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Indicates New Matter

AMENDED--NOT PRINTED IN THE HOUSE

Amt. No. 1A (4133C001.RT.SA19)

May 9, 2019

**H. 4133**

Introduced by Reps. Weeks, G.M. Smith, Clyburn, Stavrinakis, Gilliard, Bales, Hosey, Henderson‑Myers, R. Williams, Rutherford, Alexander and Forrest

S. Printed 5/7/19--S.

Read the first time April 9, 2019.

**A** **BILL**

TO AMEND SECTION 12‑6‑3530, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO COMMUNITY DEVELOPMENT TAX CREDITS, SO AS TO ALLOW A TAX CREDIT OF FIFTY PERCENT OF ANY CASH DONATION TO A COMMUNITY DEVELOPMENT CORPORATION OR COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS, TO DELETE AN AGGREGATE CREDIT PROVISION AND SET AN ANNUAL LIMIT, TO ESTABLISH TAX CREDIT RESERVE ACCOUNTS FOR THE FIRST THREE QUARTERS OF EACH TAX YEAR SO AS TO AVOID THE DEPLETION OF CREDITS BY AN INDIVIDUAL TAXPAYER, TO DELETE THE PRO‑RATA DISTRIBUTION OF TAX CREDITS, TO ALLOW FINANCIAL INSTITUTIONS WITH TAX LIABILITIES IN THIS STATE TO INVEST IN COMMUNITY DEVELOPMENT CORPORATIONS FOR THE PURPOSE OF RECEIVING A TAX CREDIT, AND TO PROVIDE THAT RETURNS ON INVESTMENTS IN CERTIFIED COMMUNITY DEVELOPMENT CORPORATIONS AND CERTIFIED COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS MAY NOT EXCEED THE TOTAL AMOUNT OF THE INITIAL INVESTMENT; AND TO AMEND SECTION 4 OF ACT 314 OF 2000, AS AMENDED, RELATING TO COMMUNITY DEVELOPMENT CORPORATIONS AND FINANCIAL INSTITUTIONS, SO AS TO EXTEND THE PROVISIONS OF THE SOUTH CAROLINA COMMUNITY ECONOMIC DEVELOPMENT ACT UNTIL JUNE 30, 2023.

Amend Title To Conform

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

SECTION 1. Section 12‑6‑3530(A), (B), (C), (D), (E), (F), and (L) of the 1976 Code is amended to read:

“(A) A taxpayer may claim as a credit against his state income tax, bank tax, or premium tax liability thirty‑three percent of all ~~amounts invested~~ equity investments in a certified community development corporation or in a community development financial institution, as defined in Section 34‑43‑20(2) or (3). A taxpayer that makes a cash donation to a certified community development corporation or community development financial institution may claim a credit equal to fifty percent of the donation.

To qualify for this credit the taxpayer must obtain a certificate from the South Carolina Department of Commerce certifying that the entity into which the funds are invested is a community development corporation or a community development financial institution within the meaning of Section 34‑43‑20(2) or (3) and certifying that the credit taken or available to that taxpayer will not exceed the annual aggregate ~~five million~~ dollar limitation ~~of all those credits as~~ provided in subsection (B) ~~when added to the credits previously taken or available to other taxpayers making similar investments~~. A taxpayer who invested in good faith in a certified corporation or institution may claim the credit provided in this section, notwithstanding the fact that the certification is later revoked or not renewed by the department.

(B)(1) The total amount of credits allowed pursuant to this section may not exceed in the aggregate five million dollars for all taxpayers and all calendar years and one million dollars for all taxpayers in one calendar year.

(2) Notwithstanding item (1), the aggregate limit for all taxpayers in all tax years set forth in item (1) is increased by one million dollars. This additional one million dollars may only be used for credits earned and certificates issued in tax years beginning after 2018.

(C) The Department of Commerce shall authorize the tax credits each year on a first‑come, first‑served basis. A single community development corporation or community development financial institution may not receive more than twenty‑five percent of the total annual tax credits authorized pursuant to this section ~~in any one calendar year~~. Twenty‑five percent of annual tax credits must be held in a reserve account during the first three quarters of each tax year and made available exclusively to small, rural‑based, community development corporations. During the first three quarters of any tax year, an individual community development corporation or a community development financial institution must not be authorized to receive more than fifteen percent of the statewide total annual credits. During the fourth quarter of each tax year, all remaining tax credits are available to all certified community development corporations or community development financial institutions.

(D) The department shall monitor the investments made by taxpayers in community development corporations and community development financial institutions as permitted by this section and shall perform the functions as provided in ~~subsection~~ subsections (A) and (C) ~~above~~.

(E) If the amount of the credit determined, pursuant to subsection (A), exceeds the taxpayer’s state tax liability for the applicable taxable year, the taxpayer may carry over the excess to the immediately succeeding taxable years. However, the credit carry‑over may not be used for a taxable year that begins on or after ~~ten~~ three years from the date of the acquisition of stock or other equity interest that is the basis for a credit pursuant to this section. The amount of the credit carry‑over from a taxable year must be reduced to the extent that the carry‑over is used by the taxpayer to obtain a credit provided for in this section for a later taxable year.

(F) ~~Notwithstanding the provisions of subsections (A), (B), (C), (D), and (E) above, if on April 1, 2001, or as soon after that as the department is able to determine, the total amount of tax credits which may be claimed by all taxpayers exceeds the total amount of tax credits authorized by this section, the credits must be determined on a pro rata basis. For purposes of this subsection, a community development corporation or community development financial institution for which an investment may be claimed as a tax credit pursuant to this section must report all investments made before April 1, 2001, to the department by April 1, 2001, which shall inform, as soon as reasonably possible, all community development corporations and community development financial institutions of the total of all investments in all institutions and corporations as of April 1, 2001~~ The department must not authorize any tax credits after the annual aggregate limitation set forth in subsection (B) has been reached.

(L) Banks and financial institutions ~~chartered by the~~ with tax liabilities in this State ~~of South Carolina~~ may invest in community development corporations and community development financial institutions incorporated pursuant to the laws of this State, up to a maximum of ten percent of a chartered bank or financial institution’s total capital and surplus.”

SECTION 2. Section 12‑6‑3530 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

“( ) Returns on investments in certified community development corporations and certified community development financial institutions, including the value of any tax credits authorized pursuant to this section, may not exceed the total amount of initial investment in certified community development corporations and community development financial institutions.”

SECTION 3. Section 4 of Act 314 of 2000, as last amended by Act 46 of 2015, is further amended to read:

“SECTION 4. Unless reauthorized by the General Assembly, the provisions of this act shall terminate on June 30, ~~2020~~ 2023, and this act and all other laws and regulations governing, authorizing, and otherwise dealing with community development corporations and community development financial institutions are deemed repealed on that date.”

SECTION 4.A. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

“Section 12‑6‑3775. (A) For the purposes of this section, ‘solar energy property’ means any nonresidential solar energy equipment with a nameplate capacity of at least one thousand nine hundred kilowatts (1,900 kw AC) 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.

(B)(1) A taxpayer is allowed an income tax credit equal to twenty‑five percent of the cost, including the cost of installation, of a solar energy property if he constructs, purchases, or leases a solar energy property that is located in the State of South Carolina and if:

(a) the property is located on:

(i) the Environmental Protection Agency’s National Priority List;

(ii) the Environmental Protection Agency’s National Priority List Equivalent Sites;

(iii) a list of related removal actions, as certified by the Department of Health and Environmental Control;

(iv) land that is subject to a Voluntary Cleanup Contract with the Department of Health and Environmental Control as of December 31, 2017 or to corrective action under the Federal Resource Conservation and Recovery Act of 1976; or

(v) land that is owned by the Pinewood Site Custodial Trust; and

(b) he places it in service in this State during the taxable year.

(2) The credit is earned in the year in which the solar energy property is placed in service but must be taken in five equal annual installments, beginning in the year in which the solar energy property is placed in service. Unused credit may be carried forward for five taxable years from the year that the credit was able to be taken. A lessor shall give a taxpayer who leases solar energy property from him a statement that describes the solar energy property and states the cost of the property upon request. A credit is not allowed pursuant to this section if the cost of the solar energy property is provided by public funds. For the purposes of this section, ‘public funds’ does not include federal grants or tax credits.

(C) If the solar energy property with respect to which the credit was claimed is disposed of, taken out of service, or moved out of the State in a year in which the installment of a credit accrues, then the credit expires and the taxpayer may not take any remaining installments of the credit.

(D) A credit for each installation of solar energy property placed in service may not exceed two million five hundred thousand dollars. The credit is allowed on a first‑come, first‑served basis, and the total amount of credits available to be taken, pursuant to the five equal annual installments, for all taxpayers in a taxable year, may not exceed two million five hundred thousand dollars in the aggregate.

(E) A taxpayer who claims any other state credit allowed with respect to solar energy property may not take the credit allowed in this section with respect to the same property. A taxpayer may not take the credit allowed in this section for solar energy property that the taxpayer leases from another unless the taxpayer obtains the lessor’s written certification that the lessor will not claim a credit pursuant to this section with respect to the property.

(F) The department may promulgate regulations necessary to implement the provisions of this section.”

B. Upon approval by the Governor, this SECTION takes effect in income tax years beginning after 2018. The provisions of this SECTION are repealed on December 31, 2021, except that if the credit allowed by Section 12‑6‑3775, as added by this SECTION, is earned before the repeal, then the provisions of Section 12‑6‑3775 continue to apply until the credits have been fully claimed.

SECTION 5. This act takes effect upon approval by the Governor and first applies to credits earned and certificates issued, and the administration thereof, after 2018. Any credits earned and certificates issued, and the administration thereof, before 2019 must be claimed in accordance with the provisions of Section 12-6-3530 as it existed on December 31, 2018. However, any credits earned and certificates issued before 2019 must count toward the aggregate credit limit for tall taxpayers in all calendar years set forth in Section 12-6-3530(B).

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