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AMENDED--NOT PRINTED IN THE HOUSE

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February 9, 2012

**H. 3506**

Introduced by Reps. Loftis, Allison, J.R. Smith, White, Bowen, Ott, Cobb‑Hunter, Pitts and Henderson

S. Printed 2/2/12--S.

Read the first time April 19, 2011.

**A** **BILL**

TO AMEND SECTION 12‑6‑3360, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE JOB TAX CREDIT, SO AS TO REVISE THE DEFINITION OF A “TECHNOLOGY INTENSIVE FACILITY”; TO AMEND SECTION 12‑20‑105, AS AMENDED, RELATING TO THE TAX CREDIT FOR INFRASTRUCTURE IMPROVEMENTS FOR WATER, WASTEWATER, HYDROGEN FUEL, SEWER, GAS, STEAM, ELECTRIC ENERGY, AND COMMUNICATION SERVICES, SO AS TO INCLUDE CERTAIN SITE PREPARATION COSTS WITHIN THE DEFINITION OF INFRASTRUCTURE IMPROVEMENTS WHICH GIVE RISE TO THE CREDIT; AND TO AMEND SECTION 12‑44‑30, AS AMENDED, RELATING TO FEES IN LIEU OF TAXES, SO AS TO REVISE THE DEFINITION OF “TERMINATION DATE”.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 12‑6‑3360(M)(13) and (14) of the 1976 Code, as last amended by Act 290 of 2010, is further amended to read:

‘(13) ‘Qualifying service‑related facility’ means:

(a) an establishment engaged in an activity or activities listed under the North American Industry Classification System Manual (NAICS) Section 62, subsectors 621, 622, and 623; or

(b) a business, other than a business engaged in legal, accounting, banking, or investment services (including a business identified under NAICS Section 55) or retail sales, which has a net increase of at least:

(i) ~~two~~ one hundred ~~fifty~~ seventy-five jobs at a single location;

(ii) one hundred fifty jobs at a single location comprised of a building or portion of building that has been vacant for at least twelve consecutive months prior to the taxpayer’s investment;

(iii) one hundred ~~twenty‑five~~ jobs at a single location and the jobs have an average cash compensation level of more than one and one‑half times the lower of state per capita income or per capita income in the county where the jobs are located;

~~(iii)~~(iv) ~~seventy‑five~~ fifty jobs at a single location and the jobs have an average cash compensation level of more than twice the lower of state per capita income or per capita income in the county where the jobs are located; or

~~(iv)~~(v) ~~thirty~~ twenty-five jobs at a single location and the jobs have an average cash compensation level of more than two and one‑half times the lower of state per capita income or per capita income in the county where the jobs are located.

A taxpayer shall use the most recent per capita income data available as of the end of the taxable year in which the jobs are filled. Determination of the required number of jobs is in accordance with the monthly average described in subsection (F).

(14) ‘Technology intensive facility’ means:

(a) a facility at which a firm engages in the design, development, and introduction of new products or innovative manufacturing processes, or both, through the systematic application of scientific and technical knowledge. Included in this definition are the following North American Industrial Classification Systems, NAICS, Codes published by the Office of the Management and Budget of the federal government:

(i) 5114 database and directory publishers;

(ii) 5112 software publishers;

(iii) 54151 computer systems design and related services;

(iv) 541511 custom computer programming services;

(v) 541512 computer systems design services;

(vi) ~~541710 scientific research and development services~~ 541711 research and development in biotechnology; 2007 NAICS;

(vii) 541712 research and development in physical, engineering, and life sciences; 2007 NAICS;

(viii) 518210 data processing, hosting, and related services;

(ix) 9271 space research and technology; or

(b) a facility primarily used for one or more activities listed under the 2002 version of the NAICS Codes 51811 (Internet Service Providers and Web Search Portals).”

SECTION 2. Section 12‑20‑105 of the 1976 Code, as last amended by Act 290 of 2010, is further amended to read:

“Section 12‑20‑105. (A) Any company subject to a license tax under Section 12‑20‑100 may claim a credit against its license tax liability for amounts paid in cash to provide infrastructure for an eligible project.

(B)(1) To be considered an eligible project for purposes of this section, the project must qualify for income tax credits under Chapter 6, Title 12, withholding tax credit under Chapter 10, Title 12, income tax credits under Chapter 14, Title 12, or fees in lieu of property taxes under either Chapter 12, Title 4, Chapter 29, Title 4, or Chapter 44, Title 12.

(2) 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 qualifications of item (1) to be considered an eligible project. As provided in subsection (C)(4), the county or political subdivision may sell all or a portion of the business or industrial park.

(C) For the purpose of this section, ‘infrastructure’ means improvements for water, wastewater, hydrogen fuel, sewer, gas, steam, electric energy, and communication 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:

(1) improvements to both public or private water and sewer systems;

(2) improvements to both public or private electric, natural gas, and telecommunications systems including, but not limited to, ones owned or leased by an electric cooperative, electric utility, or electric supplier, as defined in Chapter 27, Title 58;

(3) fixed transportation facilities including highway, road, rail, water, and air;

(4) for a qualifying project under subsection (B)(2), infrastructure improvements include shell buildings, incubator buildings whose ownership is retained by the county, political subdivision, or agency of the State and the purchase of land for an office, business, commercial, or industrial park, or combination of these, used exclusively for economic development which is owned or constructed by a county, political subdivision, or agency of this State. The county, political subdivision, or agency may sell the shell building or all or a portion of the park at any time after the company has paid in cash to provide the infrastructure for an eligible project; ~~and~~

(5) for a qualifying project pursuant to subsection (B)(2), infrastructure improvements also include due diligence expenditures relating to environmental conditions made by a county or political subdivision after it has acquired contractual rights to an industrial park. Due diligence expenditures include such items as Phase I and II studies and environmental or archeological studies required by state or federal statutes or guidelines or similar lender requirements. Contractual rights include options to purchase real property or other similar contractual rights acquired before the county or political subdivision files a deed to the property with the Register of Mesne Conveyances; and

(6) for a qualifying project pursuant to subsection (B)(2), site preparation costs include, but are not limited to:

(a) clearing, grubbing, grading, and stormwater retention; and

(b) refurbishment of buildings that are owned or controlled by a county or municipality and are used exclusively for economic development purposes.

(D) A company is not allowed the credit provided by this section for actual expenses it incurs in the construction and operation of any building or infrastructure it owns, leases, manages, or operates.

(E) The maximum aggregate credit that may be claimed in any tax year by a single company is ~~three~~ four hundred thousand dollars.

(F) The credits allowed by this section may not reduce the license tax liability of the company below zero. If the applicable credit originally earned during a taxable year exceeds the liability and is otherwise allowable under subsection (D), the amount of the excess may be carried forward to the next taxable year.

(G) For South Carolina income tax and license purposes, a company that claims the credit allowed by this section is ineligible to claim the credit allowed by Section 12‑6‑3420.

(H) By March first of each year, the Department of Revenue shall issue a report to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Secretary of the Department of Commerce outlining the history of the credit allowed pursuant to this section. The report shall include the amount of credit allowed pursuant to this section and the types of infrastructure provided to eligible projects.”

SECTION 3. Section 12‑44‑30(21) of the 1976 Code, as last amended by Act 290 of 2010, is further amended to read:

“(21) ‘Termination date’ means the date that is the last day of a property tax year that is no later than the twenty‑ninth year following the first property tax year in which an applicable piece of economic development property is placed in service. A sponsor may apply to the county prior to the termination date for an extension of the termination date beyond the twenty‑ninth year up to ten years. The county council of the county shall approve an extension by resolution upon a finding of substantial public benefit. A copy of the resolution must be delivered to the department within thirty days of the date the resolution was adopted. With respect to a fee agreement involving an enhanced investment, the termination date is the last day of a property tax year that is no later than the thirty‑ninth year following the first property tax year in which an applicable piece of economic development property is placed in service. A sponsor may apply to the county before the termination date for an extension of the termination date beyond the thirty‑ninth year up to ten years. If the fee agreement is terminated in accordance with Section 12‑44‑140, the termination date is the date the agreement is terminated.”

SECTION 4. Section 4‑12‑30(O) of the 1976 Code, as last amended by Act 69 of 2003, is amended by adding an appropriately numbered subitem at the end to read:

“( ) Upon the direction of the governing body of the county, a county official may request and obtain such financial books and records from a sponsor that support the sponsor’s fee in lieu of taxes return as may be reasonably necessary to verify the calculations of the sponsor’s fee in lieu of taxes payment or the calculations of the sponsor’s special source revenue credit.”

SECTION 5. Section 4‑29‑67(S) of the 1976 Code, as last amended by Act 290 of 2010, is further amended by adding an appropriately numbered subitem at the end to read:

“( ) Upon the direction of the governing body of the county, a county official may request and obtain such financial books and records from a sponsor that support the sponsor’s fee in lieu of taxes return as may be reasonably necessary to verify the calculations of the sponsor’s fee in lieu of taxes payment or the calculations of the sponsor’s special source revenue credit.”

SECTION 6. Section 12‑44‑90 of the 1976 Code, as last amended by Act 69 of 2003, is further amended by adding an appropriately numbered subsection at the end to read:

“( ) Upon the direction of the governing body of the county, a county official may request and obtain such financial books and records from a sponsor that support the sponsor’s fee in lieu of taxes return as may be reasonably necessary to verify the calculations of the sponsor’s fee in lieu of taxes payment or the calculations of the sponsor’s special source revenue credit.”

SECTION 7. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 8. This act takes effect upon approval by the Governor.

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