**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12‑6‑3586 SO AS TO ALLOW A COMPANY DEVELOPING OR MANUFACTURING MEDICAL DEVICES IN THIS STATE A STATE INCOME TAX CREDIT EQUAL TO ONE HUNDRED PERCENT OF THE FEES PAID THE COMPANY TO THE UNITED STATES FOOD AND DRUG ADMINISTRATION (FDA) WHICH MUST ACCOMPANY APPLICATIONS FOR FDA APPROVAL OF MEDICAL DEVICES AND TO ALLOW UNUSED SUCH CREDITS TO BE TRANSFERRED AND USED BY OTHERS IN EXCHANGE FOR SPECIFIED MINIMUM AMOUNTS OF PRIVATE FINANCIAL ASSISTANCE PAID TO THE TRANSFERRING COMPANY FOR ITS USE IN DEVELOPING ITS BUSINESS.

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

SECTION 1. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

“Section 12‑6‑3586. (A) As used in this section:

(1) ‘Department’ means the Department of Revenue.

(2) ‘Medical device’ means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including a component part or accessory, which is recognized in the official National Formulary or the United States Pharmacopoeia, or any supplement thereto, intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease in humans or other animals, and which does not achieve any of its primary intended purposes through chemical actions within or on the body of a human or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purpose.

(3) ‘Medical device company’ means:

(a) a domestic corporation organized under the laws of this State;

(b) a limited liability company organized under the laws of this State; or

(c) a corporation, organization, or association, established, organized or chartered under laws other than those of this State and, in each case, which has a usual place of business in this State where medical devices are developed or manufactured.

(4) ‘Medical device tax credit’ means the tax credit established pursuant to this section that the medical device company generated but was unable to claim as of the close of the last taxable year for which a return was filed because of limited tax liability.

(5) ‘Private financial assistance’ means the proceeds of the sale of available tax credits pursuant to this section.

(6) ‘User fees’ means the amount actually paid by a medical device company to the United States Food and Drug Administration during the taxable year for a premarket approval to market new technologies developed or manufactured in this State or for a clearance pursuant to section 510(k) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 360e and 360 to market upgrades, changes or enhancements to existing technologies that are developed or manufactured in this State as stipulated in Untied States Public Law 107‑250, the Medical Device User Fee and Modernization Act.

(B) There is allowed a credit against the tax liability imposed pursuant to this chapter on a medical device company an amount equal to one hundred percent of the cost of user fees paid by the medical device company during the taxable year for which the tax is due.

(C) The department, in consultation with the Department of Commerce, shall establish a medical device tax credit transfer program to allow medical device companies doing business in this State with unused medical device tax credits to transfer the credits for use by a purchasing company in exchange for private financial assistance to be provided by the company to assist in the funding of costs incurred by the medical device companies. The private financial assistance must be used to fund expenses incurred in connection with the operation of the medical device company in this State, including costs associated with fixed assets, such as the construction and acquisition and development of real estate, materials, start‑up, tenant fit‑out, working capital, salaries, research and development expenditures, and any other expenses determined by the department to be necessary to carry out the purposes of the program. A medical device company that wishes to participate in the program shall file an application with the department on a form prescribed by the department that sets forth the medical device tax credit amounts eligible for transfer, the use to which the medical device company intends to put the private financial assistance to be provided, the identity of the purchasing company, the amount of the financial assistance to be provided, and other information the department may require. Medical device tax credits may not be surrendered unless the purchasing company provides financial assistance in an amount at least equal to seventy‑five percent of the medical device tax credit amounts eligible to transfer. The department shall review the application and, if the proposed transfer meets the requirements of this section the department shall issue, upon receipt of a notarized statement signed under penalty of perjury by an authorized representative of the medical device company that the purchasing company has provided the specified financial assistance, a certificate to the purchasing company reflecting the medical device tax credit amounts transferred, a copy of which must be attached to each tax return by a purchasing company in which medical device tax credits are used. The purchasing company shall treat the medical device tax credit amounts purchased under the program as a credit against its tax liability under this chapter. The purchasing company shall use the medical device tax credit amounts in tax returns filed within five years of the issuance of the certificate, after which period the credits expire. With regard to the transfer of a credit allowed pursuant to this section, general income tax principles apply for purposes of the state income tax.

(E) The department, in consultation with the Department of Commerce may promulgate regulations and prescribe forms and procedures necessary for the administration and enforcement of the credits allowed by this section.”

SECTION 2. This act takes effect upon approval by the Governor and applies for taxable years beginning after 2014.

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