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COMMITTEE AMENDMENT ADOPTED AND AMENDED

February 2, 2012

**H. 3506**

Introduced by Reps. Loftis, Allison, J.R. Smith, White, Bowen, Ott, Cobb‑Hunter, Pitts and Henderson

S. Printed 2/2/12--S.

Read the first time April 19, 2011.

**A** **BILL**

TO AMEND SECTION 12‑6‑3360, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE JOB TAX CREDIT, SO AS TO REVISE THE DEFINITION OF A “TECHNOLOGY INTENSIVE FACILITY”; TO AMEND SECTION 12‑20‑105, AS AMENDED, RELATING TO THE TAX CREDIT FOR INFRASTRUCTURE IMPROVEMENTS FOR WATER, WASTEWATER, HYDROGEN FUEL, SEWER, GAS, STEAM, ELECTRIC ENERGY, AND COMMUNICATION SERVICES, SO AS TO INCLUDE CERTAIN SITE PREPARATION COSTS WITHIN THE DEFINITION OF INFRASTRUCTURE IMPROVEMENTS WHICH GIVE RISE TO THE CREDIT; AND TO AMEND SECTION 12‑44‑30, AS AMENDED, RELATING TO FEES IN LIEU OF TAXES, SO AS TO REVISE THE DEFINITION OF “TERMINATION DATE”.

Amend Title To Conform

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

SECTION 1. Section 12‑6‑3360(M)(13) and (14) of the 1976 Code, as last amended by Act 290 of 2010, is further amended to read:

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

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

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

(i) ~~two~~ one hundred ~~fifty~~ seventy-five jobs at a single location;

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

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

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

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

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

(14) ‘Technology intensive facility’ means:

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

(i) 5114 database and directory publishers;

(ii) 5112 software publishers;

(iii) 54151 computer systems design and related services;

(iv) 541511 custom computer programming services;

(v) 541512 computer systems design services;

(vi) ~~541710 scientific research and development services~~ 541711 research and development in biotechnology; 2007 NAICS;

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

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

(ix) 9271 space research and technology; or

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

SECTION 2. Section 12‑20‑105 of the 1976 Code, as last amended by Act 290 of 2010, is further amended to read:

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

(B)(1) To be considered an eligible project for purposes of this section, the project must qualify for income tax credits under Chapter 6, Title 12, withholding tax credit under Chapter 10, Title 12, income tax credits under Chapter 14, Title 12, or fees in lieu of property taxes under either Chapter 12, Title 4, Chapter 29, Title 4, or Chapter 44, Title 12.

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

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

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

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

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

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

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

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

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

(b) refurbishment of buildings that are owned or controlled by a county or municipality and are used exclusively for economic development purposes.

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

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

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

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

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

SECTION 3. Section 12‑44‑30(21) of the 1976 Code, as last amended by Act 290 of 2010, is further amended to read:

“(21) ‘Termination date’ means the date that is the last day of a property tax year that is no later than the twenty‑ninth year following the first property tax year in which an applicable piece of economic development property is placed in service. A sponsor may apply to the county prior to the termination date for an extension of the termination date beyond the twenty‑ninth year up to ten years. The county council of the county shall approve an extension by resolution upon a finding of substantial public benefit. A copy of the resolution must be delivered to the department within thirty days of the date the resolution was adopted. With respect to a fee agreement involving an enhanced investment, the termination date is the last day of a property tax year that is no later than the thirty‑ninth year following the first property tax year in which an applicable piece of economic development property is placed in service. A sponsor may apply to the county before the termination date for an extension of the termination date beyond the thirty‑ninth year up to ten years. If the fee agreement is terminated in accordance with Section 12‑44‑140, the termination date is the date the agreement is terminated.”

SECTION 4. Section 4‑12‑30(O) of the 1976 Code, as last amended by Act 69 of 2003, is amended by adding an appropriately numbered subitem at the end to read:

“( ) Upon the direction of the governing body of the county, a county official may request and obtain such financial books and records from a sponsor that support the sponsor’s fee in lieu of taxes return as may be reasonably necessary to verify the calculations of the sponsor’s fee in lieu of taxes payment or the calculations of the sponsor’s special source revenue credit.”

SECTION 5. Section 4‑29‑67(S) of the 1976 Code, as last amended by Act 290 of 2010, is further amended by adding an appropriately numbered subitem at the end to read:

“( ) Upon the direction of the governing body of the county, a county official may request and obtain such financial books and records from a sponsor that support the sponsor’s fee in lieu of taxes return as may be reasonably necessary to verify the calculations of the sponsor’s fee in lieu of taxes payment or the calculations of the sponsor’s special source revenue credit.”

SECTION 6. Section 12‑44‑90 of the 1976 Code, as last amended by Act 69 of 2003, is further amended by adding an appropriately numbered subsection at the end to read:

“( ) Upon the direction of the governing body of the county, a county official may request and obtain such financial books and records from a sponsor that support the sponsor’s fee in lieu of taxes return as may be reasonably necessary to verify the calculations of the sponsor’s fee in lieu of taxes payment or the calculations of the sponsor’s special source revenue credit.”

SECTION 7. A. Chapter 10, Title 12 of the 1976 Code is amended by adding:

“Section 12‑10‑108. (A) As used in this section:

(1) ‘Assigned employee’ means an employee providing services for a client company as affected by a contract between a licensee and a client company in which employment responsibilities are shared.

(2) ‘Client company’ means a person that contracts with a licensee and that is assigned employees under that contract.

(3) ‘Licensee’ means a person licensed under Chapter 68, Title 40 as a professional employer organization to provide professional employer services as that term is defined in Section 40‑68‑10. The term includes a professional employer services group licensed under Section 40‑68‑80.

(B) A client company that is a qualifying business and otherwise meets the requirements of this chapter except that it uses a single licensee to provide assigned employees which perform services at the project, will be eligible for an overpayment of withholding resulting from a job development credit for new jobs filled by assigned employees provided the provisions of this section are met, including the following:

(1) The benefits package, including health care, for employees described in Sections 12‑10‑50(A)(2) and (B)(2) is sponsored by either the licensee or the client company.

(2) A revitalization agreement is executed between the qualifying business that is a client company and the council, and an addendum to the revitalization agreement is executed among the qualifying business that is a client company, the council and the licensee that sets forth the applicable responsibilities of each party and is in a form acceptable to the council.

(3) The licensee makes all books and records concerning a client company available to the department and the council concerning withholding and the claiming of a job development credit in the manner provided by this title and applicable regulations; and

(4) The licensee submits the required income tax withholding payments and returns for all assigned employees working at the project and claims any applicable job development credit attributable to the assigned employees.

(C) On a quarterly basis, the client company shall file with the department and the council information concerning:

(1) the number of assigned employees at the project attributable to the licensee;

(2) the amount of South Carolina income tax withholding for assigned employees for the licensee;

(3) the total amount of job development credits associated with the assigned employees attributable to the licensee; and

(4) such other information the department or council may require.

If the client company also has employees subject to South Carolina withholding taxes payable by the client company, the client company is eligible to claim a job development credit for any such employee. The client company shall also provide the information set forth in this subsection concerning such employees.

(D)(1) In lieu of refunding any applicable overpayment of withholding attributable to a job development credit to a licensee, the department shall pay to the client company any applicable overpayment of withholding attributable to the job development credit for assigned employees. Once payment is made to the client company, the licensee has no further claim to any overpayment of withholding attributable to the job development credit and paid to the client company and shall hold the department and the council harmless for any overpayment of withholding paid to the client company pursuant to this item.

(2) To the extent that any overpayment of withholding results from an improper claiming of a job development credit, it must be treated as misappropriated withholding with the client company being liable for such amount and the licensee only liable if the licensee commits fraud attributable to the claiming of a job development credit.

(3) Qualifications and calculations of job development credits pursuant to this chapter must be made on a client company basis and not on a licensee basis.

(4) The department and the council may specify the form and manner of any information to be submitted under this section.

(5) All notices pertaining to the claiming of the job development credit must be sent to both the licensee and the client company.

(E) If a contract entered into pursuant to Section 48‑68‑60 between a client company and a licensee si terminated, the client company shall send notice of termination to the department and the council within thirty business days of the date of termination. If and until a new licensee becomes a party to the addendum, the client company shall be responsible for all of the licensee’s responsibilities under the addendum to the revitalization agreement.

(F) The client company shall be responsible for submitting any reports or fees to the council or the department required by this chapter including itemized sources and uses of funds and paying any penalty imposed for failure to submit a report or fee without an extension.

(G) Notwithstanding Sections 12‑10‑80(A)(1) and (A)(2), a client company must be considered current with respect to withholding tax if the licensee is current with respect to withholding taxes. If the client company has its own employees that are subject to a job development credit, in addition to assigned employees, the client company must also be current with respect to all withholding taxes.

(H) The licensee and the client company agree to waive the taxpayer confidentiality provisions of Section 12‑54‑240 and allow the exchange of information concerning withholding tax and the claiming of job development credit among the licensee, client company, department and the council.

(I) Any claim for a retraining credit pursuant to Section 12‑10‑95 must be treated the same as a job development credit under this section.

(J) The client company must pay an additional three hundred dollar administrative fee to be split equally between the department and the council to cover the cost of administering the provisions of this section.

(K) The department and the council may establish such rules and regulations as are necessary to administer this section.

(L) All the provisions of this chapter remain applicable to a client company and the claiming of the job development credit.”

B. Chapter 68, Title 40 of the 1976 Code is amended by adding:

“Section 40‑68‑145. (A) Except as otherwise provided by law, for purposes of determining an incentive or business preference program based on employment, an assigned employee is considered an employee solely of the client company, not the licensee. Notwithstanding that the licensee is the W‑2 reporting employer, the client company is entitled to the benefit of or to continue to qualify for an incentive, business preference program, or other benefit arising from the employment of assigned employees.

(B) Except as otherwise provided by law, for the purposes of an incentive or business preference program based on the number of employees, assigned employees, and direct employees of the client company are considered employees solely of the client company, but not the licensee.

(C) On request by the client company, the state, or any governmental entity, a licensee shall provide employment information and applicable books and records required by the state or governmental entity responsible for the administration of the incentive or business preference program and necessary to support a request, claim, application, or other action by a client company seeking an incentive or participation in a business preference program or an audit of the client company’s claiming of the incentive or business preference if based in whole, or in part, on the assigned employees.

(D) In providing information required pursuant to subsection (C), a licensee may not be required to:

(1) complete forms on behalf of a client;

(2) attest, certify, and verify the accuracy of information originally provided by or based on information provided by the client company to the licensee, however, any information submitted to the licensee by the client company must be signed by a person authorized to sign a return under Section 12‑2‑75 and shall be treated as though such information were submitted in connection with a return submitted to the Department of Revenue.

(3) create new information or records; or

(4) provide employment information beyond the applicable statute of limitations for assessing taxes provided in section 12‑54‑85.

(E) The licensee and the client company agree to waive the taxpayer confidentiality provisions of 12‑54‑240 and allow the exchange of information concerning the applicable incentive or business program among the client company, the licensee and any public entity administering the applicable incentive or business preference program.

(F) A licensee may charge a client company a fee for information provided pursuant to subsection (C) above.”

C. Notwithstanding the general effective date of this act, this SECTION takes effect upon approval by the Governor and applies to tax years beginning after December 31, 2012, and is only applicable to any client company approved for job development credits by the council or qualifying for an incentive or business preference program after December 31, 2012.

SECTION 8. 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 9. This act takes effect upon approval by the Governor.

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