~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 27, 2019

**H. 3778**

Introduced by Reps. Lucas, G.M. Smith, Sandifer, Simrill, Murphy, Weeks, Pope, McCoy, Hayes, Clary, Stringer, Bannister, Elliott, B. Cox, Morgan, W. Cox, Stavrinakis and Cobb‑Hunter

S. Printed 3/27/19--H.

Read the first time January 29, 2019.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Bill (H. 3778) to amend Section 12‑6‑3375, Code of Laws of South Carolina, 1976, relating to the tax credit for a port cargo volume increase, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, beginning on page 1, by striking line 28 through line 11 on page 2, and inserting:

/ SECTION 1. Section 12‑6‑3375(A) and (D) of the 1976 Code is amended to read:

“(A)(1) A taxpayer engaged in any of the following: manufacturing, warehousing, freight forwarding, freight handling, goods processing, cross docking, transloading, wholesaling of goods, or distribution, exported or imported through port facilities in South Carolina and which increases its port cargo volume at these facilities by a minimum of five percent in a single calendar year over its base year port cargo volume is eligible to claim an income tax credit or a credit against employee withholding in the amount determined by the Coordinating Council for Economic Development (council).

(2) The maximum amount of tax credits allowed to all qualifying taxpayers pursuant to this section may not exceed ~~eight~~ fifteen million dollars for each calendar year. The credits may be claimed against the taxes imposed pursuant to Sections 12‑6‑530 and 12‑6‑545 and against employee withholdings. The council has sole discretion in allocating the credits provided by this section and must consider the following factors:

(a) the amount of base year port cargo volume;

(b) the total and percentage increase in port cargo volume; and

(c) factors related to the economic benefit of the State or other factors.

(D) The council annually may award up to one million dollars of the ~~eight~~ fifteen million dollars of credits against employee withholdings that are not otherwise refundable pursuant to this title to a new warehouse or distribution facility which commits to expending at least forty million dollars at a single site and creating one hundred new full‑time jobs, and the base year cargo ~~shall~~ may not be less than five thousand TEUs or its non‑containerized equivalent. The council may make the award in the year the facility is announced provided that it may not tender the certificate until it has received satisfactory proof that the capital investment and job creation requirements have, or will be, satisfied. Any credit certificate expires three years after issuance if satisfactory proof has not been received. If the credit exceeds the taxpayer’s withholding tax liability for the taxable quarter that is not otherwise refundable pursuant to this title, the excess amount may be carried forward and claimed against withholding liability that is not otherwise refundable pursuant to this title in the next twenty succeeding taxable quarters.”

SECTION 2. Section 12‑6‑3375 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

“( )(1) A taxpayer engaged in any of the businesses identified in subsection (A)(1) at a facility located in the counties of Allendale, Bamberg, Barnwell, Beaufort, Colleton, Hampton, Jasper, or Orangeburg is eligible to claim a port transportation credit in the form of an income tax credit or a credit against employee withholding for its transportation costs in an amount determined by the council in its sole discretion. /

Renumber sections to conform.

Amend title to conform.

G. MURRELL SMITH, JR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced on January 29, 2019**

**State Expenditure**

The Department of Revenue indicates that there will be no expenditure impact to the general fund, federal funds, or other funds from this bill. The Department can administer the legislative changes with existing resources.

**State Revenue**

Currently, a taxpayer is allowed a nonrefundable tax credit if the taxpayer is engaged in manufacturing, warehousing, or distribution that uses South Carolina port facilities and increases its port cargo volume at these facilities by at least five percent in a calendar year over its base year port cargo volume. The maximum amount of tax credits allowed to all qualifying taxpayers pursuant to this section may not exceed $8,000,000 for each calendar year. A qualifying taxpayer may not receive more than $1,000,000 for each calendar year except as provided in Section 12-6-3375(B)(2). The amount of the credit is determined by the Coordinating Council for Economic Development (Council) of the Department of Commerce upon application by the taxpayer. The Council has sole discretion in allocating credits provided by this section, taking into consideration the following factors:

(a) the amount of base year port cargo volume;

(b) the total and percentage increase in port cargo volume; and

(c) factors related to the economic benefit of the State or other factors.

Any unused tax credits may be carried forward and claimed against income taxes in the next five succeeding taxable years.

**Section 1.** This section would amend Section 12-6-3375(A)(2) to increase the maximum amount of tax credits allowed to all qualifying taxpayers pursuant to this section from $8,000,000 for each calendar year to $15,000,000 for each calendar year. As shown in the table below, the aggregate tax credit limitation for all taxpayers has not changed since the effective date of the tax credit in tax year 2006. In fact, the $8,000,000 maximum aggregate limitation allowed all qualifying taxpayers in a calendar year has never been challenged. By raising the maximum aggregate tax credit limitation to $15,000,000 for all taxpayers, and by expanding the geographic footprint of where qualified port distribution facilities may locate as mentioned in Section 2 below, the port distribution facilities may be able to attract additional capital investment and hire additional workers to be employed at its facilities.

**South Carolina Port Cargo Volume Tax Credit**

**Program Limitations and Tax Credits Claimed**

**Tax Fiscal Maximum Credit Maximum Credit Aggregate**

Year Single Taxpayer All Taxpayers Credit Claimed

By All Taxpayers

2006 FY 2007 $1,000,000 $8,000,000 $57,249

2007 FY 2008 $1,000,000 $8,000,000 $153,508

2008 FY 2009 $1,000,000 $8,000,000 $1,744,481

2009 FY 2010 $1,000,000 $8,000,000 $4,298,067

2010 FY 2011 $1,000,000 $8,000,000 $417,563

2011 FY 2012 $1,000,000 $8,000,000 $2,132,125

2012 FY 2013 $1,000,000 $8,000,000 $1,408,307

2013 FY 2014 $1,000,000 $8,000,000 $812,308

2014 FY 2015 $1,000,000 $8,000,000 $2,021,225

2015 FY 2016 $1,000,000 $8,000,000 $423,159

2016 FY 2017 $1,000,000 $8,000,000 N/A

2017 FY 2018 $1,000,000 $8,000,000 N/A

2018 FY 2019 $1,000,000 $8,000,000 N/A

2019 FY 2020 $1,000,000 $15,000,000 N/A

2020 FY 2021 $1,000,000 $15,000,000 N/A

2021 FY 2022 $1,000,000 $15,000,000 N/A

Total Tax Credits Claimed $13,467,992

**Section 2.** This section would add an appropriately numbered subsection to allow a taxpayer engaged in a port distribution facility in the counties of Allendale, Bamberg, Beaufort, Hampton, Jasper, or Orangeburg to claim a nonrefundable port transportation credit. The credit would be claimed against income taxes or as a credit against employee withholding for its transportation costs in an amount determined by the Council in its sole discretion. Transportation costs are defined as the costs of transporting freight, goods, and materials to and from port facilities in South Carolina.

The maximum amount of port transportation credits allowed to all qualifying taxpayers is limited to the following schedule:

$1,000,000 for the calendar year ending December 31, 2019

$2,000,000 for the calendar year ending December 31, 2020

$3,000,000 for the calendar year ending December 31, 2021, until the port transportation credit expires pursuant to item (6). This item indicates that the port transportation credit expires effective at the end of the calendar year in which a port in Jasper County is opened and is accepting shipments.

The amount of any port transportation credits claimed would be applied against the maximum aggregate amount of $15,000,000 in tax credits allowed to all qualifying taxpayers in a calendar year. Any excess tax credit amounts may be carried forward and claimed against income taxes in the next five succeeding taxable years. Any excess tax credit amounts may also be carried forward and claimed against income tax withholding for the next twenty succeeding taxable quarters.

**Section 3.** This section would add Section 12-36-2140 to define the term “distribution facility” as a port facility as defined in Section 12-6-3375. A “port facility” means any publicly or privately-owned facility located within this State through which cargo is transported by way of a waterborne ship or vehicle to or from destinations outside this State and which handles cargo owned by third parties in addition to cargo owned by the port facility’s owner.

The South Carolina State Ports Authority processed more than 2,300,000 shipping containers in calendar year 2018, and has realized an average annual growth rate of 7.7 percent over the past five years. We expect this growth to continue into the future. By permitting a “distribution facility” to be defined as a “port facility” and thus being permitted to claim a nonrefundable port transportation tax credit, it is not unreasonable to expect that annual capital investments and the hiring of labor at a port distribution facility may increase in the future with taxpayers claiming an additional $1,000,000 in port transportation tax credits per tax year. This bill, therefore, would reduce general fund individual and corporation income taxes and individual income tax withholdings by an estimated $1,000,000 in FY2019-20, an estimated $2,000,000 in FY2020-21, and by an estimated $3,000,000 in FY2021-22, and each fiscal year thereafter until a port is opened and is accepting shipments in Jasper County. This section would not affect other fund revenues or federal fund revenues.

**Section 4.** This act takes effect upon approval by the Governor.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 12‑6‑3375, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE TAX CREDIT FOR A PORT CARGO VOLUME INCREASE, SO AS TO INCREASE THE MAXIMUM AMOUNT OF THE AVAILABLE TAX CREDITS FOR PORT CARGO VOLUME INCREASES, AND TO PROVIDE FOR A PORT TRANSPORTATION CREDIT FOR THE COSTS OF TRANSPORTING FREIGHT, GOODS, AND MATERIALS FROM QUALIFYING FACILITIES LOCATED IN CERTAIN COUNTIES IN SOUTH CAROLINA TO A SOUTH CAROLINA PORT FACILITY; AND BY ADDING SECTION 12‑36‑2140 SO AS TO PROVIDE THAT A PORT FACILITY IS A DISTRIBUTION FACILITY FOR PURPOSES OF CERTAIN SALES TAX EXEMPTIONS.

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

SECTION 1. Section 12‑6‑3375(A)(2) of the 1976 Code is amended to read:

“(2) The maximum amount of tax credits allowed to all qualifying taxpayers pursuant to this section may not exceed ~~eight~~ fifteen million dollars for each calendar year. The credits may be claimed against the taxes imposed pursuant to Sections 12‑6‑530 and 12‑6‑545 and against employee withholdings. The council has sole discretion in allocating the credits provided by this section and must consider the following factors:

(a) the amount of base year port cargo volume;

(b) the total and percentage increase in port cargo volume; and

(c) factors related to the economic benefit of the State or other factors.”

SECTION 2. Section 12‑6‑3375 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

“( )(1) A taxpayer engaged in any of the businesses identified in subsection (A)(1) at a facility located in the counties of Allendale, Bamberg, Barnwell, Beaufort, Hampton, Jasper, or Orangeburg is eligible to claim a port transportation credit in the form of an income tax credit or a credit against employee withholding for its transportation costs in an amount determined by the council in its sole discretion.

(2) For purposes of this subsection, ‘transportation costs’ means the costs of transporting freight, goods, and materials to and from port facilities in South Carolina.

(3) The maximum amount of port transportation credits allowed to all qualifying taxpayers pursuant to this subsection is limited to the following amounts of the fifteen million dollars of credits available under this section:

(a) one million dollars for the calendar year ending December 31, 2019;

(b) two million dollars for the calendar year ending December 31, 2020; and

(c) three million dollars for all calendar years after December 31, 2020, until the port transportation credit expires pursuant to item (6).

(4)(a) If the allocable port transportation credit exceeds the taxpayer’s income tax liability for the taxable year, the excess amount may be carried forward and claimed against income taxes in the next five succeeding taxable years.

(b) If the allocable port transportation credit exceeds the taxpayer’s withholding tax liability for the taxable quarter that is not otherwise refundable pursuant to this title, the excess amount may be carried forward and claimed against withholding liability that is not otherwise refundable pursuant to this title in the next twenty succeeding taxable quarters.

(5)(a) The port transportation credit is allowable to a qualifying taxpayer without regard to whether the taxpayer qualifies for any of the other credits available under this section. A qualifying taxpayer seeking to claim the port transportation credit must submit an application to the council after the calendar year in which the taxpayer seeks to claim the port transportation credit. The application must be made on a form to be prescribed by the council.

(b) To receive the credit the taxpayer shall claim the credit on its income tax or withholding return in a manner prescribed by the department. The department may require a copy of the certification form issued by the council be attached to the return or otherwise provided.

(6) The port transportation credit expires effective at the end of the calendar year in which a port in Jasper County is opened and is accepting shipments.”

SECTION 3. Article 21, Chapter 36, Title 12 of the 1976 Code is amended by adding:

“Section 12‑36‑2140. For purposes of the exemptions set forth in this article, the term ‘distribution facility’ includes, but is not limited to, a port facility as defined in Section 12‑6‑3375.”

SECTION 4. This act takes effect upon approval by the Governor.

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