~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

May 30, 2012

**S. 1409**

Introduced by Senator Alexander

S. Printed 5/30/12--H.

Read the first time May 1, 2012.

**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.

Amend Title To Conform

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. Section 12‑14‑80 of the 1976 Code, as last amended by Act 354 of 2008, is further amended to read:

Section 12‑14‑80. (A) There is allowed an investment tax credit for any taxable year in which ~~the taxpayer places in service~~ qualified manufacturing and productive equipment ~~and which~~ acquired or leased by the taxpayer is placed in service if the taxpayer:

(1)(a) is engaged in this State ~~in at least one economic impact zone, as defined in Section 12‑14‑30(1),~~ in an activity or activities listed under the North American Industry Classification System Manual (NAICS) Section 326;

~~(2)~~(b) is employing five thousand or more full‑time workers in this State and having a total capital investment in this State of not less than two billion dollars; and

~~(3)~~(c) commits to invest five hundred million dollars in capital investment in this State between January 1, 2006, and July 1, 2011~~.~~ ; or

(2)(a) is engaged in this State in an activity or activities listed under the North American Industry Classification System Manual (NAICS) Section 326;

(b) commits to employing one thousand two hundred full‑time employees in this State by January 1, 2022; and

(c) commits to invest four hundred million dollars in capital investment in this State between September 1, 2011, and January 1, 2022.

(B) For purposes of this section~~,~~:

(1) ‘Qualified manufacturing and productive equipment property’ means property that satisfies the requirements of Section 12‑14‑60(B)(1)(a), (b), and (c)~~.~~;

(2) ‘Taxpayer’ includes the taxpayer and any person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the taxpayer. For purposes of this item, a person controls another person if that person hold fifty percent ownership interest in the other person.

(3) ‘Capital investment in this State’ includes property that is:

(a) capitalized by the taxpayer;

(b) subject to a capital lease with the taxpayer; or

(c) subject to an operating lease with the taxpayer.

Qualified manufacturing and productive equipment property that is leased to the taxpayer shall be treated as placed in service by the taxpayer on the date the lease begins.

(C)(1) The amount of the credit allowed by this section is equal to the aggregate amount computed based on Section 12‑14‑60(A)(2).

(2) Notwithstanding item (1), in the event that the taxpayer is the lessee of the property for which the credit is allowable and is not treated as the income tax owner of such property, the basis of the property for purposes of calculating the amount of the credit for the taxpayer and the capital investment made by the taxpayer with respect the property shall be the then determined tax basis, as of the date the lease begins, for purposes of calculating income tax in this State in such property of the income tax owner of such property. In this instance, the taxpayer must include a certification that:

(a) the lessor has provided a written statement to the lessee as to the lessor’s then depreciated income tax basis;

(b) the property has not been subject to a prior investment tax credit under this section; and

(c) the taxpayer will include in taxable income the amounts required under subsection (H). Notwithstanding Section 12‑54‑240, the department may share between and among the taxpayer or the lessor information related to the items certified pursuant to subitems (a) and (b) or to the class life of equipment with respect to which a credit under this section has been claimed.

(D) A taxpayer that qualifies for the tax credit allowed by this section may claim the credit allowed by this section in addition to the credit allowed by Section 12‑6‑3360 as a credit against withholding taxes imposed by Chapter 8 of this title. The taxpayer must first apply the credit allowed by this section and Section 12‑6‑3360 against income tax liability. To the extent that the taxpayer has unused credit pursuant to this section, including the credit allowed by Section 12‑6‑3360, for the taxable year after the application of the credits allowed by this section and Section 12‑6‑3360 against income tax liability, the taxpayer may claim the excess credit as a credit against withholding taxes on its four quarterly withholding tax returns for the taxpayer’s taxable year; except that the credit claimed against withholding tax may not exceed fifty percent of the withholding tax shown as due on the return before the application of other credits including other credits pursuant to Section 12‑10‑80 or 12‑10‑81. For the period July 1, 2007, to June 30, 2008, a taxpayer using this section may not reduce its state withholding tax to less than the withholding tax remitted for the period June 30, 2006, to July 1, 2007.

(E) Unused credits allowed pursuant to this section may be carried forward for use in a subsequent tax year. During the first ten years of each tax credit carryforward, the credit may not reduce a taxpayer’s state income tax liability by more than fifty percent, and for a subsequent year the credit carryforward may not reduce a taxpayer’s state income tax liability by more than twenty‑five percent. Investment tax credit carryforwards pursuant to this section and credit carryforwards pursuant to Section 12‑6‑3360 must first be used as a credit against income taxes for that year. Any excess may be used pursuant to subsection (D) as a credit against withholding taxes; except that the limitations of subsection (D) apply each year and the ~~economic impact zone tax~~ credit carryforwards that existed on the effective date of Act 83 of 2007 for taxpayers qualifying under subsection (A)(1) and on the effective date of the qualification for taxpayers qualifying under subsection (A)(2), may not be used to reduce withholding tax liabilities pursuant to this section.

(F) The amount of credit used against withholding taxes must reduce the amount of credit that may be used against income tax liability. ~~The amount of credit used against withholding taxes must reduce the amount of credit that may be used against income taxes.~~

(G) If the taxpayer disposes of or removes qualified manufacturing and productive equipment property from the State during any taxable year and before the end of applicable recovery period for such property as determined under Section 168(e) of the Internal Revenue Code, then the income tax due pursuant to this chapter for the current taxable year must be increased by an amount of any credit claimed in prior years with respect to that property, determined by assuming the credit is earned ratably over the useful life of the property and recapturing pro rata the unearned portion of the credit. This recapture applies to credit previously claimed as a credit against income taxes pursuant to this chapter or withholding tax pursuant to Chapter 8. For purposes of this subsection, the following rules apply for determining whether a taxpayer that is a lessee of qualified manufacturing and productive equipment property has disposed of the property:

(1) a transfer of the property by the lessee to the lessor in a sale‑leaseback transaction shall be ignored;

(2) a disposition by the lessor of the property shall not be treated as a disposition provided that the lease is not terminated and the taxpayer remains lessee thereunder;

(3) if the taxpayer lessee actually purchases the property in any taxable year, the purchase shall not be treated as a disposition; and

(4) if the lease is terminated and the property is transferred by the lessee to the lessor or to any other person, other than the taxpayer, the transfer is considered to be a disposition by the taxpayer lessee.

(H)(1) For South Carolina income tax purposes, except as otherwise provided in item (2), the basis of the qualified manufacturing and productive equipment property must be reduced by the amount of any credit claimed with respect to the property, whether claimed as a credit against income taxes or withholding. If a taxpayer is required to recapture the credit in accordance with subsection (G), the taxpayer may increase the basis of the property by the amount of basis reduction attributable to claiming the credit in prior years. The basis must be increased in the year in which the credit is recaptured.

(2) Notwithstanding item (1), if the taxpayer is the lessee of the qualified manufacturing and productive equipment property for which credit has been taken by the taxpayer, in lieu of any adjustment to the basis of such property, the taxpayer shall include in its taxable income for South Carolina income tax purposes, an amount equal to the amount of the credit that is earned during such taxable year in accordance with subsection (G).

(I)(1) For taxpayers qualifying under subsection (A)(1), a credit must not be taken pursuant to this section for capital investments placed in service ~~outside of an economic impact zone~~ until the taxpayer has invested two hundred million dollars of the five hundred million‑dollar investment requirement described in subsection (A)~~(3),~~ (1)(c) and the taxpayer files a statement with the department stating that it: (i) commits to invest a total of five hundred million dollars in this State between January 1, 2006, and July 1, 2011; and (ii) shall refund any credit received with interest at the rate provided for underpayments of tax if it fails to meet the requirement of subsection (A)~~(3)~~(1)(c).

(2) For taxpayers qualifying under subsection (A)(2), a credit must not be taken pursuant to this section for capital investments in this State until the taxpayer has invested two hundred million dollars of the four hundred million dollar investment requirement described in subsection (A)(2)(c) and the taxpayer files a statement with the department stating that it:

(i) commits to invest a total of four hundred million dollars in this State between September 1, 2011, and January 1, 2022;

(ii) commits to employ a total of one thousand two hundred full‑time employees in this State by January 1, 2022; and

(iii) shall refund any credit received with interest at the rate provided for underpayments of tax if it fails to meet the requirements of subsection (A)(2)(b) or (c).

~~This~~ The statement and proof of qualification must be filed with the notice required in subsection (J). Credit is not allowed pursuant to this section for property placed in service before June 30, 2007, for taxpayers qualifying under subsection (A)(1) or for property placed in service before September 1, 2011 for taxpayers qualifying under subsection (A)(2). For credit claimed before the investment of the full five hundred million dollars pursuant to subsection (A)(1)(c) or four hundred million dollars pursuant to subsection (A)(2)(c), the company claiming the credit must execute a waiver of the statute of limitations pursuant to Section 12‑54‑85, allowing the department to assess the tax for a period commencing with the date that the return on which the credit is claimed is filed and ending three years after the company notifies the department that the ~~full five hundred million dollar~~ applicable capital investment commitment has been made. A waiver of the statute of limitations must accompany the return on which the credit is claimed.

(J) The taxpayer shall notify the department as provided in subsection (I) before taking any credits pursuant to this section. ~~The taxpayer shall state it has met the requirements of subsection (A).~~ Additionally, in a taxable year after the year of qualification for credit pursuant to this section, the taxpayer shall include with its tax return for that year: (i) a statement that the taxpayer has continued to meet the requirements of subsections (A)(1)(a) and (b) or subsections (A)(2)(a) and (b); (ii) the reconciliation required in subsection (D); and (iii) any statement and support for subsection (I).”

SECTION 18. Chapter 54, Title 12 of the 1976 Code is amended by adding:

“Section 12‑54‑87. Notwithstanding any other provision of law, for purposes of discounts allowed for timely filing of returns, if the department waives all penalties for late filing due to reasonable cause, the discount must be allowed despite the late filing.”

SECTION 19. A. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

“Section 12‑6‑3586. (A) As used in this section:

(1) ‘Solar energy equipment’ is equipment that is certified by the Solar Rating and Certification Corporation or a comparable entity, as determined by the State Energy Office that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalination, detoxification, or the production of industrial or commercial process heat. The term also includes related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy.

(2) ‘Tax liability’ includes income taxes imposed pursuant to this chapter, license taxes imposed pursuant to Chapter 20, bank and building and loan taxes imposed pursuant to Chapters 11 and 13, and premium taxes imposed pursuant to Title 38.

(B)(1) For tax years beginning after 2011 and before 2017, a taxpayer that has constructed, purchased, or leased solar energy equipment is allowed, subject to the limitations set forth in subsection (E), a credit against his tax liability equal to thirty‑five percent of the cost of the property in the taxable year in which the equipment is placed in service.

(2) In the case of solar energy equipment that serves a single‑family residence, the credit must be taken for the taxable year in which the equipment is placed in service. Unused credit with respect to a single‑family residence may be carried forward to the five succeeding taxable years.

(3) For all other solar energy equipment, the entire credit may not be taken for the taxable year in which the equipment is placed in service but must be taken in three equal annual installments beginning with the taxable year in which the equipment is placed in service and subject to this annual limit, unused credit may be carried forward for taxable years four through ten succeeding the year the equipment was placed in service.

(4) If a taxpayer is not allowed all or part of the credit the taxpayer would be authorized to receive because of the limitations set forth in subsection (E), the carry forward years provided in subsection (B)(1) begin in the year in which all or part of the credit is first allowed. However, if the credit is not allowed prior to tax year 2017, the taxpayer is not eligible to claim the credit.

(5) Notwithstanding the provisions of subsection (B)(1), if the South Carolina Solar Council, utilizing a methodology verified by the Board of Economic Advisors in conjunction with the information contained in the report of the State Energy Office issued pursuant to subsection (H)(5), determines that the number of direct solar jobs does not increase at a rate that exceeds private sector job growth in this State in 2012, 2013, and 2014, the credit allowed by this section must not be allocated or allowed after December 31, 2015, unless the taxpayer was receiving the credit for the same equipment prior to December 31,2015.

(C) If, in one of the years in which the installment of a credit accrues, the solar energy equipment with respect to which the credit was claimed is disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. A disposition does not include the sale or assignment of the partnership interests or limited liability company interests of a partnership or limited liability company that owns or leases solar energy equipment. However, the taxpayer may take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted pursuant to subsection (B). A credit is not allowed pursuant to this section to the extent the cost of the solar energy equipment was provided by public funds, and the amount of any credit allowed pursuant to this section must be reduced by any credit claimed pursuant to Section 12‑6‑3587 or any other credit allowed pursuant to this title for solar energy equipment. Public funds does not include proceeds of the investment credit pursuant to Section 48 of the Internal Revenue Code, or the grant in lieu thereof under the Section 1603 program administered by the United States Department of Treasury. In no case may a credit allowed pursuant to this section exceed one‑half of the taxpayer’s tax liability for a taxable year.

(D) The credit allowed by this section may not exceed the following applicable ceilings.

(1) a ceiling of two million five hundred thousand dollars for each installation applies to solar energy equipment placed in service for any purpose other than residential;

(2) The following ceilings apply to solar energy equipment placed in service for residential purposes:

(a) three thousand five hundred dollars for each dwelling unit for solar energy equipment for domestic water heating;

(b) three thousand five hundred dollars for each dwelling unit for solar energy equipment for active space heating, combined active space and domestic hot water systems, and passive space heating;

(c) ten thousand five hundred dollars for each installation for any other solar energy equipment for residential purposes.

(E)(1) The total amount of credits allocated for all taxpayers in all taxable years may not exceed in the aggregate:

(a) for tax years 2012 and 2013, eight million dollars;

(b) for tax year 2014, seven million dollars; and

(c) for tax years 2015 and 2016, six million dollars.

(2) Notwithstanding subsection (B), for purposes of this section, the entire credit is considered taken in the tax year in which the equipment is placed in service.

(3)(a) Of the aggregate amounts set forth in subsection (E)(1):

(i) fifteen percent must be allocated for equipment for single‑family residences;

(ii) thirty‑five percent must be allocated for equipment with less than one megawatt of installed capacity for purposes other than single‑family residences; and

(iii) fifty percent must be allocated for equipment with one megawatt of installed capacity, or greater, for purposes other than single‑family residences.

(b) If an allocation set forth in this subsection is not completely exhausted, the remaining amount may be carried forward by the department to the next year and used for the same purpose, and is in addition to the aggregate amount set forth in subsection (E)(1). No amount may be carried forward by the department beyond tax year 2016.

(4) Notwithstanding the provisions of this subsection, the limitations set forth in subsection (E)(1) do not apply to credits allocated to a taxpayer for equipment constructed, purchased, or leased if the State Energy Office, in consultation with the Department of Commerce, certifies:

(a) the equipment will create more than one megawatt of installed capacity or more for purposes other than single‑family residences;

(F) If the taxpayer leases the solar energy equipment, or part of the solar energy equipment, the taxpayer may transfer any applicable remaining credit associated with the solar energy equipment expenses incurred with respect to that part of the solar energy equipment to the lessee of the solar energy equipment. This subsection applies to a lessee that is an entity taxed as a partnership.

(G) To the extent that the taxpayer is a partnership or a limited liability company taxed as a partnership, the credit may be passed through to the partners or members and may be allocated by the taxpayer among any of its partners or members on an annual basis including, without limitation, an allocation of the entire credit to any partner or member who was a member or partner at any time during the year in which the credit is allocated.

(H)(1) After the equipment is placed in service, a taxpayer seeking to claim the credit provided in this section must submit an application to the State Energy Office for tentative approval of the credit. Within forty‑five days of receipt of the application, the State Energy Office shall review the application and tentatively shall approve the application upon determining that the taxpayer qualifies for the credit, and only if the aggregate credit, pursuant to subsection (E), has not yet been reached for the taxable year. The State Energy Office shall notify the applicant whether all or part of the credit may be claimed and the amount that may be claimed in the current year. Also, the State Energy Office shall forward the notice to the department.

(2) The credit is allowed on a first come, first serve basis. In no event may the aggregate amount of tax credits approved by the State Energy Office for all taxpayers in a taxable year exceed the limitations specified in subsection (E). For tax years 2012 through 2015, if the taxpayer timely files an application for the credit but is not allowed all or part of the credit the taxpayer would be authorized to receive because of the limitations set forth in subsection (E), the taxpayer must be added to a priority waiting list of applications, prioritized by the date of the taxpayer’s first filed application. With respect to the credit allocation in subsequent years, a taxpayer on the priority waiting list has priority over other taxpayers who apply for the credit for an installation in the subsequent year. For purposes of subsection (E), a taxpayer on the priority waiting list who is allowed the credit in a taxable year after the equipment is placed in service, the entire credit is considered taken in the year in which the credit is first allowed.

(I)(1) The department, in consultation with the State Energy Office, shall develop an application form. Also, the department and the State Energy Office shall adopt rules to provide for the administration of this credit. The State Energy Office, with assistance from the department, shall create a mechanism to track and report the status and availability of credits for the public to review on a regular basis, as determined by the State Energy Office.

(2) There is a nonrefundable application fee equal to one percent of the credit applied for, but no more than two thousand five hundred dollars. The fee must accompany the application. The fee must be credited to the State Energy Office and must be used to meet the requirements of this section.

(J) A taxpayer that applies for the credit allowed by this section, other than an electric supplier or electrical utility as those terms are defined in Sections 58‑27‑10 and 58‑27‑610, respectively, an electric cooperative engaged primarily in the business of furnishing electricity to other cooperatives for resale to other electric consumers, the South Carolina Public Service Authority, a city or town in which the city or town or a board of public works or a commission of public works provides electric service, or a joint agency as defined by Section 6‑23‑20 owning, controlling, or leasing solar energy equipment, must not sell, convey or provide electricity generated by such solar energy equipment to any other person or entity, unless the taxpayer is selling, conveying, or providing electricity to an electric supplier or electrical utility as those terms are defined in Sections 58‑27‑10 and 58‑27‑610, respectively, an electric cooperative engaged primarily in the business of furnishing electricity to other cooperatives for resale to other electric consumers, the South Carolina Public Service Authority, a city or town in which the city or town or a board of public works or a commission of public works provides electric service, or a joint agency as defined by Section 6‑23‑20.

(K) By June first of each year, the State Energy Office shall prepare a report detailing:

(1) the number of taxpayers applying for the credit and amount applied for, by allocation sought pursuant to subsection (E)(3), and equipment type, including the total cost of the equipment installed against which the credit is being claimed, and the county in which the equipment was installed;

(2) the number of taxpayers allocated the credit, and amount allocated, by allocation sought pursuant to subsection (E)(3), and equipment type, including the total cost of the equipment installed against which the credit is being claimed, and the county in which the equipment was installed;

(3) the number of taxpayers denied the credit based on an ineligibility determination by the department;

(4) the number of taxpayers eligible for the credit, but placed on the waiting list due to the limitations set forth in subsection (E); and

(5) the economic impact of this section, as determined by the South Carolina Solar Council, including the number of direct solar jobs created and maintained.”

B. This SECTION applies for installations of solar energy equipment placed in service in taxable years beginning after 2011 and before 2017.

SECTION 20. A. Section 12‑6‑3587 of the 1976 Code is amended by adding an appropriately lettered subsection to read:

“( ) This section only applies as it relates to a solar energy system placed in service before January 1, 2012.”

B. Except where otherwise provided, this SECTION takes effect July 1, 2012.

SECTION 21. A. The General Assembly finds that:

(1) A real property owner should be able to appeal the value of property using the most recent information available to the official charged with determining the value of the property;

(2) Act 388 of 2006 allows a county assessor to determine the value of certain property more frequently than the quadrennial reassessment cycle alone; and

(3) With the updated information now available to a county assessor, it is the intent of the General Assembly that an appeal on the value of real property be based on December thirty‑first of the tax year under appeal.

B. Section 12‑43‑215 of the 1976 Code, as last amended by Act 138 of 2005, is further amended to read:

“Section 12‑43‑215. When owner‑occupied residential property assessed pursuant to Section 12‑43‑220(c) is valued for purposes of ad valorem taxation, the value of the land must be determined on the basis that its highest and best use is for residential purposes. When a property owner or an agent for a property owner appeals the value of a property assessment, the assessor shall consider the appeal and make any adjustments, if warranted, based on the market values of real property as ~~they existed in the year that the equalization and reassessment program was conducted and on which the assessment is based~~ of December thirty‑first of the tax year under appeal.”

C. Section 12‑60‑2510 of the 1976 Code, as last amended by Act 57 of 2007, is further amended to read:

“Section 12‑60‑2510. (A)(1) In the case of property tax assessments made by the county assessor, whenever the assessor increases the fair market value or special use value in making a property tax assessment by one thousand dollars or more, or whenever the first property tax assessment is made on the property by a county assessor, the assessor, by July first in the year in which the property tax assessment is made, or as soon after as is practical, shall send the taxpayer a property tax assessment notice. In years when real property is appraised and assessed under a countywide equalization program, substantially all property tax assessment notices must be mailed by October first of the implementation year. In these reassessment years, if substantially all of the tax assessment notices are not mailed by October first, the prior year’s property tax assessment must be the basis for all property tax assessments for the current tax year. A property tax assessment notice under this subsection must be in writing and must include:

(a) the fair market value; in a year in which an assessable transfer of interest occurs due to a conveyance, if the assessor determines that fair market value is more than the purchase price, the assessor shall state with particularity the basis for the increase in fair market value;

(b) value as limited by Article 25, Chapter 37, Title 12;

(c) the special use value, if applicable;

(d) the assessment ratio;

(e) the property tax assessment;

(f) the number of acres or lots;

(g) the location of the property;

(h) the tax map number; and

(i) the appeal procedure.

(2) The notice must be served upon the taxpayer personally or by mailing it to the taxpayer at his last known place of residence which may be determined from the most recent listing in the applicable telephone directory, the Department of Motor Vehicles’ motor vehicle registration list, county treasurer’s records, or official notice from the property taxpayer.

(3) In years when there is a notice of property tax assessment, the property taxpayer, within ninety days after the assessor mails the property tax assessment notice or within thirty days of receipt of a property tax bill, whichever is later, must give the assessor written notice of objection to one or more of the following: the fair market value, the special use value, the assessment ratio, and the property tax assessment.

(4) In years when there is no notice of property tax assessment, the property taxpayer may appeal the fair market value, the special use value, the assessment ratio, and the property tax assessment of a parcel of property at any time. The appeal must be submitted in writing to the assessor. An appeal submitted before the first penalty date applies for the property tax year for which that penalty would apply. An appeal submitted on or after the first penalty date applies for the succeeding property tax year. When a property owner or an agent for a property owner appeals the value of a property assessment under this section, the assessor shall consider the appeal and make any adjustments, if warranted, based on the market values of real property as of December thirty‑first of the tax year under appeal.

(B) The department shall prescribe a standard property tax assessment notice designed to contain the information required in subsection (A) in a manner that may be easily understood and also a property tax refund assignment contract which may be utilized in a year in which the purchaser of property files an appeal.

(C) In any year in which an assessable transfer of interest has occurred, a purchaser of the real property may appeal the fair market value, the special use value, the assessment ratio, and the property tax assessment of a parcel of property in the same manner as the seller. The assessor may require a written assignment of any property tax refund executed by the buyer and seller.”

D. 12‑37‑3140(A)(1)(c) of the 1976 Code is amended to read:

“(c) as determined on appeal, pursuant to Section 12‑40‑217, or Section 12‑60‑2510; or”

E. Subarticle 9, Article 9, Chapter 60, Title 12 of the 1976 Code is amended by adding:

“Section 12‑60‑2570. Notwithstanding any other provision of law, for any appeal or protest brought pursuant to this subarticle, the county assessor shall have the burden of proof on the fair market value, the special use value, the assessment ratio, and the property tax assessment.

Section 12‑60‑2580. Notwithstanding any other provision of law, a taxpayer may appeal a property tax assessment on an annual basis, except that a taxpayer may only appeal due to a change in value once every five years in conjunction with the county’s reassessment cycle pursuant to Section 12‑43‑217. However, if the property undergoes an assessable transfer of interest during the reassessment cycle, and the value has already been appealed in the reassessment cycle, the taxpayer may appeal the value once more during the quadrennial reassessment cycle following the assessable transfer of interest.”

F. This SECTION takes effect upon approval by the Governor and applies to property tax years beginning after 2011.

SECTION 22. Section 6-1-970 of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

“( ) constructing an elementary, middle, or secondary school facility, or replacing, renovating, or repairing an elementary, middle, or secondary school facility, designed and used primarily for the instruction of students.”

SECTION 23. Except where otherwise provided, this act takes effect upon approval by the Governor.

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