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CHAPTER 20.

 CORPORATION LICENSE FEES

**SECTION 12‑20‑10.** Definitions.

 For the purposes of this chapter:

 (1) "Department" means the South Carolina Department of Revenue.

 (2) "Taxable year" means the calendar year or the fiscal year used in computing taxable income under Chapter 6 of this title.

 (3) "Domestic corporation" means a corporation incorporated under the laws of this State.

 (4) "Foreign corporation" means a corporation not incorporated under the laws of this State.

HISTORY: 1995 Act No. 76, Section 3.

**SECTION 12‑20‑20.** Corporations to file annual reports; time of filing; extension of time for filing annual report.

 (A) Except for those corporations described in Section 12‑20‑110, every domestic corporation, every foreign corporation qualified to do business in this State, and any other corporation required by Section 12‑6‑4910 to file income tax returns shall file an annual report with the department.

 (B) Unless otherwise provided, corporations shall file an annual report on or before the fifteenth day of the third month following the close of the taxable year.

 (C) The department, for good cause, may allow an extension of time for filing an annual report. A request for an extension of time for filing an annual report must be filed in accordance with Section 12‑6‑4980. An extension of time for filing does not extend the time for paying the license fee due.

HISTORY: 1995 Act No. 76, Section 3; 1999 Act No. 114, Section 3; 2002 Act No. 334, Section 8C, eff June 24, 2002; 2002 Act No. 363, Section 1D, eff August 2, 2002.

**SECTION 12‑20‑30.** Form and contents of annual report; public inspection.

 (A) The annual report must be in a form prescribed by the department and Secretary of State and contain all information that the department or the Secretary of State may require for the administration of the provisions of this chapter and the provisions of Title 33. The information in the annual report must be current as of the date the annual report is executed on behalf of the corporation and contain the following information:

 (1) the name of the corporation and the state or country of incorporation;

 (2) the address of the registered office and the name of the registered agent in this State;

 (3) the address of the principal office;

 (4) the names and business addresses of the directors and principal officers;

 (5) a brief description of the nature of the business;

 (6) the total number of authorized shares of stock, itemized by class and series, if any, within each class; and

 (7) the total number of issued and outstanding shares of stock, itemized by class and series, if any, within each class.

 The information required by this subsection is open to unrestricted public inspection. Any person may request a copy of the information from either the Secretary of State or the department.

 (B) The Secretary of State or the department may by regulation permit the public disclosure of other information that is required to be filed as part of the corporation's annual report in addition to the information required by subsection (A).

HISTORY: 1995 Act No. 76, Section 3.

**SECTION 12‑20‑40.** Initial annual report and minimum license fee to be filed with initial articles of incorporation or application for certificate of authority.

 (A) An initial annual report and the minimum license fee required by Sections 12‑20‑50 and 12‑20‑100(C) must be filed with the Secretary of State with the initial articles of incorporation filed by a domestic corporation, an application for certificate of authority filed by a foreign corporation, or the articles of domestication filed by a corporation domesticating in South Carolina, as appropriate. The initial annual report must be submitted to the department by the Secretary of State and contain the information required in Section 12‑20‑30(A).

 (B) A corporation that does not file an application for certificate of authority with the Secretary of State shall file the initial annual report and pay the minimum license fee required by Sections 12‑20‑50 and 12‑20‑100 to the department on or before sixty days after initially doing business, or using a portion of its capital in this State.

HISTORY: 1995 Act No. 76, Section 3; 2004 Act No. 221, Section 40, eff April 29, 2004.

**SECTION 12‑20‑50.** Imposition of license tax on corporations generally; rate; minimum tax; time payable; reduction by holding company of paid‑in capital surplus.

 (A) Except as provided in Section 12‑20‑100, every corporation required to file an annual report shall pay an annual license fee of fifteen dollars plus one dollar for each thousand dollars, or fraction of a thousand dollars, of capital stock and paid‑in or capital surplus of the corporation as shown by the records of the corporation on the first day of the taxable year in which the report is filed. In no case may the license fee provided by this section be less than twenty‑five dollars. The license fee must be paid on or before the original due date for filing the annual report.

 The phrase "paid in or capital surplus" means the entire surplus of a corporation other than earned surplus including, but not limited to, amounts charged against earned surplus and credited to other surplus accounts, donated capital, amounts representing the increase in valuation of assets made upon a revaluation of the company's assets, and amounts credited to any surplus account other than earned surplus as a result of a merger or acquisition regardless of whether the amount credited to the surplus account was transferred from an earned surplus account.

 For purposes of this section "earned surplus" means that portion of the surplus of a corporation equal to the balance of its net profits, income, gains, and losses from the date of incorporation or from the latest date when a deficit was eliminated by application of its capital surplus, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent that such distributions and transfers are made out of earned surplus.

 (B)(1) For purposes of this section capital stock and paid‑in or capital surplus is the amount reported on the taxpayer's applicable financial statement.

 (2) The term "applicable financial statement" means a statement covering the taxable year which is:

 (a) required to be filed with the Securities and Exchange Commission;

 (b) a certified audited balance sheet to be used for the purposes of a statement or report:

 (i) for credit purposes,

 (ii) to shareholder's, or

 (iii) for any other substantial nontax purpose;

 (c) a balance sheet for a substantial nontax purpose required to be provided to:

 (i) the federal government or agency of the federal government;

 (ii) a state government or agency of a state government; or

 (iii) a political subdivision of a state or any agency of the political subdivision; or

 (d) a balance sheet to be used for the purposes of a statement or report:

 (i) for credit purposes;

 (ii) to shareholders; or

 (iii) for any other purpose.

 (3) If a taxpayer has a statement described in more than one part of item (2), the applicable financial statement is the statement with the lowest number and letter designation.

 (C) In addition to the provisions of subsection (B) of this section, a holding company may reduce its paid‑in capital surplus by the portion of contributions to capital received from its parent corporation that is directly or indirectly used to finance a subsidiary's expansion costing in excess of one hundred million dollars, which on the date construction started is located in an Economic Impact Zone as defined in Section 12‑14‑30. A reduction is only allowed pursuant to this subsection for the paid‑in capital surplus of the holding company attributable to this contribution to capital for expansion. Additionally, no reduction is allowed unless the expansion is completed within three years of the first contribution to capital received by the holding company, but this three‑year limitation may be extended by the Department of Revenue upon written application and good cause shown. Amounts previously excluded in paid‑in capital surplus pursuant to this subsection must be included in the first license tax year beginning after the period allowed for the expansion if the expansion is not timely completed.

HISTORY: 1995 Act No. 76, Section 3; 2004 Act No. 168, Section 2.A, eff January 16, 2004.

**SECTION 12‑20‑60.** Proration of tax where business is conducted partly outside the State; minimum license fee may not be apportioned.

 When a corporation does business partly within and partly without this State or uses its capital partly within and partly without this State, the amount of the license fee provided for in Section 12‑20‑50 must be apportioned in accordance with the ratio prescribed for income tax purposes in the taxable year preceding the year in which the annual report is filed. The minimum license fee, however, may not be apportioned.

HISTORY: 1995 Act No. 76, Section 3.

**SECTION 12‑20‑70.** License tax where combined return is filed; applicability of minimum license fee.

 When a combined income tax return is filed, the license fee provided for by this chapter is measured by the total capital 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 group. The minimum license fee applies to each corporation in the combined group.

HISTORY: 1995 Act No. 76, Section 3.

**SECTION 12‑20‑80.** Prorated license fee.

 (A) If a corporation's taxable year is changed and results in the filing of an income tax return for less than twelve months, the license fee due with the short period return must be prorated by dividing the annual license fee by twelve and multiplying the result by the number of months in the short period. Each part of a month is considered a full month for purposes of this section. This prorated fee may not be less than the minimum license fee provided in Section 12‑20‑50(A).

 (B) The proration provided in this section applies only to short periods due to a change in accounting period and does not apply to short periods due to initial or final returns.

HISTORY: 1995 Act No. 76, Section 3.

**SECTION 12‑20‑90.** License fee for bank holding, insurance holding, or savings and loan holding company; definitions.

 The amount of the license fee required by Section 12‑20‑50 for a bank holding company, insurance holding company system, and savings and loan holding company must be measured by the capital stock and paid‑in surplus of the holding company exclusive of the capital stock and paid‑in surplus of a bank, insurer, or savings and loan association that is a subsidiary of the holding company. For the purposes of this section, "bank", "bank holding company", and "subsidiary" of a bank holding company have the same definitions as in Section 34‑25‑10; "insurer", "insurance holding company system", and a "subsidiary" of an insurance holding company system have the same definitions as in Section 38‑21‑10; and savings and loan "association", "savings and loan holding company", and a "subsidiary" of a savings and loan company have the same definitions as in Section 34‑28‑300.

HISTORY: 1995 Act No. 76, Section 3; 2001 Act No. 89, Section 19, eff July 20, 2001; 2007 Act No. 110, Section 22, eff June 21, 2007; 2007 Act No. 116, Section 28, eff June 28, 2007, applicable for tax years beginning after 2007.

**SECTION 12‑20‑100.** License tax on utilities and electric cooperatives; tax based on value of property; additional tax based on gross receipts; payment; consolidated or combined return; minimum license fee.

 (A) In the place of the license fee imposed by Section 12‑20‑50, every express company, street railway company, navigation company, waterworks company, power company, electric cooperative, light company, gas company, telegraph company, and telephone company shall file an annual report with the department and pay a license fee as follows:

 (1) one dollar for each thousand dollars, or fraction of a thousand dollars, of fair market value of property owned and used within this State in the conduct of business as determined by the department for property tax purposes for the preceding taxable year; and

 (2)(a) three dollars for each thousand dollars, or fraction of a thousand dollars, of gross receipts derived from services rendered from regulated business within this State during the preceding taxable year, except that with regard to electric cooperatives, only distribution electric cooperatives are subject to the gross receipts portion of the license fee under this subitem (2)(a).

 (b) When a consolidated return is filed pursuant to Section 12‑6‑5020, the phrase "the gross receipts derived from services rendered from regulated business" does not include gross receipts arising from transactions between the separate members of the return group.

 (B) The minimum license fee under this section is the same as provided in Section 12‑20‑50(A). When a combined return is filed, the minimum license fee applies to each corporation in the combined group.

HISTORY: 1995 Act No. 76, Section 3.

**SECTION 12‑20‑105.** Tax credits.

 (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, and 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;

 (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 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.

HISTORY: 1996 Act No. 231, Section 4A; 1997 Act No. 151, Section 9; 1999 Act No. 93, Section 15; 2003 Act No. 69, Section 3.QQ, eff June 18, 2003; 2005 Act No. 145, Section 22.A, eff June 7, 2005; 2007 Act No. 110, Section 59.A, eff June 21, 2007, applicable for tax years beginning after 2003; 2007 Act No. 116, Section 6, eff June 28, 2007, applicable for tax years beginning after 2003; 2008 Act No. 313, Section 2.I.2, eff June 12, 2008; 2010 Act No. 290, Section 18, eff January 1, 2011; 2012 Act No. 187, Section 2, eff June 7, 2012.

**SECTION 12‑20‑110.** Chapter provisions inapplicable to certain organizations, companies and associations.

 The provisions of this chapter do not apply to any:

 (1) nonprofit corporation organized pursuant to Chapter 31, Title 33 and exempt from income taxes pursuant to Section 501 of the Internal Revenue Code of 1986;

 (2) volunteer fire department and rescue squad;

 (3) cooperative organized pursuant to Title 33;

 (4) bank, building and loan association, or credit union doing a strictly mutual business;

 (5) insurance company or association including a fraternal, beneficial, or mutual protection insurance company;

 (6) foreign corporation whose entire income is excluded from gross income for federal income tax purposes due to a treaty obligation of the United States; or

 (7) homeowners' association within the meaning of Internal Revenue Code Section 528(c)(1).

 (8) community development entity certified by the United States Department of the Treasury through the Community Development Financial Institution Fund as a company established to distribute allocations received as a part of the New Market Tax Credit Program.

HISTORY: 1995 Act No. 76, Section 3; 2001 Act No. 89, Section 20, eff July 20, 2001; 2006 Act No. 384, Section 10, eff June 14, 2006.

**SECTION 12‑20‑120.** Annual report to be signed by person authorized to make report.

 The annual report required by this chapter must be signed by a person duly authorized to make the report.

HISTORY: 1995 Act No. 76, Section 3.

**SECTION 12‑20‑130.** Forms for reports; effect of failure to receive or secure form.

 The department shall prepare blank forms for the initial annual report. For subsequent reports the department shall combine the corporate income tax return and the annual report into one form. Failure to receive or secure the form does not relieve a taxpayer from the obligation of making the return or report at the time required.

HISTORY: 1995 Act No. 76, Section 3.

**SECTION 12‑20‑140.** Department's receipt constitutes certificate of compliance and license.

 The department's receipt showing the payment of the annual fees prescribed by this chapter constitutes a certificate of compliance with the provisions of this chapter and licenses the corporation for the taxable year of the corporation for which the annual report is filed.

HISTORY: 1995 Act No. 76, Section 3.

**SECTION 12‑20‑150.** Department to administer provisions of chapter; rules and regulations.

 The department may promulgate regulations necessary to enforce and administer the provisions of this chapter. These regulations have the force of law.

HISTORY: 1995 Act No. 76, Section 3; 2003 Act No. 69, Section 3.H, eff June 18, 2003.

**SECTION 12‑20‑160.** Corporate license fee deemed to be tax.

 For purposes of this chapter and for purposes of administrative and enforcement provisions of this title, the corporate license fee is deemed to be a tax.

HISTORY: 1995 Act No. 76, Section 3.

**SECTION 12‑20‑170.** Amounts collected under chapter to be deposited to credit of State Treasurer.

 All amounts collected by the department under this chapter must be deposited to the credit of the State Treasurer.

HISTORY: 1995 Act No. 76, Section 3.

**SECTION 12‑20‑175.** Reduction of license fees due to tax credits.

 License fees may be reduced by credits provided in Section 12‑6‑3410 or Section 12‑6‑3480, or both of them.

HISTORY: 1998 Act No. 432, Section 8.