CHAPTER 10

Enterprise Zone Act of 1995

**SECTION 12‑10‑10.** Short title.

 This chapter may be cited as the “Enterprise Zone Act of 1995”.

HISTORY: 1995 Act No. 25, Section 1.

**SECTION 12‑10‑20.** Legislative intent.

 The General Assembly finds:

 (1) that the economic well‑being of the citizens of the State is enhanced by the increased development and growth of industry within the State, and that it is in the best interests of the State to induce the location or expansion of manufacturing, processing, services, distribution, warehousing, research and development, corporate offices, technology intensive, and certain tourism projects within the State to promote the public purpose of creating new jobs within the State;

 (2) that the inducement provided in this chapter will encourage the creation of jobs which would not otherwise exist and will create sources of tax revenues for the State and its political subdivisions;

 (3) the powers to be granted to the Advisory Coordinating Council for Economic Development by this chapter and the purposes to be accomplished are proper governmental and public purposes and that the inducement of the location or expansion of manufacturing, processing, services, distribution, warehousing, research and development, corporate offices, and certain tourism facilities within the State is of paramount importance.

 (4) The state’s per capita income has not reached the United States average and certain rural, less developed counties have not experienced capital investment, per capita income, and job growth at a level equal to the state’s average. The economic well‑being of these areas will not be sustained without significant incentive to induce capital investment and job creation.

HISTORY: 1995 Act No. 25, Section 1; 1996 Act No. 462, Section 13; 2000 Act No. 283, Section 5(D), eff for taxable years beginning after June 30, 2001; 2000 Act No. 399, Section 3(B)(1), eff August 17, 2000.

Code Commissioner’s Note

To the extent that the text of paragraph (1) reflects amendments effected by Act 283 dealing with a “technology intensive” project and “technology employee”, those amendments are effective, at the direction of the Code Commissioner, upon the signature of the Governor but do not apply until tax years beginning after June 30, 2001.

CROSS REFERENCES

Construction of chapter, see Section 12‑10‑110.

**SECTION 12‑10‑30.** Definitions.

 As used in this chapter:

 (1) “Council” means the Coordinating Council for Economic Development.

 (2) “Department” means the South Carolina Department of Revenue.

 (3) “Employee” means an employee of the qualifying business who works full time at the project.

 (4) “Gross wages” means wages subject to withholding.

 (5) “Job development credit” means the amount a qualifying business may claim as a credit against employee withholding pursuant to Sections 12‑10‑80 and 12‑10‑81 and a revitalization agreement.

 (6) “New job” means a job created or reinstated as defined in Section 12‑6‑3360(M)(3).

 (7) “Qualifying business” means a business that meets the requirements of Section 12‑10‑50 and other applicable requirements of this chapter.

 (8) “Project” means an investment for one or more purposes pursuant to this chapter needed for a qualifying business to locate, remain, or expand in this State and otherwise fulfill the requirements of this chapter.

 (9) “Preliminary revitalization agreement” means the application by the qualifying business for benefits pursuant to Section 12‑10‑80 or 12‑10‑81 if the council approves the application and agrees in writing at the time of approval to allow the approved application to serve as the preliminary revitalization agreement. The date of the preliminary revitalization agreement is the date of the council approval.

 (10) “Revitalization agreement” means an executed agreement entered into between the council and a qualifying business that describes the project and the negotiated terms and conditions for a business to qualify for a job development credit pursuant to Section 12‑10‑80 or 12‑10‑81.

 (11) “Qualifying expenditures” means those expenditures that meet the requirements of Section 12‑10‑80(C) or 12‑10‑81(D).

 (12) “Withholding” means employee withholding pursuant to Chapter 8 of this title.

 (13) “Technology employee” means an employee at a technology intensive facility as defined in Section 12‑6‑3360(M)(14) who is directly engaged in technology intensive activities at that facility.

 (14) “Production employee” means an employee directly engaged in manufacturing or processing at a manufacturing or processing facility as defined in Section 12‑6‑3360(M).

 (15) “Retraining agreement” means an agreement entered into between a business and the council in which a qualifying business is entitled to retraining credit pursuant to Section 12‑10‑95.

 (16) “Retraining credit” means the amount that a business may claim as a credit against withholding pursuant to Section 12‑10‑95 and the retraining agreement.

 (17) “Technology intensive activities” means the design, development, and introduction of new products or innovative manufacturing processes, or both, through the systematic application of scientific and technical knowledge at a technology intensive facility as defined in Section 12‑6‑3360(M).

 (18) “Significant business” means a qualifying business making a significant capital investment as defined in Section 12‑44‑30(7).

HISTORY: 1995 Act No. 25, Section 1; 1996 Act No. 462, Section 14; 1999 Act No. 93, Section 19; 2000 Act No. 283, Section 5(E), eff for taxable years beginning after June 30, 2001; 2000 Act No. 399, Section 3(B)(2), eff August 17, 2000; 2001 Act No. 89, Section 13, eff July 1, 2001; 2008 Act No. 313, Section 2.D, eff June 12, 2008; 2008 Act No. 352, Section 2.D, eff June 12, 2008.

CROSS REFERENCES

Assessment of property taxes, depreciation allowances for manufacturer’s machinery and equipment, see Section 12‑37‑930.

Qualification for benefits provided by Enterprise Zone Act of 1995, see Section 12‑10‑50.

South Carolina Life Sciences Act, qualification under Enterprise Zone Act of 1995, see Section 12‑15‑30.

**SECTION 12‑10‑40.** Designation of enterprise zones; criteria.

 The amount of benefits available to qualified businesses is determined by the county designation as defined in Section 12‑6‑3360(B), in which the business is located.

HISTORY: 1995 Act No. 25, Section 1; 1995 Act No. 32, Section 9A; 1995 Act No. 145, Part II, Section 89; 1996 Act No. 462, Section 15.

**SECTION 12‑10‑45.** Designation of census tract by tire manufacturer as enterprise zone; certification of tire manufacturer.

 A tire manufacturer that has over one billion dollars in capital investment in this State, and employs over five thousand workers in this State may, after certification by the council, designate up to two census tracts, but not to exceed four hundred acres per site, in any area of the State as an enterprise zone provided that a capital investment of at least one hundred million dollars be made over a five‑year period at each site. The tire manufacturer’s capital investment must be based upon the gross cost of assets in South Carolina as shown on the manufacturer’s property tax and fee‑in‑lieu of property tax filings. The council will certify the manufacturer if it determines that the available incentives are appropriate for the new project, the total benefits of the new project exceed the costs to the public, and the qualifying business otherwise fulfills the requirements of this chapter.

HISTORY: 1996 Act No. 231, Section 6.

**SECTION 12‑10‑50.** Qualification for benefits.

 (A) To qualify for the benefits provided in this chapter, a business must be located within this State and must:

 (1) be engaged primarily in a business of the type identified in Section 12‑6‑3360;

 (2) provide a benefits package, including health care, to full‑time employees at the project;

 (3) enter into a revitalization agreement that is approved by the council and that describes a minimum job requirement and minimum capital investment requirement for the project as provided in Section 12‑10‑90; and

 (4) have negotiated incentives that council has determined are appropriate for the project, and the council shall certify that:

 (a) the total benefits of the project exceed the costs to the public; and

 (b) the business otherwise fulfills the requirements of this chapter.

 (B) To qualify for benefits pursuant to Section 12‑10‑95, a business must:

 (1) be engaged in manufacturing or processing operations or technology intensive activities at a manufacturing, processing, or technology intensive facility as defined in Section 12‑6‑3360(M);

 (2) provide a benefits package, including health care, to employees being retrained; and

 (3) enter into a retraining agreement with the council.

HISTORY: 1995 Act No. 25, Section 1; 1996 Act No. 462, Section 16; 1999 Act No. 114, Section 5; 2000 Act No. 399, Section 3(B)(3), eff August 17, 2000; 2001 Act No. 89, Section 14, eff July 1, 2001.

Library References

Taxation 3517.

Westlaw Topic No. 371.

NOTES OF DECISIONS

In general 1

1. In general

The 85/150 rule, which allowed corporate taxpayer to claim job development credits on newly created jobs in an amount not to exceed 150% of minimum job requirement, did not prohibit taxpayer from claiming credits, under the Enterprise Zone Act, in excess of those created at cut‑off date under revitalization agreement (RVA) taxpayer entered into with the Advisory Coordinating Council for Economic Development; unlike the minimum job requirement in RVA that required taxpayer to create three hundred jobs by cut‑off date in order to claim job development credits, the 85/150 rule did not reference the cut‑off date at all. Blackbaud, Inc. v. South Carolina Dept. of Revenue (S.C.App. 2010) 386 S.C. 446, 688 S.E.2d 150. Taxation 3517

**SECTION 12‑10‑60.** Revitalization agreement.

 (A) The council may enter into a revitalization agreement with each qualifying business with respect to the project. The terms and provisions of each revitalization agreement must be determined by negotiations between the council and the qualifying business. The decision to enter into a revitalization agreement with a qualifying business is solely within the discretion of the council based on the appropriateness of the negotiated incentives to the project and the determination that approval of the project is in the best interests of the State. The revitalization agreement must set a date by which the qualifying business shall have completed the project. Within three months of the completion date, the qualifying business shall document the actual costs of the project in a manner acceptable to the council.

 (B) If a qualifying business that entered into a revitalization agreement before January 1, 1997, receives council approval to amend its revitalization agreement to increase its minimum job requirement, the law in effect on the date of the amendment determines the amount of job development credit a qualifying business may claim pursuant to Section 12‑10‑80 for additional jobs created after the date of the amendment. This subsection does not apply to a business whose application for job development fees or credits pursuant to Section 12‑10‑81 has been approved by council before the effective date of this act.

HISTORY: 1995 Act No. 25, Section 1; 1999 Act No. 114, Section 5; 2000 Act No. 399, Section 3(B)(4), eff August 17, 2000.

Library References

Taxation 3517.

Westlaw Topic No. 371.

NOTES OF DECISIONS

In general 1

Review 2

1. In general

The 85/150 rule, which allowed corporate taxpayer to claim job development credits on newly created jobs in an amount not to exceed 150% of minimum job requirement, did not prohibit taxpayer from claiming credits, under the Enterprise Zone Act, in excess of those created at cut‑off date under revitalization agreement (RVA) taxpayer entered into with the Advisory Coordinating Council for Economic Development; unlike the minimum job requirement in RVA that required taxpayer to create three hundred jobs by cut‑off date in order to claim job development credits, the 85/150 rule did not reference the cut‑off date at all. Blackbaud, Inc. v. South Carolina Dept. of Revenue (S.C.App. 2010) 386 S.C. 446, 688 S.E.2d 150. Taxation 3517

2. Review

Administrative Law Court was not required to defer to the Department of Revenue’s interpretation of revitalization agreement between business and Advisory Coordinating Council for Economic Development; while the Department had statutory authority to audit qualifying businesses pursuant to the Enterprise Zone Act and make appropriate adjustments when a qualifying business was not complying with the terms of its revitalization agreement, the Department’s authority did not extend to negotiating or interpreting the terms of an agreement. ESA Services, LLC v. South Carolina Dept. of Revenue (S.C.App. 2011) 392 S.C. 11, 707 S.E.2d 431. Taxation 3517

**SECTION 12‑10‑80.** Job development credits.

 (A) A business that qualifies pursuant to Section 12‑10‑50(A) and has certified to the council that the business has met the minimum job requirement and minimum capital investment provided for in the revitalization agreement may claim job development credits as determined by this section.

 (1) A business may claim job development credits against its withholding on its quarterly state withholding tax return for the amount of job development credits allowable pursuant to this section.

 (2) A business that is current with respect to its withholding tax and other tax due and owing the State and that has maintained its minimum employment and investment levels identified in the revitalization agreement may claim the credit on a quarterly basis beginning with the first quarter after the council’s certification to the department that the minimum employment and capital investment levels were met for the entire quarter. If a qualifying business is not current as to all taxes due and owing to the State as of the date of the return on which the credit would be claimed, without regard to extensions, the business may claim the credit only in an amount reduced by the amount of taxes due and owing to the State as of the date of the return on which the credit is claimed.

 (3) A qualifying business may claim its initial job development credit only after the council has certified to the department that the qualifying business has met the required minimum employment and capital investment levels.

 (4) To be eligible to apply to the council to claim a job development credit, a qualifying business shall create at least ten new, full‑time jobs, as defined in Section 12‑6‑3360(M), at the project described in the revitalization agreement within five years of the effective date of the agreement.

 (5) A qualifying business is eligible to claim a job development credit pursuant to the revitalization agreement for not more than fifteen years.

 (6) A company’s job development credits shall be suspended during any quarter in which the company fails to maintain one hundred percent of the minimum job requirement set forth in the company’s revitalization agreement. A company only may claim credits on jobs, including a range of jobs approved by the council, as set forth in the company’s final revitalization agreement.

 (7) Credits may be claimed beginning the quarter subsequent to the council’s approval of the company’s documentation that the minimum jobs and capital investment requirements have been met.

 (8) To the extent any return of an overpayment of withholding that results from claiming job development credits is not used as permitted by subsection (C) or by Section 12‑10‑95, it must be treated as misappropriated employee withholding.

 (9) Job development credits may not be claimed for purposes of this section with regard to an employee whose job was created in this State before the taxable year of the qualifying business in which it enters into a preliminary revitalization agreement.

 (10) If a qualifying business claims job development credits pursuant to this section, it shall make its payroll books and records available for inspection by the council and the department at the times the council and the department request. Each qualifying business claiming job development credits pursuant to this section shall file with the council and the department the information and documentation requested by the council or department respecting employee withholding, the job development credit, and the use of any overpayment of withholding resulting from the claiming of a job development credit according to the revitalization agreement.

 (11) Each qualifying business claiming in excess of ten thousand dollars in a calendar year must furnish to the council and to the department a report that itemizes the sources and uses of the funds. The report must be filed with the council and the department no later than June thirtieth following the calendar year in which the job development credits are claimed, except when a qualifying business obtains the written approval by the council for an extension of that date. Extensions may be granted only for good cause shown. The department shall impose a penalty pursuant to Section 12‑54‑210 for all reports filed after June thirtieth or the approved extension date, whichever is later. The department shall audit each qualifying business with claims in excess of ten thousand dollars in a calendar year at least once every three years to verify proper sources and uses of the funds.

 (12) Each qualifying business claiming ten thousand dollars or less in any calendar year must furnish a report prepared by the company that itemizes the sources and uses of the funds. This report must be filed with the council and the department no later than June thirtieth following the calendar year in which the job development credits are claimed, except when a qualifying business obtains the written approval by the council for an extension of that date. Extensions may be granted only for good cause shown. The department shall impose a penalty pursuant to Section 12‑54‑210 for all reports filed after June thirtieth or the approved extension date, whichever is later.

 (13) An employer may not claim an amount that results in an employee’s receiving a smaller amount of wages on either a weekly or on an annual basis than the employee would receive otherwise in the absence of this chapter.

 (B)(1) The maximum job development credit a qualifying business may claim for new employees is limited to the lesser of withholding tax paid to the State on a quarterly basis or the sum of the following amounts:

 (a) two percent of the gross wages of each new employee who earns $8.74 or more an hour but less than $11.64 an hour;

 (b) three percent of the gross wages of each new employee who earns $11.65 or more an hour but less than $14.55 an hour;

 (c) four percent of the gross wages of each new employee who earns $14.56 or more an hour but less than $21.84 an hour; and

 (d) five percent of the gross wages of each new employee who earns $21.85 or more an hour.

 (2) The hourly gross wage figures in item (1) must be adjusted annually by an inflation factor determined by the Revenue and Fiscal Affairs Office.

 (C) To claim a job development credit, the qualifying business must incur qualified expenditures at the project or for utility or transportation improvements that serve the project. To be qualified, the expenditures must be:

 (1) incurred during the term of the revitalization agreement, including a preliminary revitalization agreement, or within sixty days before council’s receipt of an application for benefits pursuant to this section;

 (2) authorized by the revitalization agreement; and

 (3) used for any of the following purposes:

 (a) training costs and facilities;

 (b) acquiring and improving real property whether constructed or acquired by purchase, or in cases approved by the council, acquired by capital or operating lease with at least a five‑year term or otherwise;

 (c) improvements to both public and private utility systems including water, sewer, electricity, natural gas, and telecommunications;

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

 (e) construction or improvements of real property and fixtures constructed or improved primarily for the purpose of complying with local, state, or federal environmental laws or regulations;

 (f) employee relocation expenses, but only for those employees to whom the company is paying gross wages at least two times the lower of the per capita income for either the state or the county in which the project is located;

 (g) financing the costs of a purpose described in items (a) through (f);

 (h) training for all relevant employees that enable a company to export or increase a company’s ability to export its products, including training for logistics, regulatory, and administrative areas connected to the company’s export process and other export process training that allows a qualified company to maintain or expand its business in this State;

 (i) apprenticeship programs;

 (j) quality improvement programs of the South Carolina Quality Forum.

 (D)(1) The amount of job development credits a qualifying business may claim for its use for qualifying expenditures is limited according to the designation of the county as defined in Section 12‑6‑3360(B), as follows:

 (a) one hundred percent of the maximum job development credits may be claimed by businesses located in counties designated as “Tier IV”;

 (b) eighty‑five percent of the maximum job development credits may be claimed by businesses located in counties designated as “Tier III”;

 (c) seventy percent of the maximum job development credits may be claimed by businesses located in counties designated as “Tier II”; or

 (d) fifty‑five percent of the maximum job development credits may be claimed by businesses located in counties designated as “Tier I”.

 (2) The amount that may be claimed as a job development credit by a qualifying business is limited by this subsection and by the revitalization agreement. The council may approve a waiver of ninety‑five percent of the limits provided in item (1) for:

 (a) a significant business; and

 (b) a related person to a significant business if the related person is located at the project site of the significant business and qualifies for job development credits pursuant to this chapter.

 For purposes of this item, a related person includes any entity or person that bears a relationship to a significant business as provided in Internal Revenue Code Section 267 and includes, without limitation, a limited liability company of which more than fifty percent of the capital interest or profits is owned directly or indirectly by a significant business or by a person or entity, or group of persons or entities which owns, more than fifty percent of the capital interest or profits in the significant business.

 (3) The county designation of the county in which the project is located on the date the application for job development credit incentives is received in the Office of the Coordinating Council remains in effect for the entire period of the revitalization agreement, except as to additional jobs created pursuant to an amendment to a revitalization agreement entered into before June 1, 1997, as provided in Section 12‑10‑60. In that case the county designation on the date of the amendment remains in effect for the remaining period of the revitalization agreement as to any additional jobs created after the effective date of the amendment.

 (E) The council shall certify to the department the maximum job development credit for each qualifying business. After receiving certification, the department shall remit an amount equal to the difference between the maximum job development credit and the job development credit actually claimed to the State Rural Infrastructure Fund as defined and provided in Section 12‑10‑85.

 (F) Any job development credit of a qualifying business permanently lapses upon expiration or termination of the revitalization agreement. If an employee is terminated, the qualifying business immediately must cease to claim job development credits as to that employee.

 (G) For purposes of the job development credit allowed by this section, an employee is a person whose job was created in this State.

 (H) Job development credits may not be claimed by a governmental employer who employs persons at a closed or realigned military installation as defined in Section 12‑10‑88(E).

 (I) A taxpayer who qualifies for the job development credit pursuant to the provisions of this section and who is located in a multicounty business or industrial park jointly established pursuant to Section 13 of Article VIII of the Constitution of this State is allowed a job development credit equal to the amount allowed pursuant to subsection (D) for the designation of the county which has the lowest development status of the counties containing the park if:

 (1) the park is developed and established on the geographical boundary of adjacent counties; and

 (2) the written agreement, pursuant to Section 4‑1‑170, requires revenue from the park to be allocated to each county on an equal basis.

 (J) Where the qualifying business that creates new jobs under this section is a qualifying service‑related facility as defined in Section 12‑6‑3360(M)(13), the determination of the number of jobs created must be based on the total number of new jobs created within five years of the effective date of the revitalization agreement, without regard to monthly or other averaging.

HISTORY: 1995 Act No. 25, Section 1; 1995 Act No. 32, Section 8A; 1996 Act No. 231, Sections 9A, 9B; 1996 Act No. 462, Sections 17A, 17B; 1997 Act No. 151, Section 7A; 2000 Act No. 283, Section 5(F), eff for taxable years beginning after June 30, 2001; 2000 Act No. 399, Section 3(B)(5), eff August 17, 2000; 2001 Act No. 89, Section 15, eff July 1, 2001; 2002 Act No. 332, Section 3, eff June 18, 2002; 2002 Act No. 334, Sections 7F, 7G, 20, eff June 24, 2002; 2005 Act No. 161, Sections 9, 39.B, eff June 9, 2005; 2006 Act No. 384, Sections 8, 9, eff June 14, 2006; 2006 Act No. 386, Section 14, eff June 14, 2006; 2007 Act No. 116, Section 1, eff June 28, 2007, applicable for tax years beginning after 2007; 2008 Act No. 313, Sections 2.E, 2.I.1, eff June 12, 2008; 2008 Act No. 352, Section 2.E, eff June 12, 2008; 2010 Act No. 290, Section 19, eff January 1, 2011.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

CROSS REFERENCES

Exemption from entry into revitalization agreement to qualify for benefits provided by Enterprise Zone Act of 1995, with respect to paragraph D only, see Section 12‑10‑50.

Investment tax credit for manufacturing and productive equipment, see Section 12‑14‑80.

South Carolina Life Sciences Act, qualification under Enterprise Zone Act of 1995, see Section 12‑15‑30.

Library References

Taxation 3517.

Westlaw Topic No. 371.

Attorney General’s Opinions

The Job Development Fee created within the Enterprise Zone Act would meet the public purpose test. S.C. Op.Atty.Gen. (Feb. 1, 1996) 1996 WL 93962.

The Job Development Fees as enacted within the Enterprise Zone Act of 1995 would not be considered public funds for purposes of Art. X, Section 11 of the State Constitution. S.C. Op.Atty.Gen. (Feb. 1, 1996) 1996 WL 93962.

NOTES OF DECISIONS

In general 1

1. In general

The 85/150 rule, which allowed corporate taxpayer to claim job development credits on newly created jobs in an amount not to exceed 150% of minimum job requirement, did not prohibit taxpayer from claiming credits, under the Enterprise Zone Act, in excess of those created at cut‑off date under revitalization agreement (RVA) taxpayer entered into with the Advisory Coordinating Council for Economic Development; unlike the minimum job requirement in RVA that required taxpayer to create three hundred jobs by cut‑off date in order to claim job development credits, the 85/150 rule did not reference the cut‑off date at all. Blackbaud, Inc. v. South Carolina Dept. of Revenue (S.C.App. 2010) 386 S.C. 446, 688 S.E.2d 150. Taxation 3517

**SECTION 12‑10‑81.** Job development tax credits.

 (A) A business may claim a job development credit as determined by this section if the:

 (1) council approves the use of this section for the business;

 (2) business qualifies pursuant to Section 12‑10‑50; and

 (3) business is a tire manufacturer that has more than four hundred twenty‑five million dollars in capital invested in this State and employs more than one thousand employees in this State and that commits within a period of five years from the date of a revitalization agreement, to invest an additional three hundred fifty million dollars and create an additional three hundred fifty jobs in this State qualifying for job development fees or credits pursuant to current or future revitalization agreements; except that the business must certify to the council that the business has satisfied all minimum capital investment and job requirements identified in the revitalization agreements but not certified by the council to the department before July 1, 2001. The council, in its discretion, may extend the five‑year period for two additional years if the business has made a commitment to the additional three hundred fifty million dollars and makes substantial progress toward satisfying the goal before the end of the initial five‑year period. A business that represents to the council its intent to qualify pursuant to this section and is approved by the council may put job development fees computed pursuant to this section into an escrow account until the date the business certifies to the council that the business has satisfied the capital and job requirements of this section.

 (B)(1) A business qualifying pursuant to this section may claim its job development credit against its withholding on its quarterly state withholding tax return for the amount of job development credit allowable pursuant to this section for not more than fifteen years. Job development credits allowed pursuant to subsection (C)(1)(a) through (d) of this section apply only to withholding on jobs created pursuant to a revitalization agreement adopted pursuant to this section and to the amounts withheld on wages and salaries on those jobs.

 (2) A business that is current with respect to its withholding tax as well as any other tax due and owing the State and that has maintained its minimum employment and investment levels identified in the revitalization agreement may claim the credit on a quarterly basis beginning with the quarter subsequent to the council’s certification to the department that the minimum employment and capital investment levels have been met for the entire quarter. If a qualifying business is not current as to all taxes due and owing to the State as of the date of the return on which the credit would be claimed, without regard to extensions, the business is barred from claiming the credit that would otherwise be allowed for that quarter.

 (3) To be eligible to apply to the council to claim a job development credit pursuant to this section, a qualifying business must create at least ten new, full‑time jobs as defined in Section 12‑6‑3360(M) at the project or projects described in the revitalization agreement.

 (4) To the extent a return of an overpayment of withholding that results from claiming job development credits is not used as permitted by subsection (D), it must be treated as misappropriated employee withholding.

 (5) Job development credits may not be claimed for purposes of this section with regard to an employee whose job was created in this State before the taxable year the qualifying business enters into a preliminary revitalization agreement.

 (6) If a qualifying business claims job development credits pursuant to this section, it must make its payroll books and records available for inspection by the council and the department at the times the council and the department request. Each qualifying business claiming job development credits pursuant to this section must file with the council and the department the information and documentation they request respecting employee withholding, the job development credit, and the use of overpayment of withholding resulting from the claiming of a job development credit according to the revitalization agreement.

 (7) Each qualifying business must furnish an audited report prepared by an independent certified public accountant that itemizes the sources and uses of the funds. The audited report must be filed with the council and the department no later than June thirtieth following the calendar year in which the job development credits are claimed, except when a qualifying business obtains written approval of council for an extension of that date. Extensions may be granted for good cause shown. The department shall impose a penalty pursuant to Section 12‑54‑210 for all reports filed after June thirtieth or the approved extension date, whichever is later.

 (8) An employer may not claim an amount that results in an employee’s receiving a smaller amount of wages on either a weekly or on an annual basis than the employee would otherwise receive in the absence of this chapter.

 (C)(1) The maximum job development credit a qualifying business may claim for new employees is determined by the sum of the following amounts:

 (a) two percent of the gross wages of each new employee who earns $6.95 or more an hour but less than $9.27 an hour;

 (b) three percent of the gross wages of each new employee who earns $9.27 or more an hour but less than $11.58 an hour;

 (c) four percent of the gross wages of each new employee who earns $11.58 or more an hour but less than $17.38 an hour;

 (d) five percent of the gross wages of each new employee who earns $17.38 or more an hour; and

 (e) the increase in the state sales and use tax of the business from the year of the effective date of its revitalization agreement pursuant to this section and subsequent years, over its state sales and use tax for the first of the three years preceding the effective date of this revitalization agreement.

 (2) The hourly base wages in item (1) must be adjusted annually by the inflation factor determined by the Revenue and Fiscal Affairs Office.

 (D) To claim a job development credit, the qualifying business must incur expenditures at the project or for utility or transportation improvements that serve the project. To be qualified, the expenditures must be:

 (1) incurred during the term of the revitalization agreement, including a preliminary revitalization agreement, or within sixty days before council’s receipt of an application for benefits pursuant to this section;

 (2) authorized by the revitalization agreement; and

 (3) used to reimburse the business for:

 (a) training costs and facilities;

 (b) acquiring and improving real estate whether constructed or acquired by purchase, or in cases approved by the council, acquired by lease or otherwise;

 (c) improvements to both public and private utility systems including water, sewer, electricity, natural gas, and telecommunication;

 (d) fixed transportation facilities including highway, rail, water, and air; or

 (e) construction or improvements of real property and fixtures constructed or improved primarily for the purpose of complying with local, state, or federal environmental laws or regulations.

 (E)(1) For purposes of subsection (C)(1)(a) through (d), the amount of job development credits a qualifying business may claim for its use for qualifying expenditures is limited according to the designation of the county as defined in Section 12‑6‑3360(B) as follows:

 (a) one hundred percent of the maximum job development credits may be claimed by businesses located in counties designated as distressed or least developed;

 (b) eighty‑five percent of the maximum job development credits may be claimed by businesses located in counties designated as “underdeveloped”;

 (c) seventy percent of the maximum job development credits may be claimed by businesses located in counties designated as “moderately developed”; or

 (d) fifty‑five percent of the maximum job development credits may be claimed by businesses located in counties designated as “developed”.

 (2) For purposes of this subsection, the county designation of the county in which the project is located at the time the qualifying business enters into a preliminary revitalization agreement with the council remains in effect for the entire period of the revitalization agreement.

 (3) The amount claimed by a qualifying business is limited by this subsection and the terms of the revitalization agreements. The business may use either the job development escrow procedure pursuant to revitalization agreements with effective dates before 1997 or the job development credit, or a combination of the two. For a business qualifying pursuant to this section, the council also may approve or waive sections of a revitalization agreement and rules of the council, in the council’s discretion, to assist the business.

 (4) The council shall certify to the department the maximum job development credit for each qualifying business. After receiving certification, the department shall remit an amount equal to the difference between the maximum job development credit and the job development credit actually claimed to the State Rural Infrastructure Fund as defined and provided in Section 12‑10‑85.

 (F) A job development credit of a qualifying business permanently lapses upon expiration or termination of the revitalization agreement. If an employee is terminated, the qualifying business immediately must cease to claim job development credits as to that employee.

 (G) For purposes of the job development credit allowed by this section, an employee is a person whose job was created in this State.

HISTORY: 1999 Act No. 93, Section 16; 2000 Act No. 399, Section 3(B)(6), eff August 17, 2000; 2001 Act No. 89, Section 16, eff July 1, 2001; 2002 Act No. 332, Section 4, eff June 18, 2002.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

CROSS REFERENCES

Investment tax credit for manufacturing and productive equipment, see Section 12‑14‑80.

Library References

Taxation 3517.

Westlaw Topic No. 371.

**SECTION 12‑10‑82.** Irrevocable assignment of future payments.

 (A) At the time the qualifying business enters into a revitalization agreement, it may make, with the approval of council, an irrevocable assignment of future payments attributable to the job development credit made pursuant to this chapter to the designated trustee or designee.

 (B) For purposes of this section:

 (1) “designated trustee” means the single financial institution designated by the council to receive all assignments of payments made pursuant to this chapter and to the terms of an agreement entered into by the qualifying business; and

 (2) “other designee” means a taxpayer that receives a minimum of seventy percent of the goods or services produced by the qualifying business at the project.

 (C) The election must be made on a form provided by the department, including a waiver of confidentiality pursuant to Section 12‑54‑240, and the payments may be paid only to the designated trustee or other designee.

HISTORY: 2000 Act No. 399, Section 3(A)(2), eff August 17, 2000; 2004 Act No. 227, Section 3.E, eff May 11, 2004.

Library References

Taxation 3517.

Westlaw Topic No. 371.

**SECTION 12‑10‑85.** Purpose and use of State Rural Infrastructure Fund; grants.

 (A) Funds received by the department for the State Rural Infrastructure Fund must be deposited in the State Rural Infrastructure Fund of the council. The fund must be administered by the council for the purpose of providing financial assistance to local governments for infrastructure and other economic development activities including, but not limited to:

 (1) training costs and facilities;

 (2) improvements to regionally planned public and private water and sewer systems;

 (3) improvements to both public and private electricity, natural gas, and telecommunications systems including, but not limited to, an electric cooperative, electrical utility, or electric supplier described in Chapter 27, Title 58;

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

 (5) site preparation;

 (6) acquiring or improving real property; and

 (7) relocation expenses, but only for those employees to whom the company is paying gross wages at least two times the lower of the per capita income for either the state or the county in which the project is located.

 The council may retain up to five percent of the revenue received for the State Rural Infrastructure Fund for administrative, reporting, establishment of grant guidelines, review of grant applications, and other statutory obligations.

 (B) Rural Infrastructure Fund grants must be available to benefit counties or municipalities designated as “Tier IV” or “Tier III” as defined in Section 12‑6‑3360 according to guidelines established by the council, except that up to twenty‑five percent of the funds annually available in excess of ten million dollars must be set aside for grants to areas of “Tier II” and “Tier I” counties. A governing body of a “Tier II” or “Tier I” county must apply to the council for these set‑aside grants stating the reasons that certain areas of the county qualify for these grants because the conditions in that area of the county are comparable to those conditions qualifying a county as “Tier IV” or “Tier III”.

 (C) For purposes of this section, “local government” means a county, municipality, or group of counties organized pursuant to Section 4‑9‑20(a), (b), (c), or (d).

 (D) The council shall submit a report to the Governor and General Assembly by March fifteenth covering activities for the prior calendar year.

 (E) The department shall retain unexpended or uncommitted funds at the close of the state’s fiscal year of the State and expend the funds in subsequent fiscal years for like purposes.

HISTORY: 1996 Act No. 462, Section 3; 2000 Act No. 387, Part II, Section 57B, eff July 1, 2000; 2002 Act No. 332, Section 2, eff June 18, 2002; 2005 Act No. 161, Section 34, eff June 9, 2005; 2008 Act No. 353, Section 2, Pt 31C.1, eff July 1, 2008; 2010 Act No. 290, Section 14, eff January 1, 2011.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 386 to 387.

**SECTION 12‑10‑88.** Redevelopment fees.

 (A) Subject to the conditions provided in subsection (B), South Carolina individual income tax withholding equal to five percent of all South Carolina wages paid with respect to employees that are employed by a federal employer at a closed or realigned military installation must be remitted by the department to the redevelopment authority vested with authority under Section 31‑12‑40(A) to oversee the closed or realigned military installation. The amounts of withholding collected and remitted to the applicable redevelopment authority are referred to as “redevelopment fees”.

 (B) The department shall remit the redevelopment fees during the period described in subsection (C) for each calendar quarter for which the redevelopment authority provides the department with a timely statement from the federal employer that employs the employees working at the closed or realigned military installation setting forth the number of employees employed at the installation, the total wages paid to these employees, and the total amount of South Carolina withholding withheld from the employees for each quarter. In order to receive the redevelopment fees for the applicable quarter, the redevelopment authority shall submit the statement within thirty days of the later of the date that the federal employer’s South Carolina withholding tax return is due or the date the federal employer files the withholding tax return. The department may extend the time for submission of the statement at its discretion.

 (C) Redevelopment fees may be remitted to the applicable redevelopment authority for a period beginning with the date that the applicable redevelopment authority first submits the information described in subsection (B) to the department and ending fifteen years later or January 1, 2021, whichever occurs last. If the redevelopment authority fails to provide the department with the required statement within the requisite time limits, no redevelopment fees must be remitted for that quarter. Notwithstanding subsection (A), the redevelopment fee remitted by the department in any fiscal year may not exceed the amount remitted in Fiscal Year 2014‑2015.

 (D) Neither the federal employer nor the applicable redevelopment authority is required to meet the requirements of Section 12‑10‑50 for subsection (A) to apply and the restrictions contained in Section 12‑10‑80(C) do not apply to redevelopment fees.

 (E) For purposes of this section “closed or realigned military installation” means a federal defense site in which permanent employment was reduced by three thousand or more jobs after December 31, 1990, or a federal military base or installation which is closed or realigned under:

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

 (2) Title 11 of the Defense Authorization Amendments and Base Closure and Realignment Act; or

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

HISTORY: 1996 Act No. 462, Section 4A; 1998 Act No. 421, Section 2; 2006 Act No. 386, Section 40, eff June 14, 2006; 2008 Act No. 313, Section 4, eff June 12, 2008; 2010 Act No. 290, Section 34, eff January 1, 2011; 2016 Act No. 255 (S.227), Section 1, eff June 7, 2016.

Effect of Amendment

2016 Act No. 255, Section 1, in (C), substituted “January 1, 2021” for “January 1, 2017” in the first sentence, and added the last sentence, relating to the amount remitted in fiscal year 2014‑2015.

**SECTION 12‑10‑90.** Levels of capital investment or employment in revitalization agreement; failure to achieve levels and effect thereof.

 If a qualifying business fails to achieve the level of capital investment or employment set forth in the revitalization agreement, the council may terminate the revitalization agreement and reduce or suspend all or any part of the incentives until the time the anticipated capital investment and employment levels are met. However, these incentives must not be suspended retroactively. The council shall provide in the revitalization agreement entered into in connection with a project for the levels of capital investment and employment which must be achieved and for the time period in which the levels must be achieved.

HISTORY: 1995 Act No. 25, Section 1; 1996 Act No. 462, Section 18.

**SECTION 12‑10‑95.** Credit against withholding for retraining; program review; policies and procedures.

 (A)(1) Subject to the conditions in this section, a business engaged in manufacturing or processing operations or technology intensive activities at a manufacturing, processing, or technology intensive facility as defined in Section 12‑6‑3360(M) and that meets the requirements of Section 12‑10‑50(B)(2) may negotiate with a technical college, with approval from the State Board for Technical and Comprehensive Education, to claim as a credit against withholding one thousand dollars a year for the retraining of a production or technology first line employee or immediate supervisor who has been continuously employed by the business for a minimum of two years and is a full‑time employee, so long as retraining is necessary for the qualifying business to remain competitive or to introduce new technologies. In addition to the yearly limits, the retraining credit claimed against withholding may not exceed five thousand dollars over five consecutive years for each retrained production or technology first line employee or immediate supervisor.

 (2) Retraining programs that are eligible for the credit include, but are not limited to:

 (a) retraining of current employees on newly installed equipment; and

 (b) retraining of current employees on newly implemented technology, such as computer platforms, software implementation and upgrades, Total Quality Management, ISO 9000, and self‑directed work teams.

 Executive training, management development training, career development, personal enrichment training, and cross‑training of employees on equipment or technology that is not new to the company are not eligible for the credit.

 (B) A qualifying business is eligible to claim as a retraining credit against withholding the lower amount of the following:

 (1) the retraining credit for the applicable withholding period as determined by subsection (A); or

 (2) withholding paid to the State for the applicable withholding period.

 (C) All retraining must be approved by a technical college under the jurisdiction of the State Board for Technical and Comprehensive Education. A qualifying business must submit a retraining program for approval by the appropriate technical college. The approving technical college may provide the retraining itself, subject to the retraining program, or contract with other training entities to provide the required retraining, or supervise the employer’s approved internal training program.

 (D) An employer may not receive the credit allowed by this section if the employer requires that the employee reimburse or pay the employer for the direct costs of retraining, or if the employee is required to reimburse or pay the employer indirectly through the forfeiture of leave time, vacation time, or other compensable time. Direct costs of retraining include instructor salaries, development of retraining programs, purchase or rental of materials and supplies, textbooks and manuals, instructional media, such as video tapes, presentations, equipment used for retraining only, not to include production equipment, and reasonable travel costs as limited by the state’s travel expense reimbursement policy.

 (E) The qualifying business must expend at least one dollar fifty cents on retraining eligible employees for every dollar claimed as a credit against withholding for retraining. All training costs, including costs in excess of the retraining credits and matching funds, are the responsibility of the business.

 (F) A qualifying business may not claim retraining credit for training provided to the following production or technology first line employees or immediate supervisors:

 (a) temporary or contract employees; and

 (b) employees who are subject to a revitalization agreement, including a preliminary revitalization agreement.

 (G) Notwithstanding another provision of this section, the retraining credit allowed by this section is for:

 (1) apprenticeship programs; and

 (2) retraining for all relevant employees that enable a company to export or increase its ability to export its products, including training for logistics, regulatory, and administrative areas connected to its export process and other export process training that allows a qualified company to maintain or expand its business in this State.

 (H) There is hereby established an annual renewal fee of two hundred fifty dollars to be billed and collected by the department.

 (I)(1) All approved programs and training must be reviewed annually by the State Board for Technical and Comprehensive Education.

 (2) Every three years, the Department of Revenue must audit any business that claimed the job retraining credit pursuant to this section during that time period, solely for the purpose of verifying proper sources and uses of the credits.

 (J) The State Board for Technical and Comprehensive Education shall establish policies and procedures to provide the oversight and review provisions of this section. By November fifteenth of each year, the State Board for Technical and Comprehensive Education shall submit a statewide aggregated report detailing the utilization of the retraining credit pursuant to this section, as well as the board’s activities in regard to oversight, to the Governor, the Chairman of the House Ways and Means Committee, the Chairman of the Senate Finance Committee, the Coordinating Council for Economic Development, and the Department of Revenue. Also, the board shall make the report available in a conspicuous place on the website maintained by the board.”

HISTORY: 2001 Act No. 89, Section 4, eff July 1, 2001; 2003 Act No. 69, Section 3.RR, eff June 18, 2003; 2008 Act No. 353, Section 2, Pt 31A.1, eff July 1, 2008; 2014 Act No. 279 (H.3644), Section 4.A, eff June 10, 2014.

Editor’s Note

2014 Act No. 279, Section 4.C, provides as follows:

“C. This section takes effect upon approval by the Governor and applies to tax years beginning after December 31, 2013.”

Effect of Amendment

2014 Act No. 279, Section 4.A, rewrote the section.

Library References

Taxation 3517, 3560.

Westlaw Topic No. 371.

C.J.S. Taxation Section 1926.

**SECTION 12‑10‑100.** Criteria for determination and selection of qualifying businesses and for approval of revitalization agreements; application fee schedule; annual publication of itemized revitalization agreement report.

 (A) The council may establish criteria for the determination and selection of qualifying businesses and the approval of revitalization agreements. These criteria may include and may give greatest weight to the creditworthiness of the business, the number, type, and quality of new jobs to be provided by the project to residents of this State, and the economic viability of the business. The council may include in its criteria requirements relating to the capital costs of, and projected employment to be produced by, projects eligible for benefits under this chapter and requirements relating to the employment of previously unemployed or underemployed persons.

 With respect to each business and project, the council shall request the materials and make the inquiries necessary to determine whether the business and its proposed project satisfy the council’s announced criteria and to conduct an adequate cost/benefit analysis with respect to the proposed project and the incentives proposed to be granted by the council with respect to the project. After a review of the relevant materials and completion of its inquires and analysis, the council may by resolution of its members designate an applicant business as a qualifying business and authorize the undertaking of its project according to the revitalization agreement. The decision to enter into a revitalization agreement with a qualifying business is solely within the discretion of the council and a qualifying business does not have a right of appeal from the council’s decision.

 (B) The council shall establish an application fee schedule, not to exceed four thousand dollars for each qualifying business, for undertaking the provisions of this chapter. Of that amount, five hundred dollars shall be shared with the department. The council shall also establish an annual renewal fee of five hundred dollars to be shared equally with the department. The State Treasurer shall establish an account for these fees which must be expended by the council only for meeting administrative, data collection, credit analysis, cost/benefits analysis, reporting, and any other obligations pursuant to this chapter. This account may retain funds for expenditure in the next fiscal year only for purposes enumerated in this section.

 (C) By May fifteenth of each year, the council shall prepare a public document that itemizes each revitalization agreement concluded during the previous calendar year. The report must list each revitalization agreement, the results of each cost/benefits analysis, and receipts and expenditures of application fees. This document must be forwarded to the State Budget and Control Board, Senate Finance Committee, and House Ways and Means Committee. This document may not contain proprietary or confidential information that is otherwise exempt pursuant to Chapter 4 of Title 30, the Freedom of Information Act, and this section must not be construed to require the release of that exempt information.

HISTORY: 1995 Act No. 25, Section 1; 1999 Act No. 114, Sections 5C, 5D; 2000 Act No. 399, Section 3(B)(7), eff August 17, 2000; 2008 Act No. 353, Section 2, Pt 31A.2, eff July 1, 2008.

Code Commissioner’s Note

At the direction of the Code Commissioner, reference in this section to the former Budget and Control Board has not been changed pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), until further action by the General Assembly.

**SECTION 12‑10‑105.** Annual fees.

 In addition to the application fee provided in Section 12‑10‑100, an additional annual fee of one thousand dollars must be remitted by those qualifying businesses claiming in excess of ten thousand dollars of job development credits or in excess of forty thousand dollars in job retraining credits in one calendar year. The fee is due for each project that is subject to a revitalization agreement that exceeds ten thousand dollars or retraining agreement that exceeds forty thousand dollars in one calendar year and must be remitted to the Department of Revenue to be used to reimburse the department for costs incurred auditing reports required pursuant to Section 12‑10‑80(A). The fee becomes due at the time the single project’s claims for job development credits exceeds ten thousand dollars or job retraining credits exceed forty thousand dollars for that calendar year.

HISTORY: 2002 Act No. 334, Section 7H, eff June 24, 2002; 2005 Act No. 145, Section 21, eff June 7, 2005; 2014 Act No. 279 (H.3644), Section 4.B, eff June 10, 2014.

Editor’s Note

2014 Act No. 279, Section 4.C, provides as follows:

“C. This section takes effect upon approval by the Governor and applies to tax years beginning after December 31, 2013.”

Effect of Amendment

2014 Act No. 279, Section 4.B, substituted “in excess of forty thousand dollars” for “in excess of ten thousand dollars” in the first sentence; in the second sentence, substituted “revitalization agreement that exceeds ten thousand dollars or retraining agreement that exceeds forty thousand dollars” for “revitalization or retraining agreement that exceeds ten thousand dollars”; and in the last sentence, substituted “exceeds ten thousand dollars or job retraining credits exceed forty thousand dollars” for “or job retraining credits exceeds ten thousand dollars”.

**SECTION 12‑10‑110.** Construction of chapter.

 This chapter must be liberally construed in conformity with the findings provided in Section 12‑10‑20.

HISTORY: 1995 Act No. 25, Section 1.