CHAPTER 14

Economic Impact Zone Community Development Act of 1995

**SECTION 12‑14‑10.** Short title.

 This chapter may be cited as the Economic Impact Zone Community Development Act of 1995.

HISTORY: 1995 Act No. 25, Section 2.

**SECTION 12‑14‑20.** Purpose.

 It is the purpose of this chapter to establish a program of providing tax incentives for the creation of capital investment in order:

 (1) to revitalize capital investment in this State, primarily by encouraging the formation of new businesses and the retention and expansion of existing businesses; and

 (2) to promote meaningful employment.

HISTORY: 1995 Act No. 25, Section 2; 2010 Act No. 290, Section 20, eff January 1, 2011.

**SECTION 12‑14‑60.** Investment tax credit.

 (A)(1) There is allowed an investment tax credit against the tax imposed pursuant to Chapter 6 of this title for any taxable year in which the taxpayer places in service qualified manufacturing and productive equipment property.

 (2) The amount of the credit allowed by this section is equal to the aggregate of:

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|   | three‑year property | one‑half percent of total aggregate bases for all three‑year property that qualifies; |
|   | five‑year property | one percent of total aggregate bases for all five‑year property that qualifies; |
|   | seven‑year property | one and one‑half percent of total aggregate bases for all seven‑year property that qualifies; |
|   | ten‑year property | two percent of total aggregate bases for all ten‑year property that qualifies; |
|   | fifteen‑year property | two and one‑half percent of total aggregate bases for all or greater fifteen‑year or greater property that qualifies. |

 For purposes of this section, whether property is three‑year property, five‑year property, seven‑year property, ten‑year property, or fifteen‑year property is determined based on the applicable recovery period for such property under Section 168(e) of the Internal Revenue Code.

 (B) For purposes of this section:

 (1) “qualified manufacturing and productive equipment property” means any property:

 (a) which is used as an integral part of manufacturing or production, or used as an integral part of extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services in the economic impact zone;

 (b) which is tangible property to which Section 168 of the Internal Revenue Code applies;

 (c) which is Section 1245 property (as defined in Section 1245(a)(3)of the Internal Revenue Code); and

 (d)(i) the construction, reconstruction, or erection of which is completed by the taxpayer in this State; or

 (ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer inside this State.

 (2) In the case of any computer software which is used to control or monitor a manufacturing or production process inside this State and with respect to which depreciation (or amortization in lieu of depreciation) is allowable, the software must be treated as qualified manufacturing and productive equipment property.

 (C) This section does not apply to any property to which the other tax credits would apply unless the taxpayer elects to waive the application of the other credits to the property.

 (D)(1) Unused credit allowed pursuant to this section may be carried forward for ten years from the close of the tax year in which the credit was earned.

 (2) In the case of credit unused within the initial ten‑year period, a taxpayer may continue to carry forward unused credits for use in any subsequent tax years if the taxpayer:

 (a) is engaged in this State in an activity or activities listed under the North American Industry Classification System Manual (NAICS) Section 31, 32, or 33;

 (b)(i) is employing one thousand or more full‑time workers in this State and having a total capital investment in this State of not less than five hundred million dollars; or

 (ii) is employing eight hundred fifty or more full‑time workers in this State and having a total capital investment in this State of not less than seven hundred fifty million dollars; and

 (c) made a total capital investment of not less than fifty million dollars in the previous five years.

 Credits carried forward beyond the initial ten‑year period may not reduce a taxpayer’s state income tax liability in any subsequent tax year by more than twenty‑five percent.

 (E) If during any taxable year and before the end of applicable recovery period for such property as determined under Section 168(e) of the Internal Revenue Code, the taxpayer disposes of or removes from this State qualified manufacturing and productive equipment property, then the tax due under Chapter 6 by the taxpayer for the current taxable year must be increased by an amount of any credit claimed in prior years with respect to such property determined by assuming the credit is earned ratably over the useful life of the property and recapturing pro rata the unearned portion of the credit.

 (F) For South Carolina income tax purposes, the basis of the qualified manufacturing and productive equipment property must be reduced by the amount of any credit claimed with respect to the property. If a taxpayer is required to recapture the investment tax credit in accordance with subsection (E), the taxpayer may increase the basis of the property by the amount of any basis reduction attributable with claiming the investment tax credit in prior years. The basis must be increased in the year in which the credit is recaptured.

 (G) The credit allowed by this section for investments made after June 30, 1998, is limited to no more than five million dollars for an entity subject to the license tax as provided in Section 12‑20‑100.

HISTORY: 1995 Act No. 25, Section 2; 1997 Act No. 151, Section 8; 1998 Act No. 419, Part II, Section 49 IIB; 1998 Act No. 442, Section 14B; 2005 Act No. 113, Section 1, eff June 1, 2005; 2010 Act No. 290, Section 21, eff January 1, 2011.

Editor’s Note

2005 Act No. 113, Section 2, provides as follows:

“This act takes effect upon approval by the Governor and the provisions of Section 12‑14‑60(D)(2) of the 1976 Code, as amended by this act, apply for credits earned in taxable years beginning after 1996.”

CROSS REFERENCES

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

Library References

Taxation 3517.

Westlaw Topic No. 371.

NOTES OF DECISIONS

In general 1

1. In general

Statute that was effective for tax years beginning after 1996 and allowed taxpayer to carry unused credit forward unambiguously allowed taxpayer to carry forward economic impact zone (EIZ) investment tax credit earned in 1996 to offset tax liability for 1997 and 1998. SCANA Corp. v. South Carolina Dept. of Revenue (S.C. 2009) 384 S.C. 388, 683 S.E.2d 468. Taxation 3517

**SECTION 12‑14‑80.** Investment tax credit for manufacturing and productive equipment.

 (A) There is allowed an investment tax credit for any taxable year in which qualified manufacturing and productive equipment acquired or leased by the taxpayer is placed in service if the taxpayer:

 (1)(a) is engaged in this State in an activity or activities listed under the North American Industry Classification System Manual (NAICS) Section 326;

 (b) is employing five thousand or more full‑time workers in this State and having a total capital investment in this State of not less than two billion dollars; and

 (c) commits to invest five hundred million dollars in capital investment in this State between January 1, 2006, and July 1, 2011; or

 (2)(a) is engaged in this State in an activity or activities listed under the North American Industry Classification System Manual (NAICS) Section 326;

 (b) commits to employing one thousand two hundred full‑time employees in this State by January 1, 2022; and

 (c) commits to invest four hundred million dollars in capital investment in this State between September 1, 2011, and January 1, 2022.

 (B) For purposes of this section:

 (1) “Qualified manufacturing and productive equipment property” means property that satisfies the requirements of Section 12‑14‑60(B)(1)(a), (b), and (c);

 (2) “Taxpayer” includes the taxpayer and any person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the taxpayer. For purposes of this item, a person controls another person if that person holds fifty percent ownership interest in the other person.

 (3) “Capital investment in this State” includes property that is:

 (a) capitalized by the taxpayer;

 (b) subject to a capital lease with the taxpayer; or

 (c) subject to an operating lease with the taxpayer.

 Qualified manufacturing and productive equipment property that is leased to the taxpayer shall be treated as placed in service by the taxpayer on the date the lease begins.

 (C)(1) The amount of the credit allowed by this section is equal to the aggregate amount computed based on Section 12‑14‑60(A)(2).

 (2) Notwithstanding item (1), in the event that the taxpayer is the lessee of the property for which the credit is allowable and is not treated as the income tax owner of such property, the basis of the property for purposes of calculating the amount of the credit for the taxpayer and the capital investment made by the taxpayer with respect to the property shall be the then determined tax basis, as of the date the lease begins, for purposes of calculating income tax in this State in such property of the income tax owner of such property. In this instance, the taxpayer must include a certification that:

 (a) the lessor has provided a written statement to the lessee as to the lessor’s then depreciated income tax basis;

 (b) the property has not been subject to a prior investment tax credit under this section; and

 (c) the taxpayer will include in taxable income the amounts required under subsection (H). Notwithstanding Section 12‑54‑240, the department may share between and among the taxpayer or the lessor information related to the items certified pursuant to subitems (a) and (b) or to the class life of equipment with respect to which a credit under this section has been claimed.

 (D) A taxpayer that qualifies for the tax credit allowed by this section may claim the credit allowed by this section in addition to the credit allowed by Section 12‑6‑3360 as a credit against withholding taxes imposed by Chapter 8 of this title. The taxpayer must first apply the credit allowed by this section and Section 12‑6‑3360 against income tax liability. To the extent that the taxpayer has unused credit pursuant to this section, including the credit allowed by Section 12‑6‑3360, for the taxable year after the application of the credits allowed by this section and Section 12‑6‑3360 against income tax liability, the taxpayer may claim the excess credit as a credit against withholding taxes on its four quarterly withholding tax returns for the taxpayer’s taxable year; except that the credit claimed against withholding tax may not exceed fifty percent of the withholding tax shown as due on the return before the application of other credits including other credits pursuant to Section 12‑10‑80 or 12‑10‑81. For the period July 1, 2007, to June 30, 2008, a taxpayer using this section may not reduce its state withholding tax to less than the withholding tax remitted for the period June 30, 2006, to July 1, 2007.

 (E) Unused credits allowed pursuant to this section may be carried forward for use in a subsequent tax year. During the first ten years of each tax credit carryforward, the credit may not reduce a taxpayer’s state income tax liability by more than fifty percent, and for a subsequent year the credit carryforward may not reduce a taxpayer’s state income tax liability by more than twenty‑five percent. Investment tax credit carryforwards pursuant to this section and credit carryforwards pursuant to Section 12‑6‑3360 must first be used as a credit against income taxes for that year. Any excess may be used pursuant to subsection (D) as a credit against withholding taxes; except that the limitations of subsection (D) apply each year and the credit carryforwards that existed on the effective date of Act 83 of 2007 for taxpayers qualifying under subsection (A)(1) and on the effective date of the qualification for taxpayers qualifying under subsection (A)(2), may not be used to reduce withholding tax liabilities pursuant to this section.

 (F) The amount of credit used against withholding taxes must reduce the amount of credit that may be used against income tax liability.

 (G) If the taxpayer disposes of or removes qualified manufacturing and productive equipment property from the State during any taxable year and before the end of applicable recovery period for such property as determined under Section 168(e) of the Internal Revenue Code, then the income tax due pursuant to this chapter for the current taxable year must be increased by an amount of any credit claimed in prior years with respect to that property, determined by assuming the credit is earned ratably over the useful life of the property and recapturing pro rata the unearned portion of the credit. This recapture applies to credit previously claimed as a credit against income taxes pursuant to this chapter or withholding tax pursuant to Chapter 8. For purposes of this subsection, the following rules apply for determining whether a taxpayer that is a lessee of qualified manufacturing and productive equipment property has disposed of the property:

 (1) a transfer of the property by the lessee to the lessor in a sale‑leaseback transaction shall be ignored;

 (2) a disposition by the lessor of the property shall not be treated as a disposition provided that the lease is not terminated and the taxpayer remains lessee thereunder;

 (3) if the taxpayer lessee actually purchases the property in any taxable year, the purchase shall not be treated as a disposition; and

 (4) if the lease is terminated and the property is transferred by the lessee to the lessor or to any other person, other than the taxpayer, the transfer is considered to be a disposition by the taxpayer lessee.

 (H)(1) For South Carolina income tax purposes, except as otherwise provided in item (2), the basis of the qualified manufacturing and productive equipment property must be reduced by the amount of any credit claimed with respect to the property, whether claimed as a credit against income taxes or withholding. If a taxpayer is required to recapture the credit in accordance with subsection (G), the taxpayer may increase the basis of the property by the amount of basis reduction attributable to claiming the credit in prior years. The basis must be increased in the year in which the credit is recaptured.

 (2) Notwithstanding item (1), if the taxpayer is the lessee of the qualified manufacturing and productive equipment property for which credit has been taken by the taxpayer, in lieu of any adjustment to the basis of such property, the taxpayer shall include in its taxable income for South Carolina income tax purposes, an amount equal to the amount of the credit that is earned during such taxable year in accordance with subsection (G).

 (I)(1) For taxpayers qualifying under subsection (A)(1), a credit must not be taken pursuant to this section for capital investments placed in service until the taxpayer has invested two hundred million dollars of the five hundred million‑dollar investment requirement described in subsection (A)(1)(c) and the taxpayer files a statement with the department stating that it: (i) commits to invest a total of five hundred million dollars in this State between January 1, 2006, and July 1, 2011; and (ii) shall refund any credit received with interest at the rate provided for underpayments of tax if it fails to meet the requirement of subsection (A)(1)(c).

 (2) For taxpayers qualifying under subsection (A)(2), a credit must not be taken pursuant to this section for capital investments in this State until the taxpayer has invested two hundred million dollars of the four hundred million‑dollar investment requirement described in subsection (A)(2)(c) and the taxpayer files a statement with the department stating that it:

 (a) commits to invest a total of four hundred million dollars in this State between September 1, 2011, and January 1, 2022;

 (b) commits to employ a total of one thousand two hundred full‑time employees in this State by January 1, 2022; and

 (c) shall refund any credit received with interest at the rate provided for underpayments of tax if it fails to meet the requirements of subsection (A)(2)(b) or (c).

 The statement and proof of qualification must be filed with the notice required in subsection (J). Credit is not allowed pursuant to this section for property placed in service before June 30, 2007, for taxpayers qualifying under subsection (A)(1) or for property placed in service before September 1, 2011 for taxpayers qualifying under subsection (A)(2). For credit claimed before the investment of the full five hundred million dollars pursuant to subsection (A)(1)(c) or four hundred million dollars pursuant to subsection (A)(2)(c), the company claiming the credit must execute a waiver of the statute of limitations pursuant to Section 12‑54‑85, allowing the department to assess the tax for a period commencing with the date that the return on which the credit is claimed is filed and ending three years after the company notifies the department that the applicable capital investment commitment has been made. A waiver of the statute of limitations must accompany the return on which the credit is claimed.

 (J) The taxpayer shall notify the department as provided in subsection (I) before taking any credits pursuant to this section. Additionally, in a taxable year after the year of qualification for credit pursuant to this section, the taxpayer shall include with its tax return for that year: (i) a statement that the taxpayer has continued to meet the requirements of subsections (A)(1)(a) and (b) or subsections (A)(2)(a) and (b); (ii) the reconciliation required in subsection (D); and (iii) any statement and support for subsection (I).

HISTORY: 2007 Act No. 83, Section 5.A, eff July 1, 2007; 2007 Act No. 110, Section 2.A, eff July 1, 2007; 2007 Act No. 116, Section 63.A, eff July 1, 2007; 2008 Act No. 313, Section 2.K.1, eff July 1, 2007; 2008 Act No. 354, Section 4.A, eff July 1, 2007; 2012 Act No. 233, Section 1, eff June 18, 2012.

Editor’s Note

2007 Act No. 83, Section 5.B, 2007 Act No. 110, Section 2.B, and 2007 Act No. 116, Section 63.B provide as follows:

“This section takes effect July 1, 2007, and applies for capital investments placed in service outside of an economic impact zone after June 30, 2007, and for quarterly state withholding returns due on and after that date, provided that for the period July 1, 2007, to June 30, 2008, a taxpayer using this section may not reduce its state withholding tax to less than the withholding tax remitted for the period June 30, 2006, to July 1, 2007.”

2008 Act No. 313, Section 2.K.2 and 2008 Act No. 354, Section 4.B provide as follows:

“This subsection takes effect July 1, 2007, and applies for capital investments placed in service outside of an economic impact zone after June 30, 2007, and for quarterly state withholding returns due on and after that date, provided that for the period July 1, 2007, to June 30, 2008, a taxpayer using this section may not reduce its state withholding tax to less than the withholding tax remitted for the period June 30, 2006, to July 1, 2007.”

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