Indicates Matter Stricken

Indicates New Matter

Committee Amendment Adopted and Amended

May 08, 2024

H. 4087

Introduced by Reps. G. M. Smith, West, Kirby, Ballentine, Robbins, Hewitt, M. M. Smith, Davis, Hiott, Long, Hager, Ott, Weeks, Dillard, W. Jones, Brewer, Hartnett and Murphy

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Read the first time April 6, 2023

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A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 12‑6‑3410, RELATING TO CORPORATE INCOME TAX CREDIT FOR CORPORATE HEADQUARTERS, SO AS TO PROVIDE CHANGES TO STAFFING REQUIREMENTS AND CERTAIN TIMING; BY AMENDING SECTION 12‑6‑3460, RELATING TO THE RECYCLING FACILITY TAX CREDIT DEFINITIONS, SO AS TO LOWER THE MINIMUM LEVEL OF INVESTMENT FOR A QUALIFIED RECYCLING FACILITY AND TO INCLUDE CERTAIN PRODUCTS TO THE DEFINITION OF “POSTCONSUMER WASTE MATERIAL”; by amending SECTIONS 12‑10‑20; 12‑10‑30, 12‑10‑40, 12‑10‑45, 12‑10‑50, 12‑10‑60, AND 12‑10‑80, ALL RELATING TO THE ENTERPRISE ZONE ACT OF 1995, SO AS TO ALLOW REMOTE EMPLOYEES WORKING IN SOUTH CAROLINA TO BE INCLUDED IN CERTAIN JOB CREATION REQUIREMENTS AND TO CREATE A NEW PROVISION TO INCENTIVIZE CERTAIN COMPANIES; AND BY AMENDING SECTION 12‑10‑95, RELATING TO the enterprise zone act CREDIT AGAINST WITHHOLDING FOR RETRAINING, SO AS TO PROVIDE WHO IS ELIGIBLE FOR THE CREDIT AND THE AMOUNT OF THE CREDIT ALLOWED.

Amend Title To Conform

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

SECTION 1. Section 12‑6‑3410 of the S.C. Code is amended to read:

Section 12‑6‑3410. (A) A corporation taxpayer or a business unit of a taxpayer establishing a corporate headquarters facility in this State, or expanding or adding to an existing corporate headquarters facility, is allowed a credit against any tax due pursuant to Section 12‑6‑510, Section 12‑6‑530, Section 12‑11‑20, or Section 12‑20‑50 as set forth in this section or any combination thereof.

(B) In order to qualify for this credit, each of the following criteria must be satisfied:

(1) The qualifying real property costs of the corporate headquarters facility establishment, or expansion, or addition must be at least fifty thousand dollars. Qualifying real property costs are:

(a) costs incurred in the design, preparation, and development of establishing, or expanding, or adding to a corporate headquarters facility; and

(b)(i) direct construction costs; or

(ii) with respect to leased facilities, direct lease costs during the first five years of operations for the corporate headquarters facility.

(2) The headquarters establishment or, expansion, or addition must result in the creation of:

(a) at least forty new full‑time jobs that are:

(a) performing headquarters-related functions and services; or research and development related functions and services. These jobs must be permanent, full‑time positions located in this State; and

(b) at least twenty of the above‑referenced new jobs must be classified as headquarters staff employees have gross wages equal to or greater than twice the per capita income of this State based on the most recent per capita income data available as of the end of the taxpayer's taxable year in which the jobs are filled and are subject to withholding pursuant to Chapter 8 of this title; and

(c) are provided a benefits package, including health care.

(C) The amount of the credit is equal to the sum of:

(1) twenty percent of the qualifying real property costs listed in subsection (B)(1).; and

(2) (D) A headquarters establishment, expansion, or addition which meets the criteria of subsection (B) of this section is entitled to an additional credit equal to twenty percent of cost for tangible personal property if the following conditions are met:

(1)(a) the personal property is:

(a)(i) capitalized as personal property for income tax purposes under the Internal Revenue Code; and

(b)(ii) purchased for the establishment, or expansion, or addition of a corporate the taxpayer’s or business unit’s headquarters facility, or for the establishment, expansion, or addition of a research and development facility which is part of the same corporate project as the headquarters establishment, addition, or expansion; and

(c)(iii) used for corporate headquarters-related functions and services or research and development related functions and services in South Carolina.

(2) The establishment, expansion, or addition of a corporate headquarters or research and development facility must result in the creation of at least seventy‑five new full‑time jobs performing either:

(a) headquarters related functions and services; or

(b) research and development related functions and services.

The seventy‑five required jobs must have an average cash compensation level of more than twice the per capita income of this State based on the most recent per capita income data available as of the end of the taxpayer's taxable year in which the jobs are filled.

(D) Reserved.

(E)(1)(a) For headquarters facilities which are constructed, the credit can only be claimed for the taxable year when the headquarters establishment, expansion, or addition, and the research and development facility establishment, expansion, or addition, in the case of corporations qualifying under subsection (D), facility is placed in service for federal income tax purposes. For construction projects facilities completed in phases and placed in service for federal income tax purposes in more than one taxable year, the corporation credit can be claim claimed the credit on the South Carolina income tax return for the taxable year in which property, which qualifies for the credit,that phase of the headquarters facility is placed in service for federal income tax purposes. Credits cannot be obtained for costs incurred more than three taxable years after the taxable year in which the first property for which the credit is claimed is placed in service. Notwithstanding any other provisions of this subsection, if the entire project is not completed by the end of the three taxable years, the corporation may claim the credit may be claimed for all property placed in service within the time limitation set forth in the preceding sentence. The credit may not be claimed for personal property which is replacing personal property for which the credit can be claimed. The department may for good cause extend the time for incurring additional costs and for claiming the credit if the project is not completed within the time period allowed by this subsection. For purposes of this subsection the term “property” includes qualifying real property and, where the conditions of subsection (D) are met, qualifying personal property.

(b) for leased real property the credit must be claimed in the taxable year in which the first direct lease costs are incurred.

(2) The corporation taxpayer must meet the staffing requirements of subsections subsection (B)(2) and, if applicable, (D)(2), by the end of the second taxable year following the last taxable year for which the credit is claimed. The corporation taxpayer must have documented plans to meet the initial staffing requirements at the time the credit is claimed. If the corporation taxpayer fails to meet the staffing requirements within the time required by this subsection, the corporation taxpayer must increase its tax liability for the current taxable year by an amount equal to the amount of credit, or any portion of the credit for which the corporation taxpayer would not qualify, which was used to reduce tax in the earlier years.

(F) The credit provided in this section is nonrefundable, but an unused credit may be carried forward for ten years. An unused credit may be carried forward fifteen years if the criteria set forth in subsection (D)(2) are met. In addition, a taxpayer may assign its rights to the unused credit to a succeeding taxpayer if the taxpayer transfers all or substantially all of the assets of the taxpayer or all or substantially all of the assets of a trade, business, or operating division of a taxpayer to the succeeding taxpayer, and the succeeding taxpayer maintains the corporate headquarters facility of the taxpayer. No credit may be claimed for a taxable year during which the taxpayer or succeeding taxpayer fails to meet the qualifying employment requirements provided in this section and the carry forward period is not extended for any year in which the credit may not be claimed for failure to meet the employment requirements. The credit may be claimed for a taxable year in the unextended carry forward period if the taxpayer or succeeding taxpayer requalifies for the credit by meeting the employment requirements during that taxable year.

(G) If a fee‑in‑lieu arrangement under Section 4‑29‑67 is entered into with respect to all or part of property involving a corporate headquarters, and the corporation taxpayer claiming the credit provided under this section is treated as the owner of the property for federal income tax purposes, then the corporation taxpayer must be treated as the owner of the property for purposes of the credit provided by this section.

(H) To the extent that this credit applies to the cost of certain property, the basis of the property for South Carolina income tax purposes must be reduced by the amount of the credit claimed with respect to the property. This basis reduction does not reduce the basis or limit or disallow any depreciation allowable under the law of this State for other than income tax purposes, even if the depreciation is based upon or otherwise relates to income tax depreciation including, without limitation, basis or depreciation which is allowable under this title for property tax purposes. If the corporation taxpayer fails to meet the staffing requirements of subsection (E)(B)(2), the corporation taxpayer may increase the basis of the property by the amount of the original basis reduction with regard to that property in the year in which the credit is recaptured.

(I) The amount of a credit allowed under this section must be reduced by the amount of any past‑due debt owed this State by the taxpayer.

(J) As used in this section:

(1) “Corporate Headquarters” means the facility or portion of a facility where corporate headquarters staff employees are physically employed, and where the majority of the company's or company taxpayer’s or the taxpayer’s business unit's financial, personnel, legal, planning, information technology, or other headquarters‑related functions are handled either on a regional, national, or global basis. A corporate headquarters must be a regional corporate headquarters, or a national corporate headquarters, or global corporate headquarters as defined below; provided, however, for taxpayers which are subject to tax under Chapter 11 of Title 12, a corporate headquarters must be a regional corporate headquarters:. A taxpayer or taxpayer’s business unit doing business solely within South Carolina does not meet the definition of a headquarters.

(a) National corporate headquarters must be the sole corporate headquarters in the nation office or location in the nation or the world for the taxpayer or a business unit of the taxpayer with multistate operations and must handle headquarters‑related functions at least on a national or global basis. A national headquarters is considered to handle headquarters‑related functions on a national basis from this State if the corporation has a facility in this State from which the corporation engages in interstate commerce by providing goods or services for customers outside of this State in return for compensation. The function and purpose of the national headquarters is to plan, direct, and control all aspects of the taxpayer or taxpayer’s business unit’s operations, and it has final authority over regional offices, operating facilities, or any other office of the taxpayer or business unit.

(b) Regional corporate headquarters must be the sole corporate headquarters office or location in the region for the taxpayer or a business unit of the taxpayer with multistate operations within the region and must handle headquarters‑related functions on a regional basis. A regional headquarters performs a function that is separate from the management of operational facilities within the region. A regional headquarters performs functions similar to the national headquarters, but within a more limited area. For purposes of this section, “ region” or “regional” means a geographic area comprised of either:

(i) at least five states, including this State; or

(ii) two or more states, including this State, if the entire business operations of the corporation taxpayer or business unit of the taxpayer are performed within fewer than five states; provided, however, that with respect to taxpayers which are subject to tax under Chapter 11 of Title 12, the requirement that “the entire business operations of the corporation are performed within fewer than five states”, is replaced with “if all branches of the taxpayer, as defined below, are physically located in fewer than five states”. For taxpayers which are subject to tax under Chapter 11 of Title 12, such taxpayer must have two or more branches, as that term is defined in Section 34‑25‑10(8), in each state within its region.

(c) A “company business unit” is an organizational unit of a corporation or bank and taxpayer that is defined by the particular product or category of products it sells.

(2) “New job” means a job created by an employer in this State at the time a new facility, or expansion, or addition is initially staffed, but does not include a job created when an employee is shifted from an existing location in this State to work in a new or expanded facility. An employee may be employed at a temporary location in this State pending completion of the new facility, or expansion, or addition.

(3) “Full‑time Full time” means a job requiring a minimum of thirty‑five hours of an employee's time a week for the entire normal year of corporate operations or a job requiring a minimum of thirty‑five hours of an employee's time for a week for a year in which the employee was initially hired for or transferred to the corporate headquarters or research and development facility in this State.

(4) “Headquarters‑related functions and services” are those functions involving financial, personnel, administrative, legal, planning, information technology, or similar business functions.

(5) “Headquarters staff employees” means executive, administrative, or professional workers performing headquarters-related functions and services.

(a) An executive employee is a full‑time employee in which at least eighty percent of his business functions involve the management of the enterprise and directing the work of at least two employees. An executive employee has the authority to hire and fire or has the authority to make recommendations related to hiring, firing, advancement, and promotion decisions, and an executive employee must customarily exercise discretionary powers.

(b) An administrative employee is a full‑time employee who is not involved in manual work and whose work is directly related to management policies or general headquarters operations. An administrative employee must customarily exercise discretion and independent judgment.

(c) A professional employee is an employee whose primary duty is work requiring knowledge of an advanced type in a field of science or learning. This knowledge is characterized by a prolonged course of specialized study. The work must be original and creative in nature, and the work cannot be standardized over a specific period of time. The work must require consistent exercise of discretion and the employee must spend at least eighty percent of the time performing headquarters related functions and services.

(6) “Research and development” means laboratory, scientific, or experimental testing and development related to new products, new uses for existing products, or improving existing products, but “research and development” does not include efficiency surveys, management studies, consumer surveys, economic surveys, advertising, promotion, banking, or research in connection with literary, historical, or similar projects Reserved.

(7) “Research and development facility” means the building or buildings or portion of a building where research and development functions and services are physically located Reserved.

(8) “Direct lease costs” are cash lease payments. The term does not include any accrued, but unpaid, costs.

(9) “Remote employee” is a full‑time employee of the taxpayer, including an employee who works for a business unit of the taxpayer, who works for the taxpayer performing headquarters‑related functions or services either completely or partially from a home office or other residence within the State.

SECTION 2. Section 12‑6‑3460(A) (3) and (4) of the S.C. Code is amended to read:

(3) “Qualified recycling facility” means a facility certified as a qualified recycling facility by a duly authorized representative of the department which includes all real and personal property incorporated into or associated with the facility located or to be located within this State that will be used by the taxpayer to manufacture or fabricate products for sale composed of at least fifty percent postconsumer waste material by weight or by volume. The minimum level of investment for a qualified recycling facility must be at least three one hundred fifty million dollars incurred by the end of the fifth calendar year after the year in which the taxpayer begins construction or operation of the facility.

(4) “Postconsumer waste material” means any product generated by a business or consumer which has served its intended end use and which has been separated from the solid waste stream for the purpose of recycling and includes, but is not limited to, scrap metal and iron, and used plastics, paper, glass, batteries, solar panels, turbines and related structures, and rubber.

SECTION 3. Sections 12‑10‑20 through 12‑10‑80 of the S.C. Code are amended to read:

Section 12‑10‑20. The General Assembly finds:

(1) that the economic well‑being of the citizens of the State is enhanced by the increased development and growth of industry within the State, and that it is in the best interests of the State to induce the location or expansion of manufacturing, processing, services, distribution, warehousing, research and development, corporate offices, technology intensive, and certain tourism projects within the State to promote the public purpose of creating new jobs within the State;

(2) that the inducement provided in this chapter will encourage the creation of jobs which would not otherwise exist and will create sources of tax revenues for the State and its political subdivisions;

(3) the powers to be granted to the Advisory Coordinating Council for Economic Development by this chapter and the purposes to be accomplished are proper governmental and public purposes and that the inducement of the location or expansion of manufacturing, processing, services, distribution, warehousing, research and development, corporate offices, and certain tourism facilities within the State is of paramount importance.

(4) The state's per capita income has not reached the United States average and certain rural, less developed counties have not experienced capital investment, per capita income, and job growth at a level equal to the state's average. The economic well‑being of these areas will not be sustained without significant incentive to induce capital investment and job creation.

Section 12‑10‑30. As used in this chapter:

(1) “Council” means the Coordinating Council for Economic Development.

(2) “Department” means the South Carolina Department of Revenue.

(3) “Employee” means an employee of the qualifying business who works full time at in this State for the benefit of the project, including a remote employee as defined in item (20).

(4) “Gross wages” means wages subject to withholding.

(5) “Job development credit” means the amount a qualifying business may claim as a credit against employee withholding pursuant to Sections 12‑10‑80 and 12‑10‑81 and a revitalization agreement.

(6) “New job” means a job created or reinstated as defined in Section 12‑6‑3360(M)(3).

(7) “Qualifying business” means a business that meets the requirements of Section 12‑10‑50 and other applicable requirements of this chapter.

(8) “Project” means an investment for one or more purposes pursuant to this chapter needed for a qualifying business to locate, remain, or expand in this State and otherwise fulfill the requirements of this chapter.

(9) “Preliminary revitalization agreement” means the application by the qualifying business for benefits pursuant to Section 12‑10‑80 or 12‑10‑81 if the council approves the application and agrees in writing at the time of approval to allow the approved application to serve as the preliminary revitalization agreement. The date of the preliminary revitalization agreement is the date of the council approval.

(10) “Revitalization agreement” means an executed agreement entered into between the council and a qualifying business that describes the project and the negotiated terms and conditions for a business to qualify for a job development credit pursuant to Section 12‑10‑80 or 12‑10‑81.

(11) “Qualifying expenditures” means those expenditures that meet the requirements of Section 12‑10‑80(C) or 12‑10‑81(D).

(12) “Withholding” means employee withholding pursuant to Chapter 8 of this title.

(13) “Technology employee” means an employee at a technology intensive facility as defined in Section 12‑6‑3360(M)(14) who is directly engaged in technology intensive activities at that facility.

(14) “Production employee” means an employee directly engaged in manufacturing or processing at a manufacturing or processing facility as defined in Section 12‑6‑3360(M).

(15) “Retraining agreement” means an agreement entered into between a business and the council in which a qualifying business is entitled to retraining credit pursuant to Section 12‑10‑95.

(16) “Retraining credit” means the amount that a business may claim as a credit against withholding pursuant to Section 12‑10‑95 and the retraining agreement.

(17) “Technology intensive activities” means the design, development, and introduction of new products or innovative manufacturing processes, or both, through the systematic application of scientific and technical knowledge at a technology intensive facility as defined in Section 12‑6‑3360(M).

(18) “Significant business” means a qualifying business making a significant capital investment as defined in Section 12‑44‑30(7).

(19) “Related person” includes any entity or person that bears a relationship to a business as provided in Internal Revenue Code Section 267 or 707(b). The related person must be a “qualifying business” as defined in item 7, except that the related person does not have to meet the requirements of Section 12‑10‑50(A)(1) or, in case the qualifying business qualifies for the credit against withholding for retraining pursuant to Section 12‑10‑95 of this chapter, the related person does not have to meet the requirements of Section 12‑10‑50(B)(1).

(20) “Remote employee” is a full‑time employee who is a resident of this State, North Carolina, or Georgia who is subject to withholding pursuant to Chapter 8 who is hired to fill a job for the project and who works either completely or partially from a home office or other residence within or without this State.

Section 12‑10‑40. The amount of benefits available to qualified businesses is determined by the county designation as defined in Section 12‑6‑3360(B), in which the business project is located. For purposes of determining the amount of job development credit that may be claimed for a job filled by a remote employee, the physical location of the project must be used and not the physical location where the remote employee provides services.

Section 12‑10‑45. A tire manufacturer that has over one billion dollars in capital investment in this State, and employs over five thousand workers in this State may, after certification by the council, designate up to two census tracts, but not to exceed four hundred acres per site, in any area of the State as an enterprise zone provided that a capital investment of at least one hundred million dollars be made over a five‑year period at each site. The tire manufacturer's capital investment must be based upon the gross cost of assets in South Carolina as shown on the manufacturer's property tax and fee‑in‑lieu of property tax filings. The council will certify the manufacturer if it determines that the available incentives are appropriate for the new project, the total benefits of the new project exceed the costs to the public, and the qualifying business otherwise fulfills the requirements of this chapter.

Section 12‑10‑50. (A) To qualify for the benefits provided in this chapter, a business must be located within this State and must:

(1) be engaged primarily in a business of the type identified in Section 12‑6‑3360;

(2) provide a benefits package, including health care, to full‑time employees at hired for the project;

(3) enter into a revitalization agreement that is approved by the council and that describes a minimum job requirement and minimum capital investment requirement for the project as provided in Section 12‑10‑90; and

(4) have negotiated incentives that council has determined are appropriate for the project, and the council shall certify that:

(a) the total benefits of the project exceed the costs to the public; and

(b) the business otherwise fulfills the requirements of this chapter.

(B) To qualify for benefits pursuant to Section 12‑10‑95, a business must:

(1) be engaged in manufacturing or processing operations or technology intensive activities at a manufacturing, processing, or technology intensive facility as defined in Section 12‑6‑3360(M);

(2) provide a benefits package, including health care, to employees being retrained; and

(3) enter into a retraining agreement with the council.

Section 12‑10‑60. (A) The council may enter into a revitalization agreement with each qualifying business with respect to the project. The terms and provisions of each revitalization agreement must be determined by negotiations between the council and the qualifying business. The decision to enter into a revitalization agreement with a qualifying business is solely within the discretion of the council based on the appropriateness of the negotiated incentives to the project and the determination that approval of the project is in the best interests of the State. The revitalization agreement must set a date by which the qualifying business shall have completed the project met the required investment and employment levels. Within three months of the completion dateAfter meeting the thresholds, the qualifying business shall document the actual costs of the project in a manner acceptable to the council. A business is allowed to count jobs filled by remote employees towards the minimum employment levels. While remote employees count towards a business’s minimum employment levels, a business may claim job development credits on a remote employee only to the extent the remote employee was subject to withholdings pursuant to Chapter 8. A business which pays withholdings on a remote employee in South Carolina and some other state can only claim job development credits to the extent of the South Carolina withholdings.

(B) If a qualifying business that entered into a revitalization agreement before January 1, 1997, receives council approval to amend its revitalization agreement to increase its minimum job requirement, the law in effect on the date of the amendment determines the amount of job development credit a qualifying business may claim pursuant to Section 12‑10‑80 for additional jobs created after the date of the amendment. This subsection does not apply to a business whose application for job development fees or credits pursuant to Section 12‑10‑81 has been approved by council before the effective date of this act.

Section 12‑10‑80. (A) A business that qualifies pursuant to Section 12‑10‑50(A) and has certified to the council that the business has met the minimum job requirement and minimum capital investment provided for in the revitalization agreement may claim job development credits as determined by this section.

(1) A business may claim job development credits against its withholding on its quarterly state withholding tax return for the amount of job development credits allowable pursuant to this section.

(2) A business that is current with respect to its withholding tax and other tax due and owing the State and that has maintained its minimum employment and investment levels identified in the revitalization agreement may claim the credit on a quarterly basis beginning with the first quarter after the council's certification to the department that the minimum employment and capital investment levels were met for the entire quarter. If a qualifying business is not current as to all taxes due and owing to the State as of the date of the return on which the credit would be claimed, without regard to extensions, the business may claim the credit only in an amount reduced by the amount of taxes due and owing to the State as of the date of the return on which the credit is claimed.

(3) A qualifying business may claim its initial job development credit only after the council has certified to the department that the qualifying business has met the required minimum employment and capital investment levels.

(4) To be eligible to apply to the council to claim a job development credit, a qualifying business shall create at least ten new, full‑time jobs, as defined in Section 12‑6‑3360(M), at the project described in the revitalization agreement within five years of the effective date of the agreement.

(5) A qualifying business is eligible to claim a job development credit pursuant to the revitalization agreement for not more than fifteen years.

(6) A company's qualifying business’s job development credits shall be suspended during any quarter in which the company qualifying business fails to maintain one hundred percent of the minimum job requirement set forth in the company's qualifying business’s revitalization agreement. A company only may claim credits on jobs, including a range of jobs approved by the council, as set forth in the company's final revitalization agreement.

(7) Credits may be claimed beginning the quarter subsequent to the council's approval of the company's qualifying business’s documentation that the minimum jobs and capital investment requirements have been met.

(8) To the extent any return of an overpayment of withholding that results from claiming job development credits is not used as permitted by subsection (C) or by Section 12‑10‑95, it must be treated as misappropriated employee withholding.

(9) Job development credits may not be claimed for purposes of this section with regard to an employee whose job was created in this State before the taxable year of the qualifying business in which it enters into a preliminary revitalization agreement.

(10) If a qualifying business claims job development credits pursuant to this section, it shall make its payroll books and records available for inspection by the council and the department at the times the council and the department request. Each qualifying business claiming job development credits pursuant to this section shall file with the council and the department the information and documentation requested by the council or department respecting employee withholding, the job development credit, and the use of any overpayment of withholding resulting from the claiming of a job development credit according to the revitalization agreement.

(11) Each qualifying business claiming in excess of ten thousand dollars in a calendar year must furnish to the council and to the department a report that itemizes the sources and uses of the funds. The report must be filed with the council and the department no later than June thirtieth following the calendar year in which the job development credits are claimed, except when a qualifying business obtains the written approval by the council for an extension of that date. Extensions may be granted only for good cause shown. The department shall impose a penalty pursuant to Section 12‑54‑210 for all reports filed after June thirtieth or the approved extension date, whichever is later. The department shall audit each qualifying business with claims in excess of ten thousand dollars in a calendar year at least once every three years to verify proper sources and uses of the funds.

(12) Each qualifying business claiming ten thousand dollars or less in any calendar year must furnish a report prepared by the company that itemizes the sources and uses of the funds. This report must be filed with the council and the department no later than June thirtieth following the calendar year in which the job development credits are claimed, except when a qualifying business obtains the written approval by the council for an extension of that date. Extensions may be granted only for good cause shown. The department shall impose a penalty pursuant to Section 12‑54‑210 for all reports filed after June thirtieth or the approved extension date, whichever is later.

(13) An employer may not claim an amount that results in an employee's receiving a smaller amount of wages on either a weekly or on an annual basis than the employee would receive otherwise in the absence of this chapter.

(14)(a) For purposes of this chapter, a qualifying business may designate up to two related persons whose jobs and investments located at the project may be included to determine whether the qualifying business has met and maintained the minimum job requirement and minimum capital investment requirement. Qualified expenditures described in subsection (C) incurred by a related person may be treated as though such qualifying expenditures were incurred by the qualifying business for purposes of claiming the job development credit and each related person may claim the job development credit for the jobs created by such related person and include any qualifying expenditures of the qualifying business or another related person for purposes of claiming the job development credit as if created and made by the related person.

(b) A single‑member limited‑liability company that is not regarded as an entity separate from its owner and a qualified subchapter “S” subsidiary as defined in Section 1361(b)(3)(B) of the Internal Revenue Code that is not regarded as a separate entity from the “S” corporation that owns its stock, is treated as the qualifying business for all purposes under this chapter, including for purposes of claiming the job development credit against withholding but it counts as a related person for purposes of the limit described in subitem (a).

(B)(1) The maximum job development credit a qualifying business may claim for new employees is limited to the lesser of withholding tax paid to the State on a quarterly basis or the sum of the following amounts:

(a) two percent of the gross wages of each new employee who earns $8.74 or more an hour but less than $11.64 an hour;

(b) three percent of the gross wages of each new employee who earns $11.65 or more an hour but less than $14.55 an hour;

(c) four percent of the gross wages of each new employee who earns $14.56 or more an hour but less than $21.84 an hour; and

(d) five percent of the gross wages of each new employee who earns $21.85 or more an hour.

(2) The hourly gross wage figures in item (1) must be adjusted annually by an inflation factor determined by the Revenue and Fiscal Affairs Office.

(C) To claim a job development credit, the qualifying business must incur qualified expenditures at the project or for utility or transportation improvements that serve the project. To be qualified, the expenditures must be:

(1) incurred during the term of the revitalization agreement, including a preliminary revitalization agreement, or within sixty days before council's receipt of an application for benefits pursuant to this section;

(2) authorized by the revitalization agreement; and

(3) used for any of the following purposes:

(a) training costs and facilities;

(b) acquiring and improving real property whether constructed or acquired by purchase, or in cases approved by the council, acquired by capital or operating lease with at least a five‑year term or otherwise;

(c) improvements to both public and private utility systems including water, sewer, electricity, natural gas, and telecommunications;

(d) fixed transportation facilities including highway, rail, water, and air;

(e) construction or improvements of real property and fixtures constructed or improved primarily for the purpose of complying with local, state, or federal environmental laws or regulations;

(f) employee relocation expenses, but only for those employees to whom the company is paying gross wages at least two times the lower of the per capita income for either the state or the county in which the project is located;

(g) financing the costs of a purpose described in items (a) through (f);

(h) training for all relevant employees that enable a company to export or increase a company's ability to export its products, including training for logistics, regulatory, and administrative areas connected to the company's export process and other export process training that allows a qualified company to maintain or expand its business in this State;

(i) apprenticeship programs;

(j) quality improvement programs of the South Carolina Quality Forum.

(D)(1) The amount of job development credits a qualifying business may claim for its use for qualifying expenditures is limited according to the designation of the county as defined in Section 12‑6‑3360(B), as follows:

(a) one hundred percent of the maximum job development credits may be claimed by businesses located in counties designated as “Tier IV”;

(b) eighty‑five percent of the maximum job development credits may be claimed by businesses located in counties designated as “Tier III”;

(c) seventy percent of the maximum job development credits may be claimed by businesses located in counties designated as “Tier II”; or

(d) fifty‑five percent of the maximum job development credits may be claimed by businesses located in counties designated as “Tier I”.

(2) The amount that may be claimed as a job development credit by a qualifying business is limited by this subsection and by the revitalization agreement. The council may approve a waiver of ninety‑five percent of the limits provided in item (1) for:

(a) a significant business as defined in Section 12‑10‑30(18); and

(b) a related person to a significant business if the related person is located at the project site of the significant business and qualifies for job development credits pursuant to this chapter.

For purposes of this item, a related person includes any entity or person that bears a relationship to a significant business as provided in Internal Revenue Code Section 267 and includes, without limitation, a limited liability company of which more than fifty percent of the capital interest or profits is owned directly or indirectly by a significant business or by a person or entity, or group of persons or entities which owns, more than fifty percent of the capital interest or profits in the significant business.

(3) The county designation of the county in which the project is located on the date the application for job development credit incentives is received in the Office office of the Coordinating Council council remains in effect for the entire period of the revitalization agreement, except as to additional jobs created pursuant to an amendment to a revitalization agreement entered into before June 1, 1997, as provided in Section 12‑10‑60. In that case the county designation on the date of the amendment remains in effect for the remaining period of the revitalization agreement as to any additional jobs created after the effective date of the amendment.

(E) The council shall certify to the department the maximum job development credit for each qualifying business. After receiving certification, the department shall remit an amount equal to the difference between the maximum job development credit and the job development credit actually claimed to the State Rural Infrastructure Fund as defined and provided in Section 12‑10‑85.

(F) Any job development credit of a qualifying business permanently lapses upon expiration or termination of the revitalization agreement. If an employee is terminated, the qualifying business immediately must cease to claim job development credits as to that employee.

(G) For purposes of the job development credit allowed by this section, an employee is a person whose job was created in this State.

(H) Job development credits may not be claimed by a governmental employer who employs persons at a closed or realigned military installation as defined in Section 12‑10‑88(E).

(I) A taxpayer who qualifies for the job development credit pursuant to the provisions of this section and who is located in a multicounty business or industrial park jointly established pursuant to Section 13 of Article VIII of the Constitution of this State is allowed a job development credit equal to the amount allowed pursuant to subsection (D) for the designation of the county which has the lowest development status of the counties containing the park if:

(1) the park is developed and established on the geographical boundary of adjacent counties; and

(2) the written agreement, pursuant to Section 4‑1‑170, requires revenue from the park to be allocated to each county on an equal basis.

(J) Where the qualifying business that creates new jobs under this section is a qualifying service‑related facility as defined in Section 12‑6‑3360(M)(13), the determination of the number of jobs created for purposes of eligibility must be based on the total number of new jobs created within five years of the effective date of the revitalization agreement, without regard to monthly or other averaging.

(K) For purposes of this section, the job and per capita income thresholds contained in the definition of “qualifying service‑related facility” as set forth in Section 12‑6‑3360(M)(13)(b) must be modified to read as set forth in the item below:

(1) a business, other than a business engaged in legal, accounting, banking, or investment services (including a business identified under NAICS Section 55) or retail sales, which has a net increase of at least:

(a) one hundred twenty‑five jobs at on the payroll for a single location;

(b) one hundred jobs at a single location comprised of a building or portion of a building that has been vacant for at least twelve consecutive months before the taxpayer's business’s investment;

(c) seventy‑five jobs at on the payroll for 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;

(d) fifty jobs at on the payroll for 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

(e) twenty‑five jobs at on the payroll for 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.

(L) For purposes of this section and notwithstanding the provisions of Section 12‑10‑50(A)(1), subject to the discretion of the council, the definition of “qualifying service‑related facility” as defined in Section 12‑6‑3360(M)(13), as modified by Section 12‑10‑80(K)(1), shall also include the following:

(1) a business engaged in legal, accounting, banking, or investment services operating at a single facility if the single facility would otherwise qualify as a qualifying service‑related facility as defined in Section 12‑6‑3360(M)(13)(b), as modified by subsections (J) and (K) above, if not for the exclusions contained in Section 12‑6‑3360(M)(13)(b);

(2) a business generally engaged in retail sales at a single facility if that single facility would otherwise qualify as a qualifying service‑related facility as defined in Section 12‑6‑3360(M)(13)(b), as modified by subsections (J) and (K) above, if not for the exclusions contained in Section 12‑6‑3360(M)(13)(b) and provided that no retail sales are conducted at that single facility; and

(3) In making a determination with regard to Section 12‑10‑80(L)(1) or Section 12‑10‑80(L)(2), the council may consider the following:

(a) the percentage of such business's annual gross receipts from services or other income producing activity derived from customers or clients located outside of South Carolina for the twelve months preceding the month in which such business applies to the council to claim a job development credit and such percentage may not be less than seventy‑five percent;

(b) the nature of the new jobs to be created at the project;

(c) the wages of the new jobs to be created at the project;

(d) the capital investment of the project; and

(e) the potential for expansion or growth of the business or industry.

(M) If the council approves an operating lease as an eligible expenditure under Section 12‑10‑80(C) for a qualifying business that qualifies pursuant to subsections (K) or (L) and will create at least twenty‑five jobs for a project and all of the jobs will have a cash compensation level of more than two and one-half times the per capita income in the county where the project is located, the qualifying business may be reimbursed on an annual basis for lease payments before the certification to the council that the qualifying business has met the minimum job requirement and minimum capital investment provided for in the revitalization agreement. The reimbursements may begin in the first year in which the business creates at least ten new jobs that meet such wage threshold and may continue for up to ten years. This subsection does not apply to build‑to‑suit lease payments.

SECTION 4. Section 12‑10‑95 of the S.C. Code is amended to read:

Section 12‑10‑95. (A)(1) Subject to the conditions in this section, a business engaged in manufacturing or processing operations or technology intensive activities at a manufacturing, processing, or technology intensive facility as defined in Section 12‑6‑3360(M), or warehousing and distribution, and that meets the requirements of Section 12‑10‑50(B)(2) may negotiate with a technical college, with approval from the State Board for Technical and Comprehensive Education, to may claim as a credit against withholding one thousand dollars a year for the retraining of a production or technology or warehousing and distribution first line employee or immediate supervisor who has been continuously employed by the business for a minimum of two years one year and is a full‑time employee, so long as retraining is necessary for the qualifying business to remain competitive or to introduce new technologies. In addition to the yearly limits, the retraining credit claimed against withholding may not exceed five thousand dollars over five consecutive years for each retrained production or technology first line employee or immediate supervisor.

(2) Retraining programs that are eligible for the credit include, but are not limited to:

(a) retraining of current employees on newly installed equipment; and

(b) retraining of current employees on newly implemented technology, such as computer platforms, software implementation and upgrades, Total Quality Management, ISO 9000, and self‑directed work teams.; and

(c) retraining of current employees for the purpose of upskilling, management development, or recertification in production‑related competencies.

Executive training, management development training, career development, personal enrichment training, and cross‑training of employees on equipment or technology that is not new to the company are not eligible for the credit.

(B) A qualifying business is eligible to claim as a retraining credit against withholding the lower amount of the following:

(1) the retraining credit for the applicable withholding period as determined by subsection (A); or

(2) withholding paid to the State for the applicable withholding period.

(C) All retraining must be approved by a technical college under the jurisdiction of the State Board for Technical and Comprehensive Education. A qualifying business must submit a retraining program for approval by the appropriate technical college. The approving technical college may provide the retraining itself, subject to the retraining program, or contract with other training entities to provide the required retraining, or supervise the employer's approved internal training program.the State Board for Technical and Comprehensive Education.

(D) An employer may not receive the credit allowed by this section if the employer requires that the employee reimburse or pay the employer for the direct costs of retraining, or if the employee is required to reimburse or pay the employer indirectly through the forfeiture of leave time, vacation time, or other compensable time. Direct costs of retraining include instructor salaries, development of retraining programs, purchase or rental of materials and supplies, textbooks and manuals, instructional media, such as video tapes, presentations, equipment used for retraining only, not to include production equipment, and reasonable travel costs as limited by the state's travel expense reimbursement policy.

(E) The qualifying business must expend at least one dollar fifty cents on retraining eligible employees for every dollar claimed as a credit against withholding for retraining. All training costs, including costs in excess of the retraining credits and matching funds, are the responsibility of the business.

(F) A qualifying business may not claim retraining credit for training provided to the following production or technology first line employees or immediate supervisors:

(a) temporary or contract employees; and

(b) employees who are subject to a included in the minimum job requirement of an ongoing revitalization agreement, including a preliminary revitalization agreement and for which the company is eligible to claim job development credits. A qualifying business may claim retraining credits for employees who are not subject to the job development credit but who are included in the base employment of an ongoing revitalization agreement provided that such employees meet the requirements for retraining eligibility included in this section.

(G) Notwithstanding In addition to another provision of this section, the retraining credit allowed by this section is for:

(1) training included in a registered apprenticeship programsprogram; and

(2) retraining for all relevant employees that enable a company to export or increase its ability to export its products, including training for logistics, regulatory, and administrative areas connected to its export process and other export process training that allows a qualified company to maintain or expand its business in this State.

(H) There is hereby established an annual renewal fee of two hundred fifty dollars to be billed and collected by the department.

(I)(1) All approved programs and training must be reviewed annually by the State Board for Technical and Comprehensive Education.

(2) A qualifying business may contract with the State Board for Technical and Comprehensive Education or a subsidiary technical college to assist with additional program administration beyond what is required in a typical retraining agreement for a quarterly fee not to exceed twenty percent of the retraining credit amount claimed. Fees must be collected on a quarterly basis.

(3) Every three years, the Department of Revenue must audit any business that claimed the job retraining credit pursuant to this section during that time period, solely for the purpose of verifying proper sources and uses of the credits.

(J) The State Board for Technical and Comprehensive Education shall establish policies and procedures to provide the oversight and review provisions of this section. By November fifteenth of each year, the State Board for Technical and Comprehensive Education shall submit a statewide aggregated report detailing the utilization of the retraining credit pursuant to this section, as well as the board's activities in regard to oversight, to the Governor, the Chairman of the House Ways and Means Committee, the Chairman of the Senate Finance Committee, the Coordinating Council for Economic Development, and the Department of Revenue. Also, the board shall make the report available in a conspicuous place on the website maintained by the board.

SECTION 5. Section 12-6-1120 of the S.C. Code is amended by adding:

(11) For taxable years beginning on or after January 1, 2023, and prior to January 1, 2029, there shall be subtracted from taxable income any grant or subgrant pursuant to the Broadband Equity, Access, and Deployment Program established pursuant to 47 U.S.C. 1702, or the American Rescue Plan Act of 2021, Public Law 117-2, received for the purpose of making investments in broadband infrastructure but only to the extent that such grant or subgrant is included in the corporation’s taxable income, as defined under the Internal Revenue Code of 1986.

SECTION 6. Section 12-36-2120(79) of the S.C. Code is amended to read:

(79)(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 subsubitem 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 new or existing facility at a single locationor an array of facilities in a single county in South Carolina, including its contracted tenants, owners, operators, and other entities with an ownership or financial interest thereto:

(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 seventy five million dollars in real or personal property, or both, in a Tier 2, 3, or 4 county and has a fully executed fee in lieu of taxes agreement on or before June 30,2025 over a five year period; or

(b) where one or more taxpayers invests a minimum aggregate capital investment of at least seventy-five three hundred million dollars in real or personal property, or both, in a Tier 1county and has a fully executed fee in lieu of taxes agreement on or before June 30, 2024 over a five year period;

(iii) where a taxpayer creates and maintainsone or more taxpayers create at least twenty-five full-time jobs over a five-year period at the facility datacenter 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 datacenter is located, whichever is lower, according to the most recently published data available at the time the facility datacenter is certified by the Department of Commerce;

(iv) where the jobs created pursuant to subitem (B)(5)(iii) are maintained for three consecutive years after a facility datacenter with the minimum capital investment and number of jobs has been certified by the Department of Commerce; and

(v) which is certified by the Department of Commerce pursuant to subitem (D)(1) 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 datacenter 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 a datacenter taxpayer’s intention to claim the exemption. For purposes of meeting the requirements of subitems (B)(5)(i), (ii) and (B)(5)(iii) , capital investment and job creation begin accruing once the taxpayer datacenter notifies each department. Also, the five-year period begins upon notification.

(2) Once the taxpayer datacenter collectively meets the requirements of subitem (B)(5), or at the end of the five-year period, the taxpayer datacenter shall notify the Department of Revenue, in writing, whether it has or has not met the requirements of subitem (B)(5). The taxpayer datacenter 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 subitem (C)(1), and upon certification by the Department of Commerce, the taxpayer datacenter 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 subitem (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 subitem (C)(1) and ending with notice to the Department of Revenue pursuant to subitem (C)(2); and

(ii) during the three year job maintenance requirement pursuant to subitem (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 subitem, regardless of when the taxpayer datacenter makes the investments.

(F)(1) If a taxpayer datacenter receives the exemption for purchases but fails to meet the requirements of subitem (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 datacenter meets the requirements of subitem (B)(5), but subsequently fails to maintain the number of full-time jobs with the required compensation level at the facilitydatacenter, as previously required pursuant to subitem (B)(5)(iii), the taxpayer is:

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

(ii) allowed the exemption for electricity pursuant to subitem (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 subitem only applies to a datacenter that is certified by the Department of Commerce pursuant to subitem (D)(1) prior to January 1, 2032. However, this item shall continue to apply to a taxpayer datacenter that is located in a Tier 1 county and has a fully executed fee in lieu of taxes agreement on or before June 30, 2024 or that is located in a Tier 2, 3, 4 county and has a fully executed fee in lieu of taxes agreement on or before June 30, 2025 is certified by December 31, 2031, for an additional ten year period. Upon the end of the ten year period, this subitem is repealed;

SECTION 7. Beginning on July 1, 2025 and ending on July 1, 2026, political subdivisions are prohibited from offering new economic incentives intended to induce a datacenter to locate or to expand operations in this State that require the expenditure of public funds, the transfer of anything of value, that reduce the rate or alter the method of taxation of the datacenter, or that otherwise impact the political subdivision fiscally. This prohibition does not prohibit political subdivisions from honoring incentives for potential or existing datacenters agreed to prior to July 1, 2025.

SECTION 8. This act takes effect upon approval by the Governor and first applies to income tax years beginning after 2023, except that SECTION 3 first applies to income tax years beginning after 2020. The amendments to SECTION 5, as contained in this act, do not apply to any datacenter existing as of May 8, 2024.

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