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COMMITTEE REPORT

March 21, 2012

**H. 3720**

Introduced by Reps. Cooper, Henderson and Patrick

S. Printed 3/21/12--S. [SEC 3/22/12 1:01 PM]

Read the first time May 3, 2011.

**THE COMMITTEE ON FINANCE**

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, 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, by striking all after the enacting words and inserting:

/ SECTION 1. 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)(1) original or replacement computers, computer equipment, and computer hardware and software purchases used within a datacenter; and

(2) electricity used by a datacenter and eligible business property to be located and used at the datacenter. This subitem does not apply to sales of electricity for any other purpose, and such sales are subject to the tax, including, but not limited to, electricity used in administrative offices, supervisory offices, parking lots, storage warehouses, maintenance shops, safety control, comfort air conditioning, elevators used in carrying personnel, cafeterias, canteens, first aid rooms, supply rooms, water coolers, drink boxes, unit heaters and waste house lights.

(B) As used in this section:

(1) ‘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.

(2) ‘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.

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

(4) ‘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.

(5) ‘Datacenter’ means a facility at a single location in South Carolina:

(i) 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;

(ii)(a) where a taxpayer invests at least fifty million dollars in real or personal property over a five‑year period; or

(b) where one or more taxpayers invests a minimum aggregate capital investment of at least seventy-five million dollars in real or personal property or both over a five‑year period;

(iii) where a taxpayer creates and maintains at least twenty‑five full-time jobs at the facility with an average cash compensation level of one hundred fifty percent of the per capita income of the State or of the county in which the facility is located, whichever is lower, according to the most recently published data available at the time the facility is placed in service;

(iv) where the jobs created pursuant to subitem (iii) are maintained for three consecutive years after a facility with the minimum capital investment and number of jobs has been placed in service; and

(v) which is certified by the Department of Commerce prior to being placed in service under such policies and procedures as promulgated by the Department of Commerce.

(6) ‘Eligible business property’ means property used for the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.

(7) ‘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.

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

(C)(1) To qualify for the exemption allowed by this item, a taxpayer, and the facility in the case of a seventy-five million dollar investment made by more than one taxpayer, shall notify the Department of Revenue and Department of Commerce, in writing, of its intention to claim the exemption. For purposes of meeting the requirements of subsection (B)(5)(ii) and (B)(5)(iii), capital investment and job creation begin accruing once the taxpayer notifies each department. Also, the five-year period begins upon notification.

(2) Once the taxpayer meets the requirements of subsection (B)(5), or at the end of the five-year period, the taxpayer shall notify the Department of Revenue, in writing, whether it has or has not met the requirements of subsection (B)(5). The taxpayer shall provide the proof the department determines necessary to determine that the requirements have been met.

(D)(1) Upon notifying each department of its intention to claim the exemption pursuant to subsection (C)(1), and upon certification by the Department of Commerce, the taxpayer may claim the exemption on eligible purchases at any time during the period provided in Section 12‑54‑85(F), including the time period prior to subsection (B)(5)(iv) being satisfied.

(2) For purposes of this section, the running of the periods of limitations for assessment of taxes provided in Section 12‑54‑85 is suspended for:

(i) the time period beginning with notice to each department pursuant to subsection (C)(1) and ending with notice to the Department of Revenue pursuant to subsection (C)(2); and

(ii) during the three year job maintenance requirement pursuant to subsection (B)(5)(iv).

(E) Any subsequent purchase of or investment in computer equipment, computer hardware and software, and computers, including to replace originally deployed computer equipment or to implement future expansions, likewise shall qualify for the exemption provided in this item, regardless of when the taxpayer makes the investments.

(F)(1) If a taxpayer receives the exemption for purchases but fails to meet the requirements of subsection (B)(5) at the end of the five-year period, the department may assess any state or local sales or use tax due on items purchased.

(2) If a taxpayer meets the requirements of subsection (B)(5), but subsequently fails to maintain the number of full-time jobs with the required compensation level at the facility, as previously required pursuant to subsection (B)(5)(iii), the taxpayer is:

(i) not allowed the exemption for items described in subsection (A)(1) until the taxpayer meets the previous qualifying jobs requirements pursuant to subsection (B)(5)(iii); and

(ii) allowed the exemption for electricity pursuant to subsection (A)(2), but the exemption only applies to a percentage of the sale price, calculated by dividing the number of qualifying jobs by twenty-five.

(G) This item only applies to a datacenter that is certified by the Department of Commerce pursuant to subsection (D)(1) and placed in service after July 1, 2012, and prior to January 1, 2032. However, this item shall continue to apply to a taxpayer that is certified and placed in service by December 31, 2031, for an additional ten year period. Upon the end of the ten-year period, this item is repealed.”

SECTION 2. This act takes effect upon the approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

HUGH K. LEATHERMAN, SR. for Committee.

**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~~ twenty 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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