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CHAPTER 14.

ECONOMIC IMPACT ZONE COMMUNITY DEVELOPMENT ACT OF 1995

**SECTION 12‑14‑10.** Short title.

This chapter may be cited as the Economic Impact Zone Community Development Act of 1995.

**SECTION 12‑14‑20.** Purpose.

It is the purpose of this chapter to establish a program of providing tax incentives for the creation of economic impact zones in order:

(1) to revitalize economically and physically distressed areas impacted as a result of the closing or realignment of a federal military installation area, primarily by encouraging the formation of new businesses and the retention and expansion of existing businesses;

(2) to promote meaningful employment for economic impact zone residents; and

(3) to encourage individuals to reside in the economic impact zones in which they are employed.

**SECTION 12‑14‑30.** Definitions.

As used in this chapter:

(1) An “economic impact zone” is a county or municipality, any portion of which is located within fifty miles of the boundaries of an applicable federal military installation or an applicable federal facility, and any area not otherwise included as part of the economic impact zone if the State Budget and Control Board determines the area to be adversely impacted by the closing, realignment, or downsizing of an applicable federal military installation or an applicable federal facility.

(2) An “applicable federal military installation” is one which is closed or realigned under:

(a) the Defense Base Closure and Realignment Act of 1990;

(b) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act; or

(c) Section 2687 of Title 10, United States Code.

(3) An “applicable federal facility” is one which is:

(a) a federal facility that has reduced its permanent employment by three thousand or more jobs after December 31, 1990;

(b) Reserved.

(4) “Internal Revenue Code” has the meaning provided in Section 12‑6‑40(A).

**SECTION 12‑14‑40.** Designation of area as economic impact zone.

(A) The designation of an area as an economic impact zone must be made by the State Budget and Control Board.

(B) A designation may be revoked by the General Assembly only after a hearing on the record in which officials of the county or municipality involved may participate.

**SECTION 12‑14‑50.** Allowable deductions.

(A) In the case of an individual, there is allowed as a deduction against South Carolina taxable income an amount equal to twenty percent of the aggregate amount paid in cash by the taxpayer during the taxable year for the purchase of economic impact zone stock.

(B)(1) The maximum amount allowed as a deduction under subsection (A) to a taxpayer for the taxable year may not exceed the lesser of:

(a) ten thousand dollars; or

(b) the excess of one hundred thousand dollars over the amount allowed as a deduction under this section to the taxpayer for all prior taxable years.

(2) If the amount otherwise deductible by the person under subsection (A) exceeds the limitation under subsection (B)(1)(a):

(a) the amount of such excess is treated as an amount paid to which subsection (A) applies during the next taxable year; and

(b) the deduction allowed for any taxable year must be allocated proportionately among the economic impact zone stock purchased by the person on the basis of the respective purchase prices a share.

(3) The taxpayer and members of the taxpayer’s family are treated as one person for purposes of subitem (1), and the limitations contained in such subitem must be allocated among the taxpayer and such members in accordance with their respective purchases of economic impact zone stock. For purposes of this section, an individual’s family includes only such individual’s spouse and minor children.

(C) For purposes of this section:

(1) the term “economic impact zone stock” means stock of a corporation if:

(a) such stock is acquired on original issue from the corporation; and

(b) such corporation is, at the time of issue, a qualified enterprise zone issuer.

(2)(a) “Economic impact zone stock” includes such stock only to the extent that the proceeds of the stock issue are used by the issuer during the twelve‑month period beginning on the date of issuance to purchase qualified economic impact zone property.

(b) For purposes of this section, the term “qualified economic impact zone property” means property to which Section 168 of the Internal Revenue Code applies:

(i) the original use of which in an economic impact zone commences with the issuer; and

(ii) substantially all of the use of which is in an economic impact zone.

(3) The term “economic impact zone stock” does not include any stock acquired from a corporation which made a substantial stock redemption or distribution (without a bona fide business purpose therefor) in an attempt to avoid the purposes of this section.

(D) For purposes of this section, the term “qualified economic impact zone issuer” means any “C” corporation if:

(1) the corporation is an economic impact zone business or, in the case of a new corporation, the corporation is being organized for purposes of being an economic impact zone business;

(2) the sum of:

(a) the money;

(b) the aggregate adjusted bases of property owned by the corporation; and

(c) the fair market value of property leased to the corporation (as determined by the Department of Revenue for property tax purposes), does not exceed five million dollars; and

(3) more than twenty percent of the total voting power and twenty percent of the total value of the stock of the corporation is owned directly by individuals or estates or indirectly by individuals through partnerships or trusts. The determination under subsection (3) must be made as of the time of issuance of the stock in question but shall include amounts received for the stock.

(E) The basis of any economic impact zone stock must be reduced by the amount of the deduction allowed under this section with respect to the stock.

(F)(1) In the case of a partnership or an “S” corporation, the limitations under subsection (B) apply at the partner and shareholder level and do not apply at the partnership or corporation level.

(2) Estates and trusts are not treated as individuals for purposes of this section.

**SECTION 12‑14‑60.** Investment tax credit.

(A)(1) There is allowed an economic impact zone investment tax credit against the tax imposed pursuant to Chapter 6 of this title for any taxable year in which the taxpayer places in service economic impact zone qualified manufacturing and productive equipment property.

(2) The amount of the credit allowed by this section is equal to the aggregate of:

three‑year property one percent of total aggregate bases for all

three‑year property that qualifies;

five‑year property two percent of total aggregate bases for all

five‑year property that qualifies;

seven‑year property three percent of total aggregate bases for all

seven‑year property that qualifies;

ten‑year property four percent of total aggregate bases for all

ten‑year property that qualifies;

fifteen‑year property five percent of total aggregate bases for all

or greater fifteen‑year or greater property that

qualifies.

For purposes of this section, whether property is three‑year property, five‑year property, seven‑year property, ten‑year property, or fifteen‑year property is determined based on the applicable recovery period for such property under Section 168(e) of the Internal Revenue Code.

(B) For purposes of this section:

(1) “economic impact zone qualified manufacturing and productive equipment property” means any property:

(a) which is used as an integral part of manufacturing or production, or used as an integral part of extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services in the economic impact zone;

(b) which is tangible property to which Section 168 of the Internal Revenue Code applies;

(c) which is Section 1245 property (as defined in Section 1245(a)(3)of the Internal Revenue Code); and

(d)(i) the construction, reconstruction, or erection of which is completed by the taxpayer in the economic impact zone; or

(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer inside the economic impact zone.

(2) In the case of any computer software which is used to control or monitor a manufacturing or production process inside the economic impact zone and with respect to which depreciation (or amortization in lieu of depreciation) is allowable, the software must be treated as qualified manufacturing and productive equipment property.

(C) This section does not apply to any property to which the other tax credits would apply unless the taxpayer elects to waive the application of the other credits to the property.

(D)(1) Unused credit allowed pursuant to this section may be carried forward for ten years from the close of the tax year in which the credit was earned.

(2) In the case of credit unused within the initial ten‑year period, a taxpayer may continue to carry forward unused credits for use in any subsequent tax years if the taxpayer:

(a) is engaged in this State in an activity or activities listed under the North American Industry Classification System Manual (NAICS) Section 31, 32, or 33;

(b)(i) is employing one thousand or more full‑time workers in this State and having a total capital investment in this State of not less than five hundred million dollars; or

(ii) is employing eight hundred fifty or more full‑time workers in this State and having a total capital investment in this State of not less than seven hundred fifty million dollars; and

(c) made a total capital investment of not less than fifty million dollars in the previous five years.

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 twenty‑five percent.

(E) If during any taxable year and before the end of applicable recovery period for such property as determined under Section 168(e) of the Internal Revenue Code, the taxpayer disposes of or removes from the economic impact zone, economic impact zone qualified manufacturing and productive equipment property, then the tax due under Chapter 6 by the taxpayer for the current taxable year must be increased by an amount of any credit claimed in prior years with respect to such property determined by assuming the credit is earned ratably over the useful life of the property and recapturing pro rata the unearned portion of the credit.

(F) For South Carolina income tax purposes, the basis of the economic impact zone qualified manufacturing and productive equipment property must be reduced by the amount of any credit claimed with respect to the property. If a taxpayer is required to recapture the economic impact zone investment tax credit in accordance with subsection (E), the taxpayer may increase the basis of the property by the amount of any basis reduction attributable with claiming the economic impact zone investment tax credit in prior years. The basis must be increased in the year in which the credit is recaptured.

(G) Credits claimed under this section for taxable years beginning after 1997 for investments made before July 1, 1998, may not reduce a taxpayer’s state income tax liability by more than fifty percent.

(H) The credit allowed by this section for investments made after June 30, 1998, is limited to no more than five million dollars for an entity subject to the license tax as provided in Section 12‑20‑100.

(I) Notwithstanding any amendments to Section 12‑14‑60 of the 1976 Code enacted in the 1998 session of the General Assembly reducing the percentage amount of the economic impact zone investment tax credit or otherwise reducing the amount of the credit allowed, in the case of investments at a project operated by a company pursuant to a revitalization agreement entered into between the company and the South Carolina Advisory Council for Economic Development effective on or before July 1, 1996, the provisions of Section 12‑14‑60 in existence prior to the 1998 amendment shall apply.

**SECTION 12‑14‑70.** Definition of “economic impact zone business”, “qualified business”, and “nonqualified financial property”.

(A) For purposes of this chapter, “economic impact zone business” means, with respect to any taxable year, any corporation if for such year:

(1)(a) every trade or business of such corporation is the active conduct of a qualified business within an economic impact zone; and

(b) at least eighty percent of the total gross income of the corporation is derived from the active conduct of the business;

(2) substantially all of the use of the tangible property of the corporation (whether owned or leased) is within an economic impact zone;

(3) substantially all of the intangible property of the corporation is used in, and exclusively related to, the active conduct of any such business;

(4) substantially all of the services performed for the corporation by its employees are performed within an economic impact zone;

(5) at least one‑third of its employees are residents of an economic impact zone;

(6) less than five percent of the average of the aggregate unadjusted bases of the property of such corporation is attributable to collectibles (as defined in Section 408(m)(2) of the Internal Revenue Code) other than collectibles that are held primarily for sale to customers in the ordinary course of such business; and

(7) less than five percent of the average of the aggregate unadjusted bases of the property of such corporation is attributable to nonqualified financial property.

(B) For purposes of this chapter:

(1) Except as otherwise provided in this subsection, the term “qualified business” means any trade or business.

(2) The rental to others of real property located in an economic impact zone may be treated as a qualified business only if:

(a) in the case of real property which is not residential rental property (as defined in Section 168(e)(2) of the Internal Revenue Code), the lessee is an economic impact zone business; or

(b) in the case of residential rental property:

(i) the property was originally placed in service after the date the economic impact zone was designated; or

(ii) the property is rehabilitated after such date in a rehabilitation which meets requirements based on the principles of Section 42(e)(3) of the Internal Revenue Code.

(3) The rental to others of tangible personal property must be treated as a qualified business only if substantially all of the rental of the property is by economic impact zone businesses or by residents of an economic impact zone.

(4) “Qualified business” does not include any trade or business consisting predominantly of the development or holding of intangibles for sale or license.

(5) The term “qualified business” does not include:

(a) any trade or business consisting of the operation of any facility described in Section 144(c)(6)(B) of the Internal Revenue Code; and

(b) any trade or business the principal activity of which is farming (within the meaning of subsections (A) or (B) of Section 2032A(e)(5) of the Internal Revenue Code), but only if, as of the close of the preceding taxable year, the sum of:

(i) the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the taxpayer which are used in such trade or business; and

(ii) the aggregate value of assets leased by the taxpayer which are used in such a trade or business, exceeds five hundred thousand dollars.

For purposes of subitem (b), rules similar to the rules of Section 1395(b) of the Internal Revenue Code apply.

(6) For purposes of this chapter, the term “nonqualified financial property” means debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property specified in regulations, except that the term does not include:

(a) reasonable amounts of working capital held in cash, cash equivalents, or debt instruments with a term of eighteen months or less; or

(b) debt instruments described in Section 1221(4) of the Internal Revenue Code.

**SECTION 12‑14‑80.** Investment tax credit for manufacturing and productive equipment placed in service.

(A) There is allowed an investment tax credit for any taxable year in which the taxpayer places in service qualified manufacturing and productive equipment and which taxpayer:

(1) is engaged in this State in at least one economic impact zone, as defined in Section 12‑14‑30(1), in an activity or activities listed under the North American Industry Classification System Manual (NAICS) Section 326;

(2) is employing five thousand or more full‑time workers in this State and having a total capital investment in this State of not less than two billion dollars; and

(3) commits to invest five hundred million dollars in capital investment in this State between January 1, 2006, and July 1, 2011.

(B) For purposes of this section, “qualified manufacturing and productive equipment property” means property that satisfies the requirements of Section 12‑14‑60(B)(1)(a), (b), and (c).

(C) The amount of the credit allowed by this section is equal to the aggregate amount computed based on Section 12‑14‑60(A)(2).

(D) A taxpayer that qualifies for the tax credit allowed by this section may claim the credit allowed by this section in addition to the credit allowed by Section 12‑6‑3360 as a credit against withholding taxes imposed by Chapter 8 of this title. The taxpayer must first apply the credit allowed by this section and Section 12‑6‑3360 against income tax liability. To the extent that the taxpayer has unused credit pursuant to this section for the taxable year after the application of the credits allowed by this section and Section 12‑6‑3360 against income tax liability, the taxpayer may claim the excess credit as a credit against withholding taxes on its four quarterly withholding tax returns for the taxpayer’s taxable year; except that the credit claimed against withholding tax may not exceed fifty percent of the withholding tax shown as due on the return before the application of other credits including other credits pursuant to Section 12‑10‑80 or 12‑10‑81. For the period July 1, 2007, to June 30, 2008, a taxpayer using this section may not reduce its state withholding tax to less than the withholding tax remitted for the period June 30, 2006, to July 1, 2007.

(E) Unused credits allowed pursuant to this section may be carried forward for use in a subsequent tax year. During the first ten years of each tax credit carryforward, the credit may not reduce a taxpayer’s state income tax liability by more than fifty percent, and for a subsequent year the credit carryforward may not reduce a taxpayer’s state income tax liability by more than twenty‑five percent. Investment tax credit carryforwards pursuant to this section and credit carryforwards pursuant to Section 12‑6‑3360 must first be used as a credit against income taxes for that year. Any excess may be used pursuant to subsection (D) as a credit against withholding taxes; except that the limitations of subsection (D) apply each year and the economic impact zone tax credit carryforwards that existed on the effective date of Act 83 of 2007 may not be used to reduce withholding tax liabilities pursuant to this section.

(F) The amount of credit used against withholding taxes must reduce the amount of credit that may be used against income tax liability. The amount of credit used against withholding taxes must reduce the amount of credit that may be used against income taxes.

(G) If the taxpayer disposes of or removes qualified manufacturing and productive equipment property from the State during any taxable year and before the end of applicable recovery period for such property as determined under Section 168(e) of the Internal Revenue Code, then the income tax due pursuant to this chapter for the current taxable year must be increased by an amount of any credit claimed in prior years with respect to that property, determined by assuming the credit is earned ratably over the useful life of the property and recapturing pro rata the unearned portion of the credit. This recapture applies to credit previously claimed as a credit against income taxes pursuant to this chapter or withholding tax pursuant to Chapter 8.

(H) For South Carolina income tax purposes, the basis of the qualified manufacturing and productive equipment property must be reduced by the amount of any credit claimed with respect to the property, whether claimed as a credit against income taxes or withholding. If a taxpayer is required to recapture the credit in accordance with subsection (G), the taxpayer may increase the basis of the property by the amount of basis reduction attributable to claiming the credit in prior years. The basis must be increased in the year in which the credit is recaptured.

(I) A credit must not be taken pursuant to this section for capital investments placed in service outside of an economic impact zone until the taxpayer has invested two hundred million dollars of the five hundred million‑dollar investment requirement described in subsection (A)(3), and the taxpayer files a statement with the department stating that it: (i) commits to invest a total of five hundred million dollars in this State between January 1, 2006, and July 1, 2011; and (ii) shall refund any credit received with interest at the rate provided for underpayments of tax if it fails to meet the requirement of subsection (A)(3). This statement and proof of qualification must be filed with the notice required in subsection (J). Credit is not allowed pursuant to this section for property placed in service before June 30, 2007. For credit claimed before the investment of the full five hundred million dollars, the company claiming the credit must execute a waiver of the statute of limitations pursuant to Section 12‑54‑85, allowing the department to assess the tax for a period commencing with the date that the return on which the credit is claimed is filed and ending three years after the company notifies the department that the full five hundred million dollar investment has been made. A waiver of the statute of limitations must accompany the return on which the credit is claimed.

(J) The taxpayer shall notify the department before taking any credits pursuant to this section. The taxpayer shall state it has met the requirements of subsection (A). Additionally, in a taxable year after the year of qualification for credit pursuant to this section, the taxpayer shall include with its tax return for that year: (i) a statement that the taxpayer has continued to meet the requirements of subsections (A)(1) and (A)(2); (ii) the reconciliation required in subsection (D); and (iii) any statement and support for subsection (I).