~~Indicates Matter Stricken~~

Indicates New Matter

AS PASSED BY THE SENATE

May 9, 2019

**H. 4243**

Introduced by Reps. Simrill, Lucas, Pope, G.M. Smith, Rutherford, King, Felder, Bryant, D.C. Moss, B. Newton, Ligon, V.S. Moss, Brown, W. Cox, Jefferson, R. Williams, Calhoon, McKnight, Spires, Elliott, Gilliam, West, Atkinson, Bales, Gilliard, Blackwell, B. Cox and Anderson

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Read the first time March 27, 2019.

**A** **BILL**

TO AMEND SECTION 12‑6‑3360, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE JOB TAX CREDIT, SO AS TO PROVIDE FOR A PROFESSIONAL SPORTS TEAM; TO AMEND SECTION 4‑9‑30, RELATING TO THE DESIGNATION OF POWERS UNDER THE ALTERNATE FORMS OF GOVERNMENT, SO AS TO PROHIBIT THE LEVY OF COUNTY LICENSE FEES AND TAXES ON A PROFESSIONAL SPORTS TEAM; TO AMEND SECTION 5‑7‑30, RELATING TO POWERS OF A MUNICIPALITY, SO AS TO PROHIBIT THE LEVY OF A BUSINESS LICENSE TAX ON A PROFESSIONAL SPORTS TEAM; AND BY ADDING SECTION 5‑3‑20 SO AS TO PROVIDE THAT THE REAL PROPERTY OWNED BY A PROFESSIONAL SPORTS TEAM MAY NOT BE ANNEXED BY A MUNICIPALITY WITHOUT PRIOR WRITTEN CONSENT OF THE PROFESSIONAL SPORTS TEAM.

Amend Title To Conform

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

SECTION 1. Section 12‑6‑3360(A) and (M) of the 1976 Code is amended to read:

“(A) Taxpayers that operate manufacturing, tourism, processing, agricultural packaging, warehousing, distribution, research and development, corporate office, qualifying service‑related facilities, agribusiness operations, extraordinary retail establishment, professional sports teams, and qualifying technology intensive facilities, and banks as defined pursuant to this title are allowed an annual jobs tax credit as provided in this section. In addition, taxpayers that operate retail facilities and service‑related industries qualify for an annual jobs tax credit in counties designated as ‘Tier IV’. As used in this section, ‘corporate office’ includes general contractors licensed by the South Carolina Department of Labor, Licensing and Regulation. Credits pursuant to this section may be claimed against income taxes imposed by Section 12‑6‑510 or 12‑6‑530, bank taxes imposed pursuant to Chapter 11 of this title, and insurance premium taxes imposed pursuant to Chapter 7, Title 38, and are limited in use to fifty percent of the taxpayer’s South Carolina income tax, bank tax, or insurance premium tax liability. In computing a tax payable by a taxpayer pursuant to Section 38‑7‑90, the credit allowable pursuant to this section must be treated as a premium tax paid pursuant to Section 38‑7‑20.

(M) As used in this section:

(1) ‘Taxpayer’ means a sole proprietor, partnership, corporation of any classification, limited liability company, or association taxable as a business entity that is subject to South Carolina taxes as contained in Section 12‑6‑510, Section 12‑6‑530, Chapter 11, Title 12, or Chapter 7, Title 38.

(2) ‘Appropriate agency’ means the Department of Revenue, except that for taxpayers subject to the premium tax imposed by Chapter 7, Title 38, it means the Department of Insurance.

(3) ‘New job’ means a job created in this State at the time a new facility or an expansion is initially staffed. Except as otherwise provided in this item, the term does not include a job created when an employee is shifted from an existing location in this State to a new or expanded facility whether the transferred job is from, or to, a facility of the taxpayer or a related person. However, for a professional sports team, ‘new job’ means all jobs located at the professional sports team park regardless of whether an employee previously worked at an existing location in this State before 2019 as an employee of the same professional sports team. A related person includes any entity or person that bears a relationship to the taxpayer as described in Section 267 of the Internal Revenue Code. However, this exclusion of a new job created by employee shifting does not extend to a job created at a new or expanded facility located in a county in which is located an ‘applicable federal facility’ as defined in Section 12‑6‑3450(A)(1)(b). The term ‘new job’ also includes an existing job at a facility of an employer which is reinstated after the employer has rebuilt the facility due to:

(a) its destruction by accidental fire, natural disaster, or act of God;

(b) involuntary conversion as a result of condemnation or exercise of eminent domain by the State or any of its political subdivisions or by the federal government.

Destruction for purposes of this provision means that more than fifty percent of the facility was destroyed. For purposes of this section, involuntary conversion as a result of condemnation or exercise of eminent domain includes a legally binding agreement for the purchase of a facility of an employer entered into between an employer and the State of South Carolina or a political subdivision of the State under threat of exercise of eminent domain by the State or its political subdivision.

The year of reinstatement is the year of creation of the job. All reinstated jobs qualify for the credit pursuant to this section, and a comparison is not required to be made between the number of full‑time jobs of the employer in the taxable year and the number of full‑time jobs of the employer with the corresponding period of the prior taxable year.

(4) ‘Full‑time’ means a job requiring a minimum of thirty‑five hours of an employee’s time a week for the entire normal year of company operations or a job requiring a minimum of thirty‑five hours of an employee’s time for a week for a year in which the employee was hired initially for or transferred to the South Carolina facility. For members of a professional sports team, ‘full‑time’ means a job requiring a minimum of one hundred eighty days of an employee’s time a year of which at least eighty percent of such days must be spent at a professional sports team park located in South Carolina. For the purposes of this section, two half‑time jobs are considered one full‑time job. A ‘half‑time job’ is a job requiring a minimum of twenty hours of an employee’s time a week for the entire normal year of the company’s operations or a job requiring a minimum of twenty hours of an employee’s time a week for a year in which the employee was hired initially for or transferred to the South Carolina facility. For agricultural packaging and agribusiness operations, seasonal workers may be considered a full‑time employee; however, a seasonal employee only counts as a fraction of a full‑time worker, with the numerator being the number of hours worked a week multiplied by the number of weeks worked, and the denominator being the number one thousand eight hundred twenty.

(5) ‘Manufacturing facility’ means an establishment where tangible personal property is produced or assembled.

(6) ‘Processing facility’ means an establishment that prepares, treats, or converts tangible personal property into finished goods or another form of tangible personal property. The term includes a business engaged in processing agricultural, aquacultural, or maricultural products and specifically includes meat, poultry, and any other variety of food processing operations. It does not include an establishment in which retail sales of tangible personal property are made to retail customers.

(7) ‘Warehousing facility’ means an establishment where tangible personal property is stored but does not include any establishment where retail sales of tangible personal property are made to retail customers.

(8) ‘Distribution facility’ means an establishment where shipments of tangible personal property are processed for delivery to customers. The term does not include an establishment where retail sales of tangible personal property are made to retail customers on more than twelve days a year except for a facility which processes customer sales orders by mail, telephone, or electronic means, if the facility also processes shipments of tangible personal property to customers and if at least seventy‑five percent of the dollar amount of goods sold through the facility are sold to customers outside of South Carolina. Retail sales made inside the facility to employees working at the facility are not considered for purposes of the twelve‑day and seventy‑five percent limitation. For purposes of this definition, ‘retail sale’ and ‘tangible personal property’ have the meaning provided in Chapter 36 of this title.

(9) ‘Research and development facility’ means an establishment engaged in laboratory, scientific, or experimental testing and development related to new products, new uses for existing products, or improving existing products. The term does not include an establishment engaged in efficiency surveys, management studies, consumer surveys, economic surveys, advertising, promotion, banking, or research in connection with literary, historical, or similar projects.

(10) ‘Corporate office facility’ means a corporate headquarters that meets the definition of a ‘corporate headquarters’ contained in Section 12‑6‑3410(J)(1). The corporate headquarters of a general contractor licensed by the South Carolina Department of Labor, Licensing and Regulation qualifies even if it is not a regional or national headquarters as those terms are defined in Section 12‑6‑3410(J)(1).

(11) The terms ‘retail sales’ and ‘tangible personal property’ for purposes of this section are defined in Chapter 36 of this title.

(12) ‘Tourism facility’ means an establishment used for a theme park; amusement park; historical, educational, or trade museum; botanical garden; cultural center; theater; motion picture production studio; convention center; arena; auditorium; or a spectator or participatory sports facility; and similar establishments where entertainment, education, or recreation is provided to the general public. Tourism facility also includes new hotel and motel construction, except that to qualify for the credits allowed by this section and regardless of the county in which the facility is located, the number of new jobs that must be created by the new hotel or motel is twenty or more. It does not include that portion of an establishment where retail merchandise or retail services are sold directly to retail customers.

(13) ‘Qualifying service‑related facility’ means:

(a) an establishment engaged in an activity or activities listed under the North American Industry Classification System Manual (NAICS) Section 62, subsectors 621, 622, and 623, or Sector 4881, subsector 488190; or

(b) a business, other than a business engaged in legal, accounting, banking, or investment services (including a business identified under NAICS Section 55) or retail sales, which has a net increase of at least:

(i) one hundred seventy‑five jobs at a single location;

(ii) one hundred fifty jobs at a single location comprised of a building or portion of building that has been vacant for at least twelve consecutive months prior to the taxpayer’s investment;

(iii) one hundred jobs at a single location and the jobs have an average cash compensation level of more than one and one‑half times the lower of state per capita income or per capita income in the county where the jobs are located;

(iv) fifty jobs at a single location and the jobs have an average cash compensation level of more than twice the lower of state per capita income or per capita income in the county where the jobs are located; or

(v) twenty‑five jobs at a single location and the jobs have an average cash compensation level of more than two and one‑half times the lower of state per capita income or per capita income in the county where the jobs are located.

A taxpayer shall use the most recent per capita income data available as of the end of the taxable year in which the jobs are filled. Determination of the required number of jobs is in accordance with the monthly average described in subsection (F).

(14) ‘Technology intensive facility’ means:

(a) a facility at which a firm engages in the design, development, and introduction of new products or innovative manufacturing processes, or both, through the systematic application of scientific and technical knowledge. Included in this definition are the following North American Industrial Classification Systems Codes, NAICS, published by the Office of the Management and Budget of the federal government:

(i) 5114 database and directory publishers;

(ii) 5112 software publishers;

(iii) 54151 computer systems design and related services;

(iv) 541511 custom computer programming services;

(v) 541512 computer systems design services;

(vi) 541711 research and development in biotechnology; 2007 NAICS;

(vii) 541712 research and development in physical, engineering, and life sciences; 2007 NAICS;

(viii) 518210 data processing, hosting, and related services;

(ix) 9271 space research and technology; or

(b) a facility primarily used for one or more activities listed under the 2002 version of the NAICS Codes 51811 (Internet Service Providers and Web Search Portals).

(15) ‘Extraordinary retail establishment’ as defined in Sections 12‑21‑6520 and 12‑21‑6590.

(16) ‘Agricultural packaging’ means the technology of enclosing or protecting or preserving agricultural products for distribution, storage, sale, and use. Packaging also refers to the process of design, evaluation, and production of packages used for agricultural products. Packaging can be described as a coordinated system of preparing agricultural goods for transport, warehousing, logistics, sale, and end use.

(17) ‘Professional sports team’ means a professional sports team or club included in a professional league, such as the National Football League, National Association for Stock Car Racing, or the National Basketball Association, primarily engaged in participating in live sporting events before a paying audience with an annual payroll for federal tax purposes of not less than one hundred ninety million dollars and not less than one hundred fifty full-time employees in this State.

(18) ‘Professional sports team park’ means a sports facility designed for use primarily as a professional park or stadium. Such a facility may include, without limitation, practice fields and features such as parking areas and facilities, office facilities for team use or other users of the facility as authorized by the professional sports team, and other ancillary facilities necessary for the sports facility. Such a facility also includes the landscaped grounds surrounding the park, stadium, and ancillary facilities.

(19) ‘Members of a professional sports team’ means active players, players on the disabled list, and any other persons required to travel and who do travel with and perform services on behalf of the professional sports team on a regular basis. This includes coaches, managers, and trainers.”

SECTION 2. Section 4‑9‑30(12) of the 1976 Code is amended to read:

“(12) to levy uniform license taxes upon persons and businesses engaged in or intending to engage in a business, occupation, or profession, in whole or in part, within the county but outside the corporate limits of a municipality except those persons who are engaged in the profession of teaching or who are ministers of the gospel and rabbis, except persons and businesses acting in the capacity of telephone, telegraph, gas and electric utilities, suppliers, or other utility regulated by the Public Service Commission and except an entity which is exempt from license tax under another law or a subsidiary or affiliate of any such exempt entity. No county license fee or tax may be levied on insurance companies. No county license fee or tax may be levied on a professional sports team as defined in Section 12‑6‑3360(M)(17). The license tax must be graduated according to the gross income of the person or business taxed. A business engaged in making loans secured by real estate is subject to the license tax only if it has premises located in the county but outside the corporate limits of a municipality. If the person or business taxed pays a license tax to another county or to a municipality, the gross income for the purpose of computing the tax must be reduced by the amount of gross income taxed in the other county or municipality.”

SECTION 3. Section 5‑7‑30 of the 1976 Code is amended to read:

“Section 5‑7‑30. Each municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it, including the authority to levy and collect taxes on real and personal property and as otherwise authorized in this section, make assessments, and establish uniform service charges relating to them; the authority to abate nuisances; the authority to provide police protection in contiguous municipalities and in unincorporated areas located not more than three miles from the municipal limits upon the request and agreement of the governing body of such contiguous municipality or the county, including agreement as to the boundaries of such police jurisdictional areas, in which case the municipal law enforcement officers shall have the full jurisdiction, authority, rights, privileges, and immunities, including coverage under the workers’ compensation law, which they have in the municipality, including the authority to make arrests, and to execute criminal process within the extended jurisdictional area; provided, however, that this shall not extend the effect of the laws of the municipality beyond its corporate boundaries; grant franchises for the use of public streets and make charges for them; grant franchises and make charges for the use of public beaches; engage in the recreation function; levy a business license tax on gross income, but a wholesaler delivering goods to retailers in a municipality is not subject to the business license tax unless he maintains within the corporate limits of the municipality a warehouse or mercantile establishment for the distribution of wholesale goods; and a business engaged in making loans secured by real estate is not subject to the business license tax unless it has premises located within the corporate limits of the municipality and no entity which is exempt from the license tax under another law nor a subsidiary or affiliate of an exempt entity is subject to the business license tax; and a business engaged in operating a professional sports team as defined in Section 12‑6‑3360(M)(17) is not subject to the business license tax; borrow in anticipation of taxes; and pledge revenues to be collected and the full faith and credit of the municipality against its note and conduct advisory referenda. The municipal governing body may fix fines and penalties for the violation of municipal ordinances and regulations not exceeding five hundred dollars or imprisonment not exceeding thirty days, or both. If the person or business taxed pays a business license tax to a county or to another municipality where the income is earned, the gross income for the purpose of computing the tax must be reduced by the amount of gross income taxed in the other county or municipality.

For the purpose of providing and maintaining parking for the benefit of a downtown commercial area, a municipality may levy a surtax upon the business license of a person doing business in a designated area in an amount not to exceed fifty percent of the current yearly business license tax upon terms and conditions fixed by ordinance of the municipal council. The area must be designated by council only after a petition is submitted by not less than two‑thirds of the persons paying a business license tax in the area and who paid not less than one‑half of the total business license tax collected for the preceding calendar year requesting the designation of the area. The business within the designated area which is providing twenty‑five or more parking spaces for customer use is required to pay not more than twenty‑five percent of a surtax levied pursuant to the provisions of this paragraph.”

SECTION 4. Chapter 3, Title 5 of the 1976 Code is amended by adding:

“Section 5‑3‑20. No municipality may annex, under the provisions of this chapter, any real property owned by a professional sports team as defined in Section 12‑6‑3360(M)(17) without prior written consent of the professional sports team.”

SECTION 5. Section 1-3-210 of the 1976 Code is amended to read:

“Section 1-3-210. (A)(1) ~~During the recess of the Senate, vacancy which occurs in an~~ If an office filled by an appointment of the Governor with the advice and consent of the Senate becomes vacant during the interim period between regular legislative sessions, then the office may be filled by an interim appointment of the Governor only if the Governor acts to fill the office during the same interim period during which the office became vacant. The Governor must report the interim appointment to the Senate and must forward a formal appointment at its next ensuing regular session. If the Senate votes to reject an interim appointee’s formal appointment during the next ensuing regular session then the office is immediately vacant and may not be filled by another interim appointment.

(2) If the Senate does not advise and consent ~~thereto~~ to the formal appointment prior to ~~sine die adjournment~~ the second Thursday in May following the interim period during which the interim appointment was made ~~of the next ensuing regular session~~, the office shall be vacant and the interim appointment shall not serve in hold over status notwithstanding any other provision of law to the contrary. The Governor may not make a subsequent interim appointment for the same vacancy. ~~A subsequent interim appointment of a different person to a vacancy created by a failure of the Senate to grant confirmation to the original interim appointment shall expire on the second Tuesday in January following the date of such subsequent interim appointment and the office shall be vacant.~~

(B) The Governor’s authority to make an interim appointment pursuant to subsection (A) terminates when the General Assembly convenes the regular legislative session following the interim period between regular legislative sessions during which the office became vacant.”

SECTION 6. Article 5, Chapter 3 of Title 1 of the 1976 Code is amended by adding:

“Section 1-3-211. (A) If a vacancy exists in the head of an agency that requires appointment by the Governor with the advice and consent of the Senate, the Governor may designate an employee of the agency as the acting head of the agency if the person designated was employed by the agency for at least twelve consecutive months prior to the date upon which the vacancy occurred. A person designated as an acting agency head pursuant to this subsection may serve as the acting agency head no longer than the second Thursday in May following date upon which the vacancy occurred.

(B)(1) A person nominated by the Governor to head an agency that requires the advice and consent of the Senate who did not receive the advice and consent of the Senate, or whose nomination was withdrawn, may not be designated by the Governor as the acting head of the agency to which the person was nominated.

(2) A person nominated by the Governor to head an agency that requires the advice and consent of the Senate who also had been previously designated as the acting head of the agency who did not receive the advice and consent of the Senate, or whose nomination was withdrawn, may no longer exercise any authority or duties of that agency.”

SECTION 7. Section 12-6-3360 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

“( ) If a professional sports team claims the credit allowed by this section, then the Department of Revenue shall report the net number of new full‑time jobs created in this State by the professional sports team, the average cash compensation of the new full‑time jobs created by the professional sports team, and the aggregated residency status of the employee or employees filling the new full‑time jobs created by the professional sports team. The department shall provide the report to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Governor beginning on May first of the year immediately following the year in which the first new full‑time job is created by the professional sports team, and on May first each year thereafter. In reporting statistics pursuant to this subitem, the department must comply with the requirements of Section 12‑54‑240(B)(1).”

SECTION 8. Section 11-9-805 of the 1976 Code, as amended by Act 246 of 2018, is further amended by adding an appropriately numbered new item to read:

“( ) ‘Tax expenditure’ means an amount of state revenue unavailable for general fund appropriation when the loss of revenue is attributable to a provision of the South Carolina Code of Laws which allow a special exclusion, exemption, or deduction from gross income, which provide a special credit, a preferential rate of tax, or a deferral of tax liability or which allocate or distribute state funds pursuant to an incentive program or fund.”

SECTION 9. Section 11-9-830 of the 1976 Code, as last amended by Act 246 of 2018, is further amended by adding an appropriately numbered new item to read:

“( ) compile and report to the General Assembly, not later than the first day of March each year, a list of each individual tax expenditure from the prior fiscal year and the estimated tax expenditures for the current fiscal year. The report must indicate the specific enactment and program which authorized the expenditure and apply to all tax expenditures in excess of one hundred thousand dollars.”

SECTION 10. Section 12‑6‑3360(C) of the 1976 Code is amended to read:

“(C)(1) Subject to the conditions provided in subsection (M) of this section, a job tax credit is allowed for five years beginning in year two after the creation of the job for each new full‑time job created if the minimum level of new jobs is maintained. The credit is available to taxpayers that increase employment by ten or more full‑time jobs, and no credit is allowed for the year or any subsequent year in which the net employment increase falls below the minimum level of ten. The amount of the initial job credit is as follows:

(a) ~~Eight~~ twenty‑five thousand dollars for each new full‑time job created in ‘Tier IV’ counties.

(b) ~~Four~~ twenty thousand two hundred fifty dollars for each new full‑time job created in ‘Tier III’ counties.

(c) two thousand seven hundred fifty dollars for each new full‑time job created in ‘Tier II’ counties.

(d) one thousand five hundred dollars for each new full‑time job created in ‘Tier I’ counties.

(2)(a) Subject to the conditions provided in subsection (M) of this section, a job tax credit is allowed for five years beginning in year two after the creation of the job for each new full‑time job created if the minimum level of new jobs is maintained. The credit is available to taxpayers with ninety‑nine or fewer employees that increase employment by two or more full‑time jobs, and may be received only if the gross wages of the full‑time jobs created pursuant to this section amount to a minimum of one hundred twenty percent of the county’s or state’s average per capita income, whichever is lower. No credit is allowed for the year or any subsequent year in which the net employment increase falls below the minimum level of two. The amount of the initial job credit is as described in subsection (C)(1).

(b) If the taxpayer with ninety‑nine or fewer employees increases employment by two or more full‑time jobs but the gross wages do not amount to a minimum one hundred twenty percent of the county’s or state’s average per capita income, whichever is lower, then the amount of the initial job credit is ~~as follows:~~

~~(i) Four thousand dollars for each new full‑time job created in “Tier IV” counties.~~

~~(ii) Two thousand one hundred twenty‑five dollars for each new full‑time job created in “Tier III” counties.~~

~~(iii) One thousand three hundred seventy‑five dollars for each new full‑time job created in “Tier II” counties.~~

~~(iv) Seven hundred fifty dollars for each new full‑time job created in “Tier I” counties~~ reduced by fifty percent.”

SECTION 11. A. Section 12‑6‑3360 of the 1976 Code is amended by adding a subsection at the end to read:

“(O) The provisions of this section that specifically apply to a professional sports team only apply if that specific professional sports team creates the new full‑time jobs in this State as specified in subsection (M)(17) by July 1, 2022, and the professional sports team otherwise meet the requirements to claim the credit allowed by this section. However, this subsection does not apply to a professional sports team that entered into a revitalization agreement with the South Carolina Coordinating Council for Economic Development before July 1, 2022.”

B. The provisions of Sections 4‑9‑30 and 5‑7‑30 relating to a professional sports team, and the provisions of Section 5‑3‑20 only apply so long as the job and payroll provisions of Section 12‑6‑3360(M)(17) and (O) continue to be met by the professional sports team.

SECTION 12. Chapter 10, Title 12 of the 1976 Code is amended by adding:

“Section 12‑10‑120. No credit may be awarded pursuant to this chapter until the minimum job requirement set forth in Section 12-6-3360(M)(17) has been fully met. Further the council may not award any partial credit if the same minimum job requirement is not fully met. The provisions of this section only apply to a professional sports team pursuant to Section 12‑6‑3360.”

SECTION 13. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 14. This act takes effect upon approval by the Governor.

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