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Indicates New Matter

COMMITTEE REPORT

April 18, 2013

**H. 3557**

Introduced by Reps. Cobb‑Hunter, White, Bannister, Rutherford, Harrell, Merrill, Simrill, Stavrinakis, Loftis, Horne, Weeks, Mitchell, Ott and Sellers

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Read the first time February 19, 2013.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Bill (H. 3557) to amend Section 12‑6‑3375, as amended, Code of Laws of South Carolina, 1976, relating to the tax credit for port cargo volume increase, etc., respectfully

**REPORT:**

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

W. BRIAN WHITE for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**REVENUE IMPACT 1/**

This bill is not expected to affect general fund income taxes or individual income withholding taxes in FY2013-14 or FY2014-15.

**Explanation**

Currently, a taxpayer is allowed a tax credit if the taxpayer is engaged in manufacturing, warehousing, or distribution that uses South Carolina port facilities and increase its port cargo volume at these facilities by at least five (5) percent in a calendar year over its base year port cargo volume. The amount of the credit is determined by the Coordinating Council for Economic Development of the Department of Commerce upon application by the taxpayer. The maximum amount of tax credits allowed to all qualifying taxpayers may not exceed $8,000,000 for each calendar year. Any unused credits may be carried forward for five (5) years.

This bill would amend Section 12-6-3375 to amend the port usage tax credit by making several changes. This bill would expand the types of businesses that would be eligible to claim a tax credit to include freight forwarding, freight handling, goods processing, cross docking, transloading, and wholesaling of goods. The expansion of the types of jobs would broaden the base of the total number of jobs eligible to apply for tax credits. Once the taxpayer files an application with the Coordinating Council for Economic Development, the CCED would now be required to consider factors related to the economic benefit of the State or other factors in making the sole discretion in awarding credits based upon the taxpayer’s application.

Taxpayers are eligible for tax credits by increasing its port cargo volume at these facilities by a minimum of five percent in a single calendar year over its base year port cargo volume. The increase may be stated as a percentage increase, a total increase in net tons of noncontainerized cargo, a measurement of cargo, and a number of twenty-foot equivalent units, or TEU’s of cargo. This bill removes the fixed base year period and changes the base year to the initial January 1st through December 31st period the taxpayer meets the 75 net tons of noncontainerized cargo, or 385 cubic meters of cargo, or ten loaded TEU’s. The base year port cargo volume must be recalculated each calendar year after the initial base year.

This bill provides for the awarding of up to $1,000,000 of the $8,000,000 of total credits available against employee withholdings to a new warehouse or distribution facility which invests at least $40,000,000 at a single site and creates 100 new full-time jobs if the base year cargo is not less than 5,000 TEU’s or its noncontainerized equivalent. The taxpayer must make satisfactory progress in meeting the job and capital investment criteria within three years of the initial approval of the tax credits. This bill also adds a provision to allow a taxpayer that meets the initial port volume requirement but does not have a distribution center in the state to be eligible for the tax credit if the cargo supports a presence in the state. The taxpayer must employ at least 250 full-time equivalent South Carolinians statewide, and must complete the construction of a distributional facility in the State within five years of the initial approval of the tax credits.

This bill adds a “claw back” provision such that if a taxpayer fails to meet the new full-time job and capital investment requirements of the distribution centers above, the taxpayer must repay the department a pro rata portion of the credits claimed.

According to the Department of Revenue, 78 taxpayers have claimed a total of $6,670,868 of nonrefundable credits since passage of the port volume increase tax credit in 2005. Based upon the effective date and research of current activity, this bill is not expected to affect general fund revenues in FY2013-14 and FY2014-15. While the bill does expand the list of eligible businesses and we expect new businesses to qualify, they would be competing for all other entities within the $8,000,000 cap limitation. This act takes effect upon approval by the Governor and applies to tax years beginning after December 31, 2013.

*Approved By:*

Frank A. Rainwater

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 12‑6‑3375, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE TAX CREDIT FOR PORT CARGO VOLUME INCREASE, SO AS TO EXPAND THE TYPES OF BUSINESSES THAT QUALIFY FOR THE CREDIT, TO GIVE THE COORDINATING COUNCIL FOR ECONOMIC DEVELOPMENT DISCRETION IN AWARDING CREDITS, TO FURTHER DEFINE TERMS, TO PROVIDE THAT TAXPAYERS ENGAGED IN THE MOVEMENT OF GOODS IMPORTED OR EXPORTED THROUGH SOUTH CAROLINA’S PORT FACILITIES MAY BE ELIGIBLE FOR THE CREDIT IF THE CARGO SUPPORTS A PRESENCE IN THE STATE AND MEETS OTHER JOB AND CAPITAL INVESTMENT REQUIREMENTS, AND TO PROVIDE THAT A TAXPAYER THAT FAILS TO MEET THE REQUIREMENTS OF THE CREDIT MUST REPAY A PRO RATA PORTION OF THE CREDIT.

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

SECTION 1. Section 12‑6‑3375 of the 1976 Code, as last amended by Act 290 of 2010, is further amended to read:

“Section 12‑6‑3375. (A)(1) A taxpayer engaged in any of the following: manufacturing, warehousing, freight forwarding, freight handling, goods processing, cross docking, transloading, wholesaling of goods, or distribution, exported or imported through ~~which uses~~ port facilities in ~~this State~~ South Carolina and which increases its port cargo volume at these facilities by a minimum of five percent in a single calendar year over its base year port cargo volume is eligible to claim an income tax credit or a credit against employee withholding in the amount determined by the Coordinating Council for Economic Development (council).

(2) The maximum amount of tax credits allowed to all qualifying taxpayers pursuant to this section may not exceed eight million dollars for each calendar year. The credits may be claimed against the taxes imposed pursuant to Sections 12‑6‑530 and 12‑6‑545 and ~~credits~~ against employee withholdings ~~may not exceed four million dollars out of eight million dollars~~. The council has sole discretion in allocating the credits provided by this section ~~on a priority basis or such other basis as the board deems appropriate, taking into consideration~~ and must consider the following factors:

(a) the amount of base year port cargo volume;

(b) the total and percentage increase in port cargo volume; and

(c) ~~the number of qualifying taxpayers~~ factors related to the economic benefit of the State or other factors~~;~~

~~(d)~~ ~~the type of cargo transported; and~~

~~(e)~~ ~~other factors related to the economic benefit of the State, as determined by the council~~.

(3)(a) If the income tax credit exceeds the taxpayer’s income tax liability for the taxable year, the excess amount may be carried forward and claimed against income taxes in the next five succeeding taxable years.

(b) If the credit against withholding taxes exceeds the taxpayer’s withholding tax liability for the taxable quarter that is not otherwise refunded under Title 12 of the South Carolina Code of Laws, the excess amount may be carried forward and claimed against withholding liability that is not otherwise refunded under Title 12 of the South Carolina Code of Laws in the next twenty succeeding taxable quarters.

~~(4)~~ ~~The credit may be claimed by the taxpayer as provided in subsection (A)(1) only if the taxpayer owns the cargo at the time the port facilities are used.~~

(B)(1) For every year in which a taxpayer claims the credit, the taxpayer shall submit an application to the council after the calendar year in which the increase in port cargo volume occurs. ~~The council may make allocations of the credit~~ Allocations of the credit may be made on a monthly, quarterly, or annual basis. The taxpayer shall attach a schedule to the taxpayer’s application to the council with the following information and information requested by the council or the department:

(a) a description of how the base year port cargo volume and the increase in port cargo volume was determined;

(b) the amount of the base year port cargo volume;

(c) the amount of the increase in port cargo volume for the taxable year stated both as a percentage increase and as a total increase in net tons of ~~noncontainerized~~ non‑containerized cargo, measurement of cargo, and TEUs of cargo, including information which demonstrates an increase in port cargo volume in excess of the minimum amount required to claim the tax credits pursuant to this section;

(d) any tax credit utilized by the taxpayer in prior years; and

(e) the amount of tax credit carried over from prior years.

(2) To receive the credit the taxpayer shall claim the credit on its income tax or withholding return in a manner prescribed by the department. The department may require a copy of the certification form issued by the council be attached to the return or otherwise provided.

(C) As used in this section:

(1) ‘TEU’ means a ‘twenty‑foot equivalent unit’; a volumetric measure based on the size of a container twenty feet long by eight feet wide by eight feet, six inches high. A ‘weighted TEU’ is equal to seven and a half tons. A ‘measured TEU’ is equal to thirty‑eight and a half cubic meters.

(2) ‘Base year port cargo volume’ initially means the total amount of net tons of ~~noncontainerized~~ non‑containerized cargo, measured equivalent of non‑cargo or TEUs of cargo actually transported by way of a waterborne ship through a port facility during the period from January ~~1, 2009,~~ first through December ~~31, 2009~~ thirty‑first of the same year. Base year port cargo volume must be at least seventy‑five net tons of ~~noncontainerized~~ non‑containerized cargo three hundred and eighty‑five cubic meters, or ten TEUs for a taxpayer to be eligible for the credits provided in this section. For a taxpayer that does not ship that amount in the year ending December ~~31, 2009~~ thirty‑first of the previous year, including a taxpayer who locates in South Carolina after December ~~31, 2009~~ thirty‑first of the previous year, its base cargo volume will be measured by the initial January first through December thirty‑first calendar year in which it meets the requirements of seventy‑five net tons of ~~noncontainerized~~ non‑containerized cargo, three hundred eighty‑five cubic meters, or ten loaded TEUs. Base year port cargo volume must be recalculated each calendar year after the initial base year.

(3) ‘Port facility’ means any publicly or privately owned facility located within this State through which cargo is transported by way of a waterborne ship or vehicle to or from destinations outside this State and which handles cargo owned by third parties in addition to cargo owned by the port facility’s owner.

(4) ‘Port cargo volume’ means the total amount of net tons of ~~noncontainerized~~ non‑containerized cargo or containers measured in twenty‑foot equivalent units (TEUs) of cargo transported by way of a waterborne ship or vehicle through a port facility, or measured cubic meters of cargo.

(D) The council may annually award up to one million dollars of the eight million dollars of credits against employee withholdings that are not otherwise refundable pursuant to this title to a new warehouse or distribution facility which commits to expending at least forty million dollars at a single site and creating one hundred new full‑time jobs, and the base year cargo ~~provisions contained in this section do not apply~~ shall not be less than five thousand TEUs or its non‑containerized equivalent. The council may make the award in the year the facility is announced provided that it may not tender the certificate until it has received satisfactory proof that the capital investment and job creation requirements have, or will be, satisfied. Any credit certificate expires three years after issuance if satisfactory proof has not been received. If the credit exceeds the taxpayer’s withholding tax liability for the taxable quarter that is not otherwise refundable pursuant to this title, the excess amount may be carried forward and claimed against withholding liability that is not otherwise refundable pursuant to this title in the next twenty succeeding taxable quarters.

(E)(1) A taxpayer engaged in the movement of goods imported or exported through South Carolina’s port facilities may be eligible for the port volume tax credit if the cargo supports a presence in the State and the taxpayer does not have a distribution center in the State at the time of initial approval of the port volume tax credit, so long as:

(a) the taxpayer employs at least two hundred and fifty full-time or full-time equivalent South Carolinians in operations statewide;

(b) the taxpayer completes the construction of the distribution facility in South Carolina, and is operational, within five years of the initial approval of the port volume tax credit; and

(c) the base year for the taxpayer shall be not less than five thousand TEUs or its non‑containerized equivalent.

(2) Any credit certificate expires three years after issuance if satisfactory proof has not been received.

(F) The council has discretion to award the credits pursuant to either subsection (D) or (E).

(G) Notwithstanding Section 12‑54‑240, the department and the Department of Commerce may exchange information submitted by a taxpayer pursuant to this section.

(H)(1) If a taxpayer receives the credit under subsection (D) but fails to meet the requirements of subsection (D) at the end of the three‑year period, the taxpayer must repay the department a pro rata portion of the credits claimed.

(2) If a taxpayer receives the credit under subsection (E) but fails to meet the requirements of subsection (E)(1) at the end of the five‑year period, the taxpayer must repay the department a pro rata portion of the credits claimed.”

SECTION 2. This act takes effect upon approval by the Governor and applies to tax years beginning after December 31, 2013.

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