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AMENDED--NOT PRINTED IN THE HOUSE

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May 2, 2012

**H. 3720**

Introduced by Reps. Cooper, Henderson and Patrick

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Read the first time May 3, 2011.

**A** **BILL**

TO AMEND SECTION 12‑6‑3360, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS OF THE JOBS TAX CREDIT, SO AS TO REVISE THE REQUIREMENTS OF A QUALIFYING SERVICE‑RELATED FACILITY AND A TECHNOLOGY INTENSIVE FACILITY; BY ADDING SECTION 12‑6‑3411 SO AS TO PROVIDE THAT A CORPORATION ESTABLISHING A NATIONAL CORPORATE HEADQUARTERS OR EXPANDING OR ADDING TO AN EXISTING NATIONAL CORPORATE HEADQUARTERS IN THIS STATE, WHICH IN CONNECTION THEREWITH ADDS AT LEAST FIFTY NEW FULL‑TIME JOBS SHALL BE EXEMPT FROM PAYING STATE CORPORATE INCOME TAXES FOR A PERIOD OF TEN YEARS; TO AMEND SECTION 12‑20‑105, AS AMENDED, RELATING TO TAX CREDITS FOR PROVIDING INFRASTRUCTURE, SO AS TO INCREASE THE MAXIMUM AGGREGATE CREDIT TO FOUR HUNDRED THOUSAND DOLLARS ANNUALLY; TO AMEND SECTIONS 4‑12‑30, 4‑29‑67, AND 12‑44‑90, ALL AS AMENDED, RELATING TO FEE IN LIEU OF TAXES, SO AS TO PROVIDE THAT A COUNTY AUDITOR OR COUNTY ASSESSOR MAY REQUEST AND OBTAIN ANY FINANCIAL BOOKS AND RECORDS FROM A SPONSOR THAT SUPPORT THE SPONSOR’S TAX FORM OR RETURN TO VERIFY THE CALCULATIONS OF THE FEE IN LIEU OF TAXES TAX FORM OR RETURN; AND TO AMEND SECTION 12‑36‑2120, AS AMENDED, RELATING TO SALES TAX EXEMPTIONS, SO AS TO EXEMPT COMPUTERS, COMPUTER EQUIPMENT, COMPUTER HARDWARE AND SOFTWARE PURCHASES FOR A DATACENTER AND ELECTRICITY USED BY A DATACENTER.

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. Section 12‑36‑2120 of the 1976 Code, as last amended by Act 32 of 2011, is further amended by adding an appropriately numbered subsection at the end to read:

“( )(A)(1) original or replacement computers, computer equipment, and computer hardware and software purchases used within a datacenter; and

(2) electricity used by a datacenter and eligible business property to be located and used at the datacenter. This subitem does not apply to sales of electricity for any other purpose, and such sales are subject to the tax, including, but not limited to, electricity used in administrative offices, supervisory offices, parking lots, storage warehouses, maintenance shops, safety control, comfort air conditioning, elevators used in carrying personnel, cafeterias, canteens, first aid rooms, supply rooms, water coolers, drink boxes, unit heaters and waste house lights.

(B) As used in this section:

(1) ‘Computer’ means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(2) ‘Computer equipment’ means original or replacement servers, routers, switches, power units, network devices, hard drives, processors, memory modules, motherboards, racks, other computer hardware and components, cabling, cooling apparatus, and related or ancillary equipment, machinery, and components, the primary purpose of which is to store, retrieve, aggregate, search, organize, process, analyze, or transfer data or any combination of these, or to support related computer engineering or computer science research. This also includes equipment cooling systems for managing the performance of the datacenter property, including mechanical and electrical equipment, hardware for distributed and mainframe computers and servers, data storage devices, network connectivity equipment, and peripheral components and systems.

(3) ‘Computer software’ means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(4) ‘Concurrently maintainable’ means capable of having any capacity component or distribution element serviced or repaired on a planned basis without interrupting or impeding the performance of the computer equipment.

(5) ‘Datacenter’ means a new or existing facility at a single location in South Carolina:

(i) that provides infrastructure for hosting or data processing services and that has power and cooling systems that are created and maintained to be concurrently maintainable and to include redundant capacity components and multiple distribution paths serving the computer equipment at the facility. Although the facility must have multiple distribution paths serving the computer equipment, a single distribution path may serve the computer equipment at any one time;

(ii)(a) where a taxpayer invests at least fifty million dollars in real or personal property or both over a five year period; or

(b) where one or more taxpayers invests a minimum aggregate capital investment of at least seventy‑five million dollars in real or personal property or both over a five year period;

(iii) where a taxpayer creates and maintains at least twenty five full‑time jobs at the facility with an average cash compensation level of one hundred fifty percent of the per capita income of the State or of the county in which the facility is located, whichever is lower, according to the most recently published data available at the time the facility is certified by the Department of Commerce;

(iv) where the jobs created pursuant to subitem (iii) are maintained for three consecutive years after a facility with the minimum capital investment and number of jobs has been certified by the Department of Commerce; and

(v) which is certified by the Department of Commerce pursuant to subsection (D)(1)under such policies and procedures as promulgated by the Department of Commerce.

(6) ‘Eligible business property’ means property used for the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.

(7) ‘Multiple distribution paths’ means a series of distribution paths configured to ensure that failure on one distribution path does not interrupt or impede other distribution paths.

(8) ‘Redundant capacity components’ means components beyond those required to support the computer equipment.

(C)(1) To qualify for the exemption allowed by this item, a taxpayer, and the facility in the case of a seventy‑five million dollar investment made by more than one taxpayer, shall notify the Department of Revenue and Department of Commerce, in writing, of its intention to claim the exemption. For purposes of meeting the requirements of subsection (B)(5)(ii) and (B)(5)(iii), capital investment and job creation begin accruing once the taxpayer notifies each department. Also, the five‑year period begins upon notification.

(2) Once the taxpayer meets the requirements of subsection (B)(5), or at the end of the five‑year period, the taxpayer shall notify the Department of Revenue, in writing, whether it has or has not met the requirements of subsection (B)(5). The taxpayer shall provide the proof the department determines necessary to determine that the requirements have been met.

(D)(1) Upon notifying each department of its intention to claim the exemption pursuant to subsection (C)(1), and upon certification by the Department of Commerce, the taxpayer may claim the exemption on eligible purchases at any time during the period provided in Section 125485(F), including the time period prior to subsection (B)(5)(iv) being satisfied.

(2) For purposes of this section, the running of the periods of limitations for assessment of taxes provided in Section 125485 is suspended for:

(i) the time period beginning with notice to each department pursuant to subsection (C)(1) and ending with notice to the Department of Revenue pursuant to subsection (C)(2); and

(ii) during the three year job maintenance requirement pursuant to subsection (B)(5)(iv).

(E) Any subsequent purchase of or investment in computer equipment, computer hardware and software, and computers, including to replace originally deployed computer equipment or to implement future expansions, likewise shall qualify for the exemption provided in this item, regardless of when the taxpayer makes the investments.

(F)(1) If a taxpayer receives the exemption for purchases but fails to meet the requirements of subsection (B)(5) at the end of the five‑year period, the department may assess any state or local sales or use tax due on items purchased.

(2) If a taxpayer meets the requirements of subsection (B)(5), but subsequently fails to maintain the number of full‑time jobs with the required compensation level at the facility, as previously required pursuant to subsection (B)(5)(iii), the taxpayer is:

(i) not allowed the exemption for items described in subsection (A)(1) until the taxpayer meets the previous qualifying jobs requirements pursuant to subsection (B)(5)(iii); and

(ii) allowed the exemption for electricity pursuant to subsection (A)(2), but the exemption only applies to a percentage of the sale price, calculated by dividing the number of qualifying jobs by twenty‑five.

(G) This item only applies to datacenter that is certified by the Department of Commerce pursuant to subsection (D)(1) prior to January 1, 2032. However, this item shall continue to apply to a taxpayer that is certified by December 31, 2031, for an additional ten year period. Upon the end of the ten year period, this item is repealed.”

SECTION 8. 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 9. This act takes effect upon the approval by the Governor.

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