

HOUSE
AMENDMENT

THIS AMENDMENT
ADOPTED

ALLEN/TURNER
FEBRUARY 28, 2019

CLERK OF THE HOUSE

____ PROPOSES THE FOLLOWING AMENDMENT No. TO H.
3778 (COUNCIL\SA\3778C001.RT.SA19):

REFERENCE IS TO THE BILL AS INTRODUCED.

**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.

REPORT OF THE SALES & USE TAX AND INCOME TAX SUBCOMMITTEE

(Clemmons, Hosey, Stavrinakis, Whitmire & Moss - Staff Contact: Michael Jackson)

HOUSE BILL 3778

H. 3778 -- Reps. Lucas, G.M. Smith, Sandifer, Simrill, Murphy, Weeks, Pope, McCoy and Hayes: 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.

Received by Ways and Means: January 29, 2019

Summary of Bill:

South Carolina law provides a tax credit to a taxpayer engaged in warehousing, freight forwarding, freight handling, goods processing, cross-docking, transloading, wholesaling of goods or distribution that uses South Carolina port facilities and increases its port cargo volume at these facilities by at least 5% in a calendar year over its base year port cargo volume. The credit may be claimed against corporate income taxes or employee withholdings under South Carolina Code Chapter 8 Title 12.

Currently, the Port Volume Tax Credit (PVTC) is capped at \$8 million annually. H. 3778 increases the maximum amount of the available tax credits for port cargo volume from \$8 million to \$15 million. Additionally, within the \$15 million PVTC, up to \$3 million would be set aside (phased in over three years) for a new Transportation Credit. The credit is intended to incentivize the use of an in-state port facility when an out-of-state port is more economically located for a company.

"THE BELOW CONSTITUTED SUMMARY IS PREPARED BY THE STAFF OF THE SOUTH CAROLINA HOUSE OF REPRESENTATIVES AND IS NOT THE EXPRESSION OF THE LEGISLATION'S SPONSOR(S) OR THE HOUSE OF REPRESENTATIVES. IT IS STRICTLY FOR THE INTERNAL USE AND BENEFIT OF MEMBERS OF THE HOUSE OF REPRESENTATIVES AND IS NOT TO BE CONSTRUED BY A COURT OF LAW AS AN EXPRESSION OF LEGISLATIVE INTENT".

Estimated Revenue Impact:

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.

H. 3778 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 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 bill would not affect Other Fund revenues or Federal Fund revenues.

Subcommittee Recommendation:

Favorable with amendment



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
(803)734-0640 • RFA.SC.GOV/IMPACTS

Bill Number: H. 3778 Introduced on January 29, 2019
Author: Lucas
Subject: Port Cargo Volume Tax Credit
Requestor: House Ways and Means
RFA Analyst(s): R. Martin
Impact Date: February 27, 2019

Fiscal Impact Summary

This bill 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 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 bill would not affect Other Fund revenues or Federal Fund revenues.

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 Year | Fiscal Year | Maximum Credit Single Taxpayer | Maximum Credit All Taxpayers | Aggregate Credits 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 |

Notes: N/A - Not Available.

Sources: Board of Economic Advisors, S.C. Department of Revenue, Columbia, S.C.

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.

Local Expenditure

N/A

Local Revenue

N/A



Frank A. Rainwater, Executive Director

South Carolina General Assembly
123rd Session, 2019-2020

H. 3778

STATUS INFORMATION

General Bill

Sponsors: Reps. Lucas, G.M. Smith, Sandifer, Simrill, Murphy, Weeks, Pope, McCoy, Hayes, Clary, Stringer, Cobb-Hunter, Bannister, Elliott, B. Cox and Morgan

Document Path: I:\council\bill\bh\7153dg19.docx

Companion/Similar bill(s): 439

Introduced in the House on January 29, 2019

Currently residing in the House Committee on **Ways and Means**

Summary: Tax credit, port cargo volume increase

HISTORY OF LEGISLATIVE ACTIONS

| <u>Date</u> | <u>Body</u> | <u>Action Description with journal page number</u> |
|-------------|-------------|---|
| 1/29/2019 | House | Introduced and read first time (<u>House Journal-page 14</u>) |
| 1/29/2019 | House | Referred to Committee on Ways and Means (<u>House Journal-page 14</u>) |
| 1/30/2019 | House | Member(s) request name added as sponsor: Clary, Stringer |
| 1/31/2019 | House | Member(s) request name added as sponsor: Cobb-Hunter, W.Cox, Bannister |
| 2/12/2019 | House | Member(s) request name added as sponsor: Elliott, B.Cox, Morgan |

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VERSIONS OF THIS BILL

1/29/2019

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A BILL

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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.

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

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

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“(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:

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- (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.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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