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Indicates New Matter

COMMITTEE REPORT

February 24, 2022

**S. 901**

Introduced by Senators Verdin, Cromer, McElveen and Peeler

S. Printed 2/24/22--S.

Read the first time December 6, 2021.

**THE COMMITTEE ON FINANCE**

To whom was referred a Bill (S. 901) to amend Section 12‑6‑3775, Code of Laws of South Carolina, 1976, relating to income tax credits, so as to provide for an income tax credit, etc., respectfully

**REPORT:**

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

HARVEY S. PEELER, JR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill reinstates §12-6-3775, which provides a nonresidential solar energy tax credit. This bill amends the repeal date from December 31, 2021, to December 31, 2024, and increases the credit limit for each installation of solar energy property placed-in-service from $2,500,000 to $5,000,000. DOR indicates that any expenses related to the modification of tax forms from the reinstatement of the credit and increase in the credit limit can be administered with existing resources. Therefore, this bill will not have an expenditure impact on the agency.

**State Revenue**

This bill reinstates §12-6-3775, which provides a nonresidential solar energy tax credit. This bill amends the repeal date from December 31, 2021 to December 31, 2024. This section allows for an income tax credit equal to 25 percent of the cost, including installation, of nonresidential solar energy property as long as the property is located within one of the following sites within South Carolina:

 the EPA’s National Priority List,

 the EPA’s National Priority List Equivalent Sites,

 a list of related removal actions as certified by DHEC,

 land that is subject to a Voluntary Cleanup Contract with DHEC as of December 31, 2017,

 land that is subject to corrective action under the Federal Resource Conservation and Recovery Act of 1976, or

 land that is owned by the Pinewood Site Custodial Trust.

The credit is earned in the tax year that the solar energy property is placed-in-service and must be taken in five equal annual installments. The credit must be claimed within three years of the year it was earned. Unused credits may be carried forward for five years from the year the credit was able to be taken. Further, if a taxpayer is a partnership or a limited liability company taxed as a partnership, the credit and credit carry forward may be passed through and allocated to the partners or members as long as the placed-in-service date is after 2019.

This bill increases the credit limit for each installation of solar energy property placed-in-service from $2,500,000 to $5,000,000. The credit is allowed on a first-come, first-served basis, and the total amount of credits may not exceed $2,500,000 for all taxpayers in a taxable year. If a credit is earned and any portion taken pursuant to §12-6-3775 before tax year 2022, then the individual is beholden to §12-6-3775 as it existed on December 31, 2021. Without the extension of the repeal date from December 31, 2021 to December 31, 2024, all credits would effectively be claimed by tax year 2025.  
 This analysis assumes taxpayers claim the first annual installment of the credit in the year it is earned and then every consecutive year until the total five annual installments are fully utilized. Based on discussions with DOR, income tax data attributed to the Solar Energy Property Credit reported on form TC-58 is inaccurate due to misreporting by individuals claiming the Solar Energy Credit, which should be reported on form TC-38. Based upon information from DOR, only one taxpayer is currently expected to apply for the credit in tax year 2022 if reinstated. However, others may apply for the credit if it is reestablished. As such, this analysis assumes taxpayers will claim the full $2,500,000 aggregate credit limit per year in FY 2022-23 through FY 2028-29, at which time all credits are assumed to be effectively claimed. This results in a total decrease in general fund income tax revenue of up to $17,500,000 from FY 2022-23 to FY 2028-29. Taxpayers are allowed to carry forward unused credits for five taxable years from the year the credit was able to be taken, which may extend the timing of the impact.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 12‑6‑3775, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO INCOME TAX CREDITS, SO AS TO PROVIDE FOR AN INCOME TAX CREDIT TO AN INDIVIDUAL OR BUSINESS THAT CONSTRUCTS, PURCHASES, OR LEASES CERTAIN SOLAR ENERGY PROPERTY AND THAT PLACES IT IN SERVICE IN THIS STATE, AND TO DEFINE NECESSARY TERMS; AND TO REPEAL SECTION 4 B. OF ACT 77 OF 2019 RELATING TO THE REPEAL OF SECTION 12‑6‑3775.

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

SECTION 1. A. Section 12‑6‑3775 as it existed on December 31, 2021, is reenacted retroactively, subject to the amendments contained in SECTION 2.

B. This SECTION takes effect upon approval by the Governor and applies to income tax years beginning after 2021.

C. Section 4 B. of Act 77 of 2019 is repealed.

SECTION 2.A. Section 12‑6‑3775 of the 1976 Code is amended to read:

“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~~ within three years of 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~~ five 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.

(G) To the extent that the taxpayer is a partnership or a limited liability company taxed as a partnership, the credit, including any unused credit amount carried forward, may be passed through to the partners or members and may be allocated among any of its partners or members on an annual basis including, without limitation, an allocation of the entire credit or unused carryforward to any partner or member who was a member or partner at any time in the year in which the credit or unused carryforward is allocated. The allocation must be allowed without regard to any provision of the Internal Revenue Code or regulations promulgated pursuant thereto, that may be interpreted as contrary to the allocation including, without limitation, the treatment of the allocation as a disguised sale. This subsection only applies to credits earned for a solar energy property placed in service after 2019.”

B. This SECTION takes effect upon approval by the Governor and first applies to income tax years beginning after 2021.

SECTION 3. (A) Except as otherwise provided, this act takes effect upon approval by the Governor.

(B)(1) If a solar energy tax credit is earned and any portion taken pursuant to Section 12‑6‑3775 before 2022, then the provisions of 12‑6‑3775 as they existed on December 31, 2021, continue to apply to such credits until the credits have been fully claimed.

(2) If a solar energy tax credit is earned pursuant to Section 12‑6‑3775 after 2021, but before the effective date of this act, then the reenacted provisions of 12‑6‑3775, as amended pursuant to SECTION 2, apply.

(C) The provisions of Section 12‑6‑3775 are repealed on December 31, 2024, except that if the credit allowed by Section 12‑6‑3775 is earned before the repeal, then the provisions of Section 12‑6‑3775, as amended, continue to apply until the credits have been fully claimed.

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