~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

June 5, 2013

**S. 387**

Introduced by Senators O’Dell, Campbell, Cromer, Hembree, Setzler, McGill, Johnson and Ford

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Read the first time February 14, 2013.

**A** **BILL**

TO AMEND SECTION 12‑10‑95, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CREDIT AGAINST WITHHOLDING FOR RETRAINING, SO AS TO INCREASE THE CREDIT, TO SPECIFY ELIGIBLE EMPLOYEES AND PROGRAMS, TO PROVIDE THAT A BUSINESS MAY NOT CLAIM THE CREDIT IF THE EMPLOYEE IS REQUIRED TO REIMBURSE OR PAY FOR THE COSTS OF THE RETRAINING, TO INCREASE THE MATCH AMOUNT FOR THE BUSINESS, AND TO PROVIDE THE PROGRAMS ARE SUBJECT TO REVIEW BY THE DEPARTMENT OF REVENUE AND THE STATE BOARD OF TECHNICAL AND COMPREHENSIVE EDUCATION; TO AMEND SECTION 12‑10‑105, AS AMENDED, RELATING TO THE ANNUAL FEE FOR A BUSINESS CLAIMING THE CREDIT, SO AS TO PROVIDE THAT THE ANNUAL FEE IS NOT APPLICABLE TO THE RETRAINING CREDIT; AND TO AMEND SECTION 12‑20‑105, AS AMENDED, RELATING TO THE CREDIT AGAINST THE LICENSE TAX FOR CERTAIN INFRASTRUCTURE EXPENSES, SO AS TO PROVIDE THAT AN ELIGIBLE PROJECT MAY BE OWNED OR CONSTRUCTED BY A GOVERNMENTAL ENTITY IF THE PROJECT IS EXPECTED TO CONTRIBUTE TO THE ECONOMIC DEVELOPMENT OF THE GOVERNMENTAL ENTITY, TO FURTHER SPECIFY ELIGIBLE INFRASTRUCTURE, AND TO PROVIDE THAT A GOVERNMENTAL ENTITY MAY SELL THE PROJECT AFTER THE COMPANY PAYS FOR THE INFRASTRUCTURE.

Amend Title To Conform

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

SECTION 1. Section 12‑10‑95 of the 1976 Code, as last amended by Act 353 of 2008, is further amended to read:

“Section 12‑10‑95. (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 ~~the council~~ a technical college, with approval from the State Board for Technical and Comprehensive Education, to claim as a credit against withholding ~~five hundred~~ 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 ~~if~~ 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 ~~two~~ 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) ~~Travel and lodging expenses and wages for retraining participants are not reimbursable.~~ 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 ~~match on a dollar‑for‑dollar basis~~ expend at least one dollar fifty cents on retraining eligible employees for every dollar ~~the amount~~ claimed as a credit against withholding for retraining. ~~When applicable, the total amount of retraining credits and matching funds must be paid to the technical college that provides the training.~~ All training costs, including costs in excess of the retraining credits and matching funds, are the responsibility of the business.

(F) ~~A qualifying business claiming retraining credits pursuant to this section is subject to the reporting and audit requirements in Section 12‑10‑80(A).~~

~~(G)~~ 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.

~~(H)~~(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.

~~(I)~~(H) ~~The council may establish~~ There is hereby established an annual renewal fee of ~~five hundred~~ twohundred fifty dollars to be ~~shared equally with the department for administrative, data collection, reporting, and other obligations of this chapter~~ 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.”

SECTION 2. Section 12‑10‑105 of the 1976 Code, as last amended by Act 145 of 2005, is further amended to read:

“Section 12‑10‑105. 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 ~~ten~~ forty thousand dollars in job retraining credits in one calendar year. The fee is due for each project that is subject to a revitalization ~~or retraining~~ 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 ~~or job retraining credits~~ exceeds ten thousand dollars or job retraining credits exceed forty thousand dollars for that calendar year.”

SECTION 3. Section 12‑20‑105 of the 1976 Code, as last amended by Act 187 of 2012, is further amended to read:

“Section 12‑20‑105. (A) Any company subject to a license tax under Section 12‑20‑100 may claim a credit against its license tax liability for amounts paid in cash to provide infrastructure for an eligible project.

(B)~~(1)~~ To be considered an eligible project for purposes of this section, the project must:

(1) qualify for income tax credits under Chapter 6, Title 12, withholding tax credit under Chapter 10, Title 12, income tax credits under Chapter 14, Title 12, or fees in lieu of property taxes under either Chapter 12, Title 4, Chapter 29, Title 4, or Chapter 44, Title 12; or

(2) be owned or constructed by a governmental entity and used exclusively to attract one or more business enterprises, which are reasonably expected to contribute to the economic development of a governmental entity. For purposes of this section, ‘governmental entity’ means a county, municipality, or special purpose district, or an agency or instrumentality thereof, or an agency or instrumentality of this State.

~~(2)~~ ~~If a project is located in an office, business, commercial, or industrial park, or combination of these, and is used exclusively for economic development and is owned or constructed by a county, political subdivision, or agency of this State when the qualifying improvements are paid for, the project does not have to meet the qualifications of item (1) to be considered an eligible project. As provided in subsection (C)(4), the county or political subdivision may sell all or a portion of the business or industrial park.~~

(C) For the purpose of this section, ‘infrastructure’ means improvements for water, wastewater, hydrogen fuel, sewer, gas, steam, electric energy, and communication services made to a building or land that are considered necessary, suitable, or useful to an eligible project. These improvements include, but are not limited to:

(1) improvements to both public or private water and sewer systems;

(2) improvements to both public or private electric, natural gas, and telecommunications systems including, but not limited to, ones owned or leased by an electric cooperative, electric utility, or electric supplier, as defined in Chapter 27, Title 58;

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

(4) ~~for a qualifying project under subsection (B)(2), infrastructure improvements include shell buildings, incubator buildings whose ownership is retained by the county, political subdivision, or agency of the State and the purchase of land for an office, business, commercial, or industrial park, or combination of these, used exclusively for economic development which is owned or constructed by a county, political subdivision, or agency of this State. The county, political subdivision, or agency may sell the shell building or all or a portion of the park at any time after the company has paid in cash to provide the infrastructure for an eligible project~~ construction, refurbishment and upfit of both the interior and exterior of new or existing buildings and the purchase of land;

(5) ~~for a qualifying project pursuant to subsection (B)(2), infrastructure improvements also include~~ due diligence expenditures relating to environmental conditions made by a ~~county or political subdivision~~ governmental entity after it has acquired contractual rights to an industrial park. Due diligence expenditures include such items as Phase I and II studies and environmental or archeological studies required by state or federal statutes or guidelines or similar lender requirements. Contractual rights include options to purchase real property or other similar contractual rights acquired before the ~~county or political subdivision~~ governmental entity files a deed to the property with the Register of Mesne Conveyances; ~~and~~

(6) ~~for a qualifying project pursuant to subsection (B)(2),~~ all site preparation costs ~~include, but are not limited to:~~

~~(a) clearing, grubbing, grading, and stormwater retention; and~~

~~(b) refurbishment of buildings that are owned or controlled by a county or municipality and are used exclusively for economic development purposes~~ including, but not limited to, clearing, grubbing, grading, and storm water retention; and

(7) expenditures relating to compliance with the site certification requirements of the South Carolina Department of Commerce, including, but not limited to, a Phase I environmental study, wetlands delineation, endangered plant or animal species study, an archeological, historic, and cultural study, geotechnical study, topographic survey with two foot contours, and an engineering estimate for clearing, grubbing, and grading.

(D) A company is not allowed the credit provided by this section for actual expenses it incurs in the construction and operation of any building or infrastructure it owns, leases, manages, or operates.

(E) The maximum aggregate credit that may be claimed in any tax year by a single company is four hundred thousand dollars.

(F) The credits allowed by this section may not reduce the license tax liability of the company below zero. If the applicable credit originally earned during a taxable year exceeds the liability and is otherwise allowable under subsection (D), the amount of the excess may be carried forward to the next taxable year.

(G) For South Carolina income tax and license purposes, a company that claims the credit allowed by this section is ineligible to claim the credit allowed by Section 12‑6‑3420.

(H) By March first of each year, the Department of Revenue shall issue a report to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Secretary of the Department of Commerce outlining the history of the credit allowed pursuant to this section. The report shall include the amount of credit allowed pursuant to this section and the types of infrastructure provided to eligible projects.

(I) A governmental entity may transfer or sell an eligible project at any time after the company eligible to claim a credit against its license tax liability has paid, in cash, to provide the infrastructure for an eligible project.”

SECTION 4. A. Section 12‑20‑105(B) of the 1976 Code, as last amended by Act 290 of 2010, is further amended by adding a new item at the end to read:

“(3) In a county in which at least five million dollars in state accommodations tax imposed pursuant to Section 12‑36‑920 has been collected in at least one fiscal year, a county or municipality owned multiuse sports and recreational complex is considered an ‘eligible project’ promoting economic development for all purposes of the credit allowed pursuant to this section.”

B. Section 12‑20‑105 of the 1976 Code, as last amended by Act 187 of 2012, is further amended by adding a new subsection at the end to read:

“(I) For the purposes of this section, for a qualifying project pursuant to subsection (B)(3), infrastructure includes all applicable provisions of subsection (C) applying to the development and construction of the sports and recreational complex and further includes costs of land acquisition and preparation, construction of facilities and venues in the complex, improvements and upgrades to existing facilities and venues, and any other capital costs incurred in the acquisition, construction, and operation of the complex.”

C. This Section takes effect upon approval by the Governor and applies for contributions made for a multiuse sports and recreational complex placed in service after 2011.

SECTION 5. This act takes effect upon approval by the Governor and applies to tax years beginning after December 31, 2012.

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