month.)	23	29	83
Divided by Months in Operation	12	8	12
Monthly Average of Full Time Employees	1.92	3.625	6.92
Less: Prior Year Monthly Average (*e.g.*, 2005)	0	0	5
AVERAGE INCREASE IN FULL TIME EMPLOYEES	1** (1.92 rounded down)	3** (3.625 rounded down)	1 ** (1.92 rounded down)
QUALIFY FOR CREDIT	No	Yes	No

**Note: The increase in new jobs is determined based on the Department's longstanding policy of rounding down to the lowest whole number.

D. COUNTY RANKINGS

Question 11 – Annual County Designations:

Q. How are the counties ranked?

A. Each of South Carolina's 46 counties are ranked annually based in part on per capita income and unemployment rate data received from the South Carolina Employment Security Commission and Budget and Control Board. The rankings published reflect the final county rankings for the year after making all adjustments to county designations required. The rankings are done in late December for the next tax year.

Question 12 – Annual County Ranking List:

Q. What ranking list should be used to calculate the credit?

A. Each January, the Department publishes an Information Letter listing the ranking of each county as "distressed," "least developed," "under developed," "moderately developed," or "developed" to use for calculating the credit amount for jobs created during that tax year. For example, the list published in January 2006 will contain the county rankings for new jobs created in tax years which begin in 2006. See the Department's website at www.sctax.org for the annual rankings.

Question 13 – County Ranking Changes in Year 2

Q. What credit amount is a taxpayer eligible to claim in Year 2 (the first year of claiming the credit on the tax return) if the county ranking changes from Year 1 (the year of new job creation)?

A. The credit is based on the county ranking at the time the new jobs are created in Year 1. The credit created in Year 1 that is claimed in Years 2 through 6 is not affected by any future reranking of the county in which the taxpayer is located for the jobs created in Year 1. See SC Revenue Ruling #99-5, Question 17 for additional information.

Question 14 – County Ranking Changes from Year 1 and Credit Amount for Additional New Jobs

Q. What credit amount is a taxpayer eligible to claim for additional new jobs created in Years 2 through 6 if the county designation changes from Year 1 (the year of the initial job increase)?

A. The credit amount for any number of additional new jobs created is based on the county designation for the year the additional new jobs are created. See SC Revenue Ruling #99-5, Question 18 for additional information.

E. CREDIT AMOUNT

Question 15 – 100% Credit Amount and 50% Credit Amount

Q. What is the “basic” credit amount?

A. In general, the “basic” credit amount is $750 to $8,000 per year depending on the county where the taxpayer is located, the number of new, full time jobs created and maintained, and the amount of gross wages paid to each new, full time employee.

The following chart illustrates the “basic” credit amount for a qualifying taxpayer creating 2 new, full time jobs paying at or above the 120% wage threshold or creating 2 new, full time jobs paying less than the 120% wage threshold, without regard to any “additional” amounts for which a taxpayer may be eligible. Note: See Question 19 for an exception to the credit amounts below for a taxpayer who creates the minimum of 2 new, full time jobs, but with one job paying at or above the 120% threshold and the other job paying below the 120% wage threshold.

County Designation (Location of Taxpayer with 99 or Fewer Employees on the First or Last Day of its Tax Year of Job Creation)	**Gross Wages Per Job Greater Than or Equal To (*i.e.*, ≥) 120% County or State Average Per Capita Income (*i.e.*, the 100% Credit Amount)**	**Gross Wages Per Job Less Than (*i.e.*, <) 120% County or State Average Per Capita Income (*i.e.*, the 50% Credit Amount)**
Distressed	$8,000	$4,000
Least Developed	$4,500	$2,250
Under Developed	$3,500	$1,750
Moderately Developed	$2,500	$1,250
Developed County	$1,500	$ 750

Question 16 - “Additional” Credit Amount

Q. What is the “additional” credit amount?

A. Certain small business taxpayers may also be entitled to job tax credit amounts in addition to the “basic” credit amounts listed above. These “additional” amounts are available to the following qualifying taxpayers:

1. A small business located in a multi-county industrial park may be allowed an additional $1,000 credit amount per year for 5 years for each new job created beginning in the taxable year following the creation of the job. Two or more counties determine if an area in the county is designated as a multi-county industrial park by entering into an agreement under Code Section 4-1-175. This determination is not made by the Department.

2. A small business that creates qualifying new, full time jobs on property where a response action has been completed pursuant to a nonresponsible party voluntary cleanup contract under Title 44, Chapter 56, Article 7 (the Brownfields Voluntary Cleanup Program) may be allowed an additional $1,000 credit amount per year for 5 years for each new job created beginning in the taxable year following the creation of the job. Taxpayers must have a certification of completion from the South Carolina Department of Health and Environmental Control.

3. A small business engaged primarily in manufacturing, warehousing, or distribution that uses South Carolina port facilities and increased base port cargo volume at these facilities by 5% over 2005 totals. See Code Section 12-6-3375 for the additional job tax credit amounts available.

Note: For simplicity, the examples used in this advisory opinion assume a taxpayer does not qualify for any "additional" credit amounts.

Question 17 – Maximum Credit Amount

Q. Is there a cap on the credit amount for each new job?

A. Yes. The maximum credit amount that may be claimed for any tax year for a single employee under the job tax credit statute and the "basic" part of the family independence credit under South Carolina Code §12-6-3470(A), is $5,500. The $5,500 limitation is not applicable to a taxpayer qualifying for the job tax credit in a "distressed" county.

Note: As discussed in Question 30, the job tax credit taken in one tax year may not exceed 50% of the taxpayer's income tax or insurance premium tax liability.

F. <u>120% "GROSS WAGES" RULES</u>

Question 18 – Definition of "Gross Wages"

Q. How is the "gross wage" amount per job determined for purposes of calculating the 120% county or State average per capita income requirement?

A. Gross wages are wages subject to withholding (*i.e.,* "net" wages after pre tax benefits, such as pretax medical, dental, disability, retirement, 401(k) contributions, pretax dependent care plan deduction, and pretax medical reimbursement plans deductions). An example illustrates how gross wages is used to determine if 120% of the county or State average per capita income requirement is met and whether the small business is eligible for the 100% credit amount or the 50% credit amount listed in Question 15.

For example, a new employee hired by a manufacturer in X County who is paid $20 per hour gross or $41,600 per year elects pretax family medical and dental coverage of $100 per week ($5,200 per year), a $5,000 annual pre tax medical reimbursement, a $5,000 pretax dependent care plan deduction, and a $4,000 401(k) contribution. This employee has “gross wages” subject to withholding of $22,400 for purposes of the per capita computation. For illustrative purposes, assume that as of December 31, 2006, X County’s average per capita income is $28,005 and is less than the State average per capita income; the $22,400 gross wage amount subject to withholding is not 120% or more of the county or State average per capita income, and the new job would be eligible for the 50% credit amount.

Question 19 – Determination of Credit Amount for a Full Time Job and a Part Time Job

Q. How does the payment of gross wages at or above the 120% threshold or below the 120% threshold affect the credit amount for each job?

A. The 120% threshold is determined for each job at the end of the taxpayer’s tax year in which the jobs are created (Year 1) based on data published by the Department. (See Section G below for more information on State and county per capita income amounts to use.) To determine the credit amount, a monthly average number of full time jobs and full time equivalents with gross wages at or above 120% of the per capita income threshold amount is determined and then a monthly average number of full time jobs and full time equivalents with gross wages of less than 120% of the per capita income threshold amount is determined. This separate calculation is needed since the “monthly average” number of new jobs created is most often not the same as the “actual” number of new jobs created.

The following general examples explain the affect on the credit amount based on the gross wages paid to each employee. See Example D for a more detailed example.

Note: A minimum number of 2 new, full time jobs must be created paying gross wages at or above 120% of the county or State per capita income to receive the 100% credit amount. See Question 1 for exceptions for certain tourism facilities and qualifying service related facilities. (*See Example B4.)

Example B - Full Time Jobs

Simplified examples illustrate the affect of the 120% wage threshold on the credit amount for each new, full time job. These examples assume the taxpayers illustrated below meet all the statutory requirements of the credit in 2006, are located in a distressed county, and hire 3 new, full time employees in Example 1 on January 1, 2006, and 2 new, full time employees on January 1, 2006, in Examples 2, 3, and 4, and all employees are maintained in Years 2 - 6.

	Example 1	**Example 2**	**Example 3**	**Example 4**
1. Monthly average increase of each new, full time job paying gross wages ≥ 120%	2	2	0	1 * (must move to below 120% wage category)
2. 100% credit amount for each new, full time job paying gross wages ≥ 120%	2 x $8,000 = $16,000	2 x $8,000 = $16,000	N/A	0* x $8,000 = $0
3. Monthly average increase of each new, full time job paying gross wages < 120%	1	0	2	1 *
4. 50% credit amount for each new, full time job paying gross wages < 120%	1 x $4,000 = $4,000	N/A	2 x $4,000 = $8,000	2* x $4,000 = $8,000 *(Line 1 + Line 3)
5. Total Credit for Monthly Average Increase of All New, Full Time Jobs (Line 2 + Line 4)	$20,000	$16,000	$8,000	$8,000

Example 1 and Example 2 illustrate that the minimum 2 new job threshold is met in the "at or above 120%" wage threshold, thereby making these 2 new jobs eligible for the 100% credit amount. Example 1 also illustrates that the wage threshold for each additional job is looked at separately and the 1 additional job in this example is eligible for the 50% credit amount since it is paid at the "below 120%" wage threshold.

Example 3 illustrates that the minimum 2 new job threshold is met in the "below 120%" wage threshold, thereby making these 2 new jobs eligible for the 50% credit amount.

Example 4 illustrates that a small business creating a monthly average of 2 new, full time jobs paying one job in the "at or above" 120% threshold and the other job in the "below" 120% threshold qualifies only for the 50% credit amount for these 2 jobs since the 2 job minimum is not met in the same wage threshold category. If these 2 jobs are maintained, any additional jobs created will earn either the 50% credit amount or the 100% credit amount, depending on the wage threshold of each additional job.

Example C - Part Time Jobs

Simplified examples illustrate the affect of the 120% threshold on the credit amount for part time jobs. This example assumes the taxpayers illustrated below meet all the statutory requirements of the credit, hire all part time employees in a distressed county on January 1, 2006, and maintain the jobs. Reminder: Two half time jobs requiring at least 20 hours of each employee's time a week qualify as one "full time" job.

	Example 1	**Example 2**	**Example 3**	**Example 4**	**Example 5**
1. Monthly average increase of each part time new job paying gross wages ≥ 120%	2 part time (1 full time equivalent – must move to "below" 120% wage category)	5 part time (2 full time equivalents, *i.e.,* 2.5 rounded down to the lowest whole number – the .5 job is moved down and added to the "below" 120% wage category)	5 part time (2 full time equivalents, *i.e.,* 2.5 rounded down – the .5 job is moved down and added to the "below" 120% wage category)*	3 part time (1 full time equivalent – *i.e.,* 1.5 rounded) down	0
2. 100% credit amount for each new "full time" job paying gross wages ≥ 120%	$0 x $8,000 = $0	2 x $8,000 = $16,000	2 x $8,000 = $16,000	0	0
3. Monthly average increase of each part time new job paying gross wages < 120%	2 part time (1 full time equivalent)	2 part time (1 full time equivalent + .5 equivalent rounded from above = 1.5, rounded to 1)	3 part time (1.5 full time equivalents + .5 equivalent rounded from above = 2)*	0	4 part time (2 full time equivalents)
4. 50% credit amount for each new "full time" job paying gross wages < 120%	2 x $4,000 = $8,000	1 x $4,000 = $4,000	*2 x $4,000 = $8,000	0	2 x $4,000 $8,000
5. Total Credit for Monthly Average Increase of All New, "Full Time Equivalent" Jobs (Line 2 + Line 4)	$8,000	$20,000	$24,000	0	$8,000

Example 1 illustrates hiring 1 “full time equivalent” (*i.e.,* 2 part time jobs) paying in the “at or above” 120% threshold and hiring 1 “full time equivalent” (*i.e.,* 2 part time jobs) paying in the “below” 120% threshold qualifies only for the 50% credit amount for these 2 “full time equivalent” jobs since the 2 job minimum is not met in the same wage threshold category.

Example 2 illustrates that the minimum 2 new, full time job threshold is met in the “at or above” 120% wage threshold, thereby making these 2 new, full time equivalent jobs eligible for the 100% credit amount. It further illustrates that the wage threshold for each additional job is looked at separately and the 1 additional full time equivalent job in this example is eligible for the 50% credit amount since it is paid at the “below” 120% wage threshold. Note the rounding down to the lowest whole number and any remaining fraction moved to the “below” 120% wage category. The .5 job in the “at or above” 120% amount is added to the number of jobs in the 50% credit amount, however it does not affect the monthly average since the 1 full time equivalent in the “below” 120% category plus the .5 job moved down from the “at or above” 120% wage category is 1.5 and rounds down to 1 full time equivalent job.

*Example 3 illustrates that in computing the monthly average increase (see Example A), the 8 part time equivalent jobs are calculated as 4 “full time equivalents,” after rounding. After classifying each job as “at or above” the 120% wage threshold or “below” the 120% threshold, then any remaining fraction of a job is moved down to the monthly average computation for the 50% credit amount and rounded to the lowest whole number (*i.e.,* the .5 job in the “at or above” 120% amount is added to the number of jobs in the 50% credit amount, thereby increasing the number of jobs in the monthly average computation for the “below” 120% category from 1.5 to 2 full time equivalents.)

Example 4 illustrates that the 3 part time jobs do not qualify for the credit since the minimum 2 new, full time job equivalents are not created.

Example 5 illustrates that the minimum 2 new, full time job equivalent threshold is met in the “below” 120% wage threshold, thereby making these 2 new full time equivalent jobs eligible for the 50% credit amount.

Question 20 – Gross Wages of 120% County or State Average Per Capita Income

Q. How is the 120% threshold calculated?

A. To determine if the 120% threshold is met, gross wages paid for each new job created in the tax year is annualized. For example, assume a new job created July 1, 2006 pays a gross wage of $20,000 for the 6 month period July 1, 2006 through December 31, 2006. The annualized salary is $40,000 (*i.e.,* $20,000 ÷ 6 x 12).

The threshold for each full time job is computed using the following formula:

$$\frac{\text{Gross wages}}{\text{Months worked in tax year}} \times 12 \text{ months}$$

Question 21 – Calculation of Gross Wages of 120% for Part Time Jobs

Q. How is the 120% threshold for 2 half (part) time jobs calculated?

A. Each part time job is converted to a "full time equivalent" to determine if the threshold is met. For example, one full time and two part time jobs are created by a calendar year taxpayer and maintained the following year. The threshold for each part time job is computed using the following formula:

$$\frac{\text{Gross wages}}{\text{Months worked in tax year}} \times 12 \text{ months} \times 40 \text{ hours per full time work week} \div \text{part time hours worked per week}$$

To determine if the 120% threshold is met, each part time job is converted into a full time equivalent job. In this example, the computations for each job are:

Part time Job 1. This job is created on March 1, 2006 to work 20 hours per week at gross wages of $25,000 for the 10 month period March 1, 2006 through December 31, 2006. The full time equivalent of this part time job is $60,000 annualized for a full time equivalent (*i.e.,* $25,000 ÷ 10 x 12 x 40 ÷ 20.) Part time job 1 meets the 120% threshold. If eligible, it would qualify for the 100% credit amount.*

Part time Job 2. This job is created on June 1, 2006 to work 25 hours per week at gross wages of $5,000 for the 7 month period June 1, 2006 through December 31, 2006. The full time equivalent of this part time job is $13,714 annualized for a full time equivalent (*i.e.,* $5,000 ÷ 7 x 12 x 40 ÷ 25.) Part time job 2 does <u>not</u> meet the 120% threshold. If eligible, it would qualify for the 50% credit amount.

*Note: Assuming the taxpayer created 1.5 full time jobs in the "at or above" 120% wage category, and .5 full time equivalents in the "below" 120% category, then the taxpayer would qualify for the 50% credit amount for the 2 new jobs, since the minimum threshold of 2 new jobs was not met in the same wage threshold category.

Question 22 – When to Compute 120% Threshold

Q. When is the 120% requirement calculated?

A. The 120% threshold is calculated at the end of the tax year in which the job is created.

G. PER CAPITA INCOME REQUIREMENTS

Question 23 - County Per Capita Income

Q. When are the County Per Capita Income Amounts Published?

A. The per capita income for each county is received annually from the South Carolina Board of Economic Advisors, usually in May or June. Upon receipt, the Department publishes an Information Letter listing the most recent per capita income data for each county. This information can be obtained from the Department's website at www.sctax.org.

Question 24 - State Per Capita Income

Q. When are the State Per Capita Income Amounts Published?

A. The per capita income for the State is received twice each year from the Board of Economic Advisors, usually in May and October. Upon receipt, the Department publishes an Information Letter listing the most recent State per capita income data. This information can be obtained from the Department's website at www.sctax.org.

Question 25 – Per Capita Figures to Use in Computing 120% Threshold

Q. What annual figures should be used to determine the 120% threshold?

A. The most recent figures published by the Department as of the end of the taxpayer's tax year in which the new jobs are created must be used. For example, a calendar year small business eligible for the newly enacted job tax credit in 2006 will use the county per capita income published in the summer of 2006 and the State per capita income published in the fall of 2006 to determine if the 120% threshold is met for each job created in its 2006 tax year.

H. <u>DETERMINING AND CLAIMING THE CREDIT</u>

Question 26 – Years Credit is Claimed

Q. When is the newly enacted job tax credit available to a small business?

A. The credit is available to qualifying small businesses in tax years which begin on or after January 1, 2006. Except for the repeal of the credit, as discussed in Question 27, the general rule would allow the job tax credit to be taken each year for 5 years, if the jobs are maintained each year. Year 1 is the year the jobs are created; the credit is not claimed in Year 1. The credit is claimed in Years 2 through 6 on the taxpayer's income tax return.

For example, a calendar year sole proprietor creating qualifying new jobs in 2006 (Year 1) generates a credit available for first use on the 2007 tax return (Year 2), and thereafter on the 2008 tax return (Year 3), the 2009 tax return (Year 4), the 2010 tax return (Year 5), and the 2011 tax return (Year 6). If the jobs are maintained, the credit is claimed on the qualifying taxpayer's tax return filed on or before April 15, 2008, 2009, 2010, 2011, and 2012.

Caution: An exception to the general rule exists due to the repeal of the credit. See Question 27 and Example E concerning the repeal of this newly enacted credit and its affect on Year 6 of the 5 year credit period and on additional jobs created during these years.

Question 27 – Repeal of Credit for Small Business

Q. When is this newly enacted job tax credit for small businesses repealed?

A. Act No. 157 of 2005, Section 5 provides that this incentive for small businesses discussed in this advisory opinion is repealed for tax years beginning after June 9, 2010.

The practical effect of this repeal is:

1. The job tax credit as amended by Act No. 157 is repealed for tax years beginning after June 9, 2010. Accordingly, the job tax credit for new and additional jobs cannot be claimed by a calendar year taxpayer for tax years beginning on or after January 1, 2011, and cannot be claimed for a fiscal year taxpayer for tax years beginning after June 9, 2010.

   For example, a calendar year qualifying sole proprietor creating new jobs in 2006 and maintaining them will only be able to claim Years 2 (claimed on the 2007 tax return filed on or before April 15, 2008) through 5 (claimed on the 2010 tax return filed on or before April 15, 2011) of the job tax credit period (*i.e.,* claim the credit for a maximum 4 year credit period) since the credit is repealed before Year 6 of the credit period (*i.e.,* the 5^{th} credit year for a job created in 2006 or the year claimed on the 2011 tax return filed on or before April 15, 2012).

2. The repeal does not affect the carryforward of any remaining portion of the credit previously claimed but unused (*i.e.,* only unused credits that could not be claimed because of income tax limitations may be claimed after the repeal date of this job tax credit incentive.)

Question 28 – Credit Form to File

Q. What form is used by a small business to compute and claim the newly enacted job tax credit?

A. South Carolina Form TC-4SB is used. This form is currently being designed and will be available on the Department's website at www.sctax.org by January 2007. Computer designed forms or spreadsheets are acceptable in lieu of Form TC-4SB, providing all information on Form TC-4SB is reflected on the substitute form. The form is attached to the taxpayer's tax return. (Note: The existing Form TC-4 will continue to be used only by taxpayers creating 10 new jobs under Code Section 12-6-3360(C)(1)).

Question 29 – Claiming Credit When $0 Tax Liability

Q. If a taxpayer has a loss or no South Carolina taxable income for the year, should the credit be computed and a South Carolina return filed?

A Yes, the taxpayer is required to file an income tax return even if there is no South Carolina tax liability. Form TC-4SB should be completed and attached to each year's tax return, even if there is no South Carolina taxable income. This allows the taxpayer to claim the credit and establish a credit carryforward.

Question 30 – Income Tax Limitations of Credit:

Q. How much of the credit may be claimed per year?

A. The job tax credit taken in one tax year may not exceed 50% of the taxpayer's income tax or insurance premium tax liability.

The credit generated by a pass through entity is limited to 50% of the partner's, shareholder's, or member's income tax liability or married couple's income tax liability. An S corporation must first use the credit against its own income tax liability, if any, before passing the credit through to its shareholders. The amount of credit allowed a shareholder, partner, or member of a limited liability company is equal to the shareholder's percentage of stock ownership, partner's interest in the partnership, or member's interest in the limited liability company for the taxable year multiplied by the amount of the credit the entity would have been entitled to if it was taxed as a corporation. Once the credit is passed through by the entity generating it, the credit may not later be used by the entity.

I. COMPUTING THE CREDIT AND CARRYOVERS

Question 31 – Determining the Number of New Jobs

Q. How is the number of new, full time jobs determined?

A. The number of new and additional new, full time jobs is determined by comparing the monthly average number of full time employees subject to South Carolina income tax withholding in the applicable county for the taxable year with the monthly average for the prior taxable year.

The months to reflect on Form TC-4SB are the months of the business' tax year. Further, an appropriate and justifiable day in the month to determine the monthly number of new, full time employees, such as the last day of each month, must be used. Once a day of the month is chosen, it must be used for all future months and years.

Question 32 – Credit for Additional New Jobs

Q. Are additional jobs created during the 5 year credit period also eligible for the credit?

A. The credit is adjusted for job increases or job decreases and is allowed for the job level maintained in the taxable year that the credit is claimed. The general rule would allow a business to take credit for additional new, full time jobs added and maintained during the 5 year credit period (Years 2 – 6), even if only 1 additional job is added. This additional credit would be claimed for 5 years beginning in the year following the year in which the qualifying additional new, full time jobs are created. The credit amount for any number of additional new, full time jobs created is based on the county designation for the year the additional new, full time jobs are created. See SC Revenue Ruling #99-5, Question 27.

Caution: An exception to the general rule exists due to the repeal of the credit. See Questions 27 above concerning the repeal of the credit and its effect on additional jobs created.

Question 33 – Credit Reduced if Employment Falls

Q. How is the credit adjusted for job decreases?

A. No credit is allowed for the year or any subsequent year in which the net employment falls below the minimum level. If the job level for which a credit was claimed decreases, the 5 year period for eligibility for the credit continues to run. The general rule would allow that a decrease of jobs that does not fall below the minimum required will result in the credit being allowed in Years 2 through 6 for those jobs that are maintained.

Caution: An exception to the general rule exists due to the repeal of the credit. See Questions 27 above concerning the repeal of the credit and its effect on the 5 year credit period.

Question 34 – Carryforward Period

Q. What is the carry forward period?

A. Any unused credit previously claimed but unused can be carried forward <u>15 years</u> from the taxable year in which it is earned.

Example D – Credit Calculation for Year 1 and Year 2

This example is provided to illustrate the complexities of computing the job tax credit for Year 1 and Year 2 for a small business in a developed county that creates full time and part time jobs in the "at or above" 120% threshold and full time and part time jobs in the "below" 120% threshold. This example assumes that all jobs are maintained. The credit computation must be done in 3 steps.

Step 1 – Determine the number of full time and "full time equivalent" employees paid gross wages in the "at or above" 120% wage threshold for each month during the tax year.

- Compute the monthly average increase for the employees paid gross wages in the "at or above" 120% threshold, using rounding methods discussed in Question 19 (*i.e.,* fractions of jobs remaining in the "at or above" 120% wage threshold category due to rounding down to the lowest whole number are moved down to the monthly average computation for the "below" 120% threshold.)

- Determine the credit amount for employees eligible for the 100% credit amount.

Step 2 – Determine the number of full time and "full time equivalent" employees paid gross wages in the "below" 120% threshold.

- Compute the monthly average increase for the employees paid gross wages in the "below" 120% threshold, using rounding methods discussed in Question 19. If applicable, include any fractions of jobs remaining from the "at or above" 120% threshold amount moved to the monthly average increase of jobs created in the "below" 120% category due to rounding fractions of jobs from Step 1.

- Determine the credit amount for employees eligible for the 50% credit amount.

Step 3 – Compute the total eligible amount of the job tax credit for the year.

* In order to properly determine the monthly average increase in a wage category, a taxpayer who has jobs in the "prior year" must categorize each job in the "at or above" 120% wage threshold or in the "below" 120% wage threshold in Steps 1 and 2 below. This is done using the State and county per capita income figures published as of the end of the taxpayer's "prior year" tax year (*i.e.,* 2005 in this example.) For simplicity, this example does not illustrate this principle.

Step 1 – Computation of full time and part time jobs paying gross wages <u>at or above the 120%</u> threshold.

Months of Tax Year (*e.g.*, 2006)	Prior Year* (*e.g.*, 2005)	Total Full Time Jobs In Year 1	Total "Full Time Equivalents" in Year 1	Year 1 Total Jobs	Year 2 Total Jobs
January	0	0	1.5	1.5	8
February	0	6	1.5	7.5	8
March	0	6	1.5	7.5	8
April	0	6	2	8	8
May	0	6	2	8	8
June	0	6	2	8	8
July	0	6	2	8	8
August	0	6	2	8	8
September	0	6	2	8	8
October	0	6	2	8	8
November	0	6	2	8	8
December	0	6	2	8	8
Cumulative Total of Full Time Jobs ≥ 120% for Each Month		66	22.5	88.5	96
Divided by Months in Operation				12	12
Monthly Average Increase in New Jobs ≥ 120%				7.375	8
Less: Prior Year Monthly Average				0	7
Monthly Average Increase – Rounded Down to Lowest Whole Number (Fraction moves down to Step 2)				7	1
Developed County Credit Amount				$1,500	$1,500
100% Credit Amount (See Question 27 for credit repeal in Year 6)				**$10,500** (7 x $1,500) Claimed in Years 2 – 5 if jobs are maintained	**$1,500** (1 x $1,500) Claimed in Years 3 – 5 if job is maintained

Step 2 – Computation of full time and part time jobs paying gross wages <u>below the 120%</u> threshold.

Months of Tax Year (*e.g.,* 2006)	Prior Year* (*e.g.,* 2005)	Total Full Time Jobs in Year 1	Total "Full Time Equivalents" in Year 1	Total Jobs in Year 1	Total Jobs in Year 2
January	0	0	0	0	4.5
February	0	0	0	0	4.5
March	0	0	1.5	1.5	4.5
April	0	0	1.5	1.5	4.5
May	0	0	1.5	1.5	4.5
June	0	2	1.5	3.5	4.5
July	0	2	1.5	3.5	4.5
August	0	3	1.5	4.5	4.5
September	0	3	1.5	4.5	4.5
October	0	3	1.5	4.5	4.5
November	0	3	1.5	4.5	4.5
December	0	3	1.5	4.5	4.5
Cumulative Total of Full Time Jobs ≤ 120% for Each Month		19	15	34	54
Divided by Months in Operation				12	12
Monthly Average Increase in New Jobs ≤ 120%				2.833	4.5
Rounded Fraction from Step 1, if applicable				0.375	N/A
Less: Prior Year Monthly Average				0	3
Monthly Average Increase – Rounded Down to Lowest Whole Number				3 (2.833 + .375 = 3.208)	1 (*i.e.,*1.5 rounded down)
Developed County Credit Amount				$750	$750
50% Credit Amount (See Question 27 for credit repeal in Year 6				**$2,250** (3 x $750) Claimed in Years 2 - 5 if jobs are maintained	**$750** (1 x $750) Claimed in Year 3 – 5 if jobs are maintained

Step 3 – Computation of Total Credit for All New Jobs Created in Year 1 and 2

	Claimed in Year 2	**Claimed in Year 3**
Step 1 – 100% Credit	$10,500	$12,000
Step 2 – 50% Credit	$ 2,250	$ 3,000
Total Job Tax Credit	**$12,750**	**$15,000**

Example E – Calculation of Credit for 5 Year Credit Period For New Jobs Created in 2006 ALL With Gross Wages ≥ 120% Threshold

This example is provided below to explain the job tax credit calculation for the entire 5 year credit period (*i.e.*, Years 2 through 6 – 2007 - 2011.) This is an oversimplified example; it assumes that the corporate taxpayer is a retail facility with one store in a distressed county, has a calendar year, initially staffed the new facility in May 2006, and hired all full time employees at gross wages over the 120% threshold.

STEP 1: COMPUTATION OF AVERAGE INCREASE IN FULL TIME EMPLOYEES OF EMPLOYEES PAID GROSS WAGES ≥ 120% THRESHOLD							
	Prior Year (2005)	**Year 1 (2006)**	**Year 2 (2007)**	**Year 3 (2008)**	**Year 4 (2009)**	**Year 5 (2010)**	**Year 6 (2011)****
1. Cumulative Total of Full Time Employees in Each County for Each Month. (*e.g.*, See Taxpayer 2 in Example A on page 8)	0	29	60	60	58	72	n/a
2. Divided by Number of Months in Operation	0	8	12	12	12	12	n/a
3. Monthly Average of Full Time Employees (rounded down to lowest whole number)	0	3	5	5	4	6	n/a
4. Less: Previous Year Monthly Average		0	3	5	5	4	n/a
5. Average Increase in Full Time Employees (Line 3 minus Line 4)		3	2*	0	(1)	2*	n/a

***NOTE**:

1. The Year 2 increase of 2 jobs is reduced by the 1 job since the 2 job increase in Year 2 is not maintained. See Step 2, Year 2 Increase, Year 4.

2. The Year 5 increase of 2 jobs does not qualify for the credit since the credit is repealed for tax years beginning after June 9, 2010.

STEP 2: COMPUTATION OF EMPLOYEES ELIGIBLE FOR CREDIT WITH GROSS WAGES ≥ 120% THRESHOLD					
	Year 2	Year 3	Year 4	Year 5	Year 6
Year 1 Increase	3	3	3	3	n/a**
Year 2 Increase		2	1*	1	n/a
Year 3 Increase			0	0	n/a
Year 4 Increase				0	n/a
Year 5 Increase					n/a
Number of New Jobs	3	5	4	4	n/a

STEPS 3: COMPUTATION OF ELIGIBLE CREDIT AMOUNT FOR NEW JOBS CREATED WITH GROSS WAGES ≥ 120% THRESHOLD					
	Year 2 (2007)	**Year 3 (2008)**	**Year 4 (2009)**	**Year 5 (2010)**	**Year 6 (2011)**
Number of New Jobs – at or above 120% threshold	3	5	4	4	n/a**
Credit Amount for a Distressed County where the employer pays all new employees greater than 120% of the county or State average per capita income for all years	$8,000	$8,000	$8,000	$8,000	n/a
Job Tax Credit (Line 1 x Line 2) (Limited to 50% of tax liability)	$24,000	$40,000	$32,000	$32,000	n/a

**N/A – The newly enacted provisions of the job tax credit for small businesses are repealed. No credit is allowed in Year 6 (2011) of this example. See Question 27 concerning the carryforward of any portion of the credit previously claimed in Years 2007 – 2010 but unused.

NOTE: This example only shows the entire credit period for the initial 3 jobs created in 2006. The credit is first claimed in the year following the creation of the new jobs; it is not claimed in the year the new jobs are created. For example, qualifying new jobs created in this example in the 2006 tax year generate a credit available for first use on the 2007 tax return, filed March 15, 2008, providing the jobs are maintained. Additional credits are created for the job increase in 2007; it is claimed on the 2008 through 2010 tax returns for the jobs maintained. No credit is allowed in 2011 and thereafter since the credit is repealed.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

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Columbia, South Carolina