~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 25, 2012

**S. 1409**

Introduced by Senator Alexander

S. Printed 4/25/12--S.

Read the first time April 10, 2012.

**THE COMMITTEE ON FINANCE**

To whom was referred a Bill (S. 1409) to amend Section 6‑34‑40, as amended, Code of Laws of South Carolina, 1976, relating to tax credits for rehabilitation expenses, so as to clarify, etc., respectfully

**REPORT:**

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

HUGH K. LEATHERMAN, SR. for Committee.

**A** **BILL**

TO AMEND SECTION 6‑34‑40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO TAX CREDITS FOR REHABILITATION EXPENSES, SO AS TO CLARIFY THAT THE CREDIT MAY BE TAKEN AGAINST FRANCHISE TAXES ON BANKS; TO AMEND SECTION 12‑4‑320, AS AMENDED, RELATING TO POWERS AND DUTIES OF THE DEPARTMENT OF REVENUE, SO AS TO ALLOW THE DEPARTMENT TO GRANT RELIEF PERIODS GRANTED BY THE INTERNAL REVENUE SERVICE; TO AMEND SECTION 12‑6‑50, AS AMENDED, RELATING TO INTERNAL REVENUE CODE SECTIONS SPECIFICALLY NOT ADOPTED, SO AS TO NOT ADOPT SECTION 7508; TO AMEND SECTION 12‑6‑590, RELATING TO THE TREATMENT OF “S” CORPORATIONS FOR TAX PURPOSES, SO AS TO IMPOSE A TAX ON CERTAIN INCOME IF THE INTERNAL REVENUE CODE IMPOSES A SIMILAR TAX; TO AMEND SECTION 12‑6‑3360, AS AMENDED, RELATING TO THE JOBS TAX CREDIT, SO AS TO AMEND THE DEFINITION OF “NEW JOB”; TO AMEND SECTION 12‑6‑3535, AS AMENDED, RELATING TO THE INCOME TAX CREDIT FOR REHABILITATION EXPENSES, SO AS TO CLARIFY THAT THE CREDIT MAY BE TAKEN AGAINST FRANCHISE TAXES ON BANKS; TO AMEND SECTION 12‑6‑3630, RELATING TO INCOME TAX CREDITS FOR HYDROGEN RESEARCH CONTRIBUTIONS, SO AS TO CLARIFY THAT THE CREDIT MAY BE TAKEN AGAINST FRANCHISE TAXES ON BANKS; TO AMEND SECTION 12‑6‑4910, AS AMENDED, RELATING TO THE REQUIREMENT TO FILE AN INCOME TAX RETURN, SO AS TO INCREASE THE STANDARD DEDUCTION FOR INDIVIDUALS OVER SIXTY‑FIVE AS PROVIDED IN THE INTERNAL REVENUE CODE; TO AMEND SECTION 12‑37‑220, AS AMENDED, RELATING TO PROPERTY TAX EXEMPTIONS, SO AS TO CORRECT A CROSS‑REFERENCE; TO AMEND SECTION 12‑43‑260, RELATING TO COUNTIES WILFUL FAILURE TO COMPLY WITH THE ASSESSMENT PROGRAM, SO AS TO PROVIDE THAT THE DEPARTMENT SHALL MAKE A DETERMINATION THAT IS SUBJECT TO REVIEW BY THE ADMINISTRATIVE LAW COURT; TO AMEND SECTION 12‑44‑110, AS AMENDED, RELATING TO FEE IN LIEU OF TAX, SO AS TO UPDATE A TERM; TO AMEND SECTION 12‑54‑240, AS AMENDED, RELATING TO THE DISCLOSURE OF RECORDS FILED WITH THE DEPARTMENT, SO AS TO PROVIDE THAT IN ORDER FOR A CONVICTION FOR UNLAWFULLY DIVULGING RECORDS, A PERSON MUST WILFULLY DIVULGE, AND TO PROVIDE THAT PRIOR TO DISMISSING AN EMPLOYEE FOR A VIOLATION, THE EMPLOYEE MUST BE CONVICTED; TO AMEND SECTION 12‑60‑50, AS AMENDED, RELATING TO THE OCCURRENCE OF A FILING PERIOD ENDING ON A HOLIDAY, SO AS TO RECOGNIZE A HOLIDAY RECOGNIZED BY THE INTERNAL REVENUE SERVICE; TO AMEND SECTION 12‑60‑90, AS AMENDED, RELATING TO THE ADMINISTRATIVE TAX PROCESS, SO AS TO CORRECT CROSS‑REFERENCES AND FURTHER DEFINE TERMS; TO AMEND SECTION 12‑65‑30, AS AMENDED, RELATING TO THE CREDIT FOR EXPENSES RELATED TO THE REHABILITATION OF A TEXTILE MILL, SO AS TO CLARIFY THAT THE CREDIT MAY BE TAKEN AGAINST FRANCHISE TAXES ON BANKS; AND TO AMEND SECTION 44‑43‑1360, AS AMENDED, RELATING TO ADMINISTRATIVE EXPENSES FOR DONATE LIFE SOUTH CAROLINA, SO AS TO CORRECT A CROSS‑REFERENCE.

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

SECTION 1. Section 6‑34‑40(A)(2) of the 1976 Code is amended to read:

“(2) a credit against any state income taxes or franchise taxes on banks imposed pursuant to Chapter 11, Title 12, imposed equal to ten percent of the rehabilitation expenses.”

SECTION 2. Section 12‑4‑320(6) of the 1976 Code is amended to read:

“(6) for damage caused by war, terrorist act, or natural disaster or service with the United States armed forces or national guard in or near a hazard duty zone, extend the date for filing returns, payments of taxes, collection of taxes, and conducting audits, and waive interest and penalties. Also, the department may extend the same relief period and any additional relief period granted by the Internal Revenue Service to individuals, businesses, relief workers, and taxpayers whose records or tax professionals are located in the impacted area.”

SECTION 3. Section 12‑6‑50(16) of the 1976 Code, as last amended by Act 142 of 2010, is further amended to read:

“(16) Sections 2001 through 7655, 7801 through 7871, and 8001 through 9602, except for Sections 6015, ~~and~~ 6701, 7508, and except for Sections 6654 and 6655 which are adopted as provided in Section 12‑6‑3910 and Section 12‑54‑55. However, Section 6654(d)(1)(D) relating to estimated tax payments for qualified individuals as defined in that item is not adopted.”

SECTION 4. A. Section 12‑6‑3360(M)(3) of the 1976 Code, as last amended by Act 290 of 2010, is further amended to read:

“(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. 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.”

B. This SECTION takes effect January 1, 2011.

SECTION 5. Section 12‑6‑3535(A) and (B) of the 1976 Code, as last amended by Act 116 of 2007, are further amended to read:

“(A) A taxpayer who is allowed a federal income tax credit pursuant to Section 47 of the Internal Revenue Code for making qualified rehabilitation expenditures for a certified historic structure located in this State is allowed to claim a credit against income taxes, ~~and~~ license fees, and franchise taxes on banks imposed by this title. For the purposes of this section, ‘qualified rehabilitation expenditures’ and ‘certified historic structure’ are defined as provided in the Internal Revenue Code Section 47 and the applicable treasury regulations. The amount of the credit is ten percent of the expenditures that qualify for the federal credit. To claim the credit allowed by this subsection, a taxpayer filing a paper return must attach a copy of the section of the federal income tax return showing the credit claimed, along with other information that the Department of Revenue determines is necessary for the calculation of the credit provided by this subsection.

(B) A taxpayer who is not eligible for a federal income tax credit under Section 47 of the Internal Revenue Code and who makes rehabilitation expenses for a certified historic residential structure located in this State is allowed to claim a credit against the tax imposed by this chapter or by Chapter 11 of this title. The amount of the credit is twenty‑five percent of the rehabilitation expenses. To claim the credit allowed by this subsection, a taxpayer filing a paper return must attach a copy of the certification obtained from the State Historic Preservation Officer verifying that the historic structure has been rehabilitated in accordance with this subsection, along with all information that the Department of Revenue determines is necessary for the calculation of the credit provided by this subsection. A taxpayer filing an electronic return shall keep a copy of the certification with his tax records.

For the purposes of subsections (B) through (F):

(1) ‘Certified historic residential structure’ means an owner‑occupied residence that is:

(a) listed individually in the National Register of Historic Places;

(b) considered by the State Historic Preservation Officer to contribute to the historic significance of a National Register Historic District;

(c) considered by the State Historic Preservation Officer to meet the criteria for individual listing in the National Register of Historic Places; or

(d) an outbuilding of an otherwise eligible property considered by the State Historic Preservation Officer to contribute to the historic significance of the property.

(2) ‘Certified rehabilitation’ means repairs or alterations consistent with the Secretary of the Interior’s Standards for Rehabilitation and certified as such by the State Historic Preservation Officer before commencement of the work. The review by the State Historic Preservation Officer shall include all repairs, alterations, rehabilitation, and new construction on the certified historic residential structure and the property on which it is located. To qualify for the credit, the taxpayer shall receive documentation from the State Historic Preservation Officer verifying that the completed project was rehabilitated in accordance with the standards for rehabilitation. The rehabilitation expenses must, within a thirty‑six‑month period, exceed fifteen thousand dollars. A taxpayer shall not take more than one credit on the same certified historic residential structure within ten years.

(3) ‘Rehabilitation expenses’ means expenses incurred by the taxpayer in the certified rehabilitation of a certified historic residential structure that are paid before the credit is claimed including preservation and rehabilitation work done to the exterior of a certified historic residential structure, repair and stabilization of historic structural systems, restoration of historic plaster, energy efficiency measures except insulation in frame walls, repairs or rehabilitation of heating, air‑conditioning, or ventilating systems, repairs or rehabilitation of electrical or plumbing systems exclusive of new electrical appliances and electrical or plumbing fixtures, and architectural and engineering fees.

‘Rehabilitation expenses’ do not include the cost of acquiring or marketing the property, the cost of new construction beyond the volume of the existing certified historic residential structure, the value of an owner’s personal labor, or the cost of personal property.

(4) ‘State Historic Preservation Officer’ means the Director of the Department of Archives and History or the director’s designee who administers the historic preservation programs within the State.

(5) ‘Owner‑occupied residence’ means a building or portion of a building in which the taxpayer has an ownership interest, in whole or in part, in fee, by life estate, or as the income beneficiary of a property trust, that is, after being placed in service, the residence of the taxpayer and is not:

(a) actively used in a trade or business;

(b) held for the production of income; or

(c) held for sales or disposition in the ordinary course of the taxpayer’s trade or business.”

SECTION 6. Section 12‑6‑3630(A) of the 1976 Code, as added by Act 83 of 2007, is amended to read:

“(A) For taxable years beginning after 2007, and before 2012, a taxpayer is allowed a credit against the income tax imposed pursuant to Chapter 6 of this title or the franchise tax on banks imposed pursuant to Chapter 11 of this title, license fees imposed pursuant to Chapter 20 of this title, or insurance premium tax imposed pursuant to Chapter 7, Title 38, or a combination of them, for a qualified contribution made by a taxpayer to the South Carolina Hydrogen Infrastructure Development Fund established pursuant to Chapter 46, Title 11. A contribution is not a qualified contribution if it is subject to a condition or limitation regarding the use of the contribution.”

SECTION 7. Section 12‑6‑4910(1)(a) of the 1976 Code, as last amended by Act 399 of 2000, is further amended to read:

“(a) an individual not listed in subitem (c) who has a gross income for the taxable year of at least the federal exemption amount plus the applicable basic standard deduction, plus any deduction the taxpayer qualifies for pursuant to Section 12‑6‑1170(B)~~,~~. If the individual is sixty‑five or older, the standard deduction is increased as provided in Internal Revenue Code Section 63(c)(3) and 63(f)(1)(A). This section applies without regard to a reduction for the retirement income deduction, and whose filing status is:

(i) single, surviving spouse, or head of household; or

(ii) married, filing separately, and whose spouse does not itemize deductions.”

SECTION 8. Section 12‑37‑220(B)(23) of the 1976 Code is amended to read:

“(23) Notwithstanding any other provision of law, property heretofore exempt from ad valorem taxation by reason of the imposition upon such property or the owner of such property of a tax other than an ad valorem tax pursuant to the provisions of Section 12‑11‑30, Section 12‑13‑50 or Section ~~12‑21‑1080~~ 12‑21‑1085 shall continue to be entitled to such exemption.”

SECTION 9. Section 12‑43‑260 of the 1976 Code is amended to read:

“Section 12‑43‑260. Any county which wilfully fails to comply with the provisions of this article shall not be entitled to twenty percent of the allocation of the taxes as provided for in the General Appropriations Act for State Aid to Subdivisions. The department shall issue a department determination in accordance with Section 12‑4‑535, subject to review by the Administrative Law Court as provided in Section 12‑4‑535 and Chapter 60 of this title ~~make application to the circuit court for a determination as to whether or not such county meets the requirements of this article~~. The department shall then, based on this determination, certify to the State Treasurer that such county meets the requirements of this article before any tax allocation is made to the county.”

SECTION 10. Section 12‑44‑110(2) of the 1976 Code, as amended by Act 290 of 2011, is further amended to read:

“(2) property which has been subject to property taxes in this State, but which has never been placed in service in this State, or which was placed in service in this State pursuant to an inducement ~~agreement~~ resolution or other preliminary approval by the county prior to execution of the fee agreement pursuant to Section 12‑44‑40(E), may qualify as economic development property;”

SECTION 11. Section 12‑54‑240(A) of the 1976 Code is amended to read:

“(A) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for a person to wilfully divulge or make known in any manner any particulars set forth or disclosed in any report or return required under Chapters 6, 8, 11, 13, 16, 20, or 36 or Article 17 ~~of~~, Chapter 21 of this title. A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both. If the offender is an officer or an employee of the State~~, he~~ and is convicted of a violation of this section, the officer or employee must be dismissed from office and is disqualified from holding any public office in this State for a period of five years thereafter. If the offender is an officer or employee of a company retained by the State on an independent contract basis under subsection (B)(3) of this section or Section 12‑4‑350, and the officer or employee is convicted of a violation of this section, the contract is immediately terminated and the company is not eligible to contract with the State for this purpose for a period of five years thereafter.”

SECTION 12. Section 12‑60‑50(A) of the 1976 Code, as last amended by Act 69 of 2003, is further amended to read:

“(A) For purposes of this title and for other taxes, when the last day of a specified time period is a Saturday, Sunday, or a legal holiday, the end of the period is extended to the next business day. For this purpose, a legal holiday is any day the department or the offices of the United States Postal Service are closed or a holiday recognized by the Internal Revenue Service for purposes of determining the due date for taxpayers filing federal income tax returns, and for Subarticles 9 and 13 ~~of~~, Article 9 any day the county office is closed.”

SECTION 13. Section 12‑60‑90 of the 1976 Code, as last amended by Act 116 of 2007, is further amended to read:

“Section 12‑60‑90. (A) For the purposes of this section, the administrative tax process includes matters connected with presentation to a state or local tax authority, or their officials or employees, relating to a client’s rights, privileges, or liabilities pursuant to laws, regulations, or rules administered by state or local tax authorities. These presentations include the preparation and filing of necessary documents, correspondence with, and communications to, state and local tax authorities, and the representation of a client at conferences and meetings, including conferences with the county boards of assessment appeals. It does not include contested case hearings held by the Administrative Law Judge Division or the courts.

(B) State and local government tax officials and state and local government employees may represent their offices, agencies, or both, during the administrative tax process.

(C) Taxpayers may be represented during the administrative tax process by:

(1) the same individuals who may represent them in administrative tax proceedings with the Internal Revenue Service pursuant to Section 10.3(a), (b), ~~and~~ (c), and (f), Section 10.7(a), (c)(1)(i) through (c)(1)(vi), ~~and (c)(1)(viii),~~ and Section 10.7(d) ~~and (e)~~ of United States Treasury Department Circular No. 230; and

(2) a real estate appraiser who is registered, licensed, or certified pursuant to Chapter 60 ~~of~~, Title 40 during the administrative tax process in a matter limited to questions concerning the valuation of real property.

(D) The department may suspend or disbar from practice in the administrative tax process or censure any person authorized by these rules to represent taxpayers, if the person is shown to be incompetent, disreputable, or fails or refuses to comply with the rules in subsection (E), or in any manner, with intent to defraud, wilfully and knowingly deceives, misleads, or threatens any person or prospective person to be represented, by word, circular, letter, or by advertisement. The department may impose a monetary penalty on the representative, and if the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to the penalty, the department may impose a monetary penalty on the employer, firm, or entity if it knew, or reasonably should have known, of the conduct. The penalty may not exceed the gross income derived, or to be derived, from the conduct giving rise to the penalty and may be in addition to, or instead of, suspension, disbarment, or censure of the representative. For the purposes of this section, incompetence and disreputable conduct is defined in Section 10.51 of United States Treasury Department Circular No. 230. The department may review a petition for reinstatement as provided in Section 10.81.

(E) Representatives of taxpayers must comply with the duties and restrictions contained in Sections 10.20 through 10.24 and 10.27 through 10.34 of United States Treasury Department Circular No. 230.

(F) For purposes of this section the terms in United States Treasury Department Circular No. 230 must be given the meanings necessary to effectuate this section. For example, unless a different meaning is required:

(1) references to United States Treasury Department Circular No. 230 mean the United States Treasury Department Circular No. 230 as revised through the date provided for in the definition of the Internal Revenue Code in Section 12‑6‑40(A);

(2) references in United States Treasury Department Circular No. 230 to:

(a) the United States or federal are deemed to include references to this State, any of its political subdivisions, or any two or more of them;

(b) the Internal Revenue Service, the Department of Treasury, Examination Division, or District Director are deemed to include references to any state or local tax authority; ~~and~~

(c) the ~~Director of Practice~~ commissioner, delegate, or Director of the Office of Professional Responsibility is deemed to mean the director or his designee~~.~~; and

(d) a registered tax return preparer is deemed to include references to any person that prepares a South Carolina tax return;

(3) references to tax return mean appropriate return, including property tax returns filed with the department;

(4) references to federal tax obligations include all South Carolina taxes, including property taxes and property tax assessments, where administered by the department.”

SECTION 14. Section 12‑65‑30(A)(2) of the 1976 Code, as last amended by Act 182 of 2010, is further amended to read:

“(2) a credit against income taxes imposed pursuant to Chapter 6 of this title and franchise taxes on banks imposed pursuant to Chapter 11 of this title or corporate license fees pursuant to Chapter 20 of this title, or insurance premium taxes imposed by Chapter 7, Title 38, or any of them.”

SECTION 15. Section 44‑43‑1360 of the 1976 Code, as last amended by Act 92 of 2007, is further amended to read:

“Section 44‑43‑1360. The board may employ a director and other staff as necessary to carry out the provisions of this article; however, administration of this article may not exceed twenty percent of the total funds credited to Donate Life South Carolina, excluding the administrative fee paid to the Department of Revenue pursuant to Sections ~~12‑6‑5065~~ 12‑6‑5060 and 56‑1‑143.”

SECTION 16. 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 17. Except where otherwise provided, this act takes effect upon approval by the Governor.

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