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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III, Chief Administrative Law Judge

Case No. 19-ALJ-17-0153-CC

2020-001542

Duke Energy Corporation..... Appellant,

v.

South Carolina Department of Revenue..... Respondent.

RECORD ON APPEAL

VOLUME II [Pages 251-495]

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

DUKE ENERGY CORPORATION,
Petitioner,

V. Docket No. 19-ALJ-17-0153-CC
SOUTH CAROLINA DEPARTMENT OF REVENUE,
Respondent.

DEPOSITION OF: 30(b)(6) DEPARTMENT OF REVENUE

GIVEN BY: DANA TAYLOR

DATE: Thursday, February 6, 2020

TIME: 12:15 P.M.

LOCATION: Department of Revenue
300 Outlet Point Boulevard
Columbia, SC 29210

Reported by: Rebecca L. Arrison

Job No: 175874

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14 BY: CHARLES HARRIS, ESQ.
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16 SOUTH CAROLINA DEPARTMENT OF REVENUE
17 300-A Outlet Pointe Boulevard
18 Columbia, SC 29210
19
20
21
22
23
24
25

1 filling out the form to do, how is the \$5 million
2 limitation applied?

3 A. Mechanically, it does appear as if Line 9 in
4 particular could possibly be a number in excess of
5 \$5 million.

6 Q. You said that -- actually, I forgot if I
7 asked this question: Are audit work papers binding
8 on the Department?

9 A. No.

10 Q. I think you mentioned that the policy
11 guidance or the guidance issued by Ms. VanStory or
12 the policy division within the department is not
13 binding on the department; is that correct?

14 A. In my opinion, no, it is not binding.

15 Q. How about under the law? You said in your
16 opinion.

17 A. I don't believe under the law it would be
18 binding unless it's issued to the public.

19 Q. Are forms binding?

20 A. No.

21 Q. Who comes up with what the policy should be?

22 A. Ideally, it's a collaborative effort between
23 the policy group and the litigation group and perhaps
24 even the divisions insomuch as whether an
25 interpretation can practically be applied. But I

1 can't say there is any one person or one group who
2 develops policy for the Department.

3 Q. Who determines what the forms should say?

4 A. Simplistically, I would say our forms group,
5 but I don't know who comprises the forms group or
6 what members from what divisions would be part of
7 that group.

8 Q. Are the forms required to reflect South
9 Carolina law?

10 A. They should.

11 Q. You said that the only thing -- I believe,
12 and I'm sorry if I'm -- I'm trying to rephrase, but
13 correct me if I am wrong. You said that the only
14 thing that's binding on the Department is the
15 Department's Determination?

16 A. I can't think of anything else that would
17 bind the Department to a position.

18 Q. How is the Department's Determination
19 issued?

20 A. There is an appeals process set out by the
21 Revenue Procedures Act that is designed to take
22 issues forward for review by an impartial attorney.

23 Can you repeat your question?

24 Q. How is the determination issued or how does
25 it come about?

1 MS. TODOROVA: Okay. That's all I
2 have.

3 EXAMINATION

4 BY MR. HARRIS:

5 Q. I may have a few, Ms. Taylor. Let me look.

6 Is the official position of the Department
7 issued in a Department Determination?

8 A. Yes.

9 Q. You were asked about policy. Are there some
10 policy documents that would be the official position
11 of the Department such as a Revenue Ruling?

12 A. Yes.

13 Q. Okay.

14 A. Certainly.

15 Q. So there are documents from policy which
16 would be considered the official position of the
17 Department?

18 A. Yes.

19 Q. Depending, of course, on the document that
20 policy issued?

21 A. Correct.

22 Q. If policy is asked about a matter and
23 reaches a decision regarding a matter being handled
24 by another department, is that instructive to the
25 Department on that particular issue?

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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V. Docket No. 19-ALJ-17-0153-CC

SOUTH CAROLINA DEPARTMENT OF REVENUE,

Respondent.

DEPOSITION OF: 30(b)(6) DEPARTMENT OF REVENUE.

GIVEN BY: FRANK ALLEN RAINWATER

DATE: Wednesday, February 5, 2020

TIME: 1:04 P.M.

LOCATION: Department of Revenue
300 Outlet Point Boulevard
Columbia, SC 29210

Reported by: Rebecca L. Arrison

Job No. 175872

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1 FRANK ALLEN RAINWATER

2 Q. I want to make sure -- are you aware of
3 any -- I guess Mr. Martin came to you with this
4 Fiscal Impact Statement. Obviously, you had not
5 prepared it.

6 A. Correct.

7 Q. He prepared it and sort of gave you the
8 backdrop --

9 A. Yes.

10 Q. -- or the background. And so based on that,
11 you thought it was accurate?

12 A. Yes.

13 Q. It's probably safe to say you have Fiscal
14 Impact Statements in which you get a more complete
15 picture in one instance than you may have in another?

16 A. Yes.

17 Q. Kind of have to work with what information
18 you have in getting that issued?

19 A. Yes, sir.

20 Q. In this particular instance, the request for
21 the Fiscal Impact Statement was from Senate Finance,
22 and the information you had, or Mr. Martin had at
23 that time prepared, did it largely come from Senate
24 Finance or what they would have reported?

25 A. Yes. From the staff.

1 FRANK ALLEN RAINWATER

2 Q. I want to make sure. I thought your
3 testimony had been that there wasn't any note or
4 record on this particular Fiscal Impact Statement,
5 that there was any kind of conversation or
6 correspondence with the Department; is that accurate?

7 A. We do not have any documents or recollection
8 that we had a conversation or e-mail with the
9 Department of Revenue on this.

10 Q. So to the best of your knowledge, the Fiscal
11 Impact was issued without discussion from the
12 Department; is that fair?

13 A. Yes.

14 Q. Then I think you testified you had a
15 conversation with Mr. Cleland last fall; was that
16 fall of 2019?

17 A. Yes, sir.

18 Q. During that conversation, he expressed to
19 you that the Department disagreed with the Fiscal
20 Impact Statement?

21 A. Yes.

22 Q. Did you or Mr. Martin, to your knowledge --
23 certainly you -- when this Fiscal Impact Statement
24 was presented in early 2017, were you aware that
25 there was a disagreement at that time between the

1 FRANK ALLEN RAINWATER

2 Q. Okay.

3 A. That's why the amendment was being offered.

4 Q. The portion of the bill related to the tax
5 credits did not pass; is that correct?

6 A. I believe that's correct.

7 Q. When you spoke with Mr. Cleland last fall
8 and he said he didn't approve of the Fiscal Impact
9 Statement, did he tell you what the Department's
10 position was?

11 A. Yes. We talked about there was a -- that
12 the Department had taken the position this was a
13 one-time credit.

14 Q. If the Department's position is and was that
15 this was a one-time credit, the proposed -- really, I
16 guess, looking at page five, Section 2, the language
17 in the amendment would in fact be changing the law;
18 would it not? If the Department's position is it was
19 a one-time or lifetime credit and it was to be
20 amended to make it annual.

21 A. Again, that goes back to the previous
22 question. Whenever -- had we had more information,
23 we would probably have been a little bit more
24 thoughtful and deliberate on how we explain this. We
25 tried to make sure people reading the amendment

1 FRANK ALLEN RAINWATER

2 asked for, how the court is going to treat it, could
3 be, I will say, possibly.

4 Q. Same section on page five that mentions that
5 the amendment would not affect state General Fund
6 income tax revenue, is that limited to 2017, 2018?

7 A. I'm sorry, section --

8 Q. Page five, Section 2.

9 A. Uh-huh.

10 Q. The last part of that sentence says, "Would
11 not affect state general tax revenue in 2017 and
12 2018" --

13 A. And going forward.

14 Q. Okay. And going forward?

15 A. Yes, sir.

16 Q. Again, if the Department's position was that
17 the credit was lifetime and docked \$5 million
18 annually, the state General Revenue would in fact be
19 impacted; would it not?

20 A. Yes.

21 Q. You mentioned that when you prepared the
22 Fiscal Impact Statement as it relates to 12-14-60, I
23 thought you made some reference to not having a lot
24 of time.

25 A. Yes.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

DUKE ENERGY CORPORATION,

Petitioner,

V. Docket No. 19-ALJ-17-0153-CC

SOUTH CAROLINA DEPARTMENT OF REVENUE,

Respondent.

DEPOSITION OF: 30(b)(6) DEPARTMENT OF REVENUE

GIVEN BY: ORVILLE SHARPE

DATE: Wednesday, February 5, 2020

TIME: 2:32 P.M.

LOCATION: Department of Revenue
300 Outlet Point Boulevard
Columbia, SC 29210

Reported by: Rebecca L. Arrison

Job No. 175872

ORVILLE SHARPE

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1 ORVILLE SHARPE

2 A. Now, we actually still use the Excel
3 spreadsheets, but then we also have a new system
4 called Doorway where you have to, like re-input
5 information in the Doorway, so the taxpayers get an
6 Excel schedule and Doorway schedules.

7 Q. And so during the 2008 through '11 period,
8 when you say you used Excel, you just start with like
9 a blank Excel spreadsheet?

10 A. No, we have like a template that we use.

11 Q. For every taxpayer?

12 A. We have them for different types of
13 taxpayers.

14 Q. Okay.

15 A. If it's a separate entity filer, if it's a
16 South Carolina consolidated return, if it's a
17 combined return, if it's a bank return, et cetera.

18 Q. Do you also have separate schedules or Excel
19 templates by industry? So if somebody is a retailer
20 versus a manufacturer --

21 A. No.

22 Q. No? Okay. So you don't have them by
23 industries; just based on the reporting group?

24 A. Whether they're here filing separately, a
25 South Carolina consolidated return, a combined

1 ORVILLE SHARPE

2 return, or if they're a different type of entity like
3 a bank or a savings and loan.

4 Q. Who prepares those templates?

5 A. We all do.

6 Q. When you say "we all do," what does that
7 mean?

8 A. Everybody in the audit group.

9 Q. Prepares the templates.

10 So the templates that you used, who prepared
11 those, during 2008 through '11?

12 A. I think Amanda. She was, like, really good
13 with --

14 Q. Who is Amanda?

15 A. She is the person that I worked with on this
16 audit.

17 Q. Her name is listed on the --

18 A. Yeah, Amanda Golebiowski.

19 Q. That's right.

20 A. G-O-L-E-B-I-O-W-S-K-I.

21 Q. How does she know how to prepare the
22 template?

23 A. Well, she was a very smart person, and she
24 had -- she was younger, most of the younger people
25 are much better than I am with the computer stuff,

1 ORVILLE SHARPE

2 Q. Then afterwards, kind of walk me through the
3 computation.

4 A. Then I made sure that the amount of the
5 credit for that particular year didn't exceed
6 \$5 million. And it was obvious that it didn't, so
7 the full amount of the credit was allowed.

8 Q. So the \$5 million credit limitation was
9 applied to each year?

10 A. Correct.

11 Q. Is that consistent with the statute?

12 A. That's my opinion, but I don't think it's
13 consistent with the statute, no.

14 Q. What is your opinion?

15 A. My opinion is -- my opinion was that, based
16 on the way the form was shown, that there was a
17 \$5 million amount of credit that could be claimed
18 each year, but that's not what the law says.

19 Q. And when did you form that opinion?

20 A. Probably when our -- when -- I think when I
21 heard somebody from policy talking about it, but I
22 don't remember when. It could have been Jerry Van
23 Lynn (sic), but I'm not sure if she was the one.

24 Q. How did you -- did you go and look up the
25 code section? How did you form your opinion?

1 ORVILLE SHARPE

2 A. I look at the code section, and I said that
3 the code section says that it's -- it just says
4 \$5 million limitation. It doesn't specify a period,
5 so, that's it.

6 Q. So why would then there be a \$5 million
7 annual limitation in the schedule?

8 A. Because this comports with the form that was
9 the TC-11.

10 Q. Do you rely on the forms, on the
11 Department's forms when you construct your schedules
12 or your templates?

13 A. Yes, I generally do.

14 Q. So when you look at a form, do you also
15 check the statute?

16 A. Not always. Sometimes I might.

17 Q. So is it fair to say that you always look at
18 the forms, and then in some of those instances you
19 look at the statute but in others you don't?

20 A. It depends on what the -- probably review
21 the form, and if they -- usually, in the
22 instructions, they describe what the adjustments are
23 for the particular form, and if I need more
24 information, if I'm not satisfied, then I would look
25 at the code of laws.

1 ORVILLE SHARPE

2 Q. According to the schedule.

3 A. According to the schedule, except for a
4 utility company, a utility company can't -- they can
5 only earn up to a \$5 million lifetime, but normally
6 you could carry over the credits if the credits
7 weren't over -- if the lifetime credit for a utility
8 is \$5 million, but you can -- if it takes you ten
9 years to earn that lifetime amount, you can carry
10 forward up to ten years.

11 Q. So according to this schedule, it's a
12 \$5 million lifetime?

13 A. No. I'm saying according to the law.

14 Q. But according to this schedule, which was
15 based --

16 A. No. This schedule is a \$5 million limit per
17 year.

18 Q. So according to the schedule, I earned
19 \$5 million --

20 A. Right.

21 Q. -- and I did not use any of it because
22 perhaps I didn't have a liability I could carry that
23 forward according to the schedule?

24 A. Right.

25 Q. You said the schedule was based on the form?

1 ORVILLE SHARPE

2 they're due a refund; if they underpay their tax,
3 then they owe more income, but you won't know until
4 you actually do a detailed audit.

5 Q. But how do you know what's fair? How do you
6 know what's fair? What tells you what's fair?

7 A. The law. The South Carolina Code of Laws.

8 Q. Okay.

9 A. And the regulations and the policy documents
10 and the Department Determinations.

11 Q. You said you talked to -- what was the name
12 of your supervisor?

13 A. Earl Toole, T-O-O-L-E. Are you talking
14 about during this audit?

15 Q. Yes.

16 A. Okay.

17 Q. No, no. I'm sorry. About this issue, you
18 talked to your current supervisor, Don --

19 A. Don Martin.

20 Q. Don Martin.

21 What did you guys talk about?

22 A. I just talked about the issue, like the
23 lifetime cap for investment credits for utility
24 companies.

25 Q. And did Don agree with you? You can answer

ORVILLE SHARPE

my question.

MR. HARRIS: Sure, you can answer
if you know.

THE WITNESS: No.

BY MS. TODOROVA:

Q. What is his view?

A. His view is that the \$5 million should be --
should be an annual amount.

Q. And what's his -- did he tell you why?

A. He says one section of law says one thing
and the other section of the law says something
different.

Q. What do you mean by that?

A. I guess he -- I don't know what he meant by
that. But we could probably look at your protest and
you would probably have something in there that he
was looking at. But I don't know, he just said one
part of law said something and another part of it
said something else.

Q. He didn't specify?

A. No.

Q. Did he say anything else?

A. Huh-uh.

Q. Did you talk to Dana separately?

1 ORVILLE SHARPE

2 A. Correct. But they didn't actually use that
3 because of the audit settlement.

4 Q. Agree with that. But according to the
5 schedule --

6 A. Right.

7 Q. -- had they not settled --

8 A. Right.

9 Q. -- which eliminated their liability, you
10 would have agreed for their use of this amount?

11 A. Correct.

12 Q. Then in 2011, you, according to your
13 computation, you allowed \$4,831,614?

14 A. Correct.

15 Q. So the sum of those amounts is greater than
16 \$5 million; would you agree?

17 A. Correct.

18 Q. You mentioned you changed or formed a
19 different opinion about the interpretation of
20 12-14-60 when you perhaps talked to Jerilynn.

21 A. Yeah.

22 Q. How did that come about?

23 A. I don't remember exactly. We were just --
24 somebody had said something about it, and I probably
25 went over there and talked with her.

ORVILLE SHARPE

MR. HARRIS: Maybe more than a few.

EXAMINATION

BY MR. HARRIS:

Q. Do you understand the Department's official position to be certain policy documents and Department Determinations?

A. Yes, I do.

Q. Was the specific issue of the application of the tax credit addressed in the DD which was issued as a result of the 2008 to 2011 audit?

A. No.

Q. What were the specific issues in that audit?

A. There were various issues. The main issue -- there were probably about five or six, seven issues, I can -- one was the capital losses and excessive gains, the matching adjustment for Duke Energy Corporation, conversion of Duke Energy from gross receipts factor to fourth factor with gross receipts phase-in, and also some other entities where converted from four factor to gross receipts factor, tax basis adjustments for EIZIC recapture, Duke Net Communications, LLC, was determined to be a telephone utility pursuant to 12-20-100. Those were the main

1 ORVILLE SHARPE

2 audit issues.

3 Q. And those were the issues about which there
4 was a contest, a filing of a contested case hearing
5 with the Administrative Law Court.

6 A. Could you repeat?

7 Q. That's fine.

8 The issues you just testified about from
9 your 2008 to 2011 audit, those were the issues that
10 were contested by Duke?

11 A. Yes. They -- no, some of them were not
12 contested by Duke. Let's see. The ones that were
13 contested, I think, were the matching adjustment, the
14 requiring Duke Energy to be on a four factor with
15 sales phase-in for 2008 to 2010, and those are the
16 only issues that were contested.

17 Q. Whatever results that were gleaned from the
18 schedule you prepared and that which was a good bit
19 of discussion, what was that exhibit number?

20 MS. TODOROVA: Which one.

21 MR. HARRIS: The schedule he
22 prepared or Amanda prepared.

23 MS. TODOROVA: Oh, Donovan 6.

24 MR. HARRIS: Donovan 6, where is
25 that? Make sure we're talking about the same

ORVILLE SHARPE

thing. Yeah.

BY MR. HARRIS:

Q. That's the one-page schedule of the tax credits?

A. Right.

Q. All right.

A. Do you want me to find it? Do you remember what number it was.

Q. I don't.

A. Okay, I think I found it. Got it. It was Bates 861.

Q. Bates 861.

The results that you gleaned from that schedule represent your view at the time?

A. Amanda and my view.

Q. That's not the Department's official position?

A. Correct.

Q. You talked about subsequently speaking with Jerilynn VanStory who was involved in -- works in policy, correct?

A. Correct.

Q. She indicated to you that the statute provided a lifetime limitation on credits?

ORVILLE SHARPE

A. That was my understanding of my conversation with her.

Q. After you went back and looked at the statute, do you agree or disagree?

A. I agree with her.

Q. You mentioned that you had spoken with Don --

A. Correct.

Q. -- or Don had made a comment about the tax credit. That's Don's opinion?

A. Correct.

Q. It's not the Department's official position?

A. Correct.

Q. As I understand your testimony, that's the only person in the entire department that you have heard that expressed a different opinion?

A. Correct.

Q. He is not in policy?

A. Correct.

Q. And he is not in litigation?

A. Correct.

Q. And he doesn't act as a lawyer for the Department?

A. Correct.

1 ORVILLE SHARPE

2 Q. I think it was an exhibit to one of Cooper's
3 exhibits, it was the schedule for -- thank you.

4 There was discussion about the ultimate
5 settlement of the 2008 through 2011 audit. As I
6 understand your testimony, the tax credits that Duke
7 may or may not have didn't affect that audit, it
8 didn't affect the bottom line; is that accurate?

9 A. Right. They had nothing to do with the
10 settlement because we accepted, with regards to the
11 corporate income tax portion of the audit, we
12 accepted the returns as filed. All the adjustments
13 were related to license fees.

14 Q. None related to the tax credits?

15 A. Right.

16 Q. And you mentioned Tim's Notice of
17 Adjustment, and this has been marked as Monroe 3. Do
18 you recognize this as Tim's letter and his schedule
19 attached regarding the audit, if you will, of the tax
20 credit issue?

21 A. Yes, I do.

22 Q. In his July 19, 2019 letter to Mr. Monroe,
23 and his schedule, he has only allowed Duke a total of
24 \$5 million; is that correct?

25 A. On a lifetime basis, yes.

1 ORVILLE SHARPE

2 A. Right.

3 Q. You said that you formed an opinion that
4 this statute imposed a lifetime limitation?

5 A. Right.

6 Q. So is it fair to say that what was done on
7 the Schedule C is incorrect?

8 A. I'm sorry?

9 Q. Is it fair to say that what you did on the
10 Schedule C was incorrect in applying the \$5 million
11 limitation on an annual basis?

12 A. Yes.

13 Q. Does that happen often when law or different
14 provisions are applied incorrectly?

15 A. Everyone makes mistakes. I make more than
16 my share.

17 Q. How often, do you think?

18 A. I don't know.

19 Q. Once a month or once per audit?

20 A. I have no idea. I mean, I make my share, I
21 will say that.

22 Q. In the last five years, how many of those
23 mistakes do you think that you have made?

24 A. I don't know.

25 Q. Last question, I think. You're a supervisor

1 TIMOTHY DONOVAN

2 STATE OF SOUTH CAROLINA

3 ADMINISTRATIVE LAW COURT

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5 _____
6 DUKE ENERGY CORPORATION,

7 Petitioner,

8 V. Docket No. 19-ALJ-17-0153-CC

9 SOUTH CAROLINA DEPARTMENT OF REVENUE,

10 Respondent.
11 _____

12 .
13 DEPOSITION OF: TIMOTHY DONOVAN

14 DATE: Tuesday, February 4, 2020

15 TIME: 9:00 A.M.

16 LOCATION: Department of Revenue
17 300 Outlet Point Boulevard
18 Columbia, SC 29210
19 _____

20
21
22
23 Reported by: Rebecca L. Arrison

24 Job No. 175870
25

TIMOTHY DONOVAN

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Also Present: Dana Taylor

TIMOTHY DONOVAN

form?

A. Again, you would put your basis amounts for each of your property types, multiply it by the credit percentage, come to a total, and then you're limited to a maximum of \$5 million on Line 7, you put in your carryover of unused credits from previous years. Then Line 9 is a -- total Line 6 and 8.

Q. Would I have to file one of these forms every year?

A. Yes. In order to claim a credit.

Q. In order to claim a credit I have to file it every year?

A. Yeah.

Q. Every year, the form would tell me that there was a maximum credit of \$5 million; is that right?

A. Line 7 would be -- yeah, would be filled in.

Q. And let's talk about the math from Line 7 through 9.

So if I had a maximum credit of \$5 million, what was I supposed to do on Line 8?

A. Carry over any unused credits from '97.

Q. Then what did I do on Line 9?

A. Says that you're supposed to total -- says

TIMOTHY DONOVAN

different, you know, because that's -- you're bringing in the 11-20-U filers. So it's not 6 and 8, it's now, you know, the lesser of 6, 7, you know, to Line 8.

But, you know, for non-11-20-U filers, they're not limited to the \$5 million.

Q. Understood.

But you would agree that the maximum credit on Line 7 is \$5 million, right, for 11-20-U filers, right?

A. Correct.

Q. And would you agree that Line 8 allows me a carryover of unused credits from 1997, right?

A. I do.

Q. And so the total of Line 7 plus Line 8, if I had a carryover, would exceed \$5 million, right?

A. Correct.

Q. How do you reconcile the ability to exceed \$5 million on this form from a \$5 million lifetime limitation with a credit, in your view?

A. I would say the form was created incorrectly.

Q. So the auditor was wrong, correct? I want to recap. So in your view, the auditors were wrong,

TIMOTHY DONOVAN

A. Outside of the rates changing, the credit percentage, it's pretty much the same.

Q. Using this form, if a taxpayer were to use this form to compute their investment tax credit and they had a carryover of unused credits for this year, would their credit exceed -- or could their credit exceed \$5 million?

A. No.

Q. So --

A. If I understood your question correctly. You might want to try that again.

Q. Yeah. So if I'm looking at Line 7 --

A. Right.

Q. -- a maximum credit of \$5 million.

A. Right.

Q. And I looked at Line 8 and there is a carryover of unused credits from 1997 and later --

A. Right.

Q. -- could the total credit available on this form exceed \$5 million?

A. According to the form, yes.

Q. According to form.

A. Yeah.

Q. Do you agree with the form?

TIMOTHY DONOVAN

A. No.

(Donovan Exhibit No. 20 was marked for identification.)

Q. I've handed you a document marked Exhibit 20. This document is labeled State of South Carolina Department of Revenue Capital Investment Credit, TC-11. The revision date is May 9th, 2013.

Do you see that?

A. I do.

Q. You're familiar with this document?

A. Yes.

Q. What does this document do?

A. This document computes your investment tax credit.

Q. For utilities?

A. Yes.

Q. Does this document have the same computation methodology that was in Exhibit 19 that we just looked at?

A. It does.

Q. Is this form correct, in your view?

A. No.

(Exhibit No. 21 was marked for identification.)

TIMOTHY DONOVAN

and the adjustment letter that you mailed to Duke?

A. Correct.

Q. Okay. What is your recollection of how you prepared that audit from '96 through 14 involving the tax credits? Did you -- were the credits actually audited in terms of having substantiation for the credits claimed or did you just look at the credits claimed on the returns and prepare the schedule in that fashion?

A. If I recall, we pulled all of the amended returns and -- well, returns as well as amended returns to come up with those amounts.

Q. The underlying issues in the audit from 2008 to 2011, which has been mentioned, were the tax credits or the computation of the tax credits an issue in that audit?

A. Not to my knowledge.

Q. Was the computation of the tax credits addressed in any subsequent litigation involving that audit, to your knowledge?

A. Can you ask that one more time?

Q. Sure. And you may not know the answer.

Was the computation of the tax credits from the '08 to 2011 audit addressed in any subsequent

TIMOTHY DONOVAN

litigation?

A. Not until today.

Q. Sir?

A. Not until now.

Q. Okay.

A. That I'm aware of.

Q. You had been shown these forms, of which obviously there are a number of TC-11s over the years that the Department has used. There is language that begins, I think on the form in '98 when there is a limitation for utilities.

A. Do you have a --

Q. Sure. This is just, for instance, this is the -- I think this Exhibit 10 is the form --

MR. TRESH: The Bates numbers are pretty good to identify. Not to interrupt, but --

MR. HARRIS: Yeah, sure.

BY MR. HARRIS:

Q. 167.

A. All right. What's your question?

Q. Is there any language in the form with respect to the credit and the limitation of the credit for utilities?

TIMOTHY DONOVAN

A. Under Item 3 in the General Instructions.

Q. All right. And what does that -- read that language for us, please.

A. Says, "Effective for qualifying investments made after June 30, 1998, the amount of the credit is limited to no more than \$5 million for any entity subject to license tax provided in Section 12-20-100."

Q. All right sir. Let's look at Bates 170. Does the same language appear as you gave us --

A. Yes.

Q. -- on 167, Bates 167?

A. Item 3, it's the same.

Q. If you look at 172, does the same language appear?

A. Yes.

Q. If you look at Bates 174, does the same language appear?

A. Yes.

Q. On 176, does the same language appear?

A. Yes.

Q. On 178, does the same language appear?

A. Yes.

Q. On 180, does the same language appear?

TIMOTHY DONOVAN

A. On 180, yes.

Q. On 182, does the same language appear?

A. It does.

Q. On 184, does the same language appear?

A. On 184, the limitations are listed under Limitations on DOR 185.

Q. All right, sir.

A. It reads a little bit -- the limitation, I believe, is still there, but it -- it's worded differently.

Q. All right, sir. You're looking at Bates 185?

A. Correct, which is part of Bates 194 or exhibit -- whatever exhibit that is.

Q. How about read that language for us as it relates to the limitation.

A. Says, "Limitations, credits carried forward beyond the initial ten-year period may not reduce a taxpayer's state income tax liability in any subsequent tax year by more than 25 percent."

And goes on to say, "In an entity subject to license tax provided in Section 12-20-100 is limited to \$5 million in credit for investments made after June 30th, 1998."

TIMOTHY DONOVAN

Q. All right, sir. In Bates 186, does the same limitation language appear as it did on Bates 185?

A. Yes.

Q. And then Bates 200 --

A. 200 is a draft.

Q. Is a draft.

Does the same limitation language appear on Bates 202?

A. It does.

Q. And again, that's the same language that was in Bates 187; is that correct?

A. Correct.

Q. Then Bates 190, which again appears to be a draft, but does the same language appear?

A. Under the limitation, yes.

Q. That would be on Bates 191?

A. Correct.

Q. Bates 198, does the same language appear?

A. It does.

Q. And that's on Bates 199?

A. Correct.

Q. And again, that's the same language that was on Bates 191?

A. Correct.

TIMOTHY DONOVAN

Q. Bates 192, which again appears to be a draft, does the same or similar language appear in that form?

A. Yes. It's on 194 under Limitations.

Q. All right, sir. On page 195, does the same or similar language appear in that form?

A. It does.

Q. What page is that?

A. DOR 0197.

Q. All right, sir. In any of the limiting language that you just looked at and just referenced on these various forms, anywhere does that language limit the tax credit to an annual tax credit?

A. No.

Q. All right, sir. You mentioned earlier that there were a number of issues, tax issues, tax disputes, if you will, with Duke, that led to a global settlement; is that correct?

A. That's correct.

Q. And were all of the issues at that particular time resolved with the exception of the tax credit under 12-14-60?

A. They were.

Q. What was the impetus for your Notice of

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7 Petitioner,

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9 SOUTH CAROLINA DEPARTMENT OF REVENUE,

10 Respondent.
11 _____
12

13 DEPOSITION OF: 30(b)(6) DEPARTMENT OF REVENUE

14 GIVEN BY: ROBERT THOMAS

15 DATE: Tuesday, February 4, 2020

16 TIME: 3:25 P.M.

17 LOCATION: Department of Revenue
18 300 Outlet Point Boulevard
19 Columbia, SC 29210
20 _____
21
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23

24 Reported by: Rebecca L. Arrison

25 Job No. 175870

1 ROBERT THOMAS

2 APPEARANCE OF COUNSEL:

3 FOR THE PETITIONER:

4 BY: MARIA TODOROVA, ESQ.
ERIC TRESH, ESQ.
5 CHRIS LEE, ESQ.
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6 999 Peachtree Street, NE
Atlanta, GA 30309
7

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9 Via Telephone:

10 BY: SAMANTHA TRENCES, ESQ.
EVERSHEDS SUTHERLAND
11 700 6th Street, NW
Washington, DC 20001
12

13 FOR RESPONDENT:

14 BY: C. ANTHONY HARRIS, JR., ESQ.
GENERAL COUNSEL FOR LITIGATION
15 SOUTH CAROLINA DEPARTMENT OF REVENUE
300-A Outlet Pointe Boulevard
16 Columbia, SC 29210
17

18 Also Present: Dana Taylor
19
20
21
22
23
24
25

1 ROBERT THOMAS

2 So would administration of a tax that was in
3 processing purposes, so how a tax was administered or
4 enforced?

5 A. Well, since I'm dealing with forms, we would
6 look for problems that would create for the
7 Department in processing a certain type of tax credit
8 or a certain type of new tax.

9 Q. In the role you have had with respect forms,
10 who did you report to?

11 A. My original supervisor, starting in 2000,
12 was Charles Bartley. And later on, and I couldn't
13 tell you what year exactly, it would have been
14 probably 2006, Sylvan Proser, S-Y-L-V-A-N,
15 P-R-O-S-E-R.

16 Q. All right. Tell me about how you first
17 became aware of the issue with respect to the
18 calculation of the South Carolina investment tax
19 credit.

20 A. Sometime in, I guess this would be really
21 early in 2014, Jerilynn asked me to read that
22 subsection that I mentioned, which I think is G,
23 12-14-60(G), and then her question that she posed to
24 me was: Do you interpret that as an annual credit or
25 a lifetime credit. And I told her that I thought

ROBERT THOMAS

that that indicated it was a lifetime credit. And she said well, the form doesn't deal with it that way, and she asked me to look at it to see if it -- if I agreed with that. And I did agree that the form did not treat it properly and so I fixed it.

Q. So was there any deliberations -- so Jerilynn asked you a question. What did you do, what was your sort of basis of your opinion as to your conclusion with respect to the applicability of the credit?

A. Typically with the credit, if there is a limitation imposed and the intent is for it to be annual, it will tell you on an annual basis. If there is a lifetime limitation -- we don't have too many credits of that type, but it's really hard to find anyone that says it's a lifetime credit. We do have one that has three measures that you can claim once each. But other than that, there's not too many credits that have an overall limitation. And the ones that are annual, generally say so. I can't think of any one right offhand that would be treated as an annual limit that didn't say so in the statute.

Q. So what was your process to respond to Jerilynn's question?

1 ROBERT THOMAS

2 reflect the Department's view of the law?

3 A. In most cases it would be to reflect the
4 intent of the General Assembly, because we don't know
5 what -- the Department hasn't taken a position.

6 Q. Got it. Got it.

7 So those forms are being crafted to reflect
8 the intent of the General Assembly?

9 A. Yes.

10 Q. Got it.

11 Do taxpayers typically rely on those forms
12 in recording their taxes?

13 A. I would think so, yes.

14 Q. If you were a taxpayer, would you rely on
15 the form in reporting your taxes?

16 A. I would, yes.

17 Q. When you looked at the form prior to making
18 the change in 2014, did you go back and look at any
19 of the past iterations of the form?

20 A. I don't recall that I did that.

21 Q. Who would have been responsible for putting
22 together the form when the statute first went into
23 effect in 1998?

24 A. We had a fellow who was the -- now, he was
25 the corporate analyst in research and review, and his

ROBERT THOMAS

including all your unused credit from '97 and later,
then --

Q. We know it has to be more than \$5 million,
right?

A. It conceivably could be more than
\$5 million.

Q. So then if I go to the next revision of the
form, which I believe is -- if you look at Donovan
15. So Donovan 15 was -- the revision date is
8/5/03, so about a year later the Department of
Revenue Revised the form again, it looks like. Do
you agree with that?

A. Right, yes.

Q. Okay.

A. I think I do. There were two of these
forms. I could not tell the difference between them,
and these may be the two.

Q. But just judging from the upper right-hand
corner where I have a different revision date --

A. Right.

Q. -- it seems to indicate that the Department
revised the form; is that fair?

A. Yes.

Q. Is it also accurate to say that the credit

1 ROBERT THOMAS

2 A. Correct.

3 Q. So now let's talk about the calculation of
4 the credit itself from Lines 1 through 9. So we made
5 these -- we've got a law change, we've changed the
6 title, we've changed the purpose, we've changed the
7 definitions. Did the calculation change in
8 Donovan 19?

9 A. Yes.

10 Q. How did the calculation change?

11 A. It is reduced by half.

12 Q. Yet it remains conceivable that a utility
13 that had carryover of unused credits from 1997 and
14 later could claim a credit exceeding \$5 million?

15 A. That's still there, yes.

16 Q. Was there a reason why if the Department
17 didn't change the form in 2011 with respect to
18 credits in excess of \$5 million given the substantial
19 changes in this form?

20 A. Under the motto "if it's not broke don't fix
21 it," my attention was not drawn to that issue.

22 Q. Would it be fair to say though that the form
23 in Donovan 19 was a substantial overhaul of
24 Donovan -- of the form that was in Donovan 18? Is
25 that a fair characterization, in your view?

1 ROBERT THOMAS

2 limitation?

3 A. I don't remember that proposal.

4 Q. Would that have still been within your job
5 responsibility when the legislature had this draft
6 bill to take a look at it?

7 A. If I was in forms, yes. If I was in policy,
8 probably not.

9 MR. TRESH: Give us a minute or
10 two.

11 MR. HARRIS: Sure.

12 (A recess was taken.)

13 MR. TRESH: No further questions
14 from us.

15 EXAMINATION

16 BY MR. HARRIS:

17 Q. I have to keep you a little bit longer.

18 What establishes the official position of
19 the Department as it may relate to any issues?

20 A. The official position of the Department
21 would be reflected in a revenue ruling or a revenue
22 procedure or a departmental determination.

23 Q. Is a form in and of itself an expression of
24 the official position of the Department?

25 A. It doesn't get approved by the Director, and

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3 ADMINISTRATIVE LAW COURT
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5 _____
6 DUKE ENERGY CORPORATION,

7 Petitioner,

8 V. Docket No. 19-ALJ-17-0153-CC

9 SOUTH CAROLINA DEPARTMENT OF REVENUE,

10 Respondent.
11 _____

12
13 DEPOSITION OF: 30(b)(6) DEPARTMENT OF REVENUE.

14 GIVEN BY: JERILYNN VANSTORY

15 DATE: Tuesday, February 4, 2020

16 TIME: 1:00 P.M.

17 LOCATION: Department of Revenue
18 300 Outlet Point Boulevard
19 Columbia, SC 29210
20 _____

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22
23
24 Reported by: Rebecca L. Arrison

25 Job No. 175870

JERILYNN VANSTORY

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Columbia, SC 29210

Also Present: Dana Taylor

JERILYNN VANSTORY

Q. Okay. Thank you.

If at any point during our examination today if you need to take a break, please just let me know and we'll do so. If we're in the middle of a question, the thing I would ask is that you finish answering the question and then we can take a break then get back on the record.

A. Okay.

Q. You are represented by counsel here today, the Department is. Counsel may make certain objections during the course of the deposition. I would ask, unless explicitly instructed not to do so, when I ask a question, if you could please answer the question to the best of your ability, I would appreciate that.

A. Okay.

Q. Ms. VanStory, can you tell me your position with South Carolina Department of Revenue, please.

A. I am a Tax Analyst, I think, in the Policy section. I forget, we have changed our names so much, I actually forget --

Q. Okay.

A. -- what the title is now. It may be Tax Policy Manager now, I believe.

JERILYNN VANSTORY

Q. Tax Policy Manager?

A. I believe.

Q. Have you ever been deposed before?

A. No.

Q. Okay. So first time. All right.

How long have you been a Tax Policy Manager with the South Carolina Department of Revenue?

A. A Tax Policy Manager, about a year and a half.

Q. Before that, where were you employed?

A. I was employed for 26 years with the Department of Revenue with a brief break to go to the Department of Commerce about a year. Prior to that I worked for my father in VanStory Limited. Prior to that I worked at the National Office of Arthur Andersen in the corporate mergers and acquisitions group, the corporate group of Arthur Andersen. Prior to that I worked with the Internal Revenue Service in the corporate tax division.

Q. Okay. And so focusing on your time at the South Carolina Department of Revenue, you mentioned that you were a manager in the Tax Policy group. Did you hold some other title in the Tax Policy group while you were at the South Carolina's Department of

JERILYNN VANSTORY

Revenue?

A. I think we called ourselves Tax Analysts or something of that nature. I was not a supervisor of any sort at that time.

Q. Can you tell me about your job responsibilities as a Tax Analyst?

A. My job responsibilities are multiple. I interpret the law and write policy documents for the Department. I answer informal questions posed by the other people within the agency, and outside folks. I specifically deal with a lot of outside people because I'm in economic development, so I do get a lot of calls from the outside.

I give presentations. I'm the editor of the South Carolina Manual for Tax Incentives, Economic Development Tax Incentives. I am assigned special projects occasionally. I was assigned the County Competitive Study, which the governor put on our former director and I worked on that. So I have done a multitude of things.

Q. In your role of answering -- well, let's start with interpreting the law and writing policy. Can you tell me a little bit about what that would entail when you say that was part of your role?

JERILYNN VANSTORY

A. With a policy document, we have four different types of policy documents. Information letters are just stating information -- the new interest rate, what the jobs tax rankings are, nothing really interpretive there.

Q. Okay.

A. With respect to the Private Letter Rulings, we do Private Letter Rulings for individual taxpayers. Those Private Letter Rulings bind us and the taxpayer, so long as the facts stay the same, only as to that taxpayer.

Revenue Rulings over the Department, those are bigger documents, generally speaking, with more far-reaching effect than just a Private Letter Ruling. They are the Department's position until a rule by statute, court case or another document. Revenue procedures are more procedural in nature. To give you an example, how do you go about filing an appeal with the Department. They also generally are the process someone would follow in pursuing a particular action before the Department, like full penalty waiver or something like that.

Q. Okay.

A. If that's explanatory enough.

JERILYNN VANSTORY

it.

Q. So who is this memo to?

A. To the file.

Q. What prompted the memo?

A. Just in case we needed some sort of record.

That was the extent of the record.

Q. So this e-mail is sent on Thursday,
September 3rd in 2015. Do you remember --

A. Wait. That memo wasn't sent then.

Q. The e-mail --

A. The e-mail, yes. Oh, the memo to the file
was not done then.

Q. When was the memo to the file done?

A. I would say 2013, '14.

Q. So there is a memo to the file that was done
in 2013 or '14. And what would have prompted the
memo to the file, like, why would you have written
it?

A. I got an informal question.

Q. From who?

A. From Bill West.

Q. What sort of work did you do to figure out
what should go in that memo, what your interpretation
of the law would be?

JERILYNN VANSTORY

were speaking about?

A. Yes.

Q. If we go down towards, I guess it's the last full sentence that says "Also".

A. Yes.

Q. "Also indicated that we had talked to a number of people in the agency and that the consensus was that \$5 million was a lifetime total."

Who within the agency did you talk to?

A. Bob Thomas, Sylvan Proser.

Q. Did you speak with anybody in counsel's office, like, Milt Kimpson or Rick Handle? I don't know if you were reporting to Mr. Handle at that time.

A. Rick Handle had left, I believe, by then. That's why I think it was John McCormick, because I probably would have talked to Rick Handle.

Q. Okay.

A. Milton, no.

Q. Milton Kimpson was the General Counsel for the Department of Revenue at that time?

A. He was one of them. I think Joe Dusenbury might have been the other one, but I'm not 100 percent sure at that time if Joe Dusenbury was also a

JERILYNN VANSTORY

General Counsel.

Q. Did you speak to Mr. Dusenbury?

A. I don't believe so but I'm not sure. No, I'm pretty sure I didn't.

Q. So now I'll ask you to look at what's been marked as Exhibit 27. So this is a e-mail from Ray Stevens to you and to Mr. John McCormick --

A. Got it.

Q. -- stating "Assistance Please."

And if you go to the page that's marked 227, so page two of this e-mail --

A. Yes.

Q. -- Mr. Stevens, after attaching some screen shots of the form, license tax -- excuse me -- investment tax credit form, he says, "Am I correct, DOR changed from an annual \$5 million limit to a lifetime limit credit for utilities? If yes, was there a notice or bulletin or information, et cetera, issued that folks would have gotten?"

Do you see that?

A. I do see that.

Q. Was there any notice, bulletin or Information Letter issued?

A. No.

JERILYNN VANSTORY

decade?

A. Policy didn't, that I recall.

Q. You have been selected to testify on the Department's policies, procedures and practices, past, current, official and unofficial, for applying the limitation.

Are you aware how, prior to 2013, the Department applied the tax credit?

A. No.

Q. Okay. Are you aware the Department audited Duke Energy for the period 2008 to --

A. No.

Q. Let me finish my question, please.

-- 2011 and allowed the tax credit for the periods 2008 through 2011 as a lifetime limitation?

A. As a lifetime limitation?

Q. As an annual limitation. Excuse me.

A. No, because I generally do not get involved in audit matters.

Q. Are you aware that the Department's tax forms reflected an annual limitation for the tax credit for periods 1998 through 2013?

A. I am aware that the General Instructions did not reflect that. I am aware that the computation

JERILYNN VANSTORY

would lead possibly to that conclusion.

Q. Possibly to the conclusion that it was an annual limitation; is that correct?

A. Possibly, yes.

Q. Is it your testimony that that wasn't the Department's policy then, even though it was exhibited on the Department's form?

A. It's a form. It's not an official policy of the Department.

Q. Is it a procedure of the Department?

A. A procedure, no, I would not say so.

Q. The form isn't -- the form doesn't reflect a procedure?

A. No.

Q. Would it reflect the practice of the Department?

A. I don't even know if I would say it reflects the practice of the Department.

Q. Would you or would you not?

A. I'm going to say no.

Q. The form is neither a policy, a procedure or a practice; is that what you're saying?

A. I am saying that, I believe.

Q. In your view, would audit work papers

JERILYNN VANSTORY

was doing income tax.

Q. Jason Turner. And what about --

A. He is no longer with us.

Q. What about the other folks on that list from 2013 and 2014?

A. I don't think we consulted with -- I don't think I would have consulted with anybody else, no, in the Policy group, that I recall.

Q. Before making a policy on behalf of the Department of Revenue, is the Director required to sign off in any way?

A. If it's a Revenue Ruling or Revenue Procedure, he does. I think below that, I don't think so.

Q. So it's common -- is it common that you and Mr. McCormick would make interpretations of the law, and the Director and the General Counsel's office would have no knowledge of that?

A. We make interpretations of the law every day. Now, usually they're in an informal opinion. We do consult with the Director on things. I don't recall if we consulted with the Director on this or not.

Q. Who was the Director in 2013 when these

1 JERILYNN VANSTORY

2 A. If he did, I don't recall.

3 Q. So would it be common for the Director and
4 others in the Department to have a meeting on tax
5 policy, a policy that you set, without consulting
6 you?

7 A. It's possible.

8 MR. TRESH: No further questions.
9 I think we're done.

10 MR. HARRIS: We'll have these
11 marked as 31 and 32.

12 (VanStory Exhibit No. 31 and 32 were
13 marked for identification.)

14 EXAMINATION

15 BY MR. HARRIS:

16 Q. Ms. VanStory, good afternoon. I want to
17 talk with you a little bit about your policy
18 decision. Much of this you have covered -- I say
19 "your policy," I'm talking about the Department's
20 policy but your involvement in the policy division.

21 You indicated in late '13 or early '14 that
22 you would have spoken with Bob Thomas about the
23 application of the credit, be it annual or lifetime;
24 is that correct?

25 A. I e-mailed him. I don't know that I spoke

JERILYNN VANSTORY

with him.

Q. You communicated with him.

A. Correct.

Q. You would have communicated with Sylvan Proser?

A. No.

Q. Did not communicate with him?

A. Bob would have communicated with him.

Q. You communicated with John McCormick?

A. Correct.

Q. Was it the consensus of the four of you -- and I realize that you did not communicate with Mr. Proser, but you're aware of -- at least we have disclosed an e-mail from Bob Thomas in which he gave -- I think you have been shown this in one of the exhibits -- in which he gave Mr. Proser's view of this tax credit and how it should be applied, that being an annual lifetime.

A. That's correct.

Q. So was there consensus among the four of you -- that being you, Bob Thomas, Sylvan Proser and John McCormick -- that this credit was to be applied on a lifetime basis?

A. Yes.

JERILYNN VANSTORY

Q. You mentioned that in arriving at that decision, you also did some research --

A. Correct.

Q. -- is that correct?

That involved, obviously, reading the statute?

A. Correct.

Q. And looking at other statutes with tax credits and how they had been written, if the legislature intended that to be annual?

A. Correct.

Q. I think you said you also looked at the bill itself that was passed in '98?

A. That's correct. Two of them. There were two of them kind of simultaneously went through.

Q. Right. And the purpose behind looking at the bill, what about the bill would have assisted you in reaching your policy decision?

A. Well, the title of the bill which said the Total Limit.

Q. Okay. But this is --

MR. TRESH: I'm sorry, what are we looking at there?

MR. HARRIS: I was going to say,

JERILYNN VANSTORY

I'm showing Ms. VanStory what's been marked as
VanStory 31.

MS. TODOROVA: What's the Bates?

MR. HARRIS: DOR 213 through 219.

MR. TRESH: Got it. Thank you.

BY MR. HARRIS:

Q. Referencing Exhibit 31, can you identify
that document for us?

A. That was the title of one of the two bills
that went through that changed the utility, the
investment tax credit.

Q. Sure. Among other things. And you said
there were two bills. There were actually two bills
in '98 that the legislature passed; is that your
understanding?

A. That's what I recall.

Q. The titles to these proposed bills -- let's
start with the first one specifically. What does it
state with respect to the tax credit limitation --

A. I would have to read it.

Q. -- for utilities?

Sure. Take a minute and look at it.

A. And to limit the total credit allowed a
utility for investments made after June 30, 1998 to

JERILYNN VANSTORY

\$1 million.

Q. Let's look at the next bill that was also in '98 and the title, which is -- just for the record, you're looking at DOR 215, at least the beginning of that title; is that correct? Down here, yeah.

A. Okay. Yes.

Q. If you would look at that title and tell me what it says with respect to the limitation of the tax credit.

A. To limit the total credit allowed a utility for investments made after June 30th, 1998, to \$5 million.

Q. So in doing your research, the title to these two statutes in 1998 were considered?

A. They were considered.

Q. The language was important to you?

A. It was.

Q. Okay.

A. As a special legislative intent, but, you know, that's what we have.

Q. Sure. Prior to your research and your group's research in '13 and '14, as I understand it, the Department didn't have any written policy with respect to the tax credit limitation in 12-14-60(G);

JERILYNN VANSTORY

is that correct?

A. We had one thing dealing with telephone companies and what kind of equipment qualified, if I recall correctly, which was a Private Letter Ruling.

Q. Okay.

A. We had one document -- I had to go back and look at this, but there was one document that said you could take the investment tax credit without having to be an economic impact zone business, which was part of, another part of that chapter, but we had nothing else, that I recall.

Q. On the discussion of forms, why are forms provided to taxpayers? What is the purpose of a form? When the Department develops a form for the taxpayer, what is the purpose?

A. It's a convenience so a taxpayer doesn't have to develop his own.

Q. Is it intended to be instructive for the taxpayer, to be of some assistance to the taxpayer?

A. It's certainly not meant to be authoritative.

Q. If the Department has a form which may have some ambiguity, in your view, what should the Department do with respect to the form?

JERILYNN VANSTORY

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Q. Okay.

A. From a discussion standpoint, we did consult four different people.

Q. Were you primarily involved in the research regarding the statute and the limitation of the tax credit?

A. Myself and John.

Q. Okay.

A. John actually found this. He found the title.

Q. Was the process of the decision in policy with respect to the tax credit similar to the process that y'all would have followed in making other decisions?

A. Yes. I would say yes, we generally consult among those people who, like, are relevant, yes, in our group -- in our group.

Q. You may have answered this earlier but I just want to be sure for the record and that I understand. How would the Department -- what represents the Department's official position as it relates to a matter?

A. A Department Determination. And the Revenue Ruling and Revenue Procedures say it's the

JERILYNN VANSTORY

Department's decision until overruled by statute, case law, or another document.

Q. Any other -- I'm sorry, you may have covered this. Any other documents that would set forth the official position, Department Determination, anything that emanates or comes from policy itself?

A. The only things that are official are Revenue Rulings, Revenue Procedures and PLRs as to that taxpayer.

MR. HARRIS: All right,

Ms. VanStory, thank you. That's all I have.

EXAMINATION

BY MR. TRESH:

Q. A little bit of redirect, please.

Ms. VanStory, I'm referring to -- I can't see what it's marked, I think it's 31 in front of you, the bill.

A. Yes.

Q. So you testified earlier that part of the Department's basis for denying the investment tax credit to Duke Energy was based on the plan language in the statute, right?

A. Not denying it to Duke Energy. Our interpretation of the statute --

JERILYNN VANSTORY

All right. You mentioned you did some research into the purpose of the statute. What was the purpose? Do you know why the legislature passed this tax credit? What's the purpose of the investment tax credit?

A. The purpose of the investment tax credit at that time was to encourage investment in what were, at that time, economic impact zone. There were certain areas of the state that, in theory, were distressed.

Q. You say "in theory," do you have any reason to believe that --

A. Yes, I do.

Q. Why do you say "in theory"?

A. Because there were several counties that were, by far, developed counties, because it was within 50 miles of a base closure, a federal facility located in the lower part of the state, and, I believe, an Air Force facility.

Q. So you disagreed with the legislature's --

A. Personally, I believe -- personally, I'm saying personally, I believe that it was broader perhaps than just, you know, distressed areas of the state.

JERILYNN VANSTORY

Q. But the legislature's purpose, do you know what that was? Can you reiterate that for me again, please?

A. That it was to encourage investment in economic impact zone.

Q. And did the legislature make a decision to extend that incentive to utilities?

A. They basically made a decision to include, if I recall correctly, taxpayers engaged in power generation. I think that's what the statute says. Manufacturing, power, communications, transportation -- I can't remember all of those things.

Q. Do you agree that Duke Energy was one of the companies that, one of the types of companies that the legislature allowed the investment credit for? Don you agree with that?

A. It was a power generator, so, yes.

Q. Okay. So the legislature enacts this piece of legislation designed to incent investment in these types of counties; is that correct?

A. Correct.

Q. Duke Energy is one of the companies that can qualify for the incentive, correct?

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

DUKE ENERGY CORPORATION,

Petitioner,

V. Docket No. 19-ALJ-17-0153-CC

SOUTH CAROLINA DEPARTMENT OF REVENUE,

Respondent.

DEPOSITION OF: 30(b)(6) DUKE ENERGY CORPORATION

GIVEN BY: THOMAS COOPER MONROE, III

DATE: Wednesday, February 5, 2020

TIME: 9:48 A.M.

LOCATION: Department of Revenue
300 Outlet Point Boulevard
Columbia, SC 29210

Reported by: Rebecca L. Arrison

Job No. 174872

THOMAS COOPER MONROE, III

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GENERAL COUNSEL FOR LITIGATION
SOUTH CAROLINA DEPARTMENT OF REVENUE
300-A Outlet Pointe Boulevard
Columbia, SC 29210

1 THOMAS COOPER MONROE, III

2 Duke does in South Carolina?

3 A. So we are an integrated electric utility,
4 which means we generate electricity, we transmit it,
5 and distribute it to our customers, and we're
6 required to do that by our franchise 24 hours a day,
7 365 days a year.

8 So we have power production facilities of
9 various fuel types and an integrated system that
10 actually goes across North and South Carolina. And
11 so we have nuclear generation, we have natural gas
12 fired generation, some coal generation which is
13 phasing out, in fact I think we closed our last coal
14 plant in South Carolina recently. And we also have
15 solar generation which is just now starting to come
16 on line, lots in North Carolina and now some in South
17 Carolina.

18 Q. Gotcha.

19 I gather from, you know, looking at the
20 returns and so forth that there is a significant
21 property and equipment investment in South Carolina,
22 and I assume that would go hand-in-glove with
23 generating that type of electricity.

24 A. That's right. All electric utilities are
25 capital incentive businesses because of the need to

1 THOMAS COOPER MONROE, III

2 provide electricity 24 hours a day, 365 days a year.
3 We have significant nuclear component, about
4 30 percent of Duke Energy Carolinas and as Duke
5 Energy Progress' generation is from nuclear
6 generation, and the majority of our nuclear units are
7 in South Carolina -- some in North Carolina but more
8 in South.

9 Q. Is it necessary for the property and
10 equipment that Duke -- you have just kind of given us
11 an overview -- uses to generate its electricity, is
12 it necessary that that property be constantly
13 upgraded and/or replaced?

14 A. Yes, absolutely.

15 Q. You need to do that in order to generate the
16 electricity and provide it to your customers?

17 A. That is correct.

18 Q. Would you have any rough idea on how much
19 Duke would spend each year on average to upgrade
20 and/or replace its property and equipment in South
21 Carolina?

22 A. It's a significant amount. I would have
23 to -- year to year I would have to look, but I know I
24 can remember seeing one of the credit forms showing
25 in excess of half a billion dollars of qualifying

1 THOMAS COOPER MONROE, III

2 equipment that we put in a particular year that I can
3 remember.

4 Q. Half a billion?

5 A. Yeah. It may be closer to \$750 million,
6 three-quarters-of-a-billion. We own, as I said, a
7 majority of your nuclear units in South Carolina and,
8 you know, maintaining and upgrading nuclear in a
9 safe, you know, way takes a lot of money.

10 Q. Sure. I can imagine.

11 The figure you just gave, I think you
12 mentioned \$750 million qualifying equipment, what do
13 you mean by qualifying equipment?

14 A. That qualified for the investment credit at
15 issue in this proceeding.

16 Q. Gotcha.

17 And is that sort of an average of -- do I
18 understand that to be -- understand that to be a very
19 rough estimate, but is that an average year to year
20 of the investment that you would make in this
21 property in South Carolina, \$750 million?

22 A. I would have to refresh myself on that.
23 That might be -- I don't know if that's the average
24 or not.

25 Q. I think your testimony was you remember

1 THOMAS COOPER MONROE, III

2 Q. Right.

3 A. So a majority of what we do is in the long
4 lifespan category.

5 Q. Gotcha. Would it be safe to say that --
6 setting aside for the moment of the issue of the tax
7 credit, the capital investment tax previously known
8 as economic impact zone, technically, let's just put
9 that over to the side for a moment -- regardless of
10 whether you have it in the first place or regardless
11 of how it's supplied, Duke is going to make a
12 significant property investment year after year in
13 order to generate the electricity in its areas that
14 it operates?

15 A. We have a franchise in North and South
16 Carolina, and the companies we have been talking
17 about operate in both states. We have very long
18 capital investment time spans, and when we make those
19 investments, say for new generation, we look to a
20 place that makes best operational sense and economic
21 sense, and things like tax credits play into where we
22 site something.

23 Q. I understand. Let me --

24 A. So --

25 Q. I'm sorry, go ahead.

1 THOMAS COOPER MONROE, III

2 A. Once we make that investment, we have to
3 maintain it, but we have optionality about where we
4 put it.

5 Q. Well, again, if you didn't have a tax
6 credit -- how long have you been operating in South
7 Carolina?

8 A. I would have to go back and look. We are
9 the successor to a lot of historic companies. I know
10 Southern Power Company was one of them.

11 Q. All right.

12 A. I'm going to say at least since the early
13 20th Century, 1920s, maybe before.

14 Q. So 100 years, maybe?

15 A. That is a good approximate.

16 Q. Give or take a little.

17 And over that period of time, there have
18 been investments --

19 A. Yes.

20 Q. -- capital investments that are necessary?

21 A. We originally built hydroelectric dams on
22 the Catawba River that last indefinitely if you
23 maintain them.

24 Q. Over that 100-year period there have been
25 capital investments because as you, I think you told

1 THOMAS COOPER MONROE, III

2 me earlier, you can't generate this level of
3 electricity 24/7 without having those investments;
4 would you agree?

5 A. Yes.

6 Q. So I understand you might have some strategy
7 as it relates to tax credits and where we're
8 available. But given the long history in South
9 Carolina and the longstanding investment, there is
10 going to be significant capital investment in South
11 Carolina regardless of the tax credit to service your
12 customers; is that accurate?

13 A. You would need to maintain your assets that
14 exist.

15 Q. So service your customers?

16 A. To service your customers. As I said
17 before, we have an integrated system that spans North
18 Carolina and South Carolina. We have more customers
19 in North Carolina than in South Carolina.

20 Q. More in North Carolina?

21 A. Yes, much more.

22 Q. Okay.

23 A. Duke Energy Carolina is roughly 75 percent
24 of our customers are in North Carolina, 25 percent in
25 South Carolina. Duke Energy Progress, about

1 THOMAS COOPER MONROE, III

2 across this time span, I would say is not material.

3 Q. Again, while I know there is a dispute about
4 the amount of the credit, even under the Department's
5 view of the credit, during the period that we're
6 discussing, '96 through '14, if you take the
7 Department's view of the credit for '96 through '14,
8 it has not impacted Duke's income tax situation in
9 South Carolina for that period of time?

10 MR. TRESH: Objection as to form.

11 THE WITNESS: So you're talking
12 about cash?

13 BY MR. HARRIS:

14 Q. Well, I'm talking about the impact that the
15 tax credit would have on Duke's South Carolina income
16 tax return. Okay? And for the period of '96 through
17 '14, did the Department's view of the credit have any
18 impact on Duke's South Carolina income tax return?

19 A. From a cash perspective?

20 Q. Yes, sir.

21 A. We had carryforwards.

22 Q. Right.

23 A. But from an earnings perspective when we
24 earn credits, it goes into our financial statements
25 because we're a public company and an accrual method

1 THOMAS COOPER MONROE, III

2 taxpayer, so we're not a cash method taxpayer. We
3 accrue expenses and income as it's earned. So it
4 does matter to us from a financial perspective.

5 Q. It didn't matter to Duke from the standpoint
6 of the income tax that might have been owed?

7 MR. TRESH: Objection;
8 mischaracterizes. You can answer.

9 THE WITNESS: It did not change
10 our cash that we pay to South Carolina.

11 BY MR. HARRIS:

12 Q. Again, from the period we're talking about,
13 2006 to 2014, under the Department's view of the tax
14 credit that it was \$5 million lifetime, you testified
15 earlier, and clearly the schedule shows, that there
16 was a \$701,000 carryforward and a little bit of
17 change. After '14 that's accepting the Department's
18 view of the tax credit, correct?

19 A. Correct.

20 Q. So after '14, the carryforward credit is a
21 paper issue; is it not? It's not affecting your
22 bottom line. It's just a question of how much of
23 this credit you're carrying forward?

24 MR. TRESH: Objection as to form.
25 Do you understand the question?

1 THOMAS COOPER MONROE, III

2 the question was sort of purely trying to get an idea
3 of why that would happen so often.

4 (Monroe Exhibit No. 4 was marked for
5 identification.)

6 Q. The court reporter has handed you what's
7 been marked, I understand, as Monroe Number 4. And
8 take a minute and look at that. Let me know if you
9 have seen it before, if you recognize it.

10 A. I do recognize this.

11 Q. Do you know this to be Duke's request for a
12 contested case hearing --

13 A. Yes.

14 Q. -- as it relates to the issue of tax
15 credits?

16 A. Yes.

17 Q. I wanted to go over that with you a little
18 bit. Tell me about your understanding of E. Why is
19 the Department -- what is the basis for E that the
20 Department was wrong because it violates the South
21 Carolina Taxpayers Bill of Rights?

22 A. I'm sorry, what page are you on?

23 Q. I'm sorry, it's seven. At the top is E.

24 A. My understanding of the basis of this piece
25 of the Complaint is that the Department had a

1 THOMAS COOPER MONROE, III

2 longstanding form in TC-11 that, in our view,
3 comported with the statute of a \$5 million annual
4 limitation on utilities, and without any kind of
5 notice in 2014 to taxpayers, significantly changed
6 that form.

7 Q. Do you know who the Department's taxpayer
8 advocate is?

9 A. Who that person is at this very moment? No,
10 not by name.

11 Q. Have you ever known who the taxpayer
12 advocate is?

13 A. Not personally.

14 Q. Okay.

15 A. I know there is one.

16 Q. I gather you have not called the taxpayer
17 advocate about this particular situation with the tax
18 credits?

19 A. I personally have not.

20 Q. Do you know of anybody on behalf of Duke who
21 has?

22 A. Not off the top of my head.

23 Q. Let's look at the bottom of page seven.
24 It's a little (a), the contested case hearing. The
25 allegation that the Department's determination is

1 THOMAS COOPER MONROE, III

2 wrong because Duke would be unjustly -- excuse me --
3 because the Department would be unjustly enriched by
4 changing its interpretation retroactively.

5 Tell me what you know about the basis of
6 that allegation.

7 A. So as I spoke to you before, when we make
8 investment decisions, they are very long tailed
9 horizon. Things like generation take a lot of
10 capital and have a long life, and the planning for
11 those things has a very long horizon. We have an
12 integrated resource plan that we filed with the
13 Public Service Commission in North and South Carolina
14 saying what we think our needs are for 20 plus span
15 of years and estimating when we need to build new
16 generation to meet that demand.

17 So we have to make decisions that last for
18 long periods based on the information we know at the
19 time, and to the extent we look at the economics of
20 building that plant in South Carolina versus North
21 Carolina, we look at the total economics. And to the
22 extent the state, 14 years into a statute that is
23 interpreted widely by ourselves and on the form, has
24 changed, it would make a significant change in how
25 many credits we received, the impact of the state of

1 THOMAS COOPER MONROE, III

2 South Carolina.

3 Q. The page eight, the next page, the contested
4 case hearing, the second paragraph under the heading
5 of Adjust Enrichment, sets forth the first sentence,
6 if you would read that for me, please.

7 A. "Petitioner conferred significant benefits
8 on Respondent and the state of South Carolina by
9 making significant investments in the State."

10 Q. Explain to me what you believe the basis for
11 that is. Perhaps it's some of which you have already
12 told me.

13 A. It is. So when we build a -- I'll say a
14 nuclear unit in South Carolina, it's personnel
15 intensive and capital intensive, we pay a lot of
16 property tax in the state of South Carolina and, you
17 know, we pay a significant license fee for utilities
18 every year, despite that we might have loss
19 carryforwards from things like depreciation, that
20 might keep us out of paying income tax over a period
21 of time. So if you look at the economic impact of
22 our companies in South Carolina, it is significant.

23 Q. Does Duke enjoy benefits from being here in
24 South Carolina?

25 A. I'm sure we do.

1 THOMAS COOPER MONROE, III

2 MR. HARRIS: Sure.

3 MR. TRESH: He can certainly
4 testify as to factual issues, but he is not here
5 to testify to legal claims like estoppel and what
6 that might mean or what have you.

7 MR. HARRIS: Right. And I
8 understand that. That's part of the Exhibit A on
9 the 30(b)(6) Notice, so -- and he is been
10 designated, so --

11 MR. TRESH: I just want to get
12 that down for the record that he's not a lawyer.

13 MR. HARRIS: I understand. We'll
14 let him do the best he can with it, but he's here
15 to answer it.

16 THE WITNESS: As Mr. Tresh points
17 out, I am not a lawyer so I'll put this in
18 laymen's terms.

19 BY MR. HARRIS:

20 Q. Sure.

21 A. We made investment decisions based on these
22 credits being available, and we believe it's -- the
23 government shouldn't be able to retroactively change
24 the rules on us 14 years into arguably a statute not
25 changing at all.

1 THOMAS COOPER MONROE, III

2 If the Department has a form that doesn't
3 accurately reflect the law, should the form be
4 revised to accurately reflect the law?

5 A. The form should reflect the law.

6 Q. If the Department is administering a tax law
7 inconsistent with the statute itself, should the
8 Department, in your view, change its position in
9 order that it correctly and accurately administer
10 that tax law?

11 A. It should correctly and accurately reflect
12 the law, yes.

13 Q. Does Duke have lobbyist in the state of
14 South Carolina?

15 A. Yes.

16 Q. Currently, who are Duke's lobbyists?

17 A. I couldn't list them all. I know the
18 primary one in our governmental affairs area I deal
19 with is Chuck Claunch.

20 Q. Chuck?

21 A. Claunch, C-L-A-U-N-C-H.

22 Q. How long has he been a lobbyist for Duke?

23 A. I am not certain. I would say more than
24 five years.

25 Q. Do you speak with Mr. Claunch -- let me back

1 THOMAS COOPER MONROE, III

2 law court on another matter, and it's very near the
3 capital and we walked.

4 Q. You wanted to have a look-see?

5 A. It's a very nice capital.

6 Q. Well, thank you.

7 Are you familiar with the Senate Bill, I
8 think S432, that made its way into the General
9 Assembly in 2017?

10 A. I would have to check the number but I
11 believe I am.

12 Q. Tell me what that bill would have done.

13 A. I think the bill had a lot of -- had to do
14 with apportionment for Satellite companies, and it
15 also had a clarification of the statute.

16 Q. Okay.

17 A. In the current matter.

18 Q. Do you know who sponsored that bill?

19 A. I would have to look at the bill to see
20 that.

21 Q. Did you have any contact with the
22 legislature that sponsored it?

23 A. I did not.

24 Q. Did Mr. Claunch report to you about that
25 bill?

1 THOMAS COOPER MONROE, III

2 A. We spoke about it as it was going through
3 the process.

4 Q. Do you know how many times you spoke to him
5 about that particular bill?

6 A. Four or five, six, a dozen times.

7 Q. Tell me what you recall about those
8 conversations.

9 A. We were surprised by the change in the form
10 by the DOR, had consulted with various outside
11 counsel, more than one, and wanted the form to -- we
12 didn't agree with what the form was saying and wanted
13 the General Assembly to clarify that the statute was
14 annual for utilities and not a lifetime.

15 Q. Gotcha.

16 What was the impetus of the bill?

17 A. The form.

18 Q. And was Duke primarily -- did Duke have
19 something to do with the introduction of the bill?
20 Did your lobbyist have contact with legislators in
21 Columbia explaining your position?

22 MR. TRESH: Objection to form;
23 compound question.

24 BY MR. HARRIS:

25 Q. Did duke have contact with legislators in

1 THOMAS COOPER MONROE, III

2 MR. TRESH: Objection as to form.

3 THE WITNESS: -- on me believing
4 the DOR's position, which I don't.

5 BY MR. HARRIS:

6 Q. I know you don't agree with it, but you knew
7 the DOR's position by virtue of the 2014 form that
8 you identified earlier; is that accurate?

9 A. That is correct, yes.

10 Q. I understand you don't agree.

11 A. That's the source of the controversy.

12 Q. Right. I understand you don't agree with
13 DOR's position. But if you understood it to be a
14 lifetime credit from the standpoint of the
15 Department, then S428 changed the law from the
16 standpoint of the department's position.

17 A. Statute under 12-14-60(G), when read in the
18 context of the total section, it says, the credit
19 allowed by this section. If you go to A of 12-14-60,
20 it is an annual credit.

21 Q. Okay. Well, A doesn't have the word annual
22 either does it?

23 A. I would have to read it exactly. It says
24 for each year, I believe, for each taxable year.

25 Q. Did you have the -- you have described this

1 THOMAS COOPER MONROE, III

2 between Duke and the Department as to whether it's
3 annual or lifetime only became important in the
4 latter stages of this schedule?

5 A. Yes.

6 Q. The audit that you referred to earlier in
7 which you said that you were allowed -- that the
8 credit was allowed on an annual basis, in that
9 particular audit, was the issue of the tax credit
10 part of any contested case hearing?

11 A. No.

12 Q. One of the questions, I know it's a large
13 question, but under Exhibit A to the 30(b)(6)
14 Deposition, number one asks about the Petitioner's
15 total capital investments in South Carolina 2004
16 through to 2014. Would you have any rough idea of
17 what that has been?

18 A. Hundreds of millions of dollars every year.

19 Q. Would it be fair to say during that ten-year
20 period it would be billion?

21 A. It would exceed a billion dollars.

22 Q. Don't know whether it's \$2 billion or
23 \$3 billion, but you know it would be more than --

24 A. It would not shock me if it was --

25 Q. Wouldn't shock you if it was?

1 THOMAS COOPER MONROE, III

2 A. -- two to three.

3 Q. Billion?

4 A. Yes.

5 Q. Are you okay?

6 A. Oh, yeah, yeah.

7 MR. HARRIS: Let's take just a
8 little break. Is that okay?

9 THE WITNESS: Sure.

10 (A recess was taken.)

11 BY MR. HARRIS:

12 Q. Thank you for your patience. Just a few
13 other questions so that I understand, and there were
14 questions I think that were largely covered earlier.

15 But as it relates to the disputed issue for
16 the credits '96 through 14, to date, Duke has not
17 been denied taking any tax credit under 12-14-60 that
18 it might use or it might need to lessen its corporate
19 income tax obligation in South Carolina; is that
20 accurate?

21 A. To date or through '14?

22 Q. Through '14.

23 A. From a cash perspective, that's, under the
24 Department's theory, yeah, we still have \$700,000 in
25 carryforward.

1 THOMAS COOPER MONROE, III
2 you answered, and whether, if the Department had
3 incorrectly interpreted the law, should they
4 interpret the law correctly at all times under any
5 circumstance. I think you agree with that; is that
6 right?

7 MR. TRESH: Objection as to
8 characterizing the witness' testimony. Is there
9 a question?

10 MR. HARRIS: Well, sure, I'll ask
11 it again.

12 BY MR. HARRIS:

13 Q. Would you agree that the department should,
14 at all times, strive to enforce the tax laws in
15 accordance with the statutes and laws of South
16 Carolina?

17 A. Yes.

18 Q. And if a Department form was, at least from
19 the Department's view, if it had an incorrect
20 application of the law, should the Department revise
21 that form?

22 A. They should administer the laws correctly,
23 yes.

24 Q. Would your answer to that -- you've
25 indicated they should correctly administer the laws.

1 THOMAS COOPER MONROE, III

2 If they had a form which in the Department's view did
3 not correctly administer the law, should the
4 Department revise that form?

5 A. Yes.

6 Q. So 2011 through '14, the claimed tax credits
7 by Duke were significantly higher, and that was
8 because why?

9 A. Prior to 2011, it was I believe an
10 enterprise zone credit and it was specified to
11 certain economically distress stressed counties where
12 we didn't have generation, we just had transmission
13 distribution requires, so our investment was much
14 less there. In 2011, the law changed and made the
15 whole state eligible for this investment credit, so
16 it included all of our investment.

17 MR. HARRIS: All right,
18 Mr. Monroe. I appreciate it. Thank you. That's
19 all I have got.

20 MR. TRESH: Redirect.

21 EXAMINATION

22 BY MR. TRESH:

23 Q. Mr. Monroe, I think you testified earlier
24 that Duke is a net exporter of electricity from South
25 Carolina to other states; is that correct?

1 THOMAS COOPER MONROE, III

2 A. Yes.

3 Q. Does that mean that Duke is able to
4 generate -- has more generation capacity, more assets
5 generating electricity than it needs to serve the
6 customers in South Carolina?

7 A. Yes.

8 Q. In theory, as part of Duke's long-term plan,
9 if Duke decided to relocate some of that generation
10 equipment to another state, let's say move it across
11 to Georgia or to North Carolina, could Duke do that
12 and still serve the needs of South Carolina
13 residents?

14 A. Yes.

15 Q. Is it true that Duke has invested in power
16 generation assets in other states outside of South
17 Carolina?

18 A. Yes.

19 Q. Is it also true that Duke has invested in
20 alternative forms of energy other than nuclear and
21 gas and coal outside of South Carolina?

22 A. Yes.

23 Q. Does Duke have optionality with respect to
24 where it invests some of the money associated with
25 its generation, transmission and distribution assets?

1 THOMAS COOPER MONROE, III

2 A. Yes. I mean, there are operational
3 constraints about, you know, we have to have a line
4 that goes to your house to deliver electricity, but,
5 you know, where the generation goes, I believe, there
6 is various optionality.

7 Q. If the Department of Revenue denies an
8 investment tax credit for Duke, putting aside the
9 cash impact of that credit, is there a financial
10 statement impact of the denial of that credit?

11 A. Yes. As I mentioned before, we're an
12 accrual method taxpayer, so we record the benefit for
13 when these credits are earned, not in the year that
14 made cash.

15 Q. Does that financial statement impact -- does
16 that impact Duke's shareholders?

17 A. It impacts Duke's customers and
18 shareholders.

19 Q. Customers and shareholders. Okay.

20 With respect to the Department's position
21 regarding the application and the credit, you're
22 aware that the form changed in 2014, correct?

23 A. Correct.

24 Q. Is it true that Duke had a tax audit for the
25 tax years 2008 through 2011?

1 THOMAS COOPER MONROE, III

2 license taxes in South Carolina?

3 A. Yes.

4 Q. Does Duke pay a significant amount of sales
5 and use taxes in South Carolina?

6 A. Yes.

7 Q. Does Duke pay a significant amount of
8 payroll taxes in South Carolina?

9 A. Yes.

10 Q. Has Duke Energy created a significant amount
11 of jobs in South Carolina in the years after 1998?

12 A. Yes.

13 Q. I think we have covered Duke Energy has
14 invested a significant amount in capital equipment in
15 South Carolina since 1998?

16 A. Yes.

17 Q. Mr. Cooper, do you know who Ray Stevens is?

18 A. Yes.

19 Q. Do you know if sometime after 2014,
20 Mr. Stevens contacted the South Carolina Department
21 of Revenue regarding the application of the tax
22 credit?

23 A. On no-names basis, I believe he did that,
24 yes.

25 Q. And do you know that if the South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

DUKE ENERGY CORPORATION,

Petitioner,

vs.

DOCKET NO. 19-ALJ-17-0153-CC

SOUTH CAROLINA DEPARTMENT OF REVENUE,

Respondent.

 ORIGINAL

D E P O S I T I O N

WITNESS: 30(b)(6) Deposition of SOUTH
CAROLINA DEPARTMENT OF REVENUE
through its designated
representative MEREDITH CLELAND

DATE: Thursday, May 28, 2020

TIME: 2:12 p.m.

LOCATION: Remote Attendance by All Parties

TAKEN BY: Attorneys for the Petitioner

REPORTED BY: MARIE H. BRUEGGER, RPR, CRR

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(INDEX AT REAR OF TRANSCRIPT)

1 Q Have you ever been deposed concerning any
2 South Carolina corporate income tax issue?

3 A Not that I recall.

4 Q Mr. Cleland, can you please describe your
5 educational background briefly, please?

6 A Graduated from Clemson University with a
7 BA degree in administrative management.

8 Q Any law or accounting training?

9 A No, sir.

10 Q And can you please briefly summarize your
11 employment history?

12 A I've been here for a long time. Really,
13 my employment history for the most part after
14 graduating from Clemson was to be employed by the
15 former South Carolina Tax Commission, which changed
16 its name at some point in time back to the
17 Department of Revenue.

18 Q And what's your current job title at the
19 South Carolina Department of Revenue?

20 A Deputy director of government services.

21 Q And has that been your title since 2013?

22 A Yes, sir.

23 Q So from 2013 through the current time,
24 you've been the director -- deputy director of did
25 you say government services?

10

1 A Yes, sir. I think it's been since 2013.

2 Q And in your role as deputy director of
3 government services, can you explain to me your job
4 responsibilities?

5 A Yes, sir. We -- as part of our division,
6 we are liaisons to the General Assembly, we handle
7 all of the property tax operations for the state,
8 and basically act as a liaison to local
9 governments, and we have a taxpayer advocate in our
10 area and various little sundry things, but those
11 are the biggest things that we do.

12 Q And when you said part of the division,
13 are you the head of the division?

14 A Yes, sir.

15 Q And how many employees do you have
16 working for you in your role?

17 A I think we have 56. That includes part
18 time.

19 Q And who do you report to?

20 A Hartley Powell.

21 Q Can you describe your primary job duties
22 for me? So in other words, what does it mean to be
23 a liaison to the South Carolina legislature, I
24 think you said?

25 A Yes, sir. So we are there to provide

1 support to the General Assembly. We are posed to
2 represent the agency at this juncture. We're not
3 registered lobbyists. We are there just to support
4 their operations, give them facts and figures and
5 explain tax legislation when necessary.

6 As far as what we do in regards to
7 property taxes, that runs a wide gamut from working
8 in the manufacturing areas to the reimbursement of
9 the counties to property tax exemptions, all those
10 different things, and the taxpayer advocate is just
11 housed within our division. Her role is to support
12 taxpayers with questions that they have.

13 Q And so kind of expanding on my question
14 relative to the piece of your job that relates to
15 liaising with the South Carolina legislature, what
16 would be some examples of support that you would
17 provide to them?

18 A When legislation's introduced, when
19 they're in committee hearings and things of that
20 sort, staff would call us. Usually we work much
21 closer with Ways and Means staff and the finance
22 staff, but when they have questions, we help in any
23 way that we can, but that also involves a lot of
24 constituent work for the representatives and
25 senators themselves too. As they get calls related

1 A This amended section. Yes, sir, that
2 would have -- I think 428.

3 Q Okay. Were you involved in assisting to
4 draft Section -- Senate Bill 428, that amendment
5 that's being referred to here?

6 A From reading the information prior to
7 this, I guess refamiliarize myself with what
8 actually took place during that point in time. I
9 don't recall doing anything with Senate Finance.
10 The amendment actually took place in Senate
11 Finance. But I did provide information to Chairman
12 White on information that he asked for as far as a
13 draft, so if the question was did I assist in draft
14 legislation that would allow this, yes, sir, I did.
15 Was -- the draft that the department came up with,
16 was it ever used, I don't think so, but did we
17 assist, yes, sir, because like I said before, we
18 assist when asked, so --

19 Q If you had sent a memo -- or if the --
20 yeah. If you had sent a memo to Chairman White
21 that said that the department believes that the
22 limitation in this case should have been a lifetime
23 limitation, why would you draft legislation that
24 clarified that the limitation was annual?

25 A Why would we have drafted the

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1 legislation?

2 Q Yeah. I think you said you had assisted
3 in drafting that legislation for Chairman White.

4 A Yes, sir. So we play a role with the
5 department where we -- I guess to repeat myself, we
6 assist the General Assembly. So the chairman of
7 Ways and Means had asked for some assistance. I
8 don't know why he's asking for the assistance, but
9 I can recall I ran into -- I was there with a Ways
10 and Means staffer, and Chairman White came by, and
11 I don't remember what period of time this was in
12 the calendar year, but I remember him saying:
13 Meredith, I need those drafts, so I got him the
14 drafts that he had asked for.

15 So I didn't know what that was in regards
16 to, whether he was getting pressure, whether he was
17 attempting to do something that he wanted to do. I
18 don't know. But that's why we drafted it.

19 And there have been occasions where,
20 coming out of our shop, we have drafted legislation
21 that maybe the Department of Revenue, as a rule,
22 was not in favor of or whatever, but we still draft
23 it as asked by the General Assembly, so --

24 Q Can you explain why Chairman White,
25 through Alyssa Weeks -- why Chairman White would

1 Q Okay. And did Chairman White, do you
2 know whether he believed that Senate Bill 428 was
3 intended as a clarification to the law or a change
4 in the law?

5 A I don't know either way. I know that the
6 information when we sent it, I don't recall whether
7 Chairman White asked us to put whatever in there,
8 but there was a reference in there that it was
9 clarifying the law, so maybe that's where Chairman
10 White was thinking it was.

11 Q What document referenced that it was
12 clarifying the law? Do you recall which document
13 were you talking about?

14 A When we sent the drafts over that
15 Chairman White had asked for.

16 Q So you had sent a draft indicating -- the
17 Department of Revenue had sent a draft indicating
18 that it would be a clarification of the law. Is
19 that right?

20 A There was a note in the draft, yes, sir.

21 Q And did you put -- did you draft that
22 note?

23 A I don't recall drafting the note, but it
24 came from us, so it came from our office.

25 Q Do you know who would have drafted that

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1 note?

2 A Other than maybe, Mr. Tresh, it was
3 probably me, but I don't recall.

4 Q At the time you drafted -- or at that
5 time the Department of Revenue drafted that note,
6 did you know that others in the department believed
7 that the credit was a lifetime limitation?

8 A Yes, sir. That was in September, so I
9 would have already known that our position was a
10 lifetime credit.

11 Q How did you come to learn that that was
12 the Department of Revenue's position?

13 A I think when I found out about the
14 assessment. As we spoke earlier, to my knowledge,
15 that's the first information I had in regards to
16 this issue was the assessment that went out, and
17 then when he started asking about why was the
18 assessment issued, then it came back to the
19 position of the agency being a lifetime credit.

20 Q How did you come to learn of the
21 assessment?

22 A That I don't recall. It could have
23 been -- could have been at the State House, from
24 someone up there. I don't know. It could have
25 been one of our auditors. I don't really know.

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1 A Correct.

2 Q You do not make policy, is that

3 correct --

4 A That's correct.

5 Q -- for the Department of Revenue?

6 A Correct.

7 Q What is your understanding as to what
8 would -- what would be the department's official
9 policy? How is that expressed?

10 A It would be expressed through our policy
11 division, policy section, that they could generate
12 a policy document that formalizes our position, it
13 could be through a department determination, but in
14 most cases, it's official, I guess, when our
15 director signs off on it.

16 Q I think you also testified at some point
17 toward the end of your direct testimony about how
18 you determined what the department's position was
19 and that your -- as to this particular issue, the
20 tax credit we talked about. You testified that you
21 went to the policy to determine the real position,
22 and after going to the policy division in the
23 department, what did you learn the real position,
24 the official position, of the department to be as
25 to the tax credit?

1 A That it was a lifetime, that the
2 limitation of \$5 million was over a lifetime and
3 not over each year.

4 Q There was discussion about an amendment
5 that you had drafted. For clarification, the
6 amendment that you drafted and provided to the
7 legislature, was that provided to Chairman White?

8 A Right.

9 Q Okay. He's on the House side?

10 A Correct.

11 Q Did you provide any amendments to the
12 legislation regarding a tax credit to the Senate?

13 A Not that I recall.

14 Q Okay. And the amendment that you would
15 have drafted and sent to Chairman White did not
16 comport with the department's official position
17 regarding the tax credit. Is that correct?

18 A Correct.

19 Q And notwithstanding that, you prepared
20 the draft amendment as you had been requested?

21 A Correct.

22 Q And as you would do for any legislator?

23 A Correct.

24 Q There are instances, I gather, that you
25 would be aware of in your job dealing with the

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1 legislature where you are requested to prepare a
2 draft of legislation that does not comport with
3 what the department --

4 A Correct.

5 Q And you nevertheless prepare those. Is
6 that correct?

7 A Yes.

8 Q And the language in the amendment that
9 you drafted that you said you sent to Chairman
10 White, it has some vocabulary to clarify this
11 particular statute. In fact, as it relates to the
12 department's position on the tax credit, that
13 wouldn't change the statute. Is that correct?

14 A Correct.

15 Q And do you know whether Chairman White
16 would have asked you to draft it in a way that the
17 heading would read to clarify the statute?

18 A That's certainly reasonable to say that.
19 Do I recall Chairman White specifically asking
20 that? No, I do not.

21 Q Okay. Obviously, there's been some
22 testimony about Craig Parks. Do you know if you
23 spoke with Craig Parks -- I'm sorry. Is it Craig
24 Parks?

25 A Craig Parks.

Martin, Robert

From: Cooper, Debbie
Sent: Friday, March 10, 2017 8:43 AM
To: Martin, Robert
Subject: FW: S 428 background and intent if helpful

Hi Robert,
See note below.

From: Jolliff, Lisa
Sent: Friday, March 10, 2017 8:31 AM
To: Cooper, Debbie <Debbie.Cooper@rfa.sc.gov>
Subject: FW: S 428 background and intent if helpful

Debbie,

Can you please share this with the analyst for 428?

Thank you,
Lisa



RFA.SC.GOV

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From: Craig Parks [<mailto:CraigParks@scsenate.gov>]
Sent: Friday, March 10, 2017 7:58 AM
To: Rainwater, Frank <Frank.Rainwater@rfa.sc.gov>; Jolliff, Lisa <Lisa.Jolliff@rfa.sc.gov>
Cc: Mike Shealy <MikeShealy@scsenate.gov>
Subject: S 428 background and intent if helpful

Frank and Lisa,

If helpful for you or your staff, here is the background on the amendments to S428 (Sen Reeses bill) that was approved by sub and will be on full. This background was provided at the sub to the members and public present.

-1 – narrows the bill to conform to intent which is to effectively limit to DISH as they are the only provider to have 800 employees and at least 25m in payroll

2- was amended to take out any hint or possibility of retroactivity related to ongoing court and or alj litigation - - - there will be no refunds sought or provided, the bill is effectively and practically prospective as amended.

Frank, related to this portion, I believe John Deworken may have offered info and assistance and DOR and Meredith or ready to assist you as well with info and verification.

3-Also amended to clarify an almost 20 yr tax credit for utilities that the credit is annual which was DORs stance for 15+ yrs – DOR and the utilities want this change and DOR and Meredith is ready to assist you here as well. This portion is conform to policy and practice only or is at least the intent.

As always, with any legislation staff welcomes any and all questions .Thanks as always for all the help!

Craig

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SOUTH CAROLINA TAX INCENTIVES FOR ECONOMIC DEVELOPMENT

2020 EDITION (THROUGH THE 2019 SESSION OF THE GENERAL ASSEMBLY)

SOUTH CAROLINA DEPARTMENT OF REVENUE

POLICY DIVISION

Henry D. McMaster, Governor

W. Hartley Powell, Director

January 2020

REFERENCES

Department Website. This publication cites many South Carolina code sections, regulations, attorney general opinions, and Department advisory opinions (Revenue Procedures, Revenue Rulings, etc.) The full text of these references is available through the Department's website at: www.dor.sc.gov.

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The Department would appreciate any comments or notification of any errors. Such comments should be sent to:

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This book is up to date as of January 2020. Legislation passed, cases decided, or Department advisory opinions issued after that date are not reflected in this publication unless otherwise specified.

ACKNOWLEDGEMENTS

The members of the Policy Team are Deana West, John McCormack, Jerilynn VanStory, Sally Major, Corey Smith, Walter Tarcza, Aaron Scheuer, Susan Shumpert, and Wanda Grubbs.

We would like to thank Hartley Powell, Director of the South Carolina Department of Revenue. We would also like to express special thanks to Burnet R. Maybank III, former Director of the South Carolina Department of Revenue, and Rick Handel, former General Counsel of the South Carolina Department of Revenue, whose visions were the genesis for this project and especially Susan Shumpert and Wanda Grubbs for their hard work and patience in typing, proofreading, and formatting this book.

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1. OVERVIEW OF STATE TAXATION

The taxing scheme of a state is often an important factor when a company is deciding where to locate or expand its business. Often, a business is unaware of available tax incentives that may reduce or eliminate many of the taxes that would otherwise be due. This publication provides a general discussion of South Carolina's income, property, and sales and use taxes and incentives. Many of the tax incentives, credits, and exemptions are explained in detail on the following pages. Below is a brief overview of South Carolina taxation.

1. INCOME AND LICENSE TAXES

The starting point of South Carolina taxation for corporations, partnerships, limited liability companies, individuals, estates, and trusts is federal taxable income. South Carolina law provides for modifications to be made from federal taxable income in determining South Carolina taxable income.

South Carolina's corporate income tax rate of 5% is among the lowest income tax rates in the Southeast. South Carolina's individual income tax rates range from 3% to 7%.

South Carolina's license fee, or franchise tax, is imposed on the privilege of doing business, as a corporation in South Carolina. The measure of the license fee is based on (1) the capital stock and paid-in or capital surplus of the corporation or (2) South Carolina gross receipts and property. The license fee a taxpayer pays depends upon the taxpayer's type of business. Most corporations pay an annual license fee based on capital (.001 of the corporation's capital stock and paid-in surplus, plus \$15). Only specifically enumerated companies, such as waterworks companies, power companies, and telephone companies, pay the license fee based on South Carolina gross receipts and property. The minimum license fee is \$25.

County and city governments may impose a business license tax on businesses operating within the corporate limits of the county or city. The annual business license tax normally takes the form of a gross receipts tax on the revenues of the business located within the limits of the county or city. The base tax rate is dependent upon the local jurisdiction and the nature of the business.

2. PROPERTY TAX

Most real and personal property located in South Carolina is subject to property taxes. Although property tax is generally collected locally, the Department oversees property tax assessments and collections to ensure equitable and uniform assessment throughout the State. There is no state or local tax on intangibles or inventories.

The calculation of property taxes involves three elements:

1. **Valuation:** Real property (other than agricultural use property and most property subject to a negotiated fee in lieu of taxes) is generally appraised to determine fair market value. Personal property of manufacturers is valued at cost from which a fixed statutory depreciation percentage, based on industry, is deducted each year until a residual value is reached. Personal property of merchants is valued at cost from which income tax depreciation is deducted each year until a residual value is reached. In certain instances, property may be valued as part of a greater unit under the unit valuation method. Personal property of individuals is either exempt from property taxes or the valuation method differs depending on the type of property.
2. **Assessment Ratio:** The assessment ratio, established in the State Constitution to ensure stability, is 10.5% for manufacturing property, whether real or personal, and 6% for commercial real property. Commercial personal property is assessed at 10.5%. The valuation is multiplied by this ratio to produce the "assessed value" of a particular piece of property. Taxes are levied based upon this assessed value. New and expanding businesses, which invest \$2.5 million or more can enter into a fee in lieu of property taxes, which can reduce a 10.5% assessment ratio to 6% for up to 40 years for qualifying property and eliminate inflationary increases in the value of real property for that period. Very large investments can qualify for a 4% assessment ratio for up to 50 years for qualifying property with no increase in the value of real property for that period.
3. **Millage:** Each taxing jurisdiction determines on an annual basis the number of mills required to apply to the total assessed value of property subject to taxation within its jurisdiction in order to raise the money it needs to operate for the next year. (Each jurisdiction also takes other sources of revenue into account in making this determination.) The 2019 average millage rate in South Carolina is 342.04 mills.

For example, if a manufacturer owned a piece of property used in its business with a value of \$100 and an assessment ratio of 10.5% (the ratio for manufacturing property in the absence of a fee in lieu of property taxes agreement), the assessed value of that property equals \$10.50 (\$100 x 10.5%). If the taxing jurisdiction decides in a particular year to levy a tax of 297 mills, then the property tax liability of the owner would be \$3.12 (\$10.50 x .297).

3. SALES AND USE TAX

South Carolina imposes a state sales and use tax of 6%. The state tax is also imposed on sales of accommodations at a rate of 7%. The proceeds are used to fund the public school system and to provide property tax relief. Additionally, local governments in South Carolina may also levy other local taxes such as sales and use taxes, local accommodations taxes, or local hospitality taxes on sales of prepared meals.

The sales tax applies to the retail sale, lease, or rental of tangible personal property. The use tax applies to the first storage, use, or consumption of tangible personal property in South Carolina purchased at retail in another state. A credit is given against the use tax due in South Carolina for any state and local sales or use tax due and paid in another state.

4. MISCELLANEOUS TAXES

In addition to the primary three taxes relating to income, sales and property, South Carolina imposes additional taxes or in some cases, alternative taxes to the three mentioned above. For example, South Carolina imposes an admissions tax on places of amusement, a bank tax on banks engaging in business in this State, and a deed recording fee on the privilege of recording a deed when realty is transferred. These taxes may be imposed in addition to, or in lieu of, the income, sales and use or property tax. Taxpayers should check with their tax advisor to determine if they will be subject to any of these miscellaneous taxes.

2. BUSINESS INCOME TAX

PART A: GENERAL TAX PROVISIONS AND ADMINISTRATION OF CREDITS

1. FEDERAL TAX CONFORMITY

South Carolina income tax laws conform substantially to the federal income tax laws. Generally each year, South Carolina's income tax laws have been amended to conform to the Internal Revenue Code of 1986 as amended through the immediately preceding December 31st, with the exception of Internal Revenue Code Section provisions listed in South Carolina Code §12-6-50 that are specifically not adopted by South Carolina. As of the date this publication was edited, South Carolina Code §12-6-40 provides that South Carolina's income tax laws conform to the Internal Revenue Code of 1986, as amended through December 31, 2018, subject to the exceptions listed in South Carolina Code §12-6-50. The effective date provisions contained in the Internal Revenue Code are also generally adopted. Therefore, except as otherwise provided, when the annual South Carolina conformity amendment becomes effective, Internal Revenue Code provisions that went into effect during the preceding year are retroactively adopted and considered to have the same effective date as they had for federal income tax purposes. South Carolina Code §12-6-40(A)(1)(c).

This conformity simplifies the filing of returns by adopting federal taxable income as a starting point for South Carolina income tax purposes. With some exceptions, South Carolina income tax liability is determined in accordance with the same set of statutes and rules used in determining federal income tax liability. Subject to certain modifications, the South Carolina gross income and taxable income of a business is the business's gross income and taxable income as determined under the Internal Revenue Code.

2. CORPORATE INCOME TAX RATES

South Carolina corporate income tax is imposed upon the South Carolina taxable income of domestic and foreign corporations. Once a business has determined its South Carolina taxable income, it must apply the South Carolina corporate income tax rate to determine the amount of South Carolina corporate income tax due. South Carolina has a 5% corporate income tax rate.

3. TAXATION OF OTHER ENTITIES

South Carolina Code §12-6-550 exempts a number of corporations from South Carolina income tax. Exempt corporations include insurance companies, certain nonprofit corporations organized for the purpose of providing water supply and/or sewer disposal, banks, building and loan associations, and certain electric cooperatives. Some of these entities may be subject to other types of South Carolina tax. Also, South Carolina does not generally tax the income of a tax exempt organization qualifying under Internal Revenue Code §§501 through 528, although the unrelated business income of such an entity is taxed. The taxation of pass-through entities and limited liability companies generally conforms to the federal income tax laws. The South Carolina taxation of pass-through entities and withholding requirements are discussed below.

a. S Corporations

South Carolina recognizes a valid federal Subchapter S election. South Carolina Code §12-6-590 provides that a corporation having a valid election under Subchapter S of the Internal Revenue Code is not subject to South Carolina income tax to the extent it is exempt from federal corporate income tax. Further, a termination or revocation of an “S” election for federal purposes automatically terminates or revokes the election for South Carolina income tax purposes.

A corporation subject to the corporate income tax under Title 12, Chapter 6 of the South Carolina Code that has a valid qualified Subchapter S subsidiary (QSub) election for federal income tax purposes is deemed to have a valid QSub election for South Carolina income tax purposes. Therefore, for South Carolina income tax, license fee, and annual report purposes, including the determination of nexus, the parent and each QSub are treated as one entity. South Carolina Code §12-2-25(B)(2). See also South Carolina Revenue Ruling #05-11 for information on the license fee computation for a QSub.

b. Partnerships

Partnerships are not subject to South Carolina income tax under South Carolina Code §12-6-600. The gross income, adjusted gross income, and taxable income of a partnership and its partners are determined in accordance with applicable provisions of the Internal Revenue Code. Partners include in their South Carolina taxable incomes their proportionate share of the partnership’s South Carolina taxable income. See South Carolina Revenue Ruling #97-7 for information on a resident partner reporting personal service income received from South Carolina and one or more states.

c. Limited Liability Companies

South Carolina follows the federal tax treatment of limited liability companies. If a limited liability company is treated as a corporation for federal income tax purposes it is treated as a corporation for South Carolina income tax purposes and is subject to a corporate license fee. South Carolina Code §12-2-25 provides that a partnership includes a limited liability company taxed for all South Carolina income tax purposes as a partnership. Accordingly, a limited liability company that is treated as a partnership for federal income tax purposes is not subject to South Carolina income tax or the corporate license fee.

South Carolina Code §12-2-25 further provides that a single member limited liability company that is not taxed as a corporation for South Carolina income tax purposes is not regarded as an entity separate from its owner. Accordingly, if the single member limited liability company does not make a federal election to be taxed as a corporation, it will not be treated as a separate entity. Instead, it will be treated as a sole proprietorship if owned by an individual, a division of the corporation if owned by a corporation, or a division of the partnership if owned by a partnership. For example, if a corporation owns a single member limited liability company that is disregarded for South Carolina tax purposes, the limited liability company does not owe a corporate license fee. The limited liability company is treated as part of the corporation which owns it. If the single member limited liability company has elected to be taxed as a corporation, then it is treated as a 100% owned subsidiary and is subject to a separate corporate license fee.

Note, with respect to the preferential assessment ratio allowed to owner-occupied residential property, the South Carolina Supreme Court has ruled that a single member limited liability company is disregarded in determining whether the single member of the limited liability company can qualify for the 4% owner-occupied residential assessment ratio for such property under South Carolina Code §12-43-220. See, *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011).

See South Carolina Revenue Ruling #98-11 for information on income tax, license fee, and deed recording fee implications of a single member limited liability company. Questions concerning the taxation of limited liability companies, other than single member limited liability companies, are addressed in South Carolina Information Letter #96-25. Questions concerning conversion of a partnership to a limited liability company are discussed in South Carolina Revenue Ruling #95-9. See also South Carolina Limited Liability Companies and Limited Liability Partnerships, published by the South Carolina Bar.

d. Withholding for Passthrough Entities

South Carolina requires the withholding of tax on the pass through of income to nonresident shareholders and partners at the rate of 5%. South Carolina Revenue Procedure #17-2 addresses withholding on distributed or undistributed South Carolina income of shareholders and partners, and exceptions to the withholding requirements.

There are several exceptions to the withholding requirements in South Carolina Code §12-8-590. The exceptions are:

1. An S corporation or partnership is not required to withhold income taxes with respect to any shareholder or partner who submits an affidavit stating the nonresident shareholder or partner is subject to the personal jurisdiction of South Carolina. The Department has a preprinted affidavit, Form I-309, "Nonresident Shareholder or Partner Affidavit and Agreement Income Tax Withholding," available for use by shareholders and partners.
2. An S corporation or partnership is not required to withhold income taxes with respect to any shareholder or partner for which the S corporation or partnership reports the nonresident shareholder's or partner's income on a composite tax return. See Section 8 below for information on composite returns.
3. An S corporation or partnership is not required to withhold income taxes under South Carolina Code §12-8-590 on income attributable to the sale of real property which is subject to withholding under South Carolina Code §12-8-580, "Withholding by buyer of real property or associated tangible personal property from nonresident seller." See South Carolina Revenue Ruling #09-13 for more information on withholding on sales of property by nonresidents.
4. An S corporation or partnership is not required to withhold income taxes with respect to any nonresident shareholder or partner that provides a statement that the shareholder is an organization exempt from income taxes under Internal Revenue Code §501(a).

4. NEXUS

a. Public Law 86-272

Nexus is a sufficient connection between a person and a state, and a sufficient connection between an activity, property, or transaction and a state, that allows the state to subject the

person and the activity, property, or transaction to its taxing jurisdiction. The Due Process and Commerce Clauses of the United States Constitution, 15 U.S.C. §381 (Public Law 86-272), and other federal statutes provide limitations on states' powers to tax out-of-state corporations.

Public Law 86-272 prohibits a state from taxing the income of a taxpayer if the taxpayer's only business activities within the state consist of the solicitation of orders for sales of tangible personal property that are sent outside the state for approval and are filled and shipped from outside the state.

The Department published guidelines in South Carolina Revenue Ruling #97-15, similar to those published by the Multistate Tax Commission in 1994, to assist in determining whether Public Law 86-272 protects certain activities from South Carolina taxation. Only the solicitation to sell tangible personal property is afforded immunity under Public Law 86-272. The leasing, renting, licensing or other disposition of tangible personal property or transactions involving real property or intangibles, such as franchises, patents, copyrights, trademarks, service marks and the like are not protected activities under Public Law 86-272. The selling or providing of services is also not protected.

The sale or delivery, and the solicitation for the sale or delivery, of any type of service that is not either (1) ancillary to solicitation or (2) otherwise set forth as a protected activity in South Carolina Revenue Ruling #97-15 is also not protected under Public Law 86-272.

b. Geoffrey

Over the years, the courts have provided limitations and guidelines in determining whether certain activities create nexus with a state. For example, see, *Wisconsin Department of Revenue v. William Wrigley, Jr., Co.*, 505 U.S. 214 (1992), *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408 (1984), *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977), and *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E. 2d 13 (S.C. 1993) *cert. denied* 114 S. Ct. 550 (1993).

In *Geoffrey*, the South Carolina Supreme Court determined that the licensing of trademarks and symbols to a South Carolina retailer and the maintaining of accounts receivable in South Carolina by a nonresident taxpayer created nexus for South Carolina income tax purposes even though the taxpayer lacked physical presence in South Carolina. The Court determined that Geoffrey purposely directed its activities toward South Carolina, and that Geoffrey owned and used business intangible property in South Carolina. Each of these activities was held to be sufficient to satisfy the nexus requirements of the Due Process Clause and the Commerce Clause.

In South Carolina Revenue Ruling #08-1, the Department addressed some of the common questions that have arisen relating to taxpayers concerned about the implications of *Geoffrey*. Specifically, this document provides examples that show activities or relationships, which will not, by themselves, create income tax nexus with South Carolina.

c. Income Tax Nexus Creating Activities

South Carolina Revenue Ruling #16-11 provides guidance concerning corporate income tax nexus creating activities. It addresses types of business activities or relationships that, by themselves, may or may not create corporate income tax nexus. This document does not address the imposition of any license fee, filing requirements, withholding responsibilities, or the consequences of unity and foreign commerce.

The following categories of nexus creating activities are discussed:

1. General Activities
2. Registration with State Agencies/Departments
3. Ownership/leasing In-state Property
4. Ownership Interest of In-state Pass-through Entities
5. Licensing Intangibles
6. Employee Activities – Sales Related
7. Employee Activities – Non-sales Related
8. Activities of Unrelated Parties
9. Distribution and Delivery
10. Financial Activities/Transactions
11. Transactions with South Carolina Printers
12. Cloud Computing or Software as a Service (SAAS) Transactions
13. Internet-Based Activities

See Appendix I for a summary of the Department's responses to corporate income tax nexus creating questions contained in South Carolina Revenue Ruling #16-11.

Since developments in this area are constantly taking place, any response is subject to change due to a future statute, regulation, court decision, or advisory opinion.

5. ALLOCATION AND APPORTIONMENT OF INCOME

a. General Provisions

South Carolina Code §12-6-2210 provides for the determination of whether taxable income of a business will be apportioned. A taxpayer whose entire business is transacted or conducted in South Carolina is subject to income tax based on the entire taxable income of the business for the taxable year. A taxpayer that transacts or conducts its business partly within and partly outside of South Carolina is subject to income tax based on the portion of its business carried on in South Carolina. This portion is determined through allocation and apportionment of income. The sum of these amounts is South Carolina taxable income.

South Carolina Code §§12-6-2220 and 12-6-2230 provide that certain classes of income, less related expenses, are allocated. Items directly allocated include nonbusiness interest, nonbusiness dividends, nonbusiness rents and royalties from the lease or rental of real estate or tangible personal property, gains and losses from the sale of real property, and nonbusiness gains and losses from sales of intangible property.

The income remaining after allocation is apportioned in accordance with South Carolina Code §12-6-2240. South Carolina generally requires the use of one of the following apportionment methods:

1. A single factor apportionment method (based on sales) for taxpayers whose principal business in South Carolina is dealing in tangible personal property. This method is typically used by businesses that manufacture, sell, or rent tangible personal property. See, South Carolina Code §§12-6-2252, 12-6-2280, and 12-6-2295.
2. A "gross receipts" apportionment method for taxpayers not dealing in tangible personal property. This method is typically used by financial businesses and service businesses, including businesses that install or repair tangible personal property, and contractors. See South Carolina Code §§12-6-2290 and 12-6-2295.

3. A “special” apportionment method provided in South Carolina Code §12-6-2310 for certain companies, such as railroad companies, telephone companies, pipeline companies, airline companies, and shipping lines.
4. An individualized apportionment method tailored to a particular taxpayer (a) because the standard method for that taxpayer does not fairly represent the extent of the taxpayer’s business in South Carolina, or (b) as an economic incentive allowed the taxpayer. See subsections (b) and (c) below for more information on alternative apportionment provisions.

◆ **Apportionment Methods**

Single Sales Factor Apportionment Method. South Carolina Code §12-6-2252 (*i.e.*, the single sales factor apportionment method) provides that a taxpayer whose principal business in South Carolina is manufacturing or any form of collecting, buying, assembling, or processing goods and materials in this state or whose principal business in South Carolina is selling, distributing or dealing in tangible personal property within South Carolina shall apportion income to South Carolina by multiplying the net income remaining after allocation under South Carolina Code §§12-6-2220 and 12-6-2230 by the sales factor defined in South Carolina Code §12-6-2280. However, if a sales factor does not exist, the remaining net income is apportioned to the business’s principal place of business. The single sales factor apportionment method is typically used by manufacturers and retailers having income in South Carolina, as well as other businesses that make or deal with tangible personal property.

“Principal place of business” means “the domicile of a corporation. However, when none of the business of the corporation is conducted in the state of domicile, the department shall determine the principal place of business of the corporation based upon the available evidence.”

Gross Receipts Apportionment Method. South Carolina Code §12-6-2290 provides for the “gross receipts” formula and states:

If the principal profits or income of a taxpayer are derived from sources other than those described in South Carolina Code §§12-6-2252 or 12-6-2310, the taxpayer shall apportion its remaining net income using a fraction in which the numerator is gross receipts from within this State during the taxable year and the denominator is total gross receipts from everywhere during the taxable year. For purposes of this section, items included in gross receipts are as provided in South Carolina Code §12-6-2295.

The “gross receipts” ratio is most commonly used by service businesses. The sourcing of gross receipts was reviewed in *Lockwood Greene Engineers v. South Carolina Tax Commission*, 361 S.E.2d 346 (1987). The court held that in sourcing income of a multistate engineering firm, “gross receipts from within this State” were to be determined according to where the services were performed rather than according to where the customers were located. See also, *Geoffrey, Inc. v. South Carolina Tax Commission*, 313 S.C. 15, 437 S.E.2d 13 (1993), *cert. denied* 114 S. Ct. 550 (1993), SC Private Letter Ruling #13-3, and *DIRECTV, Inc. & Subsidiaries v. South Carolina Department of Revenue*, 421 S.C. 59, 804 S.E.2d 633 (Ct. App. 2017), and *Dish DBS Corporation, f/k/a Echostar, DBS Corp. and Affiliates v. South Carolina Department of Revenue*, (Unpublished Opinion No. 2018-UP-404) (Ct. App. October 31, 2018), concerning sourcing of receipts of subscription network/broadcasting/programming and advertising services associated with television providers. See also, South Carolina Code §12-6-2295(A)(7) (overruling the holding in *DIRECTV* to establish sourcing of receipts from the provision of direct broadcast satellite service and also addressing receipts from the operation of a cable system (as defined in Code §58-12-300) and video service (as defined in Code §58-12-300)).

b. Fairness Based Alternative Apportionment Provisions

South Carolina Code §12-6-2320 provides for alternative methods to fairly apportion income for companies who do business in more than one state. Any taxpayer who believes that the statutory apportionment formula does not fairly represent the extent of the taxpayer’s business within this State may apply to the Department for approval of an alternative method. On the other hand, if the Department does not believe the statutory apportionment formula fairly represents the extent of the taxpayer’s business in this State, the Department may require an alternative method.

Under South Carolina Code §12-6-2320(A), a taxpayer may petition for, or the Department may require, with respect to all or any part of the taxpayer’s business activity, one of the following alternatives for reporting:

1. Separate accounting;
2. The exclusion of one or more factors;
3. The inclusion of one or more factors; or
4. The use of another allocation and apportionment method.

The procedure to apply for the use of an alternative method is explained in detail in South Carolina Revenue Procedure #15-2. Written approval of the new method must be received prior to using it to determine income allocated or apportioned to South Carolina. The new method will also be used to determine the taxpayer's corporate license fee.

In *Media General Communications, Inc. v. South Carolina Department of Revenue*, 388 S.C. 138, 694 S.E.2d 525 (2010), the South Carolina Supreme Court was asked to consider whether the Department of Revenue had the power under South Carolina Code §12-6-2320(A) to allow Media General to use the combined entity apportionment as a method of allocating and apportioning its income.¹ In particular, the question was whether item (4) of the statute which allows the use of "any other method to effectuate an equitable allocation and apportionment of the taxpayer's income" provided for combined apportionment. The South Carolina Supreme Court held that combined entity apportionment was a method that could be used to provide equitable allocation and apportionment of the taxpayer's income. See also, *CarMax Auto Superstores West Coast, Inc. v. South Carolina Department of Revenue*, 411 S.C. 79, 767 S.E. 2d 195 (2014) modifying 397 S.C. 604, 725 S.E. 2d 711 (Ct. App. 2012) addressing who bears the burden of proving that the standard apportionment formula does not fairly represent a taxpayer's business activity in the State and that an alternative method is reasonable, and *Rent-A-Center West, Inc. v. South Carolina Department of Revenue*, 418 S.C. 320, 792 S.E. 2d 260 (Ct. App. 2016) adopting the same line of reasoning as the *CarMax* case.

c. Economic Development Based Alternative Apportionment Provisions

South Carolina Code §12-6-2320 also provides for alternative methods to apportion income of multistate companies who are planning new facilities or expansions in South Carolina. The procedure to request approval of an economic development based alternative allocation or apportionment method is provided in South Carolina Revenue Procedure #15-3. The new method will also be used to determine the taxpayer's corporate license fee, if any. The three incentive based methods are:

◆ New Facility or Expansion – 5 Year Formula

South Carolina Code §12-6-2320(B)(1) provides that the Department may enter into an agreement not to exceed five years that allows a business to use a method other than the standard apportionment method in determining its South Carolina taxable income. In order to use an alternative method for five years, the following requirements must be met:

¹ Under the combined entity apportionment, method, all income and loss of all entities that form part of the unitary business are combined.

1. The business must be planning a new facility or an expansion of an existing facility in South Carolina.
2. The business must ask the Department to enter into a contract reciting an allocation and apportionment method.
3. The Coordinating Council for Economic Development at the Department of Commerce ("Council") must certify that the new facility or expansion will have a significant beneficial economic effect on the region for which it is planned and that its benefits to the public exceed its costs.

◆ **New Facility or Expansion – 10 Year Formula**

South Carolina Code §12-6-2320(B)(3) provides that the Department may enter into an agreement not to exceed ten years that allows a taxpayer to use a method other than the standard apportionment method in determining its South Carolina taxable income. In order to use an alternative method for ten years, the following requirements must be met:

1. The taxpayer must be planning a new facility or an expansion of an existing facility in South Carolina that results in (1) a total investment of \$10 million or more and (2) the creation of at least 200 new, full-time jobs with an average cash compensation level of more than three times the per capita income of the state at the time the jobs are filled. (The job requirement must be met within 5 years of the Council's certification.)
2. The Department must agree by contract to the use of the new method.
3. The Council must certify that the new facility or expansion will have a significant beneficial economic effect on the region for which it is planned and that its benefits to the public exceed its costs.

◆ **Special Industry Formulas**

1. Certain Recycling Facilities

South Carolina Code §12-6-2320(C) provides special rules that allow a taxpayer constructing or operating a qualified recycling facility to request an alternative allocation or apportionment method. In order to qualify as a qualified recycling facility, the facility must invest at least \$300 million and meet certain other requirements.

2. Life Sciences Facilities and Renewable Energy Manufacturing Facilities

South Carolina Code §12-15-40 provides special rules that allow a taxpayer establishing a life sciences facility or a renewable energy manufacturing facility to request the Department enter into an agreement for up to 15 years to establish an alternative allocation or apportionment method pursuant to South Carolina Code §12-6-2320.

South Carolina Code §12-15-20(A) defines a “life sciences facility” as a business engaged in pharmaceutical, medicine, and related laboratory instrument manufacturing, processing, or research and development, including a business under North American Industry Classification System Manual Code 3254 (Pharmaceutical and Medical Manufacturing) or 334516 (Analytical Laboratory Instrument Manufacturing.)

South Carolina Code §12-15-20(B) defines a “renewable energy manufacturing facility” as a business which manufactures qualifying machinery and equipment for use by solar and wind turbine energy producers. It also includes a facility manufacturing qualifying advanced lithium ion, or other batteries for alternative energy motor vehicles as described in South Carolina Code §12-6-3377 or for other vehicles certified by the South Carolina Energy Office.

d. Corporate License Fees

South Carolina Code §12-20-50 imposes an annual license fee on the capital and paid-in surplus of a corporation. The license fee is \$15 plus \$1 for each \$1,000, or fraction, of capital stock and paid-in or capital surplus shown on the corporate records on the first day of the tax year. The minimum license fee is \$25. The license fee is computed in advance of the taxpayer’s income tax year.

If a “consolidated” return is filed, then the license fee is measured by the capital stock and paid-in or capital surplus of each corporation considered separately without offset for investment of one corporation in the capital or surplus of another corporation in the consolidated group. The minimum license fee applies to each corporation in the consolidated group.

South Carolina Code §12-20-60 provides that the license fee imposed by South Carolina Code §12-20-50 must be apportioned in accordance with the ratio prescribed for income tax purposes. The \$25 minimum license fee; however, may not be apportioned. A business using an alternative method to apportion income (see above discussion) must also use that alternative method to compute the South Carolina corporate license fee.

South Carolina Code §12-20-50(A) defines “paid-in or capital surplus” and “earned surplus.” Subsection (C) provides an economic development incentive allowing a reduction in the base amount used to compute the license fee for certain capital contributions used for substantial expansions. This incentive allows a holding company to reduce its paid-in or capital surplus by

the portion of contributions to capital received from its parent corporation used to finance a subsidiary's expansion. To qualify, the expansion must be: (1) located in an economic impact zone (**NOTE:** effective June 23, 2010, the definition of "economic impact zone" contained in South Carolina Code §12-14-30(1) has been eliminated and there are no longer any economic impact zones in South Carolina), (2) cost over \$100 million, and (3) completed within 3 years of the first contribution to capital received by the holding company. The 3-year limitation may be extended for good cause by the Department. If the expansion is not timely completed; however, the amounts previously excluded from the license fee base for the contributions must be included in the capital amount in the year following the completion deadline.

See South Carolina Revenue Ruling #05-11 for a detailed question and answer document on computing and prorating the license fee based on capital stock and paid in or capital surplus as provided in South Carolina Code §12-20-50.

NOTE: South Carolina Code §12-20-100 imposes a license fee on every express company, street railway company, navigation company, waterworks company, power company, electric cooperative company, light company, gas company, telegraph company, or telephone company in lieu of the license fee imposed by South Carolina Code §12-20-50. This license fee is based on gross receipts from services rendered from regulated business in South Carolina and South Carolina property used in the conduct of business. The fee is \$1 for each \$1,000, or fraction, of fair market value of property owned and used within South Carolina in the conduct of business as determined for property tax purposes for the preceding tax year and \$3 for each \$1,000, or fraction, of gross receipts from services rendered from regulated business within South Carolina during the preceding tax year. The minimum license fee is \$25.²

6. USE OF CREDITS

Most of South Carolina's income tax credits may be earned by C corporations, S corporations, partnerships, sole proprietors, and limited liability companies (regardless of how they are taxed). The types of taxes a credit may offset include corporate income tax, corporate license fee, individual income tax, wage withholding, bank tax, insurance premium tax, and sales and use taxes. South Carolina Code §§12-6-3310 and 12-6-3480, as well as each specific credit statute, should be reviewed to determine credit eligibility and use. A brief overview of the general credit rules and some exceptions to these rules are discussed below:

² In *Alltel Communications, Inc. v. South Carolina Department of Revenue, et al.*, 399 S.C. 313, 731 S.E.2d 869 (2012), the South Carolina Supreme Court determined that a cellular telephone service provider was not a telephone company for purposes of the license tax imposed under South Carolina Code §12-20-100.

a. General Use of Credit Rules

South Carolina Code §§12-2-100, 12-6-3310 and 12-6-3480 provide rules relating to the use of tax credits. These rules include:

- ◆ A credit must be used to the extent possible in the year it is generated and cannot be refunded, unless otherwise provided by law. The job development credit (South Carolina Code §12-10-80) and the job retraining credit (South Carolina Code §12-10-95) (both of which are credits against withholding tax) are refundable to the extent of withholding actually paid. The milk producer credit (South Carolina Code §12-6-3590) and the agricultural use of anhydrous ammonia credit (South Carolina Code §12-6-3582) (both of which are credits against income tax) are refundable.
- ◆ Unless otherwise provided in the particular credit statute, the taxpayer may apply tax credits in Chapter 6 (The Income Tax Act) or Chapter 14 (Economic Impact Zone Community Development Act) in any order.

NOTE: This provision does not include credits contained in other Chapters of Title 12, (*e.g.*, Chapters 20, 65 and 67), or other titles in the South Carolina Code of Laws (*e.g.*, Titles 6 and 11).

- ◆ The taxpayer may apply a credit that is allowed for use against both income taxes and corporate license fees in any order, unless otherwise specifically provided, and against either the tax or license fee, or both, in any given year, subject to specific limitations in the applicable credit statute and South Carolina Code §12-6-3480(3).
- ◆ No credit may be used more than once.
- ◆ Any limitations on the total amount of liability for taxes or license fees that can be reduced by the use of a credit must be computed one credit at a time before another credit is used to reduce any remaining tax liability in Chapter 6 or license fee liability in Chapter 20. Accordingly, a taxpayer may choose to use a credit that does not have an income tax liability limitation before or after any credit with an income tax liability limitation, unless otherwise provided in either of the credit provisions.

NOTE: Some particular credit provisions, such as the research and development credit in South Carolina Code §12-6-3415 limit the application of the credit to the applicable remaining tax liability after all other credits have been applied.

The following example illustrates how these general rules regarding the use of credits operate.

Example 1 – Income Limitation Credit by Credit Computation. Assume a taxpayer has a \$10,000 income tax liability and has generated two tax credits in Chapter 6 that are limited to 50% of its tax liability - a \$6,000 jobs tax credit and a \$6,000 child care credit. The amount of credits that can be claimed could be computed as follows:

Step 1		Step 2	
Tax Liability	\$10,000	Limited Liability	\$5,000
1 st Limitation %	<u>50%</u>	2 nd Limitation %	<u>50%</u>
Limited Liability	\$ 5,000	Limited Liability	\$2,500

Only \$7,500 (\$5,000 + 2,500) of the liability may be offset by the credits. The first limitation amount of \$5,000 applies to either credit the taxpayer chooses. The second limitation amount of \$2,500 applies to the remaining credit.

Example 2 – Choice of Credit Ordering. Assume the same facts as Example 1 and further assume that the taxpayer has a conservation credit (a credit with no specific income limitation) equal to \$8,000. Based on Example 1, the taxpayer has the option to:

1. Use the \$8,000 conservation credit first since it does not have a tax liability limitation percentage and then apply the limitation percentages of the job tax credit and the child care credit to the \$2,000 remaining tax liability (resulting in the ability to use \$1,500 of the combined jobs tax and child care credits) or
2. Apply the limitation percentages to the jobs tax credit and the child care credit first (using \$7,500 combined jobs tax and child care credits) and then reduce the \$2,500 remaining tax liability to \$0 with the conservation credit.

- ◆ Any credits under Title 38 (Insurance – including the taxation of insurance companies) may be used against income taxes imposed under Chapter 6 or license fees imposed under Chapter 20.

b. Special Use of Credit Rules

Except as otherwise provided, a credit must be used by the taxpayer who earns it. Exceptions to these rules exist for the following: (1) taxpayers participating in a consolidated corporate income tax return, (2) passthrough entities eligible to earn and use a credit, (3) limited liability companies not expressly eligible to earn a credit, and (4) transfers of permitted credits, such as the conservation credit. Exceptions 1 - 3 are briefly discussed below. Exception 4 is discussed throughout this chapter in the particular credit summary, as applicable.

◆ Consolidated Corporate Income Tax Participants

South Carolina Code §12-6-3480 provides that any income tax credit in Chapter 6 or Chapter 14 that is earned by a corporation included in a consolidated corporate income tax return under South Carolina Code §12-6-5020 must be used and applied against the consolidated tax (*i.e.*, the aggregate pre-credit tax liability of the participating taxpayers), unless otherwise specifically provided. (See Section 7 below for a discussion of credits used on a consolidated corporate tax return.)

◆ Pass-through Entity Specifically Qualifying for Credit

South Carolina Code §12-6-3310(B) contains special provisions concerning the use of income tax credits by pass-through entities. These rules include:

1. Unless specifically prohibited, an S corporation, limited liability company taxed as a partnership, or partnership that qualifies for a credit pursuant to Article 25 of Chapter 6, Title 12 may pass through the credit earned to each shareholder of the S corporation, member of the limited liability company, or partner of the partnership.

NOTE: The statutory language of a particular tax credit controls whether a credit generated by an entity may be used by a partner, shareholder, or member. See, *Centex International, Inc. v. South Carolina Dept. of Revenue*, 406 S.C. 132, 750 S.E. 2d 65 (2013), wherein the South Carolina Supreme Court held that under the infrastructure credit statute (South Carolina Code §12-6-3420) which provides that a corporation could claim a credit for construction or improvement of an infrastructure project against corporate income taxes for expenses paid or accrued by the taxpayer, the legislature intended that a corporation had to be the entity that incurred the expenses to generate the tax credit and thus, a partnership was precluded from earning the infrastructure credit.

2. Any credit earned by an S corporation owing corporate level income tax must first be used at the entity level. Only the remaining credit passes through to the shareholders of the S corporation.

NOTE: Generally, a credit that is passed through is not affected by the generating entity's income and is not limited to a percentage of the generating entity's income tax. For example, an S corporation may pass through the job tax credit to its shareholders even if it has a South Carolina loss. Once a credit is passed through, however, it may not be later used by the entity generating the credit.

3. The credit is allowed against the type of tax or taxes specifically provided for by the applicable credit.
4. Unless otherwise provided in the credit provision, the amount of the credit allowed a shareholder, partner, or member is equal to the percentage of the shareholder's 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 earned by the entity and available for pass through. Limitations upon reduction of income tax liability by use of a credit are computed based on the shareholder's, partners, or member's tax liability.

NOTE: Exceptions to this rule apply for certain credits, such as the credit for rehabilitation of a certified historic structure in South Carolina Code §12-6-3535, the textile facility revitalization credit in South Carolina Code Chapter 65, Title 12, and the abandoned buildings revitalization credit in South Carolina Code Chapter 67, Title 12.

◆ **Limited Liability Company Not Specifically Qualifying For Credit**

South Carolina Code §12-6-3310(C) contains special provisions concerning the qualification and use of credits by limited liability companies that are not organized as a legal entity that expressly qualifies for a credit in Article 25 of Chapter 6, Title 12.

NOTE: These special provisions do not apply to credits in other articles or titles of the South Carolina Code, such as Chapter 14 of Title 12 containing the economic impact zone credit, or Chapter 65 of Title 12 containing the textile revitalization credit. The rules include:

1. Limited Liability Company Taxed as a Partnership.

Individual Member. The limited liability company may earn and pass through any credits allowed by Article 25 of Chapter 6, Title 12. The individual member will use any credits against individual income taxes imposed under South Carolina Code §12-6-510.

Corporate Member. The limited liability company may earn and pass through any credits allowed by Article 25 of Chapter 6, Title 12. The corporate member will use any credits against corporate income taxes imposed under South Carolina Code §12-6-530.

NOTE: South Carolina Code §12-6-3310(C) controls over the statutory language of a particular tax credit. For example, the infrastructure credit in South Carolina Code §12-6-3420 specifically states that the credit is claimed by a corporation against corporate income taxes imposed under South Carolina Code §12-6-530 or bank taxes imposed under South Carolina Code §12-11-20.

2. Limited Liability Company Taxed as a Corporation. The limited liability company taxed as a corporation is entitled to any credits applicable to corporations.

3. Disregarded Single Member Limited Liability Company.

Individual Member. The individual member may claim any tax against individual income taxes.

Corporate Member. The corporate member may claim any tax against corporate income taxes.

4. Limited Liability Companies Owned By Limited Liability Companies or Other Passthrough Entities. Items 1, 2, and 3 above are applied at each stage of ownership until the credit is applied against individual income taxes under South Carolina Code §12-6-510 or corporate income taxes under South Carolina Code §12-6-530.

7. CONSOLIDATED CORPORATE TAX RETURN

South Carolina uses an unusual method to compute the tax on a “consolidated” corporate income tax return, Form SC1120, which may be filed by certain affiliated corporations. South Carolina has not adopted the federal consolidation rules in Internal Revenue Code §§1501 through 1505 or the regulations thereunder. There are no elimination adjustments for intercompany transactions such as those for federal consolidated income tax purposes. South Carolina’s “consolidated” rules treat each corporation in an affiliated group as a separate taxpayer.

Generally, corporate taxpayers file separate returns and report their income separately. However, South Carolina Code §12-6-5020 provides that a consolidated return may be filed for the following controlled corporations:

1. A parent and substantially controlled subsidiary or subsidiaries.
2. Two or more corporations under substantially the entire control of the same interest.

The terms “substantially controlled” and “substantially the entire control” mean the ownership of at least 80% of the total combined voting power of all classes of stock of all corporations that are a party to a consolidated return.

Either a consolidated or a separate South Carolina income tax return can be filed even if a taxpayer files a consolidated return for federal purposes. Other South Carolina consolidated return requirements include:

1. The election to file a consolidated return or separate returns must be made on an original and timely filed return and may not be changed after the return is filed.
2. Once a consolidated return is filed, permission must be granted by the Department to file separate returns.
3. All corporations included in a consolidated return must use the same accounting year.
4. All corporations included in a consolidated return must be subject to South Carolina corporate income tax. In other words, each corporation must have nexus with South Carolina. Since banks and savings and loans are not subject to corporate income tax, they may not be included in a South Carolina consolidated return.
5. A corporation doing business entirely within South Carolina may file a consolidated return with a corporation doing a multistate business. Two or more corporations doing a multistate business may file a consolidated return.
6. A corporation using the gross receipts method of apportionment may file a consolidated return with a corporation using the single sales factor method, or a special method of allocation and apportionment.

NOTE: A corporation that has elected to be taxed under Subchapter S of the Internal Revenue Code may not join in the filing of a South Carolina consolidated return.

South Carolina's consolidated return is a single corporate income tax return for two or more corporations in which income or loss is determined as follows:

1. South Carolina taxable income or loss is computed separately for each corporation.
2. Allocable income or loss is allocated separately for each corporation.
3. Apportionable income or loss is computed utilizing separate apportionment factors (e.g., gross receipts or the single sales factor method for each corporation).
4. Income or loss computed above is added together and reported on one return for the group.

5. Use of income tax credits, including the carryover of unused credits, must be determined on a combined basis. Limitations on credits which refer to the income or the income tax liability of a corporation are deemed to refer to the income or income tax liability of the consolidated group. Credits reduce the consolidated group's tax liability regardless of whether or not the corporation entitled to the credit contributed to the tax liability. (See Section 6 above for a discussion of credits used by a corporation included in a consolidated corporate income tax return.)

8. COMPOSITE RETURNS FOR NONRESIDENT PARTNERS AND SHAREHOLDERS

South Carolina Code §12-6-5030 allows S corporations or partnerships (including limited liability companies taxed as partnerships or S corporations) to separately compute South Carolina income and tax attributable to each participating nonresident shareholder or partner and report the total tax due on a single tax return, referred to as a "composite" return. S corporations and partnerships are not required to withhold income tax pursuant to South Carolina Code §12-8-590 on behalf of any nonresident shareholder or partner whose income is reported on the composite return. See Section 3.d. above for a discussion of South Carolina Code §12-8-590.

Composite return requirements include:

1. Nonresident fiduciary and individual shareholders and partners may participate in filing a composite return.
2. All participating shareholders and partners must have the same tax year.
3. A composite return may be filed even if some of the nonresident fiduciary and individual shareholders and partners eligible to participate in filing a composite return choose not to participate.
4. Corporate partners may not be included on the composite return since they are required to file an annual report and pay a license fee.
5. Shareholders or partners having income within South Carolina from sources other than the partnership or S Corporation may be included on the composite return.

Form SC1040, "South Carolina Individual Income Tax Return," is used to file a composite return on behalf of participating shareholders and partners and is signed by an authorized partner, S corporation officer, or member of a limited liability company. The S corporation, limited liability company or partnership may elect to determine each participant's tax due by one of the following methods:

Method 1: For a participant who provides an affidavit to the Department through the entity stating that he has no income other than the income from the entity. Compute the participant's South Carolina income tax as follows: (1) using the pro rata share of the standard deduction or itemized deduction and personal exemptions for each participant pursuant to South Carolina Code §12-6-1720(2) in the same manner as if it was being separately reported, or (2) without regard to any deductions or exemptions in the same manner as if it was being separately reported.

Method 2: For a participant who does not provide an affidavit to the Department through the entity stating that he has no income other than the income from the entity. Compute each participant's share of South Carolina income tax without regard to deductions or exemptions by using the active trade or business income rate provided in South Carolina Code §12-6-545 on his active trade or business income, and using the highest marginal rate in South Carolina Code §12-6-510 for other income (*i.e.*, 7%).

The Department has a preprinted affidavit, Form I-338, "Composite Return Affidavit," available for use in complying with the composite return requirements.

PART B: JOB OR EMPLOYEE CREDITS AND INCENTIVES

9. JOB TAX CREDIT AND COMPARISON CHART

South Carolina Code Title 12, Chapter 6 contains three job tax credit provisions. The provisions are contained in South Carolina Code §12-6-3360(C)(1), the “traditional” annual job tax credit, South Carolina Code §12-6-3360(C)(2), the “annual” small business job tax credit, and South Carolina Code §12-6-3362, the “accelerated” small business job tax credit. Since the qualifying requirements, the credit amount and computation, and the time in which the credit may first be claimed may differ depending on the specific credit provision, the applicable South Carolina job tax credit statute should be carefully reviewed. Careful consideration should be given to which specific credit the taxpayer will claim since a taxpayer may meet the requirements of all three of the credit provisions, but only one credit provision may be used for each credit period.

The job tax credit statute rules and requirements can be complex. An overview of the three job tax credit provisions is provided below. Also, a general comparison of the three job tax credits is provided for use as a quick reference tool; it is a simplification and may be misleading if not used in conjunction with researching the law.

For additional guidance on more complex principles and exceptions to the general rules discussed below, see South Carolina Code §§12-6-3360 and 12-6-3362, the job tax credit statutes, SC Revenue Ruling #07-2, a comprehensive question and answer advisory opinion addressing the small business job tax credits, SC Revenue Ruling #99-5, a comprehensive question and answer advisory opinion regarding the traditional job tax credit, and consult your tax advisor.

COMPARISON OF JOB TAX CREDIT OPTIONS

CAVEAT: This comparison is written in general terms. It may not be relied on as a substitute for researching original sources of authority.

	"Traditional" Annual Job Tax Credit	"Annual" Small Business Job Tax Credit	"Accelerated" Small Business Job Tax Credit
Code Section	12-6-3360(C)(1)	12-6-3360(C)(2)	12-6-3362
Form	TC-4	TC-4SB	TC-4SA
Qualifying Type Business	Manufacturing, tourism, processing, warehousing, distribution, research & development, corporate office, technology intensive, banking, qualifying service-related facility, agribusiness operations, agricultural packaging, professional sports team, qualifying health care related facilities, and air transportation support. Also, retail facilities and service related industries in Tier IV Counties.. See Code §Section 12-6-3360(A) and (M)(5) through (17)	same	same
Size Requirement	None	99 or fewer employees worldwide	99 or fewer employees worldwide
Taxes Credit Used Against	Corporate or individual income tax, bank franchise tax; or insurance premium tax	same	same
Entities Qualifying	C corporation, S corporation, LLC, Partnership, or Sole Proprietorship	same	same
Credit Amount – Basic	\$1,500 - \$25,000 per year for each new, full time job created, depending on county designation	\$1,500 - \$25,000 (100% credit amount) or \$750 - \$12,500 (50% credit amount) depending on county designation and annualized compensation amount	\$1,500 - \$25,000 (100% credit amount) or \$750 - \$12,500 (50% credit amount) depending on county designation and annualized compensation amount
Credit Amount – Additional	\$1,000 multicounty park \$1,000 Brownfields Voluntary Cleanup	same	same
Monthly Average Increase for Tax Year Requirement	10* (*Exceptions: 20 for new hotels/motels, 25-175 for qualifying service-related facilities and 150 for professional sports teams) A cumulative total of qualifying employees in each county for each month divided by 12 months or actual number of months in operation during current tax year	2 Exception: same A cumulative total of qualifying employees in each county for each month divided by 12 months or actual number of months in operation during current tax year for each wage threshold, then combined.	2 * Exception: same A cumulative total of qualifying employees in each county for each month divided by 12 months or actual number of months in operation during current tax year for each wage threshold, then combined.
Compensation/Gross Wage Requirement	Generally, no. Qualifying service-related facilities are an exception unless 175 jobs are created at one location or 150 jobs are created at a vacant building meeting certain requirements.	Yes (determines if jobs qualify for 100% or 50% credit amount) Based on ≥ 120% or < 120% per capita income for state or county (whichever per capita is lower) Annualize pay for year	Yes (determines whether jobs qualify for 100% or 50% credit amount) Based on ≥ 120% or <120% per capita income for state or county, (whichever per capita is lower) Annualize pay for year
Tax Limitation	50% of tax liability	same	same
Carry Forward	15 years	same	same
Period Credit Duration	5 years	same	same
Period to Claim	Years 2 – 6 after job creation in Year 1, if jobs are maintained**	Years 2 – 6 after job creation in Year 1, if jobs are maintained**	Years 1 – 5, with job creation in Year 1 if jobs are maintained**
Base Year	Year preceding first year a taxpayer creates the number of new jobs to qualify, regardless of whether it is the first year of operation	Same (jobs classified by wage category)	Same (jobs classified by wage category)

**See Section 9.B.a. below for an explanation of the use of the term "maintained" in this credit summary.

9.A. “TRADITIONAL” ANNUAL JOB TAX CREDIT –
Applicable to Any Size Taxpayer

a. General Provisions

South Carolina Code §12-6-3360(C)(1) provides a tax credit against South Carolina income tax, bank tax, or insurance premium tax for a qualifying business creating new jobs in this State. Corporations, sole proprietorships, partnerships, S corporations, and limited liability companies are eligible for the credit. To qualify for the job tax credit, a business must: (1) be a certain type of business, and (2) create and maintain a required minimum number of new, full-time jobs at the time a new facility or expansion is initially staffed. The “basic” credit amount for each new job is \$1,500 to \$25,000 per year depending, in part, on where a taxpayer’s facility is located. A taxpayer can receive an “additional” \$1,000 credit per year for each new qualifying job, subject to certain dollar limitations if: (1) the taxpayer’s qualifying facility is located in a multicounty industrial park, or (2) the taxpayer is creating 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 (“Brownfields Site”). The traditional annual job tax credit is available for 5 years and is first claimed on the taxpayer’s tax return for the year following the creation of the new jobs, provided the jobs are maintained.

The credit is adjusted for job increases or decreases each year. During the 5-year credit period, a credit is also allowed for additional new, full-time jobs created. Any unused credit may be carried forward for 15 years. The credit is claimed on Form TC-4, “New Jobs Credit.”

NOTE: The “traditional” annual job tax credit provisions are discussed in more detail below and an example is provided. For additional guidance on more complex principles and exceptions to the general rules discussed below, see South Carolina Code §12-6-3360; South Carolina Revenue Ruling #99-5, a comprehensive question and answer advisory opinion addressing credit issues; South Carolina Revenue Ruling # 19-11 which discusses matters related to the new increased credit amounts for Tier III and Tier IV counties; and consult your tax advisor.

b. Types of Qualifying Businesses

A business must be engaged in manufacturing, processing, tourism, warehousing, banking, distribution, research and development, agribusiness operations, agricultural packaging, or must be a qualifying service-related facility, a corporate office facility, a technology intensive facility, a professional sports team, or an extraordinary retail establishment to qualify for the job tax credit. A retail facility or service-related industry located in a Tier IV county may also qualify for the credit. The statute contains definitions of “manufacturing facility,” “processing facility,” “warehousing facility,” “distribution facility,” “research and development facility,” “corporate office facility,” “qualifying service-related facility,” “tourism facility,” “technology intensive facility,” “agricultural packaging,” “professional sports team,” and “extraordinary retail establishment.”

South Carolina Regulation 117-750.1 defines the term “facility” as follows:

A facility is generally a single physical location where a taxpayer’s business is conducted or where its services or industrial operations are performed. Where two or more distinct and separate economic activities are performed at a single physical location, each separate economic activity will be treated as a separate facility when: (1) each activity has its own separate and dedicated personnel; (2) separate reports can be prepared on the number of employees, their wages and salaries, sales, or receipts and expenses; and (3) employment and output are significant as to the activity. For purposes of item (2), it is irrelevant if separate reports are actually prepared, so long as separate reports can be prepared, this criteria is met.

In general, a taxpayer must increase employment by a monthly average of 10 new, full-time jobs to qualify for the credit, regardless of the county in which the employer is located.

Exceptions include:

1. Tourism facilities that consist of new hotels and motels must create 20 new, full-time jobs in order to qualify for the credit. Other tourism facilities defined in South Carolina Code §12-6-3360(M)(12) are only required to increase employment by 10 new, full-time jobs. See the definition of “tourism facility” for requirements regarding the types of qualifying jobs.

2. A qualifying service-related facility must either (a) create 25 to 175 new, full-time jobs at a single location based upon average cash compensation listed below, or (b) be a facility classified under North American Industry Classification System Manual (“NAICS”) Section 62, subsectors 621 (ambulatory health care services), 622 (hospitals), or 623 (residential care facilities) or (c) be an establishment engaged in activities in support of air transportation (Section 4881, subsector 488190 of the NAICS). A taxpayer who is not qualifying under (a) above must create:

- ◆ 175 jobs at a single location; or
- ◆ 100 jobs at a single location where the average cash compensation for those jobs is 1.5 times the county or state average (whichever is lower); or
- ◆ 50 jobs at a single location where the average cash compensation for those jobs is 2 times the county or state average (whichever is lower); or
- ◆ 25 jobs at a single location where the average cash compensation for those jobs is 2.5 times the county or state average (whichever is lower); or
- ◆ 150 jobs at a single location comprised of a building or portion of a building that has been vacant for at least 12 consecutive months prior to the taxpayer’s investment in the facility.

NOTE: For purposes of the jobs tax credit, a qualifying service-related facility may not be engaged in legal, accounting, banking, investment services, or retail sales. See exceptions for job development purposes discussed in item 10.a. of this chapter.

3. A “professional sports team” must have an annual payroll for federal tax purposes of at least \$190 million and at least 150 full-time employees in South Carolina. In order to claim the credit, a professional sports team must create the jobs by July 1, 2022. However, a team that has entered into a revitalization agreement with the Coordinating Council before that date is not subject to this deadline.

The per capita income for each county is received annually from the South Carolina Revenue and Fiscal Affairs Office. The most recent data available as of November 2019 is listed below.

COUNTY	PER CAPITA INCOME	COUNTY	PER CAPITA INCOME	COUNTY	PER CAPITA INCOME
Abbeville	\$34,108	Dillon	\$27,718	Marion	\$31,492
Aiken	\$42,511	Dorchester	\$38,892	Marlboro	\$31,562
Allendale	\$33,237	Edgefield	\$36,436	McCormick	\$38,513
Anderson	\$39,710	Fairfield	\$36,758	Newberry	\$37,793
Bamberg	\$32,858	Florence	\$41,833	Oconee	\$43,312
Barnwell	\$33,363	Georgetown	\$47,071	Orangeburg	\$33,818
Beaufort	\$56,711	Greenville	\$48,644	Pickens	\$38,344
Berkeley	\$40,415	Greenwood	\$37,424	Richland	\$45,529
Calhoun	\$38,415	Hampton	\$32,473	Saluda	\$34,455
Charleston	\$61,477	Horry	\$37,091	Spartanburg	\$43,148
Cherokee	\$33,197	Jasper	\$29,242	Sumter	\$38,603
Chester	\$34,014	Kershaw	\$41,227	Union	\$32,745
Chesterfield	\$31,012	Lancaster	\$49,127	Williamsburg	\$32,726
Clarendon	\$33,197	Laurens	\$34,622	York	\$46,667
Colleton	\$35,697	Lee	\$32,708		
Darlington	\$37,475	Lexington	\$46,513		

The per capita income for the state is generally published twice a year. The most recent state per capita income as of November 2019 is \$43,702.

c. Definition of “Full-Time” and “New Job”

The terms “full-time” and “new job” are defined in the statute. 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. Two half-time jobs requiring a minimum of 20 hours of each employee’s time a week qualify as one “full-time” job. Additionally, seasonal workers in agricultural packaging and agribusiness operations may be considered full-time. However, a seasonal employee only counts as a fraction of a full-time worker, with the numerator being the number of hours worked a week multiplied by the number of weeks worked and the denominator being 1,820.

A “new job” is a job created in the state at the time a new facility or an expansion is initially staffed (See South Carolina Revenue Ruling #05-5 for the meaning of “expansion.”) A “new job” also includes existing jobs which are reinstated after the employer has rebuilt a facility (1) because of its destruction (more than 50% of the facility) by accidental fire, natural disaster, or act of God, or (2) due to involuntary conversion as a result of condemnation or exercise of eminent domain (as determined under the statute) by the state, political subdivisions of the state, or the federal government.

The term “new job” does not include a job created when an employee is shifted from an existing South Carolina location to a new or expanded facility whether the transferred job is from, or to, a facility of the taxpayer or a related person. However, a “new job” includes a job shifted from an existing facility of the taxpayer in South Carolina to a new or expanded facility located in a county that has an “applicable federal facility” as that term is defined in South Carolina Code §12-6-3450(A)(1)(b).

NOTE: South Carolina Code §12-6-3450 has been repealed and there is no longer a definition of “applicable federal facility” as referenced in the definition of “new job”. Therefore, this special exception contained in the definition of “new job” is no longer operative.

d. County Rankings

The amount of credit that a business may receive for each job created is determined by the county where the business’s facility is located. There are 4 categories of counties; Tier I, Tier II, Tier III and Tier IV. The rankings are now done with equal weight given to unemployment rate and per capita income for the counties.

The county rankings are updated once a year, usually in December and are effective as of January 1st of the following year. For 2020, the county rankings are as follows:

TIER IV	TIER III	TIER II	TIER I
Allendale	Abbeville	Aiken	Anderson
Bamberg	Calhoun	Edgefield	Beaufort
Barnwell	Cherokee	Florence	Berkeley
Chester	Chesterfield	Georgetown	Charleston
Clarendon	Colleton	Greenwood	Dorchester
Dillon	Darlington	Kershaw	Greenville
Lee	Fairfield	Lancaster	Lexington
Marion	Hampton	Newberry	Richland
Marlboro	Horry	Oconee	Spartanburg
Orangeburg	Jasper	Pickens	York
Union	Laurens	Saluda	
Williamsburg	McCormick	Sumter	

Companies planning significant expansions may lock-in the current county designation without regard to whether the ranking of the particular county in which the company is planning its project changes by filing a Form SC616. In order to ensure qualification for a planned expansion of jobs, companies should file Form SC616 before the initial staffing of the new facility or expansion begins. This will ensure the company that the Department is aware of the planned expansion and that the company will be entitled to the designated credits in future years without regard to whether a particular county's designation changes in a later year.

e. Credit Amount

The "basic" job tax credit amounts under the traditional annual job tax credit are listed below:

- ◆ \$25,000 per year for each new, full-time job created in a Tier IV county
- ◆ \$20,250 per year for each new, full-time job created in a Tier III county
- ◆ \$2,750 per year for each new, full-time job created in a Tier II county
- ◆ \$1,500 per year for each new, full-time job created in a Tier I county.

A company may be entitled to an “additional” \$1,000 job tax credit amount for each new, full-time job created by a company in the following locations:

1. At a facility that is located in a multicounty park. Two or more counties determine if an area in the county is designated as a multicounty park by entering into an agreement. This determination is not made by the Department.
2. At a facility that is located on a 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 (“Brownfields Site”). Qualifying taxpayers must have a certification of completion from the South Carolina Department of Health and Environmental Control.

NOTE: 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 Tier IV county. A taxpayer may choose not to claim the family independence credit to maximize the job tax credit. See the discussion in Section 13 below regarding the family independence credit.

The job tax credit taken in one tax year may not exceed 50% of the taxpayer’s income tax, bank tax, or insurance premium tax liability. If the credit is passed through, the 50% limitation is determined at the shareholder, partner, or member level. 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.

Any unused credit may be carried forward for 15 years.

f. Calculating the Credit

The job tax credit is claimed on the taxpayer’s tax return for 5 years provided those jobs are maintained in the year in which the credit is claimed. The credit is not claimed in the year the new jobs are created. 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.

A taxpayer investing at least \$50 million at a “single site” within a 3-year period may elect to determine the number of new, full-time jobs created by using the monthly average number of full-time jobs created at that one site. The statute defines “single site” as a stand-alone building whether or not several stand-alone buildings are located in one geographical location.

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. No credit is allowed for the year or any subsequent year in which the net increase in employment falls below the minimum level of 10. If the job level for which a credit was claimed decreases, the 5-year period for eligibility for the credit continues to run. A decrease of jobs that does not fall below the minimum 10 jobs required to be maintained will result in the credit being allowed in Years 2 through 6 only for those jobs that are maintained. Additional credits are allowed for increases in full-time jobs, if the company already qualifies for the credit. This additional credit is earned for jobs created in Years 2 through 6 of a qualified credit period and runs for 5 years beginning the year after the jobs are created.

g. Frequently Asked Questions and Helpful Tips

South Carolina Revenue Ruling #99-5 provides numerous questions and answers regarding the “traditional” annual job tax credit. In addition, the instructions to the job tax credit form, Form TC4, provide helpful examples regarding the computation of the job tax credit.

Helpful tips to remember concerning the job tax credit include:

- ◆ To qualify for the credit, a business must be a certain type of business and must create a required minimum number of new, full-time jobs at the time a new facility or expansion is initially staffed.
- ◆ In general, the job tax credit amount is based on the county designation during the year the new jobs are actually created. However, if Form SC616 is filed, the credit is based on (1) the county designation at the time the SC616 is filed or (2) the county designation at the time the new jobs are created, whichever county designation results in the largest credit.

- ◆ Form SC616 is not required to be filed; it is a planning tool that can prove to be beneficial if the county ranking where the jobs are to be created changes prior to creation of the jobs. The filing of Form SC616 “locks in” a county designation; it cannot be detrimental to a taxpayer. Form SC616 is valid for all new jobs created during the original credit period. Additionally, any increases in new jobs occurring during this original credit period are automatically included in the “lock-in” period. Form SC616 is required to be sent to the Department before the initial staffing of the new facility.
- ◆ Whether or not Form SC616 is filed, the credit generated in any applicable year and claimed for 5 subsequent years is not affected by any future re-designation of the county in subsequent years.
- ◆ The year a job is created is not the year in which the credit may be claimed. The credit for that job creation may first be claimed in the tax year after the job was created.
- ◆ The statute requires a monthly average increase of new, full-time jobs (ranging from 10 to 175 jobs) to be created in the tax year and be maintained for a taxpayer to qualify for the credit. When computing the increase in new, full-time jobs each year, the taxpayer must round down to the lowest whole number of jobs. The credit is not earned when a total of 10 jobs are created by the end of a tax year or when a total of 10 jobs are created over several years.
- ◆ The months to reflect on Form TC-4 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.
- ◆ Generally, the credit is computed on a county-by-county basis. The credit is not computed on a facility-by-facility basis or on a statewide basis. A taxpayer may not transfer employees from one county to another county to create a qualifying job increase.
- ◆ A computer designed form or spreadsheet is acceptable in lieu of Form TC-4 provided all information on Form TC-4 is reflected on the substitute form.
- ◆ Form TC-4 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. Any unused credit can be carried forward 15 years from the taxable year in which it is earned.

- ◆ 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. Once the credit is passed through by the entity generating it, the credit may not later be used by the entity.
- ◆ During the original credit period, a business can take credit for additional new, full-time jobs added in subsequent eligible years even if fewer than 10 additional jobs are added. This additional credit is claimed for 5 years beginning in the year following the year in which the qualifying additional new, full-time jobs are created, provided the jobs are maintained for the year that the business is claiming the credit.
- ◆ The credit amount for any number of additional new, full-time jobs is based on the county designation at the time Form SC616 is filed or the county designation for the year the additional new, full-time jobs are created, whichever results in the largest credit.

If Form SC616 is not filed, the credit amount for any additional new, full-time jobs created is based on the county designation for the year the additional new jobs are created.

- ◆ The merger, consolidation, or reorganization of a taxpayer where tax attributes survive does not create new eligibility in a succeeding taxpayer, but unused credits may be transferred to, and continued by, the succeeding taxpayer subject to the limitations in Internal Revenue Code §383. In addition, a taxpayer may assign its rights to the job tax credit to another taxpayer if it transfers all, or substantially all, of the assets of a business or operating division related to the generation of the credit to another taxpayer and the required number of new jobs is maintained.
- ◆ The job tax credit cannot be sold and is nonrefundable.

h. Example

An example is provided below to explain the "traditional" annual job tax credit calculation.

NOTE: This example assumes that the jobs are created in 2019 and that no Form SC616 was filed in connection with this new facility.

The job tax credit calculation is a 3 step process:

Step 1 - Compute the monthly average increase in full-time employees

Step 2 - Compute the employees eligible for the credit

Step 3 - Compute the eligible credit amount

This example is based on the following facts. The taxpayer, a calendar year taxpayer, has one manufacturing facility located in a Tier IV county that is not located in a multicounty park or on a Brownfields Site. The taxpayer initially staffed the new facility by hiring 12 new full-time employees on January 1, 2019.

NOTE: For simplicity, the example shows the credit computation for Years 2 through 6 (2020-2024) only. The example does not show the entire 5-year credit period for additional jobs created in 2020 through 2024.

STEP 1: COMPUTATION OF AVERAGE INCREASE IN FULL TIME EMPLOYEES							
	Prior Year (2018)	Year 1 (2019)	Year 2 (2020)	Year 3 (2021)	Year 4 (2022)	Year 5 (2023)	Year 6 (2024)
1. Cumulative Total of Full Time Employees in Each County for Each Month. (e.g., Year 1 has 12 employees working 12 months)	0	144	168	156	192	276	288
2. Divided by Number of Months in Operation	0	12	12	12	12	12	12
3. Monthly Average of Full-time Employees	0	12	14	13	16	23	24
4. Less: Previous Year Monthly Average		0	12	14	13	16	23
5. Average Increase in Full Time Employees (Line 3 minus Line 4)		12	2	(1)*	3	7	1

STEP 2: COMPUTATION OF EMPLOYEES ELIGIBLE FOR CREDIT					
	Year 2	Year 3	Year 4	Year 5	Year 6
Year 1 Increase	12	12	12	12	12
Year 2 Increase		1**	1	1	1
Year 3 Increase			0	0	0
Year 4 Increase				3	3
Year 5 Increase					7
Number of New Jobs	12	13	13	16	23

***NOTE:** The Year 3 decrease of 1 job (see Step 1) affects the computation of employees eligible for the credit in Step 2 as follows:

1. **The Year 2 increase is reduced by 1 job (2 job increase in Year 2 minus 1 job decrease in Year 3) in Years 3 through 7 since the credit may be claimed in Year 3 only for those jobs created in Year 2 and maintained in subsequent years.
2. The Year 3 increase is 0 in Years 4 through 8 since there was an average decrease of jobs.

STEP 3: COMPUTATION OF ELIGIBLE CREDIT AMOUNT					
	Year 2 (2020)	Year 3 (2021)	Year 4 (2022)	Year 5 (2023)	Year 6 (2024)
Number of New Jobs	12	13	13	16	23
Multiply by Credit Amount for a Tier IV County	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
Job Tax Credit (Limited to 50% of tax liability)	\$300,000	\$325,000	\$325,000	\$400,000	\$575,000

NOTE: This example only shows the entire credit period for the initial 12 jobs created in 2019. 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 2019 tax year generate a credit available for first use on the 2020 tax return, filed April 15, 2021. Additional credits are created for any job increases in 2020, 2021, 2022, and 2023. The credit for the 2020 increase is claimed on the 2021 through 2025 tax returns; the credit for the 2021 increase is claimed for 5 years beginning with the 2022 tax return, and so on, providing the jobs are maintained.

9.B. *SMALL BUSINESS JOB TAX CREDIT – Applicable To Qualifying Taxpayers with 99 or Fewer Employees Worldwide*

a. General Provisions

General Provisions. South Carolina Code §§12-6-3360(C)(2) and 12-6-3362 provide a job tax credit against South Carolina income tax, bank tax, or insurance premium tax for most types of small businesses (*i.e.*, a business with 99 or fewer employees worldwide) creating and maintaining new jobs in South Carolina. Corporations, sole proprietorships, partnerships, S corporations, and limited liability companies are eligible for the credit. To be eligible for this new jobs tax credit, the qualifying small business must generally create and maintain a monthly average increase of 2 new, full-time jobs.

The credit amount is determined by the South Carolina county where the taxpayer's facility is located and the amount of gross wages paid to each employee. The "basic" credit amount for each new job for the small business job tax credit ranges from \$750 to \$25,000 per year. Further, "additional" credit amounts for each new qualifying job, subject to certain dollar limitations, may be available to businesses in particular locations, (*e.g.*, in a multicounty park or on a Brownfields Site.)

"Annual" Small Business Job Tax Credit (Claimed in Years 2 – 6). South Carolina Code §12-6-3360(C)(2) provides the credit is first claimed on the taxpayer's tax return for the year following the creation of the new jobs (For example, jobs created in Year 1 are claimed in Year 2), provided the jobs are maintained. The credit is adjusted for job increases or decreases. No credit is allowed for the year or any subsequent year in which the net increase in employment falls below the minimum level. During the original 5-year credit period, a credit is also allowed for additional new, full-time jobs created during that period. Any unused credit may be carried forward for 15 years. The credit is claimed on Form TC-4SB, "Small Business Job Tax Credit."

"Accelerated" Small Business Job Tax Credit (Claimed in Years 1 – 5). South Carolina Code §12-6-3362 provides the credit is first claimed on the taxpayer's tax return beginning with the year the new jobs are created (Year 1). The credit is adjusted for job increases or decreases. No credit is allowed for the year or any subsequent year in which the net employment falls below the minimum level. During the original 5-year credit period, a credit is also allowed for additional new, full-time jobs created beginning in the year the qualifying additional new jobs are created. Any unused credit may be carried forward for 15 years. The credit is claimed on Form TC-4SA, "Alternative Small Business Job Tax Credit."

Comparison of “Annual” and “Accelerated” Small Business Job Tax Credits.

This simplified example is provided to illustrate the differences between the annual and the accelerated small business job tax credit. The differences are: (1) the effect that the following year(s) have on the number of jobs eligible for the current year credit (*i.e.*, referred to as “maintained” throughout this summary) and (2) what year the 5-year period for claiming the credit starts.

This example assumes the corporate taxpayer is a manufacturing facility, the facility is not located in a multicounty park or on a Brownfields Site, taxpayer initially staffed the new facility on January 1, 2019 with 5 new full-time jobs.

Year of Job Creation:	Prior Year	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Monthly Average Number of Jobs	0	5	3	2	1	2	2
Number of Jobs “Maintained” During Tax Year		5	Lost 2 of 5 jobs = 3 maintained	Lost 1 job = 2 jobs maintained	Lost 1 job – 1 job maintained	Hired 1 job = 2 jobs maintained	Hired 0 jobs = 2 jobs maintained

Year Credit is Claimed:	Year 1 (2019)	Year 2 (2020)	Year 3 (2021)	Year 4 (2022)	Year 5 (2023)	Year 6 (2024)
Annual Credit – Number of Jobs Qualifying		3	2	0	0	2
Accelerated Credit – Number of Qualifying Jobs	5	3	2	0	2	

Annual Small Business Credit Method. This example illustrates the following:

- ◆ The credit is first claimed in Year 2 for jobs created in Year 1 and continues for a 5-year period through Year 6. For example, the credit for the jobs created in 2019 is claimed in 2020 – 2024.
- ◆ The number of jobs maintained in the following year affects the amount of credit that can be claimed. For example, the taxpayer created 5 jobs in Year 1, but only “maintained” 3 jobs in Year 2. As a result, credit for jobs created in Year 1 which is first claimed in Year 2 is allowed for only the 3 jobs maintained in year 2.
- ◆ No credit is allowed for any year that the increase in jobs fall below 2. See Year 4 and its effect on the annual credit claimed in Year 4 (2022) and Year 5 (2023).

Accelerated Small Business Credit Method. This example illustrates the following:

- ◆ The credit is first claimed in Year 1 for jobs created in Year 1 and continues for a 5-year period through Year 5. For example, the credit for the jobs created in 2019 is claimed in 2019 – 2023.
- ◆ The number of jobs maintained in the following year does not affect the current year credit. As a result, the credit first claimed in Year 1 is allowed for all 5 jobs, the credit in Year 2 is allowed for 3 jobs, etc. (Note: The credit is not allowed for 5 years for the 5 original jobs since they were not maintained.)
- ◆ No credit is allowed for any year that the minimum increase in jobs falls below 2. See Year 4 and its effect on the accelerated credit claimed in Year 4 (2022).

NOTE: The basic “annual” job tax credit principles for small businesses are discussed in more detail below. Be aware that the credit statute rules, requirements, and computations can be complex. For additional guidance on more complex principles and exceptions to the general rules discussed below, see South Carolina Code §12-6-3360; South Carolina Revenue Ruling #07-2, a detailed question and answer advisory opinion on computing the job tax credit for small businesses with 99 or fewer employees worldwide; South Carolina Revenue Ruling #99-5, a comprehensive question and answer advisory opinion addressing credit issues after a substantial amendment in 1996; South Carolina Revenue Ruling #19-11 which discusses matters related to the new increased credit amounts for Tier III and Tier IV counties; and consult your tax advisor.

b. Types of Qualifying Businesses

The following chart summarizes the types of small businesses that may be eligible to qualify for the small business job tax 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
	Tier IV	Tier III	Tier II	Tier I	
1. Manufacturing	Yes	Yes	Yes	Yes	2
2. Processing	Yes	Yes	Yes	Yes	2
3. Warehousing	Yes	Yes	Yes	Yes	2
4. Distribution	Yes	Yes	Yes	Yes	2
5. Research & Development	Yes	Yes	Yes	Yes	2
6. Corporate Office	Yes	Yes	Yes	Yes	2
7. Technology Intensive	Yes	Yes	Yes	Yes	2
8. Banking	Yes	Yes	Yes	Yes	2
9. Tourism	Yes	Yes	Yes	Yes	2, except 20 for a new hotel or motel
10. Agribusiness operations	Yes	Yes	Yes	Yes	2
11. Agricultural Packaging	Yes	Yes	Yes	Yes	2
12. Extraordinary Retail Establishment	Yes	Yes	Yes	Yes	2
13. Retail Facility (e.g., a convenience store, restaurant, florist, photographer, machine shop, interior design, repair shop selling tangible personal property)	Yes	No	No	No	2
14. Service Related Industry (e.g., seamstress, hair stylist, lawn care, childcare, construction contractor, painter, repair services, trucking or hauling, roofer, janitorial services, courier services, security services, accounting, legal, investment services, accounting, investment services, call centers, mortgage processing)	Yes	No	No	No	2

Qualifying Facility	County Ranking				Monthly Average Job Creation Requirement
	Tier IV	Tier III	Tier II	Tier I	
15.a. Qualifying Service-Related Facility – health care (e.g., hospital, health related services) and air transportation support	Yes	Yes	Yes	Yes	2
15.b. Qualifying Service-Related Facility – other (e.g., call centers, mortgage processing centers, but not legal, accounting, investment services, or retail sales)	Yes	Yes	Yes	Yes	25- 175 at a single location based on certain average cash compensation amounts or other criteria. See Code Section 12-6-3360(M)(13)(b).
16. Professional Sports Team (if jobs are created by, or revitalization agreement entered into, before July 1, 2022)	Yes	Yes	Yes	Yes	150 and annual federal payroll of \$190 million

The statute contains definitions of “manufacturing facility,” “processing facility,” “warehousing facility,” “distribution facility,” “research and development facility,” “corporate office facility,” “qualifying service-related facility,” “tourism facility,” “extraordinary retail establishment,” “agricultural packaging,” “technology intensive facility,” and “professional sports team.” Further, South Carolina Regulation 117-750.1 defines the term “facility.”

In general, a small business taxpayer must increase employment by a monthly average of 2 new, full-time jobs to qualify for this credit.

NOTE: For illustrative purposes, the number of new, full-time jobs required to be created is referred to as “2” throughout the summary of this incentive. Be aware that exceptions to this general rule exist for certain “tourism” facilities,” “qualifying service-related facilities,” and “professional sports teams.”

The per capita income for each county is received annually from the South Carolina Revenue and Fiscal Affairs Office, usually in November or December. Upon receipt, the Department publishes an Information Letter listing the most recent per capita income data for each county and the state. This information can be obtained from the Department’s website at www.dor.sc.gov. See Section 9.A.b. for a listing of the per capita income data for each county as of November 2019 and for the State as of November 2019.

c. Definition of “Full-Time” and “New Job”

The terms “full-time” and “new job” are defined in the statute. 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. Two half-time jobs requiring a minimum of 20 hours of each employee’s time a week qualify as one “full-time” job. Additionally, seasonal workers in agricultural packaging and agribusiness operations may be considered full-time. However, a seasonal employee counts as a fraction of a full-time worker, with the numerator being the number of hours worked a week multiplied by the number of weeks worked and the denominator being 1,820.

A “new job” is a job created in the state at the time a new facility or an expansion is initially staffed (See South Carolina Revenue Ruling #05-5 for the meaning of “expansion.”) The term “new job” does not include a job created when an employee is shifted from an existing South Carolina location to a new or expanded facility whether the transferred job is from, or to, a facility of the taxpayer or a related person. ”

d. County Rankings

The amount of credit that a small business qualifying for the small business job tax credit may receive for each job created is determined, in part, by the county where the business’s facility is located. Rankings are done with equal weight given to unemployment rate and per capita income and the counties are ranked as either Tier I, Tier II, Tier III or Tier IV. These rankings will be based solely on the unemployment rate and the per capita income for each county.

The county rankings are updated once a year, usually in December and are effective as of January 1st of the following year. For 2020, the county rankings are as follows:

TIER IV	TIER III	TIER II	TIER I
Allendale	Abbeville	Aiken	Anderson
Bamberg	Calhoun	Edgefield	Beaufort
Barnwell	Cherokee	Florence	Berkeley
Chester	Chesterfield	Georgetown	Charleston
Clarendon	Colleton	Greenwood	Dorchester
Dillon	Darlington	Kershaw	Greenville
Lee	Fairfield	Lancaster	Lexington
Marion	Hampton	Newberry	Richland
Marlboro	Horry	Oconee	Spartanburg
Orangeburg	Jasper	Pickens	York
Union	Laurens	Saluda	
Williamsburg	McCormick	Sumter	

In order to ensure qualification for a planned expansion of jobs, companies should file Form SC616 before the initial staffing of the new facility or expansion begins. This will ensure the company that the Department is aware of the planned expansion and that the company will be entitled to the designated credits in future years without regard to whether a particular county's designation changes in a later year.

e. Credit Amounts

Basic Credit Amounts:

In general, the "basic" job tax credit amount for each new, full-time job created under the small business job tax credit and maintained by a small business is substantial and can be either the "100% credit amount" or the "50% credit amount." The credit amount depends on: (1) the county where the taxpayer is located and (2) the amount of gross wages paid to each new, full-time employee. The "basic" job tax credit amounts available to a small business creating a monthly average of 2 or more new, full-time jobs are the:

- ◆ "50% credit amount" – This amount ranges from \$750 to \$12,500 per year per job for a taxpayer who pays gross wages per job below 120% of the county or state average per capita income (whichever is less). The amount depends upon the location of the business.

- ◆ “100% credit amount” – This amount ranges from \$1,500 to \$25,000 per year per job for a taxpayer who pays gross wages per job at or above 120% of the county or state average per capita income (whichever is less). The amount depends upon the location of the business. The “100% credit amount” and the “50% credit amount” are dependent, in part, on the “wage category” of the minimum number of required jobs and the “wage category” of each additional job. The following rules apply in determining the credit amount.
- ◆ For a small business taxpayer to qualify for the “100% credit amount,” the minimum 2 new, full-time jobs must be created paying gross wages at or above the 120% wage threshold “wage category.” The credit amount for each additional job created over the minimum during the original credit period is determined separately based upon the wage category of each additional job (*i.e.*, some additional jobs may qualify for the “50% credit amount” and other additional jobs may qualify for the “100% credit amount”).
- ◆ If a small business taxpayer creates the minimum 2 new, full-time jobs with one job paying at or above the 120% wage threshold and the other job paying below the 120% wage threshold, then the taxpayer would be eligible only for the “50% credit amount” for these 2 jobs. The credit amount for any additional jobs created over the minimum is determined separately and will be eligible for either the “50% credit amount” or the “100% credit amount,” depending on the wage category of each additional new job.

In general, the credit is also based on the county ranking at the time the new jobs are created in Year 1. The credit amount during the credit period for the jobs created in Year 1 is not affected by any future re-ranking of the county in which the taxpayer is located in a subsequent year.

Where new, full-time jobs are created during years 2-6, each additional qualifying job may be eligible for the “50% credit amount” or the “100% credit amount,” depending on the wage category of each additional job. The credit amount for additional new jobs in years 2-6 is based on the county designation for the year the additional new, full-time jobs are created; it is not affected by any future re-ranking of the county in which the taxpayer is located.

The “basic” credit amounts by county ranking and wage category per qualifying job are listed below, subject to statutory rules and computations discussed in this summary.

The credit amounts are as follows:

County Designation (Location of Taxpayer)	“100% Credit Amount” <i>i.e.</i>, Gross Wages Per Job Greater Than or Equal To 120% County or State Average Per Capita Income, Whichever is Less	“50% Credit Amount” <i>i.e.</i>, Gross Wages Per Job Less Than 120% County or State Average Per Capita Income, Whichever is Less
Tier IV	\$25,000	\$12,500
Tier III	\$20,250	\$10,125
Tier II	\$2,750	\$1,375
Tier I	\$1,500	\$ 750

Additional Credit Amounts:

Further, a small business qualifying for the “basic” job tax credit may be entitled to “additional” \$ 1,000 job tax credit for each new, full-time job created and maintained, if the facility is located in:

1. A multicounty park. Two or more counties determine if an area in the county is designated as a multicounty park by entering into an agreement. This determination is not made by the Department.
2. 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 (“Brownfields Site”) The company must receive a certification of completion from the South Carolina Department of Health and Environmental Control.

If a taxpayer qualifies for one of the “additional” credit amounts, the additional credit is the full \$1,000 even for jobs receiving the 50% credit amount.

Maximum Credit Amounts:

The maximum “basic” and “additional” credit amounts that may be claimed for any tax year for a single employee under the small business job tax credit 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 Tier IV county. A taxpayer may choose not to claim the family independence credit to maximize the job tax credit. See the discussion in Section 13 below concerning the family independence credit.

Credit Use and Limitations:

The job tax credit taken in one tax year may not exceed 50% of the taxpayer's income tax, bank tax, or insurance premium tax liability. If the credit is passed through, the 50% limitation is determined at the shareholder, partner, or member level. 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 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.

f. Gross Wages – Definition and Calculation of 120% Wage Category

As discussed above, the "basic" job tax credit amount for each new, full-time job created and maintained by a small business depends, in part, on the amount of gross wages paid to each new, full-time employee. The 120% wage threshold is determined for each job at the end of the taxpayer's tax year in which the jobs are created. This computation can involve a series of steps depending on when the jobs are created, the amount of gross wages paid, and whether both half-time and full-time jobs are created. The steps involved in determining the gross wage amounts are briefly described below.

Step 1 – Determine "Gross Wage" Amount Per Job:

For purposes of calculating the 120% county or state average per capita income requirement, "gross wages" are wages subject to withholding (*i.e.*, "net" wages after pretax benefits, such as pretax medical, dental, disability, retirement, 401(k) contributions, pretax dependent care plan deduction, and pretax medical reimbursement plans deductions).

A simplified example illustrates how the "gross wage" amount per job is determined. A new employee hired on January 1st 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 pretax 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 (*i.e.*, "net wages" after pretax benefits) of \$22,400 for purposes of the per capita computation.

Assume that the figures published by the Department indicate that the average per capita income for X County is \$28,005, and this amount 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. (See Steps 3 – 5 below.)

Step 2 – Annualize Gross Wage Amounts:

Since most jobs are not created on the first day of the tax year, the gross wages paid for each job must be annualized to determine if the 120% wage threshold is met. The annualized “net” wage amount is computed for each new, full-time job created in the tax year. In addition, each new, half-time job, if any, must be converted to a “full-time equivalent” and the annualized “net” wage amount must be determined for each, new “full-time equivalent” (two half-time jobs) job created in the tax year.

- ◆ The following explains the computation to annualize wages for full-time jobs.

The 120% wage threshold for each full-time job is computed using the following formula:

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

For example, assume a new, full-time job created July 1, 2019 pays a “gross wage” (*i.e.*, “net” wages after pretax benefits) of \$20,000 for the 6 month period July 1, 2019 through December 31, 2019. The annualized “net” salary is \$40,000 (*i.e.*, \$20,000 ÷ 6 x 12).

Assume that the state average per capita income is \$28,212, and is below the average per capita income for the county in which the jobs are created based on the data available as of the end of 2019. Since the annualized salary of \$40,000 is greater than 120% of the state average per capita income of \$33,854 (120% x \$28,212), the new job meets the 120% wage threshold for the year. If eligible, it would qualify for the 100% credit amount.

- ◆ The following explains the computations to annualize wages for “full-time equivalent” jobs (*i.e.*, half-time jobs.)

The 120% wage threshold for each half-time job converted into a “full-time equivalent” is determined using the following formula:

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

The following example illustrates the computation of “full-time equivalents” for half-time jobs created and the computation of the annualized gross wages.

Half-time Job 1. This job is created on March 1, 2019 to work 20 hours per week at “gross wages” (*i.e.*, “net” wages after pretax benefits) of \$25,000 for the 10 month period March 1, 2019 through December 31, 2019. The gross wages of this half-time job is \$60,000 annualized on a full-time basis (*i.e.*, $\$25,000 \div 10 \times 12 \times 40 \div 20$.) (**Note:** Half-time job 1 meets the 120% wage threshold – see Step 3. If eligible, it would qualify for the 100% credit amount.)

Assume that the state average per capita income is \$28,212, and is below the average per capita income for the county in which the jobs are created based on the data available as of the end of 2019. Since the annualized salary of \$60,000 is greater than 120% of the state average per capita income of \$33,854 ($120\% \times \$28,212$), it meets the 120% wage threshold for the year. If eligible, it would qualify for the 100% credit amount.

Half-time Job 2. This job is created on June 1, 2019 to work 25 hours per week at “gross wages” (*i.e.*, “net” wages after pretax benefits) of \$12,000 for the 7 month period June 1, 2019 through December 31, 2019. The gross wages of this half-time job is \$32,914 annualized on a full-time basis (*i.e.*, $\$12,000 \div 7 \times 12 \times 40 \div 25$.) (**Note:** Half-time job 2 does not meet the 120% wage threshold of \$33,854 (see per capita assumption above) – see Step 3. If eligible, it would qualify for the 50% credit amount.)

Step 3 - Calculate 120% Wage Threshold:

At the end of the tax year in which the jobs are created, the following calculations must be made to “categorize” each employee by wage threshold amount. The calculation to determine the 120% wage threshold “categories” are:

- ◆ Determine the number of full-time and “full-time equivalent” employees paid gross wages in the “at or above” 120% wage threshold category for each month during the tax year. **Note:** Due to rounding down to the lowest whole number, fractions of jobs remaining in the “at or above” 120% wage threshold category are moved down to the monthly average computation for the below 120% threshold.
- ◆ Determine the number of full-time and “full-time equivalent” employees paid gross wages in the “below” 120% wage threshold category for each month during the tax year.

In making this calculation, the most recent county and state per capita income 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 creating new jobs in 2019 will use the state and county per capita income published in the Fall/Winter of 2019 to determine if the 120% threshold is met for each job created in its 2019 tax year.

g. Monthly Average Increase and Credit Amount

Step 4 – Compute the Monthly Average Increase in New Jobs:

The small business job tax credits require that a monthly average increase of 2 jobs or more in the tax year be created and maintained in the applicable county for a small business to qualify for the credit. See South Carolina Revenue Ruling #07-2, Questions 8 – 10 and Examples A1 and A2 for more information on the basic calculation of the monthly average of full-time employees and the “combined” monthly average increase for taxpayers paying wages in both wage threshold categories.

NOTE: A monthly average increase of 2 jobs is not the same as creating a total of 2 jobs by the end of a tax year or creating a total of 2 jobs over several years. This computation is briefly described below.

- ◆ Compute the monthly average increase for employees paid gross wages in the “at or above” 120% wage threshold category. Due to rounding down to the lowest whole number, fractions of jobs remaining in the “at or above” 120% wage category are moved down to the monthly average computation for the “below” 120% wage threshold category. For more information on rounding methods, see South Carolina Revenue Ruling #07-2, Question 19.
- ◆ Compute the monthly average increase for employees paid gross wages in the “below” 120% wage threshold category. If applicable, include any fractions of jobs remaining from the “at or above” 120% wage category moved to the monthly average increase of jobs in the “below” 120% wage threshold category due to rounding fractions of jobs from above.

The following illustrates a portion of the basic concepts used in the monthly average computation for full-time and half-time jobs paying “gross wages” at or above the 120% threshold. See South Carolina Revenue Ruling #07-2, Example D for a more complete example illustrating this calculation. Example D, however, does not illustrate more complex concepts such as “combined” total monthly average increase or decrease in jobs for both wage categories, the treatment of job decreases in one threshold category, etc.

Months of Tax Year (e.g., 2019)	Prior Year (e.g., 2018)	Total Full - Time Jobs In Year 1	Total “Full-Time Equivalents” of Half-Time Jobs in Year 1	Year 1 Total Jobs
January	0	0	1.5	1.5
February	0	6	1.5	7.5
March	0	6	1.5	7.5
April	0	6	2	8
May	0	6	2	8
June	0	6	2	8
July	0	6	2	8
August	0	6	2	8
September	0	6	2	8
October	0	6	2	8
November	0	6	2	8
December	0	6	2	8
Cumulative Total of Full Time Jobs ≥120% for Each Month		66	22.5	88.5
Divided by Months in Operation				12
Monthly Average of New Jobs ≥120%				7.375
Less: Prior Year Monthly Average				0
Monthly Average Increase – Rounded Down to Lowest Whole Number (Fraction moves down to below 120% computation, if any)				7

Step 5 – Compute Credit for New Jobs Created in the “100% Credit Amount” and the “50% Credit Amount” Based on County Ranking:

- ◆ Once the monthly average increase for all jobs paying gross wages in the “at or above” 120% wage threshold category has been determined, the dollar value of the credit per job based on the designation on the county in which the taxpayer is located is used to determine the “100% credit amount.”
- ◆ Once the monthly average increase for all jobs paying gross wages in the “below” 120% wage threshold category has been determined, the dollar value of the credit per job based on the designation of the county in which the taxpayer is located is used to determine the “50% credit amount.”

Step 6 – Compute Total Credit for All New Jobs Created:

The monthly average increase (rounded to the lowest whole number) for full- and half-time jobs paying gross wages in the “at or above” 120% threshold is determined and multiplied by the credit amount for the county in which the taxpayer’s business is located. Likewise, the monthly average increase is determined for full- and half-time jobs paying gross wages in the “below” 120% threshold category is determined and multiplied by the credit amount for the county in which the business is located. The sum of these amounts is the total job tax credit that may be claimed in Year 2 under the annual method assuming the jobs are maintained or Year 1 under the accelerated method, Reminder: The job tax credit taken in one tax year may not exceed 50% of the taxpayer’s income tax, bank tax, or insurance premium tax liability.

See South Carolina Revenue Ruling #07-2, Questions 19 - 23 and Example D for more information on computing the annual small business credit amount per job.

h. Frequently Asked Questions and Helpful Tips

South Carolina Revenue Ruling #07-2 and South Carolina Revenue Ruling #99-5 provide numerous questions and answers regarding the job tax credit. Helpful tips to remember concerning the “annual” and “accelerated” small business job tax credit include:

- ◆ A small business is one with 99 or fewer total employees at all locations worldwide on either the first day or the last day of its tax year for the first year in which qualifying jobs are created.

- ◆ To qualify for the credit, a small business must be a qualifying type of business and must create a required minimum number of “new, full-time jobs,” at the time a new facility or expansion is initially staffed.
- ◆ The “basic” credit amount can be the “50% credit amount” or the “100% credit amount.” In general, the amount depends on the county in which the taxpayer’s facility is located and the amount of gross wages paid to each new, full-time employee.
- ◆ To qualify for the “100% credit amount,” a minimum of 2 new, full-time jobs must be created in the same “wage category,” *i.e.*, the business pays gross wages at or above 120% of the county or state average per capita income, whichever is less. For example, if a monthly average increase of 2 new jobs are created in different wage categories (one job pays at or above the 120% threshold and the second job pays below the 120% wage threshold,) the taxpayer is eligible only for the “50% credit amount” for jobs 1 and 2. The credit amount for any additional job created during the original credit period (*e.g.*, job 3), however, is determined separately.
- ◆ For purposes of calculating the 120% county or state average per capita income threshold, “gross wages” are wages subject to withholding (*i.e.*, “net” wages after pre tax benefits, such as pretax medical and 401(k) contributions.)
- ◆ The 120% wage threshold for each new job is determined at the end of the tax year in which the jobs are created based on the most recent figures published by the Department.
- ◆ Gross wages for each new job created in the tax year must be annualized.
- ◆ In general, the job tax credit amount is based, in part, on the county designation during the year the new jobs are actually created. However, if Form SC616 is filed, the credit is based on (1) the county designation at the time the Form SC616 is filed or (2) the county designation at the time the new jobs are created, whichever county designation results in the largest credit. Form SC616 is required to be sent to the Department before the initial staffing of the new facility or expansion.
- ◆ Whether or not Form SC616 is filed, the credit generated by a job created in Year 1 and claimed in Year 1 (for the “accelerated” method) or claimed in Year 2 (for the “annual” method) and subsequent years is not affected by any future re-designation of the county in which the taxpayer is located for jobs created in Year 1.

Annual Method. Year 1 is the year of job creation that generates a job tax credit. The credit is not claimed in Year 1.

Accelerated Method. Year 1 is the year of job creation that generates a job tax credit. The credit is claimed in Year 1.

- ◆ The credit is for a 5-year period and is taken each year for 5 years, if the jobs are maintained.

Annual Method. The credit is claimed in Years 2 - 6 on Form TC-4SB and the tax return.

Accelerated Method. The credit is claimed in Years 1 - 5 on Form TC-4SA and the tax return.

- ◆ A monthly average increase of new, full-time jobs (ranging from 2 to 175 jobs) must be created in the tax year and be maintained for a taxpayer to qualify for the credit. The credit is not 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.
- ◆ When computing the increase in new, full-time jobs each year, the taxpayer must use the rounding down rules set forth in South Carolina Revenue Ruling #07-2. For example, when computing the monthly average increase for the employees paid gross wages in the “at or above” 120% threshold category, fractions of jobs remaining in that wage category due to rounding down to the lowest whole number are moved to the monthly average computation for the “below” 120% threshold category.
- ◆ Generally, the credit is computed on a county-by-county basis. The credit is not computed on a facility-by-facility basis or on a statewide basis. A taxpayer may not transfer employees from one county to another county to create a qualifying job increase.
- ◆ Form TC-4SA or 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. Any unused credit can be carried forward 15 years from the taxable year in which it is earned.
- ◆ The months to reflect on Form TC-4SA or 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.

- ◆ A computer designed form or spreadsheet is acceptable in lieu of Form TC-4SA or Form TC-4SB providing all information on Form TC-4SA or Form TC-4SB is reflected on the substitute form.
- ◆ 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. Once the credit is passed through by the entity generating it, the credit may not later be used by the entity.
- ◆ Annual Method. During the original 5 year credit period (Years 2 – 6), a business can take credit for additional new full-time jobs added, even if only 1 additional job is added. This additional credit is claimed in the year following the year in which the qualifying additional new, full-time jobs are created, providing the jobs are maintained.

Accelerated Method. During the original 5-year credit period (Years 1 - 5), a business can take credit for additional new, full-time jobs added and maintained, even if only 1 additional job is added. This additional credit is claimed in the year the qualifying additional new, full-time jobs are created, and each following year for the jobs maintained.

- ◆ The credit amount for any number of additional new, full-time jobs is based on the county designation at the time Form SC616 is filed or the county designation for the year the additional, new full-time jobs are created, whichever results in the largest credit.

If Form SC616 is not filed, the credit amount for any additional new, full-time jobs created is based on the county designation for the year the additional new jobs are created.

- ◆ The merger, consolidation, or reorganization of a taxpayer where tax attributes survive does not create new eligibility in a succeeding taxpayer, but unused credits may be transferred to, and continued by, the succeeding taxpayer subject to the limitations in Internal Revenue Code §383. In addition, a taxpayer may assign its rights to the job tax credit to another taxpayer if it transfers all, or substantially all, of the assets of a business or operating division related to the generation of the credit to another taxpayer and the required number of new jobs is maintained.
- ◆ The job tax credit cannot be sold and is nonrefundable.

i. Example – “Annual” Small Business Job Tax Credit (Claimed in Years 2 – 6)

CAUTION: This is an oversimplified example. It is provided only to illustrate an overview of the incentive available to a small business over the entire 5-year credit period (*i.e.*, Years 2 - 6 or Years 2020 - 2024.) This example assumes that the corporate taxpayer is a retail facility with one store in a Tier IV county, has a calendar year, initially staffed the new facility in May 2019, 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 (2018)	Year 1 (2019)	Year 2 (2020)	Year 3 (2021)	Year 4 (2022)	Year 5 (2023)	Year 6 (2024)
1. Cumulative Total of Full-Time Employees in the County for Each Month. (e.g., See SC Rev. Rul. #07-2, Example A1, Taxpayer 2 – the number of employees in January plus number in February, etc.)	0	29	60	60	58	72	74
2. Divided by Number of Months in Operation	0	8	12	12	12	12	12
3. Monthly Average of Full-Time Employees (rounded down to lowest whole number)	0	3	5	5	4	6	6
4. Less: Previous Year Monthly Average		0	3	5	5	4	6
5. Average Increase in Full-Time Employees (Line 3 minus Line 4)		3	2*	0	(1)*	2	0

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

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	3
Year 2 Increase		2	1*	1	1
Year 3 Increase			0	0	0
Year 4 Increase				0	0
Year 5 Increase					2

STEP 3: COMPUTATION OF ELIGIBLE CREDIT AMOUNT FOR NEW JOBS CREATED WITH GROSS WAGES ≥ 120% THRESHOLD					
	Year 2 (2020)	Year 3 (2021)	Year 4 (2022)	Year 5 (2023)	Year 6 (2024)
Number of New Jobs – at or above 120% threshold	3	5	4	4	6
Credit amount for a Tier IV county where the employer pays all new employees greater than 120% of the county or state average per capita income for all years	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
Job Tax Credit (Line 1 x Line 2) (Limited to 50% of tax liability)	\$75,000	\$125,000	\$100,000	\$100,000	\$150,000

NOTE: This example only shows the entire credit period for the initial 3 jobs created in 2019. The credit is first claimed in the year following the creation of the new full-time jobs; it is not claimed in the year the new full-time jobs are created. For example, qualifying new full-time jobs created in this example in the 2019 tax year generate a credit available for first use on the 2020 tax return, filed April 15, 2021, provided the jobs are maintained. Additional credits are created for the 2 job increase in 2020; it is claimed on the 2021 through 2025 tax returns if those jobs are maintained.

j. Example – “Accelerated” Small Business Job Tax Credit (Claimed in Years 1 – 5) (Uses Same Number of Jobs as Shown in Example i for Annual Small Business Job Tax Credit)

CAUTION: This is an oversimplified example. It is provided only to illustrate an overview of the incentive available to a small business over the entire 5-year credit period (*i.e.*, Years 1 - 5 or Years 2019 - 2023.) This example assumes that the corporate taxpayer is a retail facility with one store in a Tier IV county, has a calendar year, initially staffed the new facility in May 2019, 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 (2018)	Year 1 (2019)	Year 2 (2020)	Year 3 (2021)	Year 4 (2022)	Year 5 (2023)
1. Cumulative Total of Full-Time Employees in the County for Each Month. (e.g., See SC Rev. Rul. #07-2, Example A1, Taxpayer 2 – the number of employees in January plus number in February, etc.)	0	29	60	60	58	72
2. Divided by Number of Months in Operation	0	8	12	12	12	12
3. Monthly Average of Full-Time Employees (rounded down to lowest whole number)	0	3	5	5	4	6
4. Less: Previous Year Monthly Average		0	3	5	5	4
5. Average Increase in Full-Time Employees (Line 3 minus Line 4)		3	2*	0	(1)*	2

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

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

STEP 3: COMPUTATION OF ELIGIBLE CREDIT AMOUNT FOR NEW JOBS CREATED WITH GROSS WAGES ≥ 120% THRESHOLD					
	Year 1 (2019)	Year 2 (2020)	Year 3 (2021)	Year 4 (2022)	Year 5 (2023)
Number of New Jobs – at or above 120% threshold	3	5	5	4	6
Credit amount for a Tier IV county where the employer pays all new employees greater than 120% of the county or state average per capita income for all years	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
Job Tax Credit (Line 1 x Line 2) (Limited to 50% of tax liability)	\$75,000	\$125,000	\$125,000	\$100,000	\$150,000

NOTE: This example only shows the entire credit period for the initial 3 jobs created in 2019. The credit is first claimed the year the new jobs are created. For example, qualifying new jobs created in this example in the 2019 tax year generate a credit available for first use on the 2019 tax return, filed April 15, 2020. Additional credits are created for the 2 job increase in 2020; it is claimed on the 2020 through 2024 tax returns if the jobs are maintained for those years.

10. JOB DEVELOPMENT AND JOB RETRAINING CREDITS

South Carolina Code Title 12, Chapter 10, contains an economic development incentive designed to promote the growth of manufacturing, processing, warehousing, distribution, research and development, technology intensive, and other targeted businesses in South Carolina.

This incentive is referred to as the “job development credit”. It is a discretionary incentive that allows businesses approved by the South Carolina Coordinating Council for Economic Development (“Council”) to obtain a refund of employee withholding to use for, or reimburse the cost of, approved business expenditures. The job development credit, contained in South Carolina Code §§12-10-80 (general provision) and 12-10-81 (provision for tire manufacturers), is available to approved new or expanding businesses making a new capital investment and creating a minimum number of net new jobs in South Carolina. Because the qualifying requirements and the approval process of this incentive can be complex, the applicable South Carolina law and current Council applications and agreements should be carefully reviewed. A general overview of the incentive is provided below.

NOTE: The Council administers the approval of the “job development credit”. They have developed rules concerning a business qualifying for and claiming the job development credit and these rules are generally set forth in the applicable applications and agreements.

a. Qualifying for a Job Development Credit

To qualify for the job development credit a business must be located, or locating, in South Carolina and must meet the following criteria:

1. The business must be primarily the type of business that qualifies for the job tax credit, such as a manufacturing, tourism, processing, distribution, research and development, or technology intensive facility. (See South Carolina Code §12-6-3360, South Carolina Regulation 117-750.1, and Section 9 the discussion of the job tax credit above for the types of facilities qualifying for the job tax credit.)

Special rules for qualifying service-related facilities for job development credit purposes only.

- i. The number of jobs required to qualify as a qualifying service-related facility is reduced. Instead of 175 jobs, a business only has to create 125 jobs with no minimum compensation requirements. Alternatively, a business can qualify if it creates 100 jobs and those jobs have an average compensation of one and a half

times the lower of the state or county per capita income or a business can qualify if it creates 75 jobs and those jobs have an average cash compensation of twice the lower of the state or county per capita income.

- ii. All jobs created within the 5-year period can count towards meeting the job requirements. A business does not have to use the monthly average provided in South Carolina Code §12-6-3360(M)(13) and does not have to create the jobs in a single taxable year.
 - iii. At the discretion of the Council, businesses generally engaged in legal, accounting, banking, or investment services operating at a single facility may qualify as a qualifying service-related facility if they would otherwise meet the requirements of a qualifying service-related facility for job development credit purposes.
 - iv. Businesses generally engaged in retail sales at a single facility may qualify if that single facility would otherwise qualify as a qualifying service-related facility for job development credit purposes and provided that no retail sales are conducted at that single facility.
2. The business must provide a benefits package that includes health care to full-time employees at the project site where the investment is made.
 3. The business must enter into a revitalization agreement with the Council.
 4. The Council must determine that the negotiated incentives are appropriate for the project, and the Council must determine that the total benefits of the proposed project exceed the total costs to the public, and that the qualifying business otherwise fulfills the requirements of Chapter 10, Title 12.
 5. The business must agree to create at least 10 net, new full-time jobs (“full-time” and “new job” are defined in South Carolina Code §12-6-3360) at the project within a period of time. A new job does not include an employee whose job was created in South Carolina before the taxable year of the business in which the qualifying business enters into a preliminary revitalization agreement and job development credits may not be claimed on those employees.

NOTE: Although, a business is required by law to create at least 10 net new full-time jobs, the Council generally requires a business to create significantly more than 10 jobs in order to qualify a business for job development credits.

b. Application, Agreement, Certification, and Renewal Process

In order to receive the job development credit, a business must complete an application, a revitalization agreement, and a certification process. Once a business begins receiving the credit, it must participate in an annual renewal process. The entire process is briefly described below.

Step 1: Application Process – An application to receive the job development credit, accompanied by a \$4,000 application fee and financial statements of the business, should be submitted to the Council prior to official announcement by a business of its South Carolina location or expansion. The nonrefundable application fee is required at the time of application. The application must include the following information:

- ◆ The number of existing full-time jobs at the facility, if any, as of the beginning of the taxable year in which the application is approved (“the “base employment”)
- ◆ The number of new jobs that will be created (the “minimum job requirement”)
- ◆ The total capital investment that will be made (the “minimum capital investment requirement.”)

Step 2: Revitalization Agreement Process – If approved by the Council, the application generally serves as the “preliminary revitalization agreement.” In order to have an expenditure reimbursed by the job development credit, the expenditure must be incurred during the term of the agreement or within 60 days before the Council’s receipt of an application for job development credit benefits. A business must enter into a “final” revitalization agreement with the Council within twelve months from the date the application is approved. A revitalization agreement describes the project and the negotiated terms and conditions, including the minimum capital investment and minimum job requirements, for a business to qualify for the job development credit. The minimum job requirement represents both the minimum number of jobs that must be created and the maximum number of jobs for which the job development credits may be claimed.

Step 3: Certification Process – Once a final revitalization agreement has been executed, the qualifying business certifies to the Council in writing that the minimum capital investment and minimum job requirements have been met. As a general rule, a qualifying business must certify within 5 years of the date of approval of its application. The Council then certifies the business to the Department and notifies the business of the certification date. After such notification, the Department will send

the business the appropriate withholding forms to use to claim the credit. The business may begin claiming job development credits the quarter following the quarter in which they certify. Withholding may only be refunded for quarters that begin after the Council's certification.

If a qualifying business fails to achieve the minimum capital investment or minimum job requirement by the date provided in the final revitalization agreement (usually 5 years from the date of approval), the Council may terminate the revitalization agreement and reduce or suspend all, or any part of, the incentives granted.

Step 4: Renewal Process – Once a business' application has been approved, it must remit certain renewal fees to stay in the job development program. The Council imposes an annual \$500 renewal fee that is due June 30 of each year. Further, South Carolina Code §12-10-105 provides that a business claiming more than \$10,000 in job development credits for a project in one calendar year must remit an annual \$1,000 fee to the Department. The fee is used to reimburse the Department for costs incurred in auditing the project's job development credits at least once every 3 years.

c. Claiming a Job Development Credit

The job development credit is a credit against employee withholding tax. A business remits all South Carolina withholding to the Department as required under the withholding laws in Chapter 8 of Title 12 and claims a credit for the amount of allowable job development credits when it files the quarterly South Carolina withholding tax return. The withholding overpayment resulting from the job development credit is refunded to the business and must be used to reimburse the cost of qualifying expenditures.

To claim a job development credit for any quarter, the following requirements must be met:

1. The business must be current with respect to all South Carolina state taxes.
2. The business must maintain the base employment, the minimum job requirement and the minimum capital investment set forth in the revitalization agreement for the entire withholding quarter.

A business may claim a job development credit for up to 15 years, although the Council generally limits a business to collecting a job development credit for 10 years. The amount that may be claimed is based on the designation of the county in which the project is located and the gross wages paid to the employees at the project. The designation of the county at the time

the application is received by the Council is “locked-in” and the county designation for purposes of the job development credit does not change in future years unless there is a new application for a new project and a new revitalization agreement is approved.

The credit amounts are as follows:

- ◆ A business located or to be located in a Tier IV county at the time the application is received by the Council may retain 100% of the allowable job development credit as provided in the revitalization agreement.
- ◆ A business located or to be located in a Tier III county at the time the application is received by the Council may retain 85% of the allowable job development credit as provided in the revitalization agreement.
- ◆ A business located or to be located in a Tier II county at the time the application is received by the Council may retain 70% of the allowable job development credit as provided in the agreement.
- ◆ A business located or to be located in a Tier I county at the time the application is received by the Council may retain 55% of the allowable job development credit as provided in the revitalization agreement.

The Council may waive a portion of these limits and allow a qualifying business to retain up to 95% of the job development credits it collects if it qualifies as: (a) a significant business making a significant capital investment, as defined in South Carolina Code §12-44-30(7) (generally an investment of at least \$150 million and the creation of at least 125 new full-time jobs or a \$400 million investment is required); or (b) a related person, as defined in South Carolina Code §12-10-80(D)(2), to the significant business if the related person qualifies for the job development credit and is located at the project site of the significant business.

If the project is located in a multicounty park, the credit is based on the designation of the county in which the park is physically located. However, if the park is located on the geographical boundary of adjacent counties and the multicounty park agreement requires revenues from the park to be allocated to each county equally, the credit is based on the lowest development status of any of the counties that are included in the park.

The maximum allowable job development credit that may be claimed is calculated as a percentage of the gross wages of each new employee. Gross wages is defined in South Carolina Code §12-10-30(4) as wages subject to withholding. However, the Council generally limits the

amount of job development credits to no more than \$3,250 per employee per year. Special rules exist for a qualifying business that is a tire manufacturer meeting the substantial job and capital requirements of South Carolina Code §12-10-81. A business may never claim a job development credit that exceeds all withholding from all employees for the quarter.

The hourly gross wage figures are adjusted annually by an inflation factor determined by South Carolina's Revenue and Fiscal Affairs Office. See Appendix II for a list of the hourly gross wage figures for years 1995 through 2020. The gross wage amounts for 2020 and the percentages to claim are:

GROSS WAGES PER HOUR OF NEW EMPLOYEE FOR 2019	PERCENTAGE TO CLAIM
\$10.37 to \$13.82	2%
\$13.83 to \$17.28	3%
\$17.29 to \$25.93	4%
\$25.94 and over	5%

In order to compute the hourly wages for new employees, the business may divide the amount of total wages subject to South Carolina quarterly withholding for each new employee by the sum of the hours worked by the employee, plus hours of paid leave (*i.e.*, vacation, illness, and other purposes). Alternatively, the qualifying business may elect to take the total amount of wages subject to South Carolina quarterly withholding for each new employee and divide it by the number of hours the employee is deemed to work. Each new full-time employee will be deemed to work 40 hours each week employed, or 500 hours if employed for the entire calendar quarter.

An example best explains this calculation. For purposes of this example it is assumed that: (1) the employer's total South Carolina withholding for all employees in all locations during the calendar quarter is \$15,000, (2) the employer is located in a Tier IV county and therefore may claim 100% of the maximum allowable job development credit, and (3) the employer has certified that it is current with respect to all state taxes and has maintained its base employment, minimum job requirement, and minimum capital investment requirement for the entire quarter.

GROSS WAGES PER HOUR OF NEW EMPLOYEE	PERCENTAGE BASED ON WAGES	AMOUNT EARNED DURING CALENDAR QUARTER BY ELIGIBLE EMPLOYEES IN EACH PAY RANGE	TENTATIVE AMOUNT TO CLAIM (% BASED ON WAGES x GROSS WAGES x % BASED ON COUNTY)
\$10.37 to \$13.82	2%	\$ 35,000	\$ 700
\$13.83 to \$17.28	3%	\$ 40,000	\$1,200
\$17.29 to \$25.93	4%	\$ 60,000	\$2,400
\$25.94 and over	5%	\$100,000	\$5,000
		\$235,000	\$9,300

In this example, the business may claim a \$9,300 job development credit against the total South Carolina employee withholding because the total South Carolina withholding (\$15,000) exceeds the amount that is calculated to be claimed (\$9,300). In the example, the Department will refund \$9,300 to the business to reimburse the cost of eligible expenditures.

South Carolina Code §12-10-82 provides that a qualifying business may make an irrevocable election to assign the job development credit to a designated trustee or other designee. A “designated trustee” is the single financial institution designated by the Council to receive all assignments of payments. An “other designee” is a taxpayer that receives a minimum of 70% of the goods or services produced by the qualifying business at the project. The election must be made on a form provided by the Department and must include a waiver of confidentiality under South Carolina Code §12-54-240.

d. Use of Job Development Credit

To claim a job development credit, a business must incur qualified expenditures during the term of the revitalization agreement, including a preliminary revitalization agreement, or within 60 days prior to the Council’s receipt of the application, and such expenditures must be authorized by the revitalization agreement and are restricted to the following purposes:

- (A) Training costs and facilities;

- (B) Acquiring and improving real estate and subject to Council approval, capital and operating leases for real estate if the lease has at least a 5-year term;
- (C) Improvements to public and private utility systems, including water, sewer, electricity, natural gas, and telecommunications;
- (D) Fixed transportation facilities, including highway, rail, water, and air;
- (E) Construction or improvements of real property and fixtures for the purpose of complying with environmental laws and regulations;
- (F) Employee relocation expenses but only for employees that are paid twice the per capita income of the state or the county where the project is located, whichever is lower;
- (G) Financing costs associated with (A) – (F) above;
- (H) South Carolina Quality Forum improvement programs;
- (I) Training that increases a business's export capabilities;
- (J) Apprenticeship programs.

Note, for a business qualifying for job development credits under South Carolina Code §12-10-81, only items (A) – (E) are considered eligible expenditures.

For purposes of the job development credit, an expenditure is incurred if it is accrued under the accrual method of accounting for income tax purposes, without regard to Internal Revenue Code §461(h). In general, under the accrual method of accounting, an expense or liability is incurred when all the events have occurred that establish the fact of the liability and the amount of the liability can be determined with reasonable accuracy. To the extent any job development credit is not used for the approved purposes, it is treated as misappropriated employee withholding.

e. General Recordkeeping Requirements

Any business claiming a job development credit must satisfy the following recordkeeping requirements:

1. The business must timely provide the Council and the Department documentation regarding the job development credit and the use of any overpayments resulting from the claiming of the credits.

2. The business must provide access to all its payroll books and records any time the Council or Department requests them for inspection.
3. A business claiming a job development credit in any calendar year must furnish the Council and the Department with a report that summarizes the credit claimed. The business must file its report no later than June 30 following the calendar year the job development credit is claimed. An extension of time may be granted in writing by the Council for good cause.

In addition, a business claiming a job development credit must file quarterly reports with the Council that are due within 30 days following the end of the 1st, 2nd and 3rd and 4th quarters. If a company fails to provide the quarterly report as required, the company will receive a notice and will be given an additional 30 day period to comply. If the company fails to provide the report within such additional 30 day period, the company's rights to claim job development credits will be suspended for the next quarter and will not be reinstated until all required reports have been submitted to the Council. A company may not retroactively claim any job development credits forgone during the period its rights were suspended.

f. Helpful Tips for the Job Development Credit

Helpful points to remember concerning the job development credit are listed below. Several of these points contain rules and stipulations that have been established by the Council most of which have been incorporated into the application and/or the revitalization agreement. The application and a sample revitalization agreement may be obtained by calling the Council staff at 803-737-2024.

Council Standards for the Job Development Credit. The Council Standards summarized below pertain to the job development credit.

- ◆ Application for job development credit benefits should be made prior to a qualifying business officially announcing its South Carolina location or expansion plan.
- ◆ The Council generally approves job development credit benefits for a maximum of 10 years.
- ◆ Generally, a business approved for benefits must commit in writing to locate or expand in South Carolina within 30 days of approval of the application.

- ◆ Leased employees used by the business do not qualify for benefits.
- ◆ A qualifying business may not claim benefits on half-time employees.
- ◆ A business must pay at least 50% of the employee's premium for a comprehensive health plan that includes benefits equivalent to the benefits provided under the Savings Plan of the State Health Plan made available to state employees. The qualifying business must offer the same health benefits to the spouses and dependents of employees but does not have to pay for any portion of their premiums.
- ◆ The Council generally requires that job development credits may only be claimed on new employees with gross wages that meet or exceed the county average wage. This minimum wage requirement will be adjusted every 5 years.
- ◆ Generally, the maximum job development credit provided for in the revitalization agreement is \$3,250 per employee annually.
- ◆ The job development credit is available for the minimum number of jobs stated in the revitalization agreement provided those jobs are maintained. No credit may be claimed if the base employment and the minimum job requirement are not 100% maintained. The credit is not available for any jobs above the minimum job requirement set forth in the revitalization agreement.
- ◆ As a general rule, existing revitalization agreements cannot be amended; a new application must be submitted to the Council. Existing revitalization agreements may only be amended at the discretion of the Council.
- ◆ Job development credits can be claimed beginning with the quarter after the business provides proof of meeting its minimum investment and job requirements to the Council and after the Council has certified the qualifying business to the Department. Generally, the business must begin claiming the benefits no later than the first quarter of the sixth year from the date of the preliminary revitalization agreement.

Helpful tips. Important points to remember concerning the job development credit are listed below.

- ◆ Generally, the minimum job creation requirement to apply for job development credit benefits is at least 10 net new, full-time jobs over 5 years. However, the Council may, and usually does, require the creation of a larger number of jobs to be approved for job development credits.

- ◆ The job development credit amount is based on the ranking of the county in which the business is located on the date the application is received by the Council and the gross wages paid (*i.e.*, wages subject to withholding) and any other conditions provided in the revitalization agreement.
- ◆ A qualifying business may be eligible to claim both the job development credit and the job retraining credit, but may only claim one of these credits, not both, on the same employee.
- ◆ The “time period” (usually 10 years) to obtain job development credit benefits begins upon the earlier of the first request for a refund of withholding or the first quarter of the 6th year from the date of the preliminary revitalization agreement. The time period does not toll even if the business drops below the minimum job requirement and cannot claim the job development credit for a period of time.
- ◆ Both consideration and caution should be exercised when stating in the application and the revitalization agreement the number of jobs to be created. For example, if the business creates the 100 new jobs specified in the revitalization agreement but later reduces employment, then the credit is generally not allowed during the time the 100 jobs are not maintained and the time period approved for claiming benefits continues to run. Further, if the number of jobs created exceeds the 100 new jobs specified in the revitalization agreement within the 5 year time period, the credit is limited to the 100 jobs specified in the revitalization agreement, unless the business submits a new application to the Council for approval of job development credit benefits for the additional new jobs.
- ◆ Hourly gross wage figures are adjusted annually for inflation. See Appendix II for these figures.
- ◆ The credit cannot be claimed before the qualifying business has been certified by the Council to begin claiming job development credits.
- ◆ Generally, job development credit benefits begin no later than 5 years after approval of the application. The business must meet all minimum investment and job creation requirements by that date or the benefits will be lost.
- ◆ The business must be current with all South Carolina withholding taxes and all other taxes due and owing the state in order to claim a job development credit for the quarter. If a qualifying business is not current with all taxes due and owing the state as

of the date of the return on which the job development credit would be claimed, without regard to extensions, the job development credit that would otherwise be allowed for that quarter is reduced by the amount of taxes due and owing South Carolina.

- ◆ The business must use pre-printed Forms WH-1605Z and WH-1606Z provided by the Department to claim the job development credit. These forms must be used even if no job development credit is claimed in a particular quarter. The Department will generally issue a refund within 90 days of receipt of the appropriate form.

11. JOB RETRAINING CREDIT

The job retraining credit, contained in South Carolina Code §12-10-95, is available to approved existing businesses retraining qualifying existing employees in order for the business to remain competitive, introduce new technologies, export products, or provide apprenticeship programs. The job retraining credit is administered by the South Carolina Technical Colleges and the State Board for Technical and Comprehensive Education (SBTCE).

a. Qualifying for a Job Retraining Credit

To qualify for the job retraining credit provided under South Carolina Code §12-10-95, a qualifying business must be an existing South Carolina business and must meet the following criteria:

1. The business generally must be engaged in manufacturing, processing, or technology at a manufacturing, processing, or technology intensive facility. (See South Carolina Code §12-6-3360(M) and South Carolina Regulation 117-750.1 for definitions of these types of facilities.)
2. The business must demonstrate that the retraining of qualifying production or technology employees is necessary for the qualifying business to remain competitive or to introduce new technologies. Qualifying production or technology employees must be first line employees or immediate supervisors who have been employed by the business on a full-time basis for a continuous period of at least two years. South Carolina Code §12-10-30 defines “production employee” as an employee directly engaged in manufacturing or processing at a manufacturing or processing facility, and defines “technology employee” as an employee at a technology intensive facility who is directly engaged in technology intensive activities (*i.e.*, the design, development, and introduction of new products or innovative manufacturing processes, or both, through

the systematic application of scientific and technical knowledge at a technology intensive facility).

3. The business must provide a benefits package, including health care, to employees being retrained.
4. The business must spend at least one dollar and fifty cents on eligible employees for each dollar claimed as a job retraining credit.
5. The business must develop a retraining plan with the assistance of a technical college within the appropriate service area. Once a retraining plan has been approved by the technical college, the business must submit an application to the SBTCE.¹
6. The technical college must provide the retraining program directly, contract with other training entities to perform the training, or supervise an employer's internal training program.
7. Only the direct costs of the retraining qualify for the credit (e.g., instructor salaries, development of retraining programs, purchase or rental of materials and supplies, textbooks and manuals, instructional media, and reasonable travel costs). Further, a business may not receive the retraining credit for training costs that are reimbursed directly or indirectly by the employee.

Pursuant to South Carolina Code §12-10-95(A), eligible retraining programs include, but are not limited to:

- ◆ The retraining of current employees on newly installed equipment; and
- ◆ The retraining of current employees on newly implemented technology , such as computer platforms, software implementation and upgrades, Total Quality Management, ISO 9000, and self-directed work teams.

Examples of training not eligible for the job retraining credit include: career development, executive training, management development training, personal enrichment training, and cross-training of employees on equipment or technology. See South Carolina Code §12-10-95(A)(2).

¹ Pursuant to SC Code Section § 12-10-95(J), the SBTCE shall establish additional policies and procedures for the administration of the job retraining credit. Additional information on these policies and procedures can be found at www.sctechsystem.com.

b. Claiming and Using a Job Retraining Credit

The job retraining credit is claimed as a credit against employee withholding tax. A business remits all South Carolina employee withholding to the Department as required under the withholding laws in Chapter 8 of Title 12 and claims a credit for the amount of allowable job retraining credit when it files the quarterly South Carolina withholding tax return. Any withholding overpayment resulting from the retraining credit is refunded to the business and must be used for qualifying job retraining or apprenticeship programs.

To claim the job retraining credit, a qualifying business must submit an application (including a retraining plan approved by the appropriate technical college) to the SBTCE. A revitalization agreement is not required to apply for the job retraining credit. A qualifying business may claim a job retraining credit equal to \$1,000 a year for each qualifying employee retrained for up to a 5-year period. A business may not; however, claim a job retraining credit in excess of \$5,000 over a 5-year period for any single employee being retrained, and may not claim the job retraining credit and the job development credit on the same employee. A business may not claim a job retraining credit for a temporary or contract employee. Further, the job retraining credit claimed may not exceed the total employee withholding for the qualifying business.

The availability of the job retraining credit is restricted to the following:

- ◆ Retraining of an existing production employee or technology employee if the retraining is necessary for the business to remain competitive or to introduce new technologies;
- ◆ Retraining for all relevant existing employees that enable a business to export or increase its ability to export its products, including training for logistics, regulatory, and administrative areas connected to its export process and other export process training that allows a business to maintain or expand its business in South Carolina; and
- ◆ Apprenticeship programs.

Once a business' application for retraining credits has been approved, it must submit an annual renewal application to the SBTCE and remit an annual \$250 fee to the Department to stay in the job retraining program. Additionally, South Carolina Code §12-10-105 provides that a business claiming more than \$40,000 in job retraining credits for a project in one calendar year must remit an annual \$1,000 fee to the Department. The fee is used to reimburse the Department for costs incurred in auditing a project's job retraining credit at least once every 3 years.

c. Recordkeeping for Job Retraining Credit

Any business claiming a job retraining credit must satisfy the following recordkeeping requirements:

1. The business must provide the Department with the quarterly employee withholding return (WH-1605Z).
2. A business claiming a job retraining credit in any calendar year must furnish the SBTCE with a report that summarizes the credits claimed. The business must file its report no later than June 30 following the calendar year the job retraining credit is claimed.

d. Helpful Tips for the Job Retraining Credit

Helpful Tips. Important points to remember concerning the job retraining credit are listed below.

- ◆ Although a revitalization agreement is not required to receive a job retraining credit, a qualifying business must develop a training plan with the assistance of the appropriate technical college and submit an application to the SBTCE.
- ◆ The retraining credit is available for up to 5 years beginning from the date of approval of the business by a technical college under the jurisdiction of the SBTCE.
- ◆ A qualifying business may be eligible to claim both the job development credit and the job retraining credit, but may only claim one of these credits, not both, on the same employee.
- ◆ The retraining credit is not available for wages of retraining participants or retraining of temporary, contract, or new employees.
- ◆ The business must use pre-printed Forms WH-1605Z and WH-1606Z provided by the Department to claim the job retraining credit. These forms must be used even if no credit is claimed in a particular quarter. The Department will generally issue a refund within 90 days of the receipt of the appropriate form.

12. TAX MORATORIUM

a. General Provisions

South Carolina Code §12-6-3367 allows a 10 year, or in some cases a 15 year, moratorium on corporate income taxes or insurance premium taxes to a qualifying taxpayer. The taxpayer must make a substantial investment and create at least 100 new, full-time jobs in designated South Carolina counties. These jobs must be created within 5 years from the date the taxpayer creates the first qualifying job in order to qualify for the tax moratorium.

The moratorium begins the first taxable year after the taxpayer qualifies and ends at the earlier of (a) 10 years from that date or (b) the year when the taxpayer's number of full-time jobs falls below 100. The moratorium applies to that portion of the taxpayer's corporate income tax or insurance premium tax that represents the ratio of the company's new investment in the moratorium county to its total South Carolina investment.

Any facility that is a type of facility defined in South Carolina Code §12-6-3360(M) of the job tax credit statute may qualify for the tax moratorium. Types of facilities that may qualify for the tax moratorium include manufacturing, processing, warehousing, distribution, tourism, research and development, corporate office, qualifying service-related facilities, technology intensive facilities, agricultural packaging, professional sports teams and extraordinary retail establishments. A general overview of the tax moratorium requirements is provided below.

b. Qualifying Taxpayers

- ◆ A Facility of the Type Listed in South Carolina Code §12-6-3360(M). To qualify for the moratorium in South Carolina Code §12-6-3367(B)(1)(a), a taxpayer must:

1. Establish or expand a facility identified in South Carolina Code §12-6-3360(M).
2. Locate that facility in either: (a) a county with an average annual unemployment rate of at least twice the state average during each of the last two completed years (based on the most recent unemployment rates available), or (b) a county which is one of the three lowest per capita income counties (based on the average of the three most recent years of available average per capita income data) (*i.e.*, a moratorium county);
3. Create at least 100 new full-time jobs as defined in South Carolina Code §12-6-3360(M) (the job tax credit provision) at the facility within 5 years from the date it creates the first new full-time job at the facility; and

4. Invest at least 90% of its total investment in South Carolina in the moratorium county.

If a taxpayer creates and maintains at least 200 new full-time jobs within 5 years from the date the taxpayer creates the first new full-time job at the facility, the moratorium is extended to 15 years.

To continue claiming the tax moratorium for any year of the 10-year period, the taxpayer must maintain the 100 jobs for that year. If the taxpayer qualifies for the 15-year tax moratorium, to continue claiming the tax moratorium for any year of the 15-year period the taxpayer must maintain the 200 new full-time jobs, however, if the taxpayer's number of full-time jobs falls below 200 during the first 10 years of the 15-year period, but the taxpayer maintains 100 or more jobs at the facility, then the tax moratorium may be continued for the balance of the 10-year period. The tax moratorium is claimed on Form TC-34, "Corporate Tax Moratorium Per Section 12-6-3367" for taxpayer's subject to the corporate income tax. (See special rules for businesses subject to the insurance premium tax).

◆ Requirements for a Manufacturing Facility Investing and Creating Jobs in Two Counties.

To qualify for the tax moratorium in South Carolina Code §12-6-3367(B)(1)(b), a taxpayer must:

1. Create and maintain at least 100 new full-time jobs and invest at least \$150 million at a manufacturing facility in a moratorium county described above;
2. Create and maintain at least 100 new full-time jobs and invest at least \$150 million at a manufacturing facility in a second county which is designated as "distressed," "least developed," or "underdeveloped" as provided in the job tax credit statute;² and
3. Invest at least 90% of its total investment in South Carolina in one or both of the counties described above in items (1) and (2).

For purposes of the tax moratorium in South Carolina Code §12-6-3367(B)(1)(b), the 10 (or 15) year moratorium periods are determined separately for income from each facility. The tax moratorium is not affected if the taxpayer changes its form of business organization within the time period the tax moratorium is in effect. The term "taxpayer" means a single taxpayer or, collectively, a group of one or more affiliated taxpayers.

² Note: As of January 1, 2011, there are no longer any "distressed", "least developed" or "underdeveloped" counties in South Carolina, therefore, this provision may no longer be effective for companies that have not already been approved for the tax moratorium.

NOTE: South Carolina Code §12-6-3360(H), allowing a 15-year job tax credit carryforward, provides that a taxpayer eligible for the tax moratorium in South Carolina Code §12-6-3367 and the job tax credit may claim the job tax credit and carry forward the unused job tax credits after the tax moratorium period expires.

c. Approval Procedure

A taxpayer must petition, using the procedures in South Carolina Code §12-6-2320(B), (the criteria for applying for an alternative allocation/apportionment method), to obtain approval for the tax moratorium. Guidance regarding the application process is provided in South Carolina Revenue Procedure #04-6 and includes the Coordinating Council for Economic Development's certifying that the facility will have a significant beneficial economic effect on the region for which it is planned and that its benefits to the public exceed the costs. The petition for a corporate tax moratorium is made to, and approved by, the Department of Revenue; and the petition for an insurance premium tax moratorium is made to, and approved by, the Director of the Department of Insurance.

d. Moratorium Counties

The new moratorium counties are generally determined in December of each year and those counties are eligible counties as of January 1st of the following year. For 2020, the following counties are moratorium counties.

Chesterfield
Dillon
Jasper

13. CREDIT FOR HIRING FAMILY INDEPENDENCE RECIPIENT

South Carolina Code §12-6-3470 allows a tax credit to employers who employ persons who received family independence payments within this state for 3 months immediately before becoming employed. In order to qualify for the credit, the employer must make health insurance available to a family independence payment recipient. All conditions, including employer contributions and employer imposed waiting periods, must be on the same basis and under the same conditions as that of any other employee. However, the employer is not required to pay for all or part of any health insurance coverage for family independence payment recipients hired in order to claim the credit if an employer does not pay for all or part

of health insurance coverage for any other employee. An employer may claim the credit from the date of hire for each full month of employment even if there is an employer imposed waiting period for the health insurance, providing the waiting period does not exceed 12 months.

The employer must submit an employee release and must request in writing certification of family independence eligibility for each of the newly hired employees from the South Carolina Department of Social Services. The employer has until 15 days after the end of its tax year in which the family independence payment recipient is hired to request verification. Department of Social Service Form 12108 is used to request eligibility. The Department of Social Services has 30 days to approve or deny this certification. The employer may not take the credit if another employee was terminated in order to hire the family independence payment recipient.

A qualifying employer receives a “basic” credit amount equal to:

- ◆ 20% of wages paid to such employee for each full month of employment during the first 12 months of employment
- ◆ 15% of wages paid to such employee for each full month of employment during the second 12 months of employment and
- ◆ 10% of wages paid to such employee for each full month of employment during the third 12 months of employment.

The total amount claimed per employee under both the job tax credit, South Carolina Code §12-6-3360 discussed above, and the “basic” part of the family independence credit, South Carolina Code §12-6-3470(A), is limited to \$5,500 for all taxpayers not located in a Tier IV county. The \$5,500 limitation is not applicable to a taxpayer qualifying for the job tax credit in a Tier IV county. A taxpayer may choose not to claim the family independence credit to maximize the credit.

Notwithstanding the \$5,500 limitation amount, employers located in a South Carolina county designated for job tax credit purposes as a (1) “distressed county” or (2) “least developed county” may be able to receive the “additional” part of the family independence credit in South Carolina Code §12-6-3470(B). An employer located in a “distressed county” or “least developed county” who employs a former family independence recipient to work full-time in that county is allowed an additional \$175 credit per qualifying employee for each full month during the first 36 months of employment, up to an additional \$2,100, for each qualifying year.

NOTE: Since as of January 1, 2011, there are no longer any “distressed” or “least developed” counties in South Carolina, this provision no longer applies unless the statute is amended.

Any unused credit may be carried forward for 15 years.

Form TC-12, “Credit for Employers Hiring Recipients of Family Independence Payments,” is used to claim the credit.

14. APPRENTICESHIP CREDIT

South Carolina Code §12-6-3477 allows an employer a \$1,000 tax credit for each apprentice employed pursuant to an apprentice agreement registered with the Office of Apprenticeship of the Employment and Training Administration of the United States Department of Labor. The apprentice must be employed by the taxpayer for at least 7 full months of the tax year to qualify. A credit is not allowed for an individual for more than 4 tax years. The credit is claimed on Form TC-45, “Apprenticeship Credit.”

PART C: GENERAL BUSINESS CREDIT

15. CREDIT FOR INVESTING IN PROPERTY IN SOUTH CAROLINA

South Carolina Code §12-14-60 allows a taxpayer a credit against income taxes for qualified manufacturing and productive equipment properties placed in service during the taxable year in South Carolina.

The amount of the credit for qualifying investments is:

- ◆ 1/2% of the total aggregate bases of 3-year property
- ◆ 1% of the total aggregate bases of 5-year property
- ◆ 1 1/2% of the total aggregate bases of 7-year property
- ◆ 2% of the total aggregate bases of 10-year property
- ◆ 2 1/2% of the total aggregate bases of 15-year or greater property.

Whether property is 3, 5, 7, 10, or 15 year or greater property is determined by the applicable recovery period for the property under Internal Revenue Code §168(e).

The credit claimed is limited to \$5 million for a taxpayer subject to the license tax under South Carolina Code §12-20-100. This credit does not apply to any property to which other tax credits apply, such as the headquarters credit, infrastructure credit, or the textile, abandoned building and retail revitalization credits unless the qualifying business waives the application of such credits. Any unused credit may be carried forward for 10 years. An unlimited carryforward is allowed for certain manufacturing taxpayers having significant capital investments and employment in South Carolina; however, a carryforward beyond 10 years cannot reduce the tax liability in a subsequent year by more than 25%. The credit is claimed on Form TC-11, "Capital Investment Credit." Any recapture is reported on Form TC-11R, "Recapture of Capital Investment Credit."

Rules exist requiring:

1. Property basis reduction for the amount of the credit claimed.

2. Recapture of the credit if the property is disposed of or removed from the state before the end of the applicable recovery period. A pro rata portion of the credit previously claimed for that property must be recaptured. A taxpayer required to recapture the credit may increase the basis of the property by the amount of any basis reduction attributable to the credit claimed in prior years. The basis must be increased in the year of recapture.

For the purpose of this credit, “qualified manufacturing and productive equipment property” is any property that is:

- ◆ Constructed, reconstructed, or erected in South Carolina or acquired by the taxpayer if the original use of such property begins with the taxpayer inside this state, and which is:
 1. Used as an integral part of manufacturing, production, or extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services in the economic impact zone,
 2. Tangible property depreciable under Internal Revenue Code §168, and
 3. Internal Revenue Code §1245 property.
- ◆ Computer software that may be depreciated or amortized that is used to control or to monitor a manufacturing or production process inside South Carolina.

In South Carolina Private Letter Ruling #98-2, the Department reviewed whether a company providing residential and business telephone service to South Carolina economic impact zone counties qualified for the tax credit. Based upon the facts, the Department concluded that the providing of telephone service is the business of “furnishing communications” that is eligible for the economic impact zone credit. Also, the Department determined which of the company’s property constituted an integral part of furnishing communications.

NOTE: Although there are no longer “economic impact zones” in South Carolina, this ruling still has relevance as to what qualifies as an integral part of “furnishing communications”.

16. CORPORATE HEADQUARTERS CREDIT

a. General Provisions

South Carolina Code §12-6-3410 allows a corporation a credit against corporate income tax imposed under South Carolina Code §12-6-530, corporate license fees imposed under South Carolina Code §§12-10-50 or 12-20-100, or bank taxes imposed under South Carolina Code §12-11-20, equal to 20% of the qualifying costs of establishing a corporate headquarters in South Carolina, or expanding or adding to an existing corporate headquarters. The credit is made up of two parts: Part I – the real property costs and Part II – the personal property costs. A taxpayer may qualify for only Part I of the credit or may qualify for both Parts I and II of the credit.

Any unused credit may be carried forward for 10 years, or if the 75 new job and per capita income requirements set forth in South Carolina Code §12-6-3410(D) are met, the credit can be carried forward for 15 years. In addition, a taxpayer may assign its rights to the unused credit to a succeeding taxpayer if the taxpayer transfers all, or substantially all, of the assets of: (1) the taxpayer, or (2) a trade, business, or operating division of a taxpayer, to the succeeding taxpayer, and the succeeding taxpayer maintains the corporate headquarters of the taxpayer.

No credit may be claimed for a tax year during which the corporation or succeeding corporation fails to maintain the qualifying employment requirements. The carryforward period is not extended for any year in which the credit may not be claimed for failure to maintain the employment requirements, but the remaining eligible carryforward may be claimed in the year that the corporation requalifies for the credit by re-meeting the employment requirements. The credit is claimed on Form TC-8, "Corporate Headquarters Credit." If a taxpayer claims the headquarters credit, for South Carolina income tax purposes, the basis of any property used to calculate the credit must be reduced by the amount of the credit claimed.

Each part of the corporate headquarters credit has specific minimum investment and job creation requirements. These are:

◆ Part I: Real Property Component of the Credit

In order to qualify for the real property component of the headquarters credit, the following requirements must be met:

1. The qualifying real property costs must be at least \$50,000. For corporations constructing a headquarters, these costs are costs incurred in the design, preparation, and development of establishing or adding to a corporate headquarters, and direct construction costs. For corporations leasing a facility, these costs are direct lease costs during the first 5 years of corporate headquarters operations.
2. The headquarters establishment, addition, or expansion must create at least 40 new, full-time, permanent jobs in South Carolina performing headquarters related functions and services or research and development related functions and services. At least 20 of these jobs must be headquarters staff employees performing headquarters related functions and services. Each of these terms is defined in South Carolina Code §12-6-3410(J).

The real property portion of the headquarters credit is equal to 20% of:

1. Qualifying real property costs incurred in the design, preparation, and development of establishing, expanding, or adding to a corporate headquarters; and
2. Direct construction costs or, with respect to leased facilities, direct lease costs for the first 5 years of operations for the corporate headquarters. Direct lease costs are cash lease payments and do not include any accrued, but unpaid costs.

◆ Part II: Personal Property Component of the Credit

A headquarters that meets the real property costs and job requirements above may also qualify for an additional credit equal to 20% of the cost of tangible personal property if certain requirements are met. In order to qualify for the personal property component of the credit, the following requirements must be met:

1. The personal property must be purchased for the establishment, expansion, or addition of a corporate headquarters or research and development facility which is part of the same corporate project as the headquarters establishment or expansion.
2. The personal property must be used for corporate headquarters or research and development related functions and services in South Carolina. The credit may not be claimed; however, for personal property which is replacing personal property for which the credit can be claimed.
3. The personal property must be capitalized for income tax purposes under the Internal Revenue Code.

4. The headquarters or research and development establishment or addition must create at least 75 new, full-time jobs performing headquarters related or research and development related functions and services. At least 20 of these jobs must be headquarters staff employees.
5. The 75 headquarters jobs created must have an average cash compensation level of more than twice the South Carolina per capita income based on the most recent per capita income data available as of the end of the taxpayer's tax year in which the jobs are filled.

The state per capita income figures are received at least annually from Revenue and Fiscal Affairs. As of November 2019, the most recent data available indicates South Carolina per capita income is \$43,702. South Carolina Revenue Ruling #99-11 provides that if the taxpayer is a calendar year taxpayer, the state per capita income figure available as of December 31 of the tax year in which the 75th new, full-time employee is hired is used in determining if the pay requirements have been met.

b. Qualifying Headquarters

South Carolina Code §12-6-3410(J)(1) defines "corporate headquarters" as the facility or portion of a facility where corporate staff employees are physically employed, and where the majority of the company's or company's business unit's financial, personnel, legal, planning, information technology, or other headquarters related functions are handled either on a regional, national, or global basis. A "company business unit" is an organizational unit of a corporation or bank and is defined by the particular product or category of product it sells.

South Carolina Regulation 117-750.1 defines the term "facility." A "facility" is generally a single physical location where a taxpayer's business is conducted or where its services or industrial operations are performed. Where two or more distinct and separate economic activities are performed at a single physical location, each separate economic activity will be treated as a separate facility when: (1) each activity has its own separate and dedicated personnel; (2) separate reports can be prepared on the number of employees, their wages and salaries, sales, or receipts and expenses; and (3) employment and output are significant as to the activity. For purposes of item (2), it is irrelevant if separate reports are actually prepared, so long as separate reports can be prepared, this criteria is met.

A corporate headquarters must be a regional corporate headquarters, a national corporate headquarters, or a global corporate headquarters to qualify; however, a corporate headquarters of a taxpayer subject to bank taxes must be a regional corporate headquarters and must have two or more branches in each state within its region. (The term “branch” is defined in South Carolina Code §34-25-10(8).) A corporation doing business solely within South Carolina does not meet the definition of a corporate headquarters. These terms are defined in South Carolina Code §12-6-3410(J) as follows:

1. A “national” corporate headquarters must be the sole corporate headquarters in the nation and handle headquarters related functions at least on a national basis. The corporation must have a facility in South Carolina from which it engages in interstate business to qualify for the headquarters credit.
2. A “regional” corporate headquarters must be the sole corporate headquarters within the region and must handle headquarters related functions on a regional basis. “Region” or “regional” means a geographic area comprised of: (a) at least 5 states, including South Carolina, or either (b)(1) 2 or more states, including South Carolina, if the entire business operations of the corporation are performed within fewer than 5 states or (b)(2) for banks, 2 or more states, including South Carolina, if all branches of the taxpayer subject to bank taxes under Chapter 11 of Title 12 are physically located in fewer than 5 states, and the bank has at least 2 branches in each state within the region.

d. Examples

Examples best explain the timeline for meeting the requirements and claiming the credit.

- ◆ Example 1: Assume a corporate headquarters is placed in service in one year.

The claiming of the credit and the staffing requirements are as follows:

Year 1 – First property placed in service for federal income tax purposes. Credit is claimed.

Year 3 – Staffing requirements must be met or the credit claimed is recaptured.

- ◆ Example 2: Assume the corporate headquarters is placed in service over a 3-year period or that 5 years of direct lease costs are incurred. The claiming of the credit and the staffing requirements are as follows:

Year 1 – First property placed in service for federal income tax purposes or first year direct lease costs are incurred. Credit may be claimed for these costs.

Year 2 – Additional property placed in service or direct lease costs incurred. Credit may be claimed for these costs.

Year 3 – Additional property placed in service or direct lease costs incurred. Credit may be claimed for these costs.

Year 4 – Last year credit may be claimed for direct construction costs, design, preparation, and development costs. Credit may be claimed for direct lease costs.

Year 5 – Last year credit may be claimed for direct lease costs.

Year 6 – Staffing requirements must be met, if facility is constructed; otherwise, credits claimed must be recaptured.

Year 7 – Staffing requirements must be met, if facility is leased; otherwise, credits claimed must be recaptured.

See Business Property Tax, Chapter 4, Section 6, for information on a 5-year exemption from certain property taxes for corporate headquarter facilities.

17. CREDIT FOR INFRASTRUCTURE CONSTRUCTION

South Carolina Code §12-6-3420 allows a corporation a credit against corporate income tax or bank tax equal to 50% of the contributions or expenses paid or accrued by the taxpayer for the construction or improvement of water lines, sewer lines, and road projects that are eventually dedicated to public use or deeded to a qualifying private entity. A credit is available for each infrastructure project of the taxpayer, but is limited to \$10,000 per project per year. Any unused credit, up to \$30,000 for each project, may be carried forward for 3 years. The maximum infrastructure credit that may be claimed for each project is \$40,000. The credit is claimed on Form TC-6, "Infrastructure Credit." An infrastructure project includes water and sewer lines, their related facilities, and roads that:

1. Do not exclusively benefit the taxpayer;
2. Are built to applicable standards; and
3. Are dedicated to public use or, in the case of water or sewer lines in areas served by a private water and sewer company, are deeded to a qualified private entity.

If the project benefits more than the taxpayer, the expenses must be allocated to the various beneficiaries, and only those expenses not allocated to the taxpayer's benefit qualify for the credit. A qualifying private entity is not allowed a tax credit for expenses it incurs in building or improving facilities it owns, manages, or operates.

In *Centex International, Inc. v. South Carolina Dept. of Revenue*, 406 S.C. 132, 750 S.E. 2d 65 (2013), the South Carolina Supreme Court held that under the infrastructure credit statute (South Carolina Code §12-6-3420) which provides that a corporation could claim a credit for construction or improvement of an infrastructure project against corporate income taxes for expenses paid or accrued by the taxpayer, the legislature intended that a corporation had to be the entity that incurred the expenses to generate the tax credit and thus, a partnership was precluded from earning the infrastructure credit.

18. CREDIT AGAINST LICENSE FEE FOR INFRASTRUCTURE

South Carolina Code §12-20-105 allows a taxpayer subject to the license fee imposed on South Carolina property and gross receipts under South Carolina Code §12-20-100, such as a power company, water company, gas company, or telephone company, a credit against its license fee liability for 100% of the amount paid in cash for infrastructure for an eligible project of another taxpayer. A taxpayer is not allowed a credit for actual expenses it incurs in the construction and operation of any building or infrastructure it owns, leases, manages, or operates.

The maximum credit that may be earned in any tax year by a taxpayer is \$400,000; however, the credit cannot reduce the license fee liability of the taxpayer below zero. Any unused credit can be carried forward to the next succeeding year. A company that claims this credit may not claim the credit for infrastructure construction in South Carolina Code §12-6-3420 (discussed above in Section 17).

The statute defines the term "infrastructure" as improvements for water, wastewater, hydrogen fuel, sewer, gas, steam, electric energy, and communications services made to a building or land that are considered necessary, suitable, or useful to an eligible project. These improvements include, but are not limited to:

- ◆ Improvements to either public or private water and sewer systems.
- ◆ Improvements to either public or private electric, natural gas, and telecommunications systems including, but not limited to, ones owned or leased by an electric cooperative, electrical utility, or electric supplier as defined by Chapter 27, Title 58.
- ◆ Fixed transportation facilities including highway, road, rail, water, and air.

For projects located in a qualifying park as discussed below, the following additional expenditures qualify as eligible expenditures:

- ◆ Shell buildings and the purchase of land for an office, business, commercial, or industrial park constructed by a county, political subdivision, or agency of the state. The credit provisions do not prohibit the county or political subdivision from selling the shell building or all or a portion of the park after a company has paid cash to provide infrastructure to the eligible project.
- ◆ Incubator buildings owned by a county, political subdivision or agency of the state if the ownership of the building is retained by the county, political subdivision or agency of the state.
- ◆ Due diligence expenses, as defined in South Carolina Code §12-20-105(C)(5), relating to environmental conditions if the expenses are incurred by a county or political subdivision after it has acquired contractual rights to an industrial park.
- ◆ Site preparation costs including clearing, grubbing, grading and stormwater retention and refurbishment of buildings that are owned or constructed by a county or municipality if the buildings are used exclusively for economic development.
- ◆ Land acquisition and preparation costs, new construction costs, improvements and upgrades to existing facilities, and any other capital costs associated with a qualifying multi-use sports and recreation complex.

To be considered an eligible project, the project must qualify for income tax credits under Chapter 6 of Title 12, withholding tax credits under Chapter 10 of Title 12 (job development or retraining benefits), income tax credits under Chapter 14 of Title 12 (South Carolina investment tax credit), or fee in lieu of property taxes under Chapter 12 of Title 4 (“Little Fee”), Chapter 29 of Title 4 (“Big Fee”), or Chapter 44 of Title 12 (“Simplified Fee”).

Alternatively, if a project is located in an office, business, commercial, or industrial park, or combination of these, is used exclusively for economic development and is owned or constructed by a county, political subdivision or agency of this State when the qualifying improvements are paid for, the project does not have to meet the above requirements in order to be considered an eligible project.

For a county that collects at least \$5 million in accommodations tax in a single fiscal year, a multi-use sports and recreation complex owned by a county or municipality qualifies as an eligible project.

A taxpayer may request an informal, nonbinding letter from the Department concerning eligibility for the credit. There is a \$35 fee for the issuance of such letter.

19. RESEARCH AND DEVELOPMENT CREDIT

South Carolina Code §12-6-3415 allows a taxpayer a credit against any tax due under Chapter 6 of Title 12 (income tax) or under South Carolina Code §12-20-50 (corporate license fees based on capital stock and paid-in surplus) equal to 5% of its qualified research expenses made in South Carolina. The credit is limited to 50% of the taxpayer's tax liability remaining after all other credits have been applied. Any unused credit can be carried forward, but must be used before a taxable year beginning 10 years or after from the date of the qualified research expenses. The credit is claimed on Form TC-18, "Research Expenses Credit."

For a taxpayer to qualify for the credit, the taxpayer must claim a federal income tax credit pursuant to Internal Revenue Code §41 for increasing research activities for the taxable year. For purposes of this credit, qualified research expenses has the same meaning as provided in Internal Revenue Code §41.

20. PORT CREDITS

a. Port Volume Increase Credit

General Provision

South Carolina Code §12-6-3375(A) provides a tax credit to a taxpayer engaged in manufacturing, warehousing, freight forwarding, freight handling, goods processing, cross docking, transloading, wholesaling of goods or distribution that uses South Carolina port facilities and increases its port cargo volume at these facilities by at least 5% in a calendar year over its base year port cargo volume. The credit may be claimed against income taxes or employee withholding taxes.

The amount of credit and the type of taxes (income or withholding) the credit may offset is determined by the Coordinating Council for Economic Development (“Council”) upon application by the taxpayer. Any unused income tax credit may be carried forward for 5 years and unused withholding tax credits may be carried forward for 20 quarters. Form TC-30, “Port Cargo Volume Increase Credit,” is used to claim the income tax credit.

Base Year and Cargo Requirements

To qualify for the credit. The base year volume of cargo transported must be at least 75 net tons of noncontainerized cargo, 385 cubic meters, or 10 “twenty foot equivalent units” (*i.e.*, TEUs.)

Initial Base Year. The initial “base year port cargo volume” is the total amount of net tons of noncontainerized cargo or TEUs of cargo actually transported by way of a waterborne ship through a port facility during January 1 – December 31st of the same year. If the taxpayer did not transport at least 75 net tons of noncontainerized cargo, 385 cubic meters or 10 TEUs of cargo during the calendar year, or the taxpayer was not located in South Carolina during that year, then the initial base year is the first calendar year that the taxpayer meets the cargo requirements. The initial base year cannot be 0.

Base Year Recalculation. Base year port cargo volume must be recalculated every calendar year.

b. Port Transportation Credit

General Provisions

South Carolina Code §12-6-3375(l) provides a tax credit to a taxpayer engaged in manufacturing, warehousing, freight forwarding, freight handling, goods processing, cross docking, transloading, wholesaling of goods or distribution that uses South Carolina port facilities and incurs transportation costs to and from a South Carolina port. The credit may be claimed against income taxes or employee withholding.

The amount of credit and the type of taxes (income or withholding) the credit may offset is determined by the Council upon application by the taxpayer. Any unused income tax credit may be carried forward for 5 years and unused withholding tax credits may be carried forward for 20 quarters. Form TC-30, "Port Cargo Volume Increase Credit," is used to claim the income tax credit.

Maximum Credit Amounts and Expiration of the Credit

The maximum amount of port transportation credit allowed to all qualifying taxpayers for a calendar year is limited to:

\$1 million for calendar year ending December 31, 2019

\$2 million for calendar year ending December 31, 2020

\$3 million for each calendar year after December 2020 until the credit expires.

A taxpayer cannot claim the port transportation cost credit in any tax year after the tax year a port in Jasper County is opened and accepting shipments.

A taxpayer is eligible for the port transportation credit even if it does not qualify for the port volume increase credit under Code §12-6-3375(A). **However, a taxpayer may not claim both the port volume increase credit and the port transportation credit in the same year.**

c. Definitions

South Carolina Code §12-6-3375(C) provides the following definitions for both credits:

"Port facility" is any publicly or privately owned facility located within South Carolina through which cargo is transported by way of a waterborne ship or vehicle to or from destinations outside South Carolina and which handles cargo owned by the port facility's owner and third parties.

"Port cargo volume" is the total amount of net tons of non-containerized cargo or containers measured in 20 foot equivalent units transported by way of a waterborne ship or vehicle through a port facility or measured cubic meters of cargo.

“Twenty foot equivalent unit” (TEU) is a volumetric measure based on the size of a container 20 feet long, by 8 feet wide, by 8 feet 6 inches high. A “weighted TEU” is equal to 7½ tons. A “measured TEU” is equal to 38½ cubic meters.

“Transportation costs” are the costs of transporting freight, goods, and materials to and from port facilities in South Carolina.

d. Application, Allocation, and Certification Process

Upon application by the taxpayer to the Council, the credits are determined and certified. The following briefly explains the process.

Step 1: Application Process – To receive the credit, an “Application for International Trade Incentive Program Tax Credit,” must be submitted to the Council after the calendar year in which the qualifying increase occurs or transportation costs are incurred. The application, additional information requested to be submitted, and the certification procedures may be obtained from the Council staff at 803-737-2024. There is no application fee.

Step 2: Credit Allocation - The total port volume increase credit or port transportation credit that the taxpayer will receive is determined by the Council. The total credit available for all qualifying taxpayers may not exceed \$15 million for each calendar year for both credits. Further, the amount of port transportation credit that may be awarded is limited as described above. The Council determines whether a taxpayer may claim an income tax credit, a withholding tax credit, or both, and how much credit the taxpayer will receive.

Step 3: Credit Certification - The Council will issue a credit certification form to the taxpayer once the credit allocation has been made. The Council has sole discretion in allocating the port credit.

In addition to the above credits, the Council may annually award up to \$1 million dollars in withholding credit to a new warehouse or distribution facility which commits to spending at least \$40 million at a single site and creating at least 100 new full-time jobs if the base year cargo is at least 5,000 TEUs or its non-containerized equivalent. Certain restrictions apply if the Council awards the credit to a qualifying facility.

Additionally, a taxpayer may be eligible for a credit if it is engaged in the movement of goods imported or exported through South Carolina port facilities if the cargo supports a presence in

South Carolina but the taxpayer does not have a distribution facility in the State at the time of initial approval of the port credit if: (1) the taxpayer employs at least 250 full-time (or full-time equivalent) jobs in South Carolina; (2) the taxpayer constructs and operates a distribution facility in the State within 5 years of initial approval for the credit; and, (3) the base year cargo volume equals or exceeds 5,000 TEUs or its noncontainerized equivalent.

A taxpayer may not claim both the port volume increase credit and the port transportation credit in the same year.

e. Example

An example best explains the timeline for meeting the requirements of, and claiming, the port volume increase credit.

Calendar Year	2018	2019	2020	2021	2022	2023
Net Tons of Noncontainerized Cargo Transported	0	100	105	107	120	
Less: Previous Base Year (must be recalculated every year)		N/A* (base year must be 75 or more)	100	105	107	
Increase in Volume			5	2	13	
Qualification – Increase by 5%		No	Yes	No	Yes	
Submission of Application to Council			Submit application after December 31, 2020		Submit application after December 31, 20122	

21. CREDIT FOR INCREASING PURCHASES OF SOUTH CAROLINA AGRICULTURAL PRODUCTS

South Carolina Code §12-6-3378 provides a tax credit against either income tax or employee withholding for agribusiness operations and agricultural packaging operations (as defined in South Carolina Code §12-6-3360) who increase their purchases of agricultural products designated as Certified South Carolina Grown by the South Carolina Department of Agriculture by 15% over their base year. A taxpayer is not eligible for this credit unless its base year purchases exceed \$100,000, and the base year must be recalculated each calendar year after the initial base year.¹

¹ See example under 20(e) above for Port Volume Increase Credit for the mechanics on how to calculate the percentage or total increase over a base year. Please note, the base year and required minimum increase amounts for the 2 credits are different.

The amount of the credit is determined by, and at the discretion of the Coordinating Council for Economic Development ("Council"), and is limited to \$100,000 per taxpayer in any tax year. The maximum amount of credit for all taxpayers for calendar year 2020 is \$1.5 million dollars. A taxpayer may carry forward any excess credit against income tax for 15 years, while the excess credit against employee withholding may be carried forward for 20 quarters.

To claim the credit, a taxpayer must submit an application to the Council after the calendar year in which the increase in purchases of certified products occurs. The application and the certification procedures may be obtained from the Council staff at 803-737-2024. In addition to other information requested by the Council or the Department, the taxpayer must attach the following information to its application:

- (1) A description of how the base year and increase in purchases of certified products was determined;
- (2) The amount of base year purchases of certified products;
- (3) Amount of increase as a total and a percentage, including information showing the increase exceeds 15%;
- (4) Any tax credit utilized by the taxpayer in prior years; and
- (5) The amount of tax credit carried over from prior years.

Factors considered by the Council in determining allocation of this credit include (1) the amount of base year purchases of certified agricultural products; (2) the total and percentage increase in purchases; and (3) factors related to the economic benefit of the State or other factors. Furthermore, the Department of Commerce and the Department of Agriculture may establish guidelines necessary to ensure all applications, product certification record sheets, and checklists are accurately and effectively created and comply with the provisions of South Carolina Code §12-6-3378.

22. FIRE SPRINKLER SYSTEM CREDIT

South Carolina Code §12-6-3622 provides that a local taxing entity may allow a taxpayer who installs a new or existing fire sprinkler system (as defined in South Carolina Code §40-10-20) that is not required by law, regulation, or code in a new or existing commercial or residential structure, a property tax credit equal to 25% of the direct expenses, not including any fee charged by the utility, against real property taxes levied by a local taxing entity.

The taxpayer may also claim an income tax credit equal to the amount of the property tax credit allowed by the local taxing entity. The income tax credit is claimed on Form TC-52, "Fire Sprinkler System Credit."

The credit earned by an S corporation owing corporate level tax must first be used at the entity level. Any remaining credit passes to each shareholder based on their percentage of stock ownership. The credit earned by a general partnership, limited partnership, limited liability company, or any other entity taxed as a partnership is allocated among any of its partners, including an allocation of the entire credit to one partner, in a manner agreed by the partners that is consistent with Subchapter K of the Internal Revenue Code. The owner of the structure may transfer, devise, or distribute any unused credit to the tenant of the eligible site. To be effective, the local taxing entity must receive written notification.

See Chapter 4, "Business Property Tax and Exemptions," for a discussion of the property tax credit allowed by a local taxing entity for the installation of a fire sprinkler system and for a discussion of the fire sprinkler system equipment exemption.

23. CREDIT FOR CHILD CARE PROGRAMS

South Carolina Code §12-6-3440 provides that an employer may claim as a credit against its income tax, bank tax, or insurance premium tax liability an amount equal to (a) 50% of its capital expenditures in South Carolina but no more than \$100,000, for costs incurred in establishing a child care program for its employees' children and (b) 50% of the child care payments made not to exceed \$3,000 for each participating employee per year.

The program and operation of the program must meet the licensing, registration, and certification standards prescribed by law. The credit taken in any one tax year cannot exceed 50% of the employer's tax liability for that year. Any unused credit can be carried forward for 10 years. The credit is claimed on Form TC-9, "Credit for Child Care Program."

For purposes of the capital expenditures portion of the credit, qualifying expenditures for establishing a child care program include, but are not limited to:

1. Mortgage or lease payments for child care facilities.
2. Purchases of playground and classroom equipment, kitchen appliances, and cooking equipment.
3. Purchases of real property and improvements.

4. Donations to a nonprofit organization that qualifies under Internal Revenue Code §501(c)(3) in order to help that organization establish a child care facility for the employees' children. The employer may not, however, also claim a charitable deduction for the contribution made to the §501(c)(3) organization.
5. Expenses incurred in the first year for organizing and administering a direct payment program (see discussions below) for paying employees' child care expenses.

For purposes of the child care portion of the credit, 50% of the following payments, not to exceed \$3,000 for each participating employee per year, qualify for the credit:

1. Payments incurred by the taxpayer to operate a child care program for the taxpayer's employees in South Carolina.
2. Payments made directly to licensed or registered independent child care facilities in the name of, and for the benefit of, the employer's employees who are residents of, and employed in, South Carolina qualify if the children are kept at the facility during the employee's working hours. In addition, the employer may include any administrative costs, not to exceed 2%, that are associated with payments to a licensed or registered independent childcare facility.

The requirements of the child care payment portion of the credit include:

1. The payment may not exceed the amount charged to non-employee's children of like age and abilities.
2. The taxpayer must retain information concerning the child care facility's federal identification number, license or registration number, payment amount, and in whose name and for whose benefits the payments were made.

24. CREDIT FOR STATE CONTRACTORS SUBCONTRACTING WITH SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESSES (FORMERLY MINORITY BUSINESS CREDIT)

South Carolina Code §12-6-3350 provides a tax credit to taxpayers having a contract with the state who award a subcontract to a certified South Carolina based socially and economically disadvantaged small business. The credit is equal to 4% of the payments to that subcontractor for work pursuant to the contract. The credit is limited to a maximum of \$50,000 annually. A

taxpayer is eligible to claim the credit for 10 consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. There is no carryforward of unused credits.

The subcontractor must be certified as a socially and economically disadvantaged small business, as defined in South Carolina Code §11-35-5010 and SC Regulation 19-445.2160. A taxpayer claiming the credit must maintain evidence of work performed for the contract by the subcontractor. Any payment made to a the subcontractor prior to the date of certification by the South Carolina Division of Small and Minority Business Contracting and Certification does not qualify for the credit. The credit is claimed on Form TC-2, "Credit for State Contractors Subcontracting with Socially and Economically Disadvantaged Small Business", formerly the "Minority Business Credit."

25. QUALITY IMPROVEMENT PROGRAM CREDITS

South Carolina Code §12-6-3580 allows income tax credits for fees incurred for quality improvement programs. They are:

1. A credit equal to the annual fee paid to the South Carolina Quality Forum to participate in quality programs.
2. A credit equal to 50% of any fees charged to participate in the organizational performance excellence assessment process.

The credits are limited to the tax liability on the return. There is no carryforward of unused credits. The credits are claimed on Form TC-28, "South Carolina Quality Forum Credit."

PART D: INDUSTRY SPECIFIC CREDITS

26. MOTION PICTURE PROJECT CREDIT

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

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

1. The taxpayer must invest cash in a company that develops or produces a qualified South Carolina motion picture project intended for commercial exploitation. Only cash investments qualify for the credit. The taxpayer is the person who invests in a qualified South Carolina motion picture project. For purposes of a motion picture equity fund created for the sole purpose of facilitating a slate of qualified motion picture projects, the taxpayer is the person (*e.g.*, investor, partner, member, or shareholder) who invests in the motion picture equity fund.
2. The motion picture project must submit all required documentation to the South Carolina Film Commission ("Film Commission") at the South Carolina Department of Parks, Recreation and Tourism. Upon recommendation of the Film Commission, the motion picture project will be certified as an eligible project. For credit application and certification procedures, contact the Film Commission at 803-737-0498.
3. The qualified South Carolina motion picture project must register with the Department of Revenue and submit a record of allocation of credits and documentation required to meet the credit requirements.
4. The project must incur at least \$250,000 of costs directly in South Carolina to produce a master negative motion picture for theatrical or television exhibition in the United States. At least 20% of the filming days of principal photography, but not less than 10 filming days, must be in South Carolina.
5. The cash investment must be expended for: (a) services performed in South Carolina, (b) tangible personal property dedicated for first use in South Carolina, or (c) real property in South Carolina.

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

27. MOTION PICTURE PRODUCTION FACILITY CREDIT

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

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

1. The taxpayer's investment is cash and/or the fair market value of real property, including any improvements. The taxpayer is the person who invests in the company that constructs, converts, or equips a qualified South Carolina motion picture production facility or post-production facility.
2. Investments in cash must be expended for: (a) services performed in South Carolina, (b) tangible personal property dedicated for first use in South Carolina, or (c) real property in South Carolina. Investments in the form of real property must be in South Carolina and the facilities must be located on such property. "Real property" can also include the fair market value of a 36-month or greater lease less the fair market value of any consideration paid for the lease.
3. The total investment in a motion picture production facility must be at least \$2 million, excluding land costs. The total investment in a post-production facility must be at least \$1 million, excluding land costs.
4. Application for the credit is made to the Film Commission. Documentation must be provided to the Film Commission to confirm the total amount invested. For credit application and certification procedures, contact the Film Commission at 803-737-0498.

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

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

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

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

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

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

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

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

a. Wage/Payroll Rebate

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

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

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

1. The motion picture production company must incur total production costs in South Carolina of \$1 million or more during the taxable year.
2. South Carolina Code §12-62-20 defines “payroll” as salary, wages, or other compensation subject to South Carolina income tax withholding. It does not include the salary of an employee earning \$1 million or more per motion picture.
3. The total rebate for all qualifying projects is \$10 million for each state fiscal year.

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

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

b. Expenditures/Supplier Rebate

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

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

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

- ◆ Expenditures eligible for the wage/payroll rebate are not also eligible for this rebate.

- ◆ Only expenditures associated with a South Carolina supplier qualify.

29. COMMERCIAL PRODUCTION CREDIT

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

The following requirements apply to the credit:

1. The credit is available to a company producing an advertisement composed of moving images and words that are recorded on film, videotape, or digital medium in South Carolina. It is not available to a company producing industrial videos, television broadcasts, cable and satellite networks, or news or sporting events.
2. The production company's total base investment in state certified commercial productions must exceed \$500,000 during the calendar year.
3. The production company must apply to, and obtain certification of, each production from the Film Commission. For credit application and certification procedures, contact the Film Commission at 803-737-0498.
4. South Carolina has \$1 million in total tax credits to disburse annually to all eligible companies. The amount disbursed is based on the order of approval of the company's application by the Film Commission. Once a company is certified, the Film Commission will notify the production company and the Department of Revenue.

30. MILK PRODUCER CREDIT

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

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

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

31. AGRICULTURAL USE OF ANHYDROUS AMMONIA CREDIT

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

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

32. WHOLE EFFLUENT TOXICITY TESTING CREDIT FOR MANUFACTURING FACILITY

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

33. SPECIAL INVESTMENT TAX CREDIT FOR RUBBER AND PLASTICS MANUFACTURERS

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

1. Be employing 5,000 or more full-time workers in the State and have a total capital investment of at least \$2 billion dollars in the State and commit to investing \$500 million in capital investment in this State between January 1, 2006 and July 1, 2011; or
2. Commit to employing 1,200 full-time employees in this State by January 1, 2022 and commit to investing \$400 million in this State between September 1, 2011 and January 1, 2022.

Under the statute, the following terms are defined.

- (a) “Qualified manufacturing and productive equipment property” means property that satisfies the requirements of South Carolina Code §12-14-60(B)(1)(a),(b), and (c).
- (b) “Taxpayer” includes the taxpayer and any person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the taxpayer. For this purpose, a person controls another person if that person holds 50% ownership interest in the other person.
- (c) “Capital investment in this State” includes property that is: (1) capitalized by the taxpayer; (2) subject to a capital lease with the taxpayer; (3) subject to an operating lease with the taxpayer.

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

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

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

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

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

PART E: PROPERTY REHABILITATION CREDITS

34. TEXTILE REVITALIZATION CREDITS

a. General Provisions

The South Carolina Textile Communities Revitalization Act, contained in Title 12, Chapter 65, provides a credit for the renovation, rehabilitation, and redevelopment of abandoned textile mill sites in South Carolina. The credit is not available to a taxpayer who owned the textile mill site immediately prior to its abandonment if the site was operational at that time or if the site has previously received textile mill credits.

An overview of the credit is provided below; however, for additional guidance and examples see South Carolina Revenue Ruling #15-8.¹

South Carolina Code §12-65-30 allows a taxpayer who rehabilitates an abandoned textile mill site to choose one of the following tax credits:

1. A credit against income tax, license tax, or both or a credit against bank taxes ("income/bank/license tax credit") or insurance premium taxes equal to 25% of eligible rehabilitation expenses or
2. A credit against real property taxes ("property tax credit") equal to 25% of the eligible rehabilitation expenses made to the site multiplied by the local taxing entity ratio for each local taxing entity consenting to the credit.

For a credit under (1) above, a taxpayer must file a "Notice of Intent to Rehabilitate" (Notice) with the Department before receiving the building permits for rehabilitating the site, or the applicable phase of the site. Transfers between affiliated taxpayers of any of the developmental phases of the textile mill site are not considered an acquisition that would subject the taxpayer to filing a Notice. Failure to provide the Notice results in only those rehabilitation expenses incurred after the Notice is provided qualifying for the credit.

The Notice is a letter submitted by the taxpayer indicating:

- ◆ the taxpayer intends to rehabilitate the site

¹ The South Carolina General Assembly amended certain provisions of the South Carolina Textiles Communities Revitalization Act in 2019. As such, South Carolina Revenue Ruling #15-8 must be reviewed in light of the legislative amendments from 2019 Act No. 50.

- ◆ the location of the site
- ◆ the amount of acreage involved with the site
- ◆ the estimated expenses to be incurred
- ◆ which buildings on the site are to be renovate or demolished and
- ◆ whether new construction is to be involved at the site.

b. Income/Bank/License/Insurance Premium Tax Credit

This credit amount is based upon actual or estimated expenses as follows:

1. The credit is 25% of the actual rehabilitation expenses unless the expenses exceed 125% of the estimated rehabilitation expenses set forth in the Notice.
2. The credit is 25% of 125% of the estimated rehabilitation expenses set forth in the Notice if the actual rehabilitation expenses exceed 125% of the estimated expenses listed in the Notice.

This credit can be used against income taxes imposed under Chapter 6 of Title 12 or license taxes imposed by Chapter 20 of Title 12, or both, bank taxes imposed under Chapter 11 of Title 12 or insurance premium taxes imposed by Chapter 7, Title 38. The entire credit is earned in the taxable year in which the site (or applicable phase or portion) is placed in service and is claimed in equal installments over a 5-year period beginning with the tax year the site (or applicable phase or portion) is placed in service. The credit may offset 100% of the taxpayer's income tax liability or license tax liability. Any unused credit may be carried forward for 5 years. The credit is claimed on Form TC-23, "Credit for Textiles Rehabilitation."

A partnership or limited liability company taxed as a partnership may pass the credit earned to each partner or member in any manner agreed to by the partners or members, including an allocation of the entire credit or unused credit carryforward to one partner or member. The credit is allocated on an annual basis and may be allocated to any partner or member who was a partner or member at any time during the year in which the credit is allocated. An S corporation must first use the credit against its own income tax liability, if any, before passing the credit through to its shareholders based on their percentage of stock ownership. South Carolina Code §12-6-3310(B)(2).

NOTE: A taxpayer may claim the income/bank/license/insurance premium textile revitalization tax credit in addition to the credit for rehabilitation of a certified historic structure allowed under South Carolina Code §12-6-3535.

c. Certification Procedures

South Carolina Code §12-65-60 provides a procedure which allows a taxpayer to apply to the governing body of the municipality or county in which the textile mill site is located for certification of the site. The certification can be done by either ordinance or binding resolution and must include certain findings. A taxpayer who receives this certification may conclusively rely on the certification in determining the credit allowed, however, the taxpayer must include a copy of the certification on his first return where the credit is claimed.

d. Property Tax Credit

See Chapter 4, “Business Property Tax and Exemptions”, Section 7, for a summary of the textile revitalization property tax credit.

e. Definitions

South Carolina Code §12-65-20 contains a list of definitions of terms used in the Act. Some of the defined terms are:

1. “Textile mill” - a facility or facilities that was initially used for textile manufacturing, dying, or finishing operations and for ancillary uses to those operations.
2. “Textile mill site” - 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, dying, or finishing facility structure is located and does not include land located outside the boundaries of the structure or devoted to ancillary uses.

Notwithstanding the above, with respect to (i) any site acquired by a taxpayer before January 1, 2008, (ii) a site located on the Catawba River near Interstate 77, or (iii) a site which, on the date the notice of intent to rehabilitate is filed, is located in a distressed area of a county in this State, as designated by the applicable council of government, “textile mill site” means 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 or a contiguous parcel within one thousand feet of any textile mill structure or ancillary uses. For purposes of this item, “contiguous parcel” means any separate tax parcel sharing a common boundary with an adjacent parcel or separated only by a private or public road.

3. "Ancillary uses" - uses related to the textile manufacturing, dying, 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.
4. "Abandoned" - at least 80% of the textile mill has been continuously closed to business or otherwise nonoperational as a textile mill for at least one year immediately preceding the date the taxpayer files a "Notice of Intent to Rehabilitate." A textile mill that qualifies as abandoned may be subdivided into separate parcels, and those 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 has been abandoned.
5. "Rehabilitation expenses" - the expenses or capital expenditures incurred in the rehabilitation, renovation, or redevelopment of the textile mill site, including without limitations, the demolition of existing buildings, environmental remediation, site improvements and the construction of new buildings and other improvements on the textile mill site, but excluding 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 either renovated or demolished.

Notwithstanding the above, for purposes of calculating the credit with regard to new or rehabilitated buildings on "contiguous parcels" as described above, "rehabilitation expenses" do not include expenses that increase the amount of square footage of the buildings that existed on that contiguous parcel immediately preceding the time at which the textile mill became abandoned by more than 200%.

6. "Placed in service" - the date the textile mill site is completed and ready for its intended use. If the site is completed and ready for use in phases or portions, each phase or portion is considered placed in service when it is completed and ready for its intended use.

f. Transfer of Credit

A taxpayer who sells or leases all or part of the textile mill site may transfer all or part of any applicable remaining credit associated with the rehabilitation expenses incurred with respect to that part of the site to the purchaser or lessee. The taxpayer must notify the Department of the

credit transfer. Questions concerning a credit transfer and the method to request approval of the transfer from the Department should be directed to the Department at 803-898-5749 or by email at TaxCredits@dor.sc.gov.

NOTE: Other rules not discussed in this general summary may apply to sites purchased before January 1, 2008, a site located on the Catawba River near Interstate 77, or a site which on the date a notice of intent to rehabilitate is filed is located in a distressed area of a county, as designated by the applicable council of government. Also, transitional rules may apply to certain sites.

35. RETAIL FACILITY REVITALIZATION CREDITS

NOTE: The Retail Facilities Revitalization Act was repealed on July 1, 2016. However, for those sites which provide written notification of their election prior to July 1, 2016 and for which a building permit was issued prior to July 1, 2016, the repeal is suspended for fiscal year 2019-2020.

a. General Provisions

The South Carolina Retail Facilities Revitalization Act, contained in Title 6, Chapter 34, provides an income tax credit or property tax credit for the renovation, improvement, and redevelopment of abandoned retail facility sites in South Carolina.

An overview of the credit is provided below; however, for additional guidance and examples see South Carolina Revenue Ruling #15-9.

South Carolina Code §6-34-40 allows a taxpayer who improves, renovates, or redevelops an eligible site to elect one of the following revitalization tax credits:

1. An "income tax credit" equal to 10% of the rehabilitation expenses or
2. A "property tax credit" equal to 25% of the rehabilitation expenses made to the eligible site multiplied by the local taxing entity ratio of each local taxing entity consenting to the credit, up to 75% of the real property taxes due on the eligible site each year.

The taxpayer elects whether to claim the income tax credit or the real property tax credit. There is no formal procedure to elect the income tax credit; it is simply claimed on the income tax return. To elect the property tax credit, the taxpayer must provide written notification to the Department prior to the date the eligible site is placed in service. If the taxpayer does not

affirmatively make the property tax credit election timely in writing before the date the site is placed in service or does not obtain the required county approvals in South Carolina Code §6-34-40(B), then the taxpayer is deemed to have elected the income tax credit.

b. Income Tax Credit

The income tax credit provided in South Carolina Code §6-34-40(A)(2) is claimed in equal installments over an 8-year period beginning with the year the property is placed in service. Any unused credit may be carried forward for 5 years. The credit is claimed on Form TC-31, "Retail Facilities Revitalization Credit."

A partnership or limited liability company taxed as a partnership may pass the credit earned to each partner or member in any manner agreed to by the partners or members that is consistent with Subchapter K of the Internal Revenue Code, including an allocation of the entire credit to one partner or member. An S corporation must first use the credit against its own income tax liability, if any, before passing the credit through to its shareholders based on their percentage of stock ownership. South Carolina Code §12-6-3310(B)(2).

NOTE: A taxpayer may claim this credit against income tax in addition to the credit for rehabilitation of a certified historic structure allowed under South Carolina Code §12-6-3535.

c. Property Tax Credit

See Chapter 4, "Business Property Tax and Exemptions," Section 8, for a summary of the retail facility revitalization property tax credit.

d. Definitions

South Carolina Code §6-34-30 contains a list of definitions of terms used in the Act. Some of these defined terms are:

1. "Eligible site" – an abandoned shopping center, mall, or free standing site whose primary use was as a retail sales facility with at least one occupant in a 40,000 square foot or larger building or structure.
2. "Abandoned" - at least 80% of the facilities of the eligible site has been continuously closed to business or nonoperational for at least one year immediately prior to the time the determination is to be made. During the abandonment, the eligible site may serve as a wholesale facility for no more than one year.

3. “Rehabilitation expenses” - the expenses incurred in the rehabilitation of the eligible site, excluding the cost of acquiring the eligible site or the cost of personal property maintained at the eligible site.
4. “Placed in service” - the date the eligible site is suitable for occupancy for the purposes intended.

e. Transfer of Credit

The owner of an eligible site may transfer, devise, or distribute any unused credit to the tenant of the eligible site, provided the Department receives written notification of and approves the transfer, devise or distribution. Questions concerning a credit transfer and information needed in connection with the Department’s approval of a transfer should be directed to the Department at 803-898-5749 or TaxCredits@dor.sc.gov.

36. ABANDONED BUILDINGS REVITALIZATION CREDIT

a. General Provisions

The South Carolina Abandoned Buildings Revitalization Act, contained in Title 12, Chapter 67 provides an income tax credit or property tax credit for the renovation, redevelopment or improvement of abandoned building sites put into operation for income producing purposes.

An overview of the credit is provided below; however, for additional guidance and examples see South Carolina Revenue Ruling #15-7.² Also, see South Carolina Revenue Ruling #15-12 for additional rules relevant to state-owned abandoned buildings.

NOTE: As a result of the amendments to the Act in 2015, there are several differences between the credit provisions applicable to building sites placed in service before and after June 9, 2015. These differences are noted herein.

Under Title 12, Chapter 67 a qualifying taxpayer may elect one of the following tax credits:

1. A credit against income tax, license tax, bank tax, insurance premium tax (including retaliatory taxes),³ or a combination thereof equal to 25% of the eligible rehabilitation expenses made to the site or

² Note, the statute has been amended since the publication of this ruling, so caution should be exercised when reviewing the ruling as it pertains to portions of the statute that have been amended.

³ For a credit earned before June 9, 2015, the credit may not be used against insurance premium taxes, including retaliatory taxes, imposed by Chapter 7, Title 38.

2. A credit against real property taxes equal to 25% of the eligible rehabilitation expenses made to the site multiplied by the local taxing entity ratio of each local taxing entity consenting to the credit, which can offset up to 75% of the real property taxes due on the eligible site each year.

In order for expenses associated with the site to qualify for the credit, the abandoned buildings on the building site must be either renovated or redeveloped. For sites which have had no portion thereof placed in service before July 1, 2018, and upon which is located a redeveloped multi-floor structure that is listed on the National Register of Historic Places, the taxpayer may subdivide the structure into separate units, with the limitation that up to 7 separate floors may be considered 7 separate subdivided units if a floor is redeveloped for the exclusive use as a residential apartment or apartments. If a taxpayer intends to redevelop a multi-floor structure listed on the National Register of Historic Places referenced in the immediately preceding sentence, the taxpayer must, in lieu of filing a Notice of Intent to Rehabilitate but before claiming this tax credit, notify the Department in writing of the taxpayer's intent to claim the Abandoned Buildings Credit, and must provide any information required by the Department, including, but not limited to, the location of the building site, the actual expenses incurred in connection with the rehabilitation, the number of units for which a credit is being claimed, and the date the building site will be placed in service.

For the income/license/bank tax credit, a taxpayer must file a "Notice of Intent to Rehabilitate" (Notice) with the Department before incurring any rehabilitation expenses. Failure to provide the Notice results in only those rehabilitation expenses incurred after the Notice is provided qualifying for the credit.

The Notice is a letter submitted by the taxpayer indicating:

- ◆ the taxpayer intends to rehabilitate the building;
- ◆ the location of the building site;
- ◆ the amount of acreage involved with the site;
- ◆ the amount of square footage of existing buildings;
- ◆ the estimated expenses to be incurred;
- ◆ which buildings will be rehabilitated; and
- ◆ whether new construction is to be involved at the site.

b. Income/License/Bank/Insurance Premium Tax Credit

This credit amount is based upon actual or estimated expenses as follows:

1. The credit is 25% of the actual rehabilitation expenses if such expenses are between 80% to 125% of the estimated rehabilitation expenses listed in the Notice.
2. The credit is 25% of 125% of the estimated rehabilitation expenses set forth in the Notice if the actual rehabilitation expenses exceed 125% of the estimated expenses listed in the Notice.
3. No credit is allowed if the actual rehabilitation expenses are below 80% of the estimated expenses.

The entire credit is earned in the taxable year in which the site (or applicable phase or portion) is placed in service and is claimed in equal installments over a 3-year period⁴ beginning with the tax year the site (or applicable phase or portion) is placed in service. The credit cannot exceed \$500,000 for any taxpayer in any tax year for each unit or parcel deemed to be an abandoned building site.⁵ Any unused credit may be carried forward for 5 years at the individual, partnership, or limited liability company level. The credit is claimed on Form SC SCH TC-55, "Abandoned Buildings Revitalization Credit."

A partnership or limited liability company taxed as a partnership may pass through the credit earned, including any unused credit amount carried forward, to the partners or members and may be allocated among any of its partners or members on an annual basis including, without limitation, an allocation of the entire credit or unused credit carryforward to any partner or member who was a partner or member at any time during the year in which the credit or unused carryforward is allocated. An S corporation must first use the credit against its own income tax liability, if any, before passing the credit through to its shareholders based on their percentage of stock ownership. South Carolina Code §12-6-3310(B)(2).

If the taxpayer qualifies for the abandoned buildings credit and the textile revitalization credit or the retail revitalization credit, the taxpayer may only claim one of the three credits.

However, the taxpayer is not disqualified from claiming any other tax credit in conjunction with the abandoned buildings credit.

⁴ For building sites placed in service before June 9, 2015, the credit is claimed in equal installments over a 5-year period.

⁵ For building sites placed in service before June 9, 2015, the credit claimed each year is also limited to 50% of the taxpayer's applicable tax liability.

c. Investment Requirements

The abandoned buildings credit only applies to abandoned building sites, or phases or portions thereof, put into operation where the taxpayer incurs:

- More than \$250,000 of rehabilitation expenses for buildings located in the unincorporated areas of a county or in a municipality in the county with a population of more than 25,000 people.
- More than \$150,000 of rehabilitation expenses for buildings located in the unincorporated areas of a county or in a municipality in the county with a population between 1,000 and 25,000 people.
- More than \$75,000 of rehabilitation expenses for buildings located in a municipality with a population of less than 1,000 people.

d. Property Tax Credit

See Chapter 4, “Business Property Tax and Exemptions”, Section 9, for a summary of the abandoned buildings property tax credit.

e. Certification of Abandoned Building Site

For buildings placed in service on or after June 9, 2015, the taxpayer may apply to the county or municipality in which the building is located for certification that the building is an abandoned building or state-owned abandoned building, as defined in South Carolina Code §12-67-120. The taxpayer may conclusively rely on this certification. A copy must be included with the first tax return for which the credit is claimed. See South Carolina Code §12-67-160.

f. Definitions

South Carolina Code §12-67-120 contains a list of definitions of terms used in the Act. Some of the defined terms are:

1. “Abandoned building” - a building or structure, other than a single family residence, which clearly may be delineated from other buildings or structures, at least 66% of the space which has been closed continuously to business or otherwise nonoperational for income producing purposes for a period of at least 5 years immediately preceding the date on which the taxpayer files the Notice of Intent to Rehabilitate. A building that

otherwise qualifies may be divided into unit or parcels, which may be owned by the same taxpayer or different taxpayers. Each unit or parcel is deemed to be an abandoned building site for purposes of determining whether each subdivided parcel is considered to be abandoned. Special rules apply if the building is listed on the National Register for Historic Places.

2. "Building site" - the abandoned building together with the parcel of land upon which it is located and other improvements located on the parcel. However, the area of the building site is limited to the land upon which the abandoned building is located and the land immediately surrounding such building used for parking and other similar purposes directly related to the building's income producing use.
3. "Rehabilitation expenses" - expenses or capital expenditures incurred in the rehabilitation, demolition, renovation, or redevelopment of the building site, including without limitation, the renovation or redevelopment of existing buildings, environmental remediation, site improvements and the construction of new buildings and other improvements on the site, but excluding the cost of acquiring the site or the cost of personal property located at the site, and demolition expenses if the building is on the National Register of Historic Places.

Rehabilitation expenses associated with a building site that increase the amount of square footage on the building site in excess of 200% of the amount of the square footage of the buildings that existed on the buildings site as of the filing of the Notice shall not be considered a rehabilitation expense for calculating the amount of the credit.

4. "Placed in service" - the date upon which the building site is completed and ready for its intended use. If the site is completed and ready for use in phases or portions, each phase or portion is considered placed in service when it is completed and ready for its intended use.
5. "State-owned abandoned building" – an abandoned building and its ancillary service buildings or a project consisting of one or more abandoned buildings, the aggregate size of which is greater than 50,000 square feet, that has been abandoned for more than five years, and, prior to the taxpayer's acquisition of such building, was most recently owned by the State, or an agency, instrumentality, or political subdivision of the State. For purposes of this definition, the taxpayer shall include any entity under common control or common ownership with the taxpayer.

g. Transfer of Credit

A taxpayer who sells or leases all or part of the abandoned building site may transfer all or part of any applicable remaining credit associated with the rehabilitation expenses incurred with respect to that part of the site to the purchaser or lessee. The taxpayer must notify the Department of the credit transfer. Questions concerning a credit transfer and the method to request approval of the transfer from the Department should be directed to the Department at 803-898-5749 or by email at TaxCredits@dor.sc.gov.

h. Extension of Placed in Service Date

If a taxpayer files a notice of intent to rehabilitate and has been rehabilitating an abandoned building continuously for the preceding year and the building is more than 60% complete, the taxpayer must be allowed to extend the placed in service date until 90 days after construction is completed, provided the construction continues diligently until the end of the 90 days. Code §12-67-170. This provision is not to be construed to allow a taxpayer to earn a credit before the applicable phase or portion of the building site is placed in service.

i. Repeal of the Act

The South Carolina Abandoned Buildings Revitalization Act is repealed on December 31, 2021. Any credit carryforward will continue to be allowed until the 5-year time period in South Carolina Code §12-67-140 is completed.

37. CREDIT FOR REHABILITATION OF A CERTIFIED HISTORIC STRUCTURE

South Carolina Code §12-6-3535 has two similar income tax credits available to taxpayers making historic rehabilitation expenditures in South Carolina. The first credit, rehabilitation of a certified historic structure credit, is available to taxpayers that qualify for the federal rehabilitation credit. The second credit, rehabilitation of a certified historic residential structure credit, is available to individual taxpayers that do not qualify for the federal rehabilitation credit.

A general overview of the credit for rehabilitation of a certified historic structure is provided below. See Chapter 3, "Individual Income and Estate and Gift Taxes," Section 18 for a general overview of the credit for rehabilitation of a certified historic residential structure.

NOTE: As a result of the amendments to South Carolina Code §12-6-3535 in 2015, there are several differences between the credit provisions for certified historic structures placed in service before and after June 9, 2015. These differences are noted herein.

South Carolina Code §12-6-3535(A) allows a taxpayer a credit against income taxes and license taxes imposed under Title 12 (or a combination of the two if placed in service on or after June 9, 2015) equal to 10% of the qualified rehabilitation expenditures for a certified historic structure located in South Carolina that qualify for the federal rehabilitation credit provided in Internal Revenue Code §47. For a certified historic structure placed in service on or after June 9, 2015, a taxpayer may elect a 25% tax credit in lieu of the 10% tax credit, not to exceed \$1 million for each certified historic structure.

The credit is claimed in equal amounts over a 3-year period⁶ beginning with the year that the property is placed in service. Any unused credit may be carried forward for the succeeding 5 years at the individual, partnership, or limited liability company level. To claim this credit, the taxpayer must attach to the South Carolina income tax return a copy of the appropriate federal tax forms showing the amount of federal rehabilitation credit claimed. The credit is claimed on Form TC-21, "Credit for a Certified Historic Structure Placed in Service after June 9, 2015."⁷

Taxpayers who are either a general partnership, limited partnership, limited liability company, or other pass-through entity (as defined in South Carolina Code §12-6-545), and who also qualify for the rehabilitation of a certified historic structure credit, must pass through the credit, including any unused credit amount carried forward, to its partners, and may allocate it among its partners including, without limitation, an allocation of the entire credit or unused credit carryforward to any partner who was a partner or member at any time during the year in which the credit or unused carryforward is allocated, in a manner agreed to by the partners or members.⁸ An S corporation must first use the rehabilitation of a certified historic structure credit against its own income tax liability, if any, before passing the credit through to its shareholders based on their percentage of stock ownership. South Carolina Code §12-6-3310(B)(2). Additionally, a taxpayer who makes a passthrough election under Internal Revenue Code Section 50(d) may elect to pass the credit claimed to the tenant of the eligible structure or to retain the credit.⁹

The terms "taxpayer," "qualified rehabilitation expenditures," and "certified historic structure" have the same meaning as provided in Internal Revenue Code §47 and the applicable Treasury Regulations.

⁶ For certified historic structures placed in service before June 9, 2015, the credit is claimed in equal amounts over a 5-year period beginning with the year that the property is placed in service.

⁷ For certified historic structures placed in service before June 9, 2015, the credit is claimed on Form TC-21, "Credit for a Certified Historic Structure Placed in Service before June 8, 2015."

⁸ For certified historic structures placed in service before June 9, 2015, the allocation of the credit must be consistent with Subchapter K of the Internal Revenue Code.

⁹ This state election is not available to certified historic structures placed in service before June 9, 2015.

Other credit provisions include:

1. Additional work done by the taxpayer while the credit is being claimed, for a period of up to 5 years, must be consistent with the Secretary of the Interior's Standards for Rehabilitation. During this period, the State Historic Preservation Officer may inspect and review additional work to the certified historic structure. If this work is not consistent with the Standards for Rehabilitation, the taxpayer and Department must be notified in writing and any unused portion of the credit, including any carryforward, is forfeited.
2. The South Carolina Department of Archives and History has developed an application and certification process. A copy of the application and certification information can be obtained from the South Carolina Department of Archives and History at 803-896-6174. A taxpayer may appeal a decision of the State Historic Preservation Officer to a committee of the State Review Board.

PART F: LAND CONSERVATION OR ENVIRONMENTAL CREDITS

38. CONSERVATION CREDIT

a. General Provisions

South Carolina Code §12-6-3515 allows a taxpayer, who is entitled to and claims a federal charitable deduction for a gift of land for conservation or for a qualified conservation contribution on a qualified real property interest located in South Carolina, to claim a South Carolina income tax credit equal to 25% of the value of the gift of land for conservation or to the qualified real property interest associated with the qualified conservation contribution. The credit cannot exceed \$250 per acre of property to which the qualified conservation contribution or gift of land for conservation applies. The total credit claimed by a single taxpayer cannot exceed \$52,500 per year. Any unused credit may be carried forward until used. The credit is claimed on Form TC-19, "Credit for a Gift of Land for Conservation or a Qualified Conservation Contribution of Real Property After May 31, 2001."

b. Definitions and Requirements

For purposes of this credit, "qualified conservation contribution" and "qualified real property interest" have the same meaning as defined in Internal Revenue Code §170(h). The term "gift of land for conservation" is a charitable contribution of fee simple title to real property conveyed for conservation purposes as defined in Internal Revenue Code §170(h)(4)(A) to a qualified conservation organization as defined in Internal Revenue Code §170(h)(3). The conservation credit is not allowed unless the contribution meets the requirements of Internal Revenue Code §170, South Carolina Code §12-6-3515, and South Carolina Code §12-6-5590 (*i.e.*, donative intent).

Notwithstanding Internal Revenue Code §170(h) and applicable regulations, a taxpayer is not disqualified from claiming this credit because of silvacultural and forestry practices permitted by or undertaken pursuant to a conservation contribution on a real property interest provided that: (1) the practices conform to Best Management Practices established by the South Carolina Forestry Commission existing at the time the conservation contribution is made, or at the time a particular forestry or silvacultural practice is undertaken; (2) the conservation contribution otherwise conforms to the requirements of Internal Revenue Code §170(h); and, (3) the taxpayer provides the Department with information to determine that the taxpayer would

otherwise be eligible for the deduction under Internal Revenue Code §170(h). The credit is 25% of the deduction that would otherwise be allowable under Internal Revenue Code §170(h) but for the silvacultural and forestry activities performed on the real property interest and is subject to all the other conditions and limitations of this section.

For purposes of applying the per acre and per taxpayer limitations, the attribution rules of Internal Revenue Code §267 apply. The fair market value of all qualified donations must be substantiated by a “qualified appraisal” prepared by a “qualified appraiser” as defined under applicable federal law and regulations relating to charitable contributions.

c. Transfer of Credit

The unused credit may be transferred, devised, or distributed, with or without consideration, to another taxpayer upon written notification to, and approval by, the Department of the transfer. The Department’s approval is valid only if the transfer is completed consistent with the information contained in the request for transfer. If the Department has not approved the transfer within two weeks of submission of the request, the request will be deemed approved two weeks after the transferor has submitted all information requested in complete form and the transfer is carried out consistent with the information submitted in the request.

A taxpayer may transfer the unused credits to one or more taxpayers (transferees) for any tax year and each of these transferees will be eligible to claim up to \$52,500 in total conservation credits for the current tax year and any subsequent tax years. The total conservation credits include any credits for the current year, whether transferred to a taxpayer or earned or retained by a taxpayer, and any carryover of previous year’s credits transferred to a taxpayer or earned or retained by a taxpayer. If a taxpayer transfers the credit, the unused credit retains all its original attributes in the hands of the transferee. If there is a sale, exchange, or transfer of the credit, general income tax principles apply for purposes of the state income tax credit.

The procedure to request approval from the Department of the transfer, devise, or distribution of the conservation credit, and the information required to be submitted with the request, is provided in South Carolina Revenue Procedure #08-1.

39. CREDIT FOR WATER IMPOUNDMENTS AND WATER CONTROLS

South Carolina Code §12-6-3370 allows a taxpayer a credit equal to 25% of all expenditures incurred for the construction, installation, or restoration of certain ponds, lakes, other water impoundments, and water control structures designed for the purposes of water storage for irrigation, water supply, sediment control, erosion control, or aquaculture and wildlife

management, provided these items are not located in, or adjacent to, and filled primarily by coastal waters of the state. To qualify for the credit the taxpayer must obtain a construction permit issued by the Department of Health and Environmental Control or proof of exemption from permit requirements issued by the Department of Health and Environmental Control, the Natural Resources Conservation Service, or a local Soil and Water Conservation District.

The maximum credit that may be claimed is \$2,500. In the case of pass-through entities, the credit is determined at the entity level and is limited to \$2,500. Any unused credit can be carried forward for 5 years. The credit is claimed on Form TC-3, "Water Resources Credit."

40. HABITAT MANAGEMENT CREDIT

South Carolina Code §12-6-3520 provides an income tax credit equal to 50% of the costs incurred for habitat management or construction and maintenance of improvements on real property that are made to land described in South Carolina Code §50-15-50(A) as a certified management area for endangered species, or of species in need of management, and which meets the requirements of regulations promulgated by the Department of Natural Resources.

NOTE: Until the Department of Natural Resources promulgates regulations, this credit is not available.

To qualify for the credit, all costs must be incurred on land that has been designated as a certified management area for endangered species provided in South Carolina Code §50-15-30, or for nongame and wildlife species determined to be in need of management under South Carolina Code §50-15-20.

The credit must be claimed in the year that the costs are incurred and may not exceed 50% of the taxpayer's income tax liability. Any credit generated by an S corporation must be used first against any tax liability of the S corporation and any remaining credit passes through to the shareholders. Any unused credit can be carried forward 10 years.

Rules exists requiring recapture of the credit. If the landowner voluntarily chooses to leave the agreement made concerning the certified areas after taking the tax credit, then the taxpayer's tax liability must be increased by the full amount of the credit previously claimed.

41. BROWNFIELDS VOLUNTARY CLEANUP CREDIT

South Carolina Code §12-6-3550 allows a credit against taxes due for costs of voluntary cleanup activity by a nonresponsible party pursuant to the Brownfields Voluntary Cleanup Program in South Carolina Code Title 44, Chapter 56, Article 7.

The “basic” credit amount is equal to 50% of the cleanup expenses paid or accrued or cash contributions for site cleanup conducted during the tax year the tax credit application is submitted, not to exceed \$50,000 in a tax year. Any unused credit, up to \$100,000, may be carried forward 5 years. An “additional” credit equal to 10% of the total cleanup costs, not to exceed \$50,000, is allowed in the final year of cleanup, as evidenced by the South Carolina Department of Environmental Control (“DHEC”) issuing a certificate of completion for the site. Multiple taxpayers working jointly to clean up a single site are allowed the credit in the same proportion as their contribution to the payment of cleanup costs. The credit is claimed on Form TC-20, “Credit for Expenses Incurred Through Brownfields Voluntary Cleanup Program.”

The following requirements apply to the credit:

1. The taxpayer must have entered into a nonresponsible party voluntary contract with DHEC as provided in South Carolina Code §44-56-750.
2. The taxpayer must file a tax credit certificate application annually with DHEC in order to obtain a tax credit certificate. The tax credit application and required documentation must be received by DHEC by December 31. Information included with the application form must include: (a) copies of contracts, invoices or payment records involving the actual costs incurred for the tax year related to the site rehabilitation and (b) a copy of an independent certified public accountant report attesting to the accuracy and validity of the cleanup costs.

DHEC will issue a tax credit certificate upon review of the application and documentation before April 1 if it determines that the applicant has met all requirements. It may revoke or modify any written decision granting eligibility for partial tax credits if it is discovered that the taxpayer submitted false information. The taxpayer must pay DHEC’s administrative review costs pursuant to South Carolina Code §44-56-750(D).

42. RECYCLING FACILITY TAX CREDITS

South Carolina Code §12-6-3460 provides a taxpayer constructing or operating a qualified recycling facility a 30% credit each year for an investment in recycling property. Recycling property is property incorporated into or associated with a qualified recycling facility.

The credit may be used to reduce: (a) corporate income tax imposed under South Carolina Code §12-6-530, (b) sales and use tax imposed by the state or any political subdivision of the state, (c) corporate license fees imposed by South Carolina Code §12-20-50 or (d) any similar tax.

In order to qualify as a “qualified recycling facility” the facility must:

1. Manufacture products for sale composed of 50% or more post-consumer waste material by weight or volume, such as scrap metal and iron, used plastics, paper, glass, and rubber;
2. Invest at least \$300 million in the acquisition, construction, erection, and installation of real and personal property by the end of the fifth year after the first year of construction or operation; and
3. Receive certification from the Department that the facility is a qualified recycling facility.

Any unused credit may be carried forward indefinitely. If the facility does not meet the required minimum investment, all credits must be recaptured. The credit is claimed on Form TC-17, “Recycling Property Tax Credit per S.C. Code Section 12-6-3460.”

South Carolina Code §12-6-3465 provides that a qualified recycling facility is also entitled to a credit equal to the amount of all of its job development benefits collected under South Carolina Code §12-10-80. This credit can be used to reduce the taxpayer’s corporate income tax imposed by South Carolina Code §12-6-530, sales or use tax imposed by the state or any political subdivision of the state, corporate license fees imposed by South Carolina Code §12-20-50, or any tax similar to these taxes. Any unused credit may be carried forward to subsequent taxable years until such credit is exhausted.

There are also significant fee in lieu of property tax and sales tax incentives available to qualifying recycling facilities. These benefits are discussed in the Property Tax and Sales and Use Tax Sections.

PART G: ENERGY CONSERVATION AND ALTERNATIVE ENERGY CREDITS

43. SOLAR ENERGY CREDITS

a. Basic Solar Credit

South Carolina Code §12-6-3587 allows a taxpayer a credit against income taxes equal to 25% of the costs incurred in the purchase and installation of a solar energy system, including a small hydropower system or “geothermal machinery and equipment” for heating water, space heating, air cooling, energy efficient daylighting, heat reclamation, energy-efficient demand response or the generation of electricity in or on a facility (or home) in South Carolina owned by the taxpayer. The credit cannot be claimed before installation of the system is completed. The amount of the credit may not exceed \$3,500 for each facility or 50% of the taxpayer’s tax liability for the taxable year, whichever is less. The credit in excess of \$3,500 for each facility can be carried forward for 10 years. The credit is claimed on Form TC-38, “Solar Energy Credit.”

A “system” includes all controls, tanks, pumps, heat exchangers, and other equipment used directly and exclusively for the solar energy system. It does not include any land or structural elements of the building such as walls and roofs or other equipment ordinarily contained in the structure. To qualify for the credit, the system must be certified for performance by the nonprofit Solar Rating and Certification Corporation or a comparable entity endorsed by the State Energy Office. The statute also defines “geothermal machinery and equipment”.

NOTE: The credit available for purchase and installation of “geothermal machinery and equipment” is effective until January 1, 2022.

b. Solar Energy Equipment Credit – Qualifying Sites

South Carolina Code §12-6-3775 provides an income tax credit equal to 25% of the cost, including installation, of solar energy property. “Solar energy property” is defined as any **nonresidential** solar energy equipment with a nameplate capacity of at least 1,900 kilowatts that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalination, detoxification, or the production of industrial or commercial process heat. Certain related devices are also included in the term. South Carolina Code §12-6-3775(A) and (B).

In order to qualify for the credit, the taxpayer must construct, purchase or lease, and place in service in South Carolina, a solar energy property. In addition, the property must be located on a qualifying site as provided in the statute. If the taxpayer leases the property, certain additional requirements must be met. South Carolina Code §12-6-3775(B) and (E).

The credit is earned in the year in which the solar energy site is placed in service but must be taken in 5 equal annual installments, beginning in the year the property is placed in service. Unused credits can be carried forward for 5 years. A taxpayer who claims any other state credit allowed with respect to solar energy property may not take the credit under Code §12-6-3775 for the same property. South Carolina Code §12-6-3775(E). If the solar energy property is disposed of, taken out of service, or moved out of South Carolina, during the 5-year period for claiming the credit, then the credit expires and the taxpayer may not take any remaining credit. South Carolina Code §12-6-3775(C).

A credit for each installation of solar energy property cannot exceed \$2.5 million and the total amount of credit available to be taken, pursuant to the 5 equal annual installments, for all taxpayers in a taxable year, may not exceed \$2.5 million in the aggregate. The credit is allowed on a first-come, first-serve basis.

NOTE: This credit is repealed on December 31, 2021. If a credit is earned before the repeal, the provisions of South Carolina Code §12-6-3775 continues to apply until all credits have been claimed.

44. ALTERNATIVE MOTOR VEHICLE CREDIT

South Carolina Code §12-6-3377 allows a resident taxpayer a credit against income taxes equal to 20% of the federal credit allowed under Internal Revenue Code §30B, without regard to the federal phase-out limits of Internal Revenue Code §30B(f). Any unused credit can be carried forward for 5 years. The credit is claimed on Form TC-35, "Alternative Motor Vehicle Credit."

For a taxpayer to qualify for the credit, the taxpayer must be eligible for the federal credit pursuant to Internal Revenue Code §30B. Internal Revenue Code §30B provides an alternative motor vehicle credit equaling the total of the: (1) qualified fuel cell motor vehicle credit, (2) advanced lean burn technology motor vehicle credit, (3) qualified hybrid motor vehicle credit, and (4) qualified alternate fuel motor vehicle credit. For purposes of this credit, the provisions of Internal Revenue Code §30B are deemed permanent.

45. ETHANOL OR BIODIESEL PRODUCTION CREDITS

a. General Provisions

South Carolina Code §12-6-3600 provided several income tax credits for facilities that produce ethanol or biodiesel at a plant in South Carolina at which all fermentation, distillation, and dehydration takes place. These credits are not allowed for ethanol or biodiesel produced or sold for use in the production of distilled spirits. Although most of the credits are no longer available for facilities that did not already qualify because the time period for meeting the “name plate design capacity requirement” has passed, there remains one credit potentially available to companies that increase their production of ethanol or biodiesel in the future.

1. Credit for Qualified New Production Beginning January 1, 2017. South Carolina Code §12-6-3600(C) provides a tax credit of 7.5¢ a gallon of ethanol or biodiesel for “new production” by an ethanol or biodiesel facility **beginning January 1, 2017**. The credit is allowed for a period not to exceed 36 consecutive months. Further, not more than 10 million gallons of ethanol or biodiesel produced during a 12-consecutive month period at an ethanol or biodiesel facility is eligible for the credit. An ethanol or biodiesel facility receiving a credit under South Carolina Code §12-6-3600(A) (the previous provision relating to such facilities) may not receive a credit under South Carolina Code §12-6-3600(C) until its eligibility to receive the credit in South Carolina Code §12-6-3600(A) has been completed. This credit has to be approved by the State Energy Office.

b. Definitions

South Carolina Code §12-6-3600(B) contains definitions for the following terms:

1. “Biodiesel facility” - a plant or facility primarily engaged in the production of plant or animal based fuels used as a substitute for diesel fuel.
2. “Ethanol facility” - a plant or facility primarily engaged in the production of ethanol or ethyl alcohol derived from renewable and sustainable bioproducts used as a substitute for gasoline fuel.
3. “New production” means production which results from a new facility, a facility which has not received credits before 2017, or the expansion of the capacity of an existing facility by at least 2 million gallons if the expansion is first placed in service after 2016, as certified by the design engineer of the facility to the State Energy Office.