~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 6, 2011

**H. 3720**

Introduced by Reps. Cooper, Henderson and Patrick

S. Printed 4/6/11--H.

Read the first time February 22, 2011.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Bill (H. 3720) to amend Section 12‑6‑3360, as amended, Code of Laws of South Carolina, 1976, relating to definitions of the jobs tax credit, so as to revise the requirements, etc., respectfully

**REPORT:**

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

Amend the bill, as and if amended, SECTION 1, page 2, line 20, by striking /forty/ and inserting /twenty/.

Renumber sections to conform.

Amend title to conform.

DANIEL T. COOPER for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**REVENUE IMPACT 1/**

This bill, in total, would reduce general fund revenues by $458,432 in FY2011-12 and by $777,000 in FY2012-13. Of this total amount, $358,432 would be a reduction in general fund corporate income tax revenues in FY2011-12, $100,000 would be a reduction in general fund corporate license taxes in FY2011-12, and $777,000 would be a reduction in general fund income tax revenues in FY2012-13.

**Explanation of Bill**

**Section 1:** This section of the bill would amend Section 12-6-3360(M) (13) by lowering the required amount of new jobs created by a qualifying service-related facility in order for such a facility to receive job tax credits. This section would also amend Section 12-6-3360(M)(14) to include data processing, hosting and related services facilities (NAICS code 518210), computer facilities management services (NAICS code 541513), and other computer-related service facilities (NAICS code 541519) to the definition of “technology intensive facility”, expanding the jobs tax credit to these sectors. Based upon data from the SC Employment Security Commission, these qualifying sectors (NAICS code 518210, 541513, and 541519) added an average of 222 jobs each year over the latest three fiscal years even without the credit. It is expected that this pace of new jobs creation in this sector will continue in FY2011-12, but with this bill, these companies will receive the credit. Multiplying 222 new jobs by an average job tax credit of $3,500 per new job created, it is estimated that this section of the bill would reduce ongoing collections of taxes by an estimated $777,000 in FY2012-13 as this credit is claimed one year after jobs are created.

**Section 2:**  This section of the bill would add Section 12-6-3411 that exempts corporations that establish national corporate headquarters or expand existing national corporate headquarters in South Carolina from the corporate income tax for a period of ten years if the headquarters adds at least fifty new full-time corporate headquarters related jobs. Under current law, corporations establishing headquarters in South Carolina and creating at least forty new headquarters-related jobs may claim an income tax credit equal to twenty percent of the cost of real property and an additional income tax credit equal to twenty percent of the cost of personal property. This section prohibits a national corporate headquarters from claiming both the twenty-percent income tax credits and the ten-year corporate income tax exemption. According to the South Carolina Department of Commerce, in the past four years, five national corporate headquarters have expanded existing national corporate headquarters in South Carolina and created at least fifty new full-time jobs. Based upon corporate headquarters income tax credit data from the Department of Revenue, it is estimated that one national corporate headquarters expansion qualified for and claimed the existing twenty-percent corporate headquarters income tax credit. It is expected that one national corporation that already exists in South Carolina and is paying taxes will expand existing headquarters in South Carolina and qualify for the corporate income tax exemption in FY2011-12. This will reduce taxes currently being collected. Based upon state corporate income tax liability data provided by the Department of Revenue, it is estimated that this section of the bill will reduce general fund corporate income tax revenue by $358,432 in FY2011-12.

**Section 3:** This section of the bill amends 12-20-105(E) that increases the maximum aggregate corporate license tax credit for companies that provide infrastructure improvements to eligible projects from three hundred thousand dollars to four hundred thousand dollars per tax year. This section of the bill is expected to reduce general fund corporate license tax revenues by $100,000 in FY2011-12.

**Section 7:** This section of the bill exempts the state sales and use tax on computers, computer equipment, computer hardware, computer software, and electricity used by a datacenter. Datacenters are defined in this section as facilities in which at least fifty million dollars are invested in real or personal property or both over a five-year period and that provide infrastructure for hosting or data processing services. The state has not attracted hosting or data processing datacenters of this caliber. In the absence of this proposed legislation, this trend is expected to continue. Since the revenue projection does not include these projects, these tax exemptions will have no impact on the projection. As a result, the revenue projection would not be impacted.

*Approved By:*

William C. Gillespie

Board of Economic Advisors

1/ This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.

**A** **BILL**

TO AMEND SECTION 12‑6‑3360, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS OF THE JOBS TAX CREDIT, SO AS TO REVISE THE REQUIREMENTS OF A QUALIFYING SERVICE‑RELATED FACILITY AND A TECHNOLOGY INTENSIVE FACILITY; BY ADDING SECTION 12‑6‑3411 SO AS TO PROVIDE THAT A CORPORATION ESTABLISHING A NATIONAL CORPORATE HEADQUARTERS OR EXPANDING OR ADDING TO AN EXISTING NATIONAL CORPORATE HEADQUARTERS IN THIS STATE, WHICH IN CONNECTION THEREWITH ADDS AT LEAST FIFTY NEW FULL‑TIME JOBS SHALL BE EXEMPT FROM PAYING STATE CORPORATE INCOME TAXES FOR A PERIOD OF TEN YEARS; TO AMEND SECTION 12‑20‑105, AS AMENDED, RELATING TO TAX CREDITS FOR PROVIDING INFRASTRUCTURE, SO AS TO INCREASE THE MAXIMUM AGGREGATE CREDIT TO FOUR HUNDRED THOUSAND DOLLARS ANNUALLY; TO AMEND SECTIONS 4‑12‑30, 4‑29‑67, AND 12‑44‑90, ALL AS AMENDED, RELATING TO FEE IN LIEU OF TAXES, SO AS TO PROVIDE THAT A COUNTY AUDITOR OR COUNTY ASSESSOR MAY REQUEST AND OBTAIN ANY FINANCIAL BOOKS AND RECORDS FROM A SPONSOR THAT SUPPORT THE SPONSOR’S TAX FORM OR RETURN TO VERIFY THE CALCULATIONS OF THE FEE IN LIEU OF TAXES TAX FORM OR RETURN; AND TO AMEND SECTION 12‑36‑2120, AS AMENDED, RELATING TO SALES TAX EXEMPTIONS, SO AS TO EXEMPT COMPUTERS, COMPUTER EQUIPMENT, COMPUTER HARDWARE AND SOFTWARE PURCHASES FOR A DATACENTER AND ELECTRICITY USED BY A DATACENTER.

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

SECTION 1. A. Section 12‑6‑3360(M)(13) of the 1976 Code, as last amended by Act 394 of 2006, 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 or retail sales, which has a net increase of at least:

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

(ii) ~~one hundred twenty‑five~~ seventy‑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; or

(iii) ~~seventy‑five~~ forty 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)~~ ~~thirty 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).”

B. Section 12‑6‑3360(M)(14) of the 1976 Code, as last amended by Act 335 of 2006, is further amended to read:

“(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;

(vii) 9271 space research and technology; ~~or~~

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

(ix) 541513 computer facilities management services;

(x) 541519 other computer-related services; 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); or

(c) a facility primarily used for one or more of the activities listed under the 2002 version of the NAICS Codes 541513, 541519, or 518210.”

SECTION 2. Chapter 12, Title 6 of the 1976 Code is amended by adding:

“Section 12‑6‑3411. (A) A corporation establishing a national corporate headquarters in this State or expanding or adding to an existing national corporate headquarters in this State, which in connection therewith adds at least fifty new full‑time jobs performing corporate headquarters related functions and services, as defined in Section 12‑6‑3410, shall be exempt from paying state corporate income taxes pursuant to Section 12‑6‑530 for a period of ten years from the date of establishment, expansion, or addition.

(B) A taxpayer only may elect to receive either the exemption provided in this section or the credit provided in Section 12‑6‑3410. If the taxpayer makes an election for the exemption, the taxpayer may not claim the credit in subsequent tax years.”

SECTION 3. Section 12‑20‑105(E) of the 1976 Code, as last amended by Act 290 of 2010, is further amended to read:

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

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:

“( ) A county auditor or county assessor may request and obtain any financial books and records from a sponsor that support the sponsor’s tax form or return to verify the calculations of the fee in lieu of taxes tax form or return.”

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:

“( ) A county auditor or county assessor may request and obtain any financial books and records from a sponsor that support the sponsor’s tax form or return to verify the calculations of the fee in lieu of taxes tax form or return.”

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:

“( ) A county auditor or county assessor may request and obtain any financial books and records from a sponsor that support the sponsor’s tax form or return to verify the calculations of the fee in lieu of taxes tax form or return or the calculations of the special source revenue credit.”

SECTION 7. A. Section 12‑36‑2120 of the 1976 Code, as last amended by Act 280 of 2010, is further amended by adding an appropriately numbered subsection at the end to read:

“( )(a) computers, computer equipment, computer hardware and software purchases for a datacenter as defined by this section; and

(b) electricity used by a datacenter.

(c) As used in this subsection:

(i) ‘Computer’ means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(ii) ‘Computer equipment’ means original or replacement servers, routers, switches, power units, network devices, hard drives, processors, memory modules, motherboards, racks, other computer hardware and components, cabling, cooling apparatus, and related or ancillary equipment, machinery, and components, the primary purpose of which is to store, retrieve, aggregate, search, organize, process, analyze, or transfer data or any combination of these, or to support related computer engineering or computer science research. This also includes equipment cooling systems for managing the performance of the datacenter property, including mechanical and electrical equipment; hardware for distributed and mainframe computers and servers; data storage devices; network connectivity equipment and peripheral components and systems.

(iii) ‘Computer software’ means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(iv) ‘Concurrently maintainable’ means capable of having any capacity component or distribution element serviced or repaired on a planned basis without interrupting or impeding the performance of the computer equipment.

(v) ‘Datacenter’ means a facility where the taxpayer invests at least fifty million dollars in real or personal property or both comprising or located at the facility over a five‑year period and that provides infrastructure for hosting or data processing services and that has power and cooling systems that are created and maintained to be concurrently maintainable and to include redundant capacity components and multiple distribution paths serving the computer equipment at the facility. Although the facility must have multiple distribution paths serving the computer equipment, a single distribution path may serve the computer equipment at any one time. The following definitions apply in this subdivision:

(vi) ‘Multiple distribution paths’ means a series of distribution paths configured to ensure that failure on one distribution path does not interrupt or impede other distribution paths.

(vii) ‘Redundant capacity components’ means components beyond those required to support the computer equipment.

(d) This exemption applies from the start of the investment in or construction of the datacenter. The taxpayer shall notify the Department of Revenue of its use of the exemption provided in this subsection on or before the first sales tax return filed with the department after its first use. Upon receipt of the notification, the department shall issue an appropriate exemption certificate to the taxpayer to be used for qualifying purposes under this subsection. Any subsequent purchase of or investment in computer equipment, computer software, and computers, including to replace originally deployed computer equipment or to implement future expansions, likewise shall qualify for the exemption provided in this subsection, regardless of when the taxpayer makes the investments.”

B. The exemption provided in this section no longer applies after twenty years from the date of enactment.

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

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