

The opinions expressed in this paper are the authors' opinions and should not be attributed to the South Carolina Department of Revenue. This paper is revised through June 10, 2005, but does not reflect legislation passed in the 2005 South Carolina legislative session.

.09 Withholding

A. Scope

South Carolina's wage withholding laws conform substantially to the federal income tax wage withholding provisions. South Carolina has additional withholding requirements on certain South Carolina income of nonresidents. For example, South Carolina requires withholding on certain South Carolina income received by or for the following: (a) nonresident S corporation shareholders and partners, whether distributed or undistributed, (b) nonresident contractors temporarily conducting business in South Carolina, (c) rent and royalty payments made to nonresidents, and (d) sales of real property and associated tangible personal property by nonresidents. Further, South Carolina allows a tax incentive whereby qualifying companies can receive a refund of South Carolina wage withholding to use for, or to reimburse, the cost of certain economic development expenditures. These specific withholding provisions and applicable exceptions are discussed below.

B. Wage Withholding

1. General Provisions

A person located, doing business, or having gross income in South Carolina and an employer having an employee earning income within South Carolina are subject to South Carolina's withholding laws.¹ "Employer" is defined as the person for whom an individual performs or performed a service, of whatever nature, as the employee of the person.² "Employee" is defined to include a resident individual receiving wages for services regardless of where the services are rendered and a nonresident individual receiving wages for services rendered in South Carolina.³

Comment: South Carolina generally follows the common law rules (*i.e.*, case law) in determining whether an employee-employer relationship exists. The Department has used the 20 factor control test set forth in Internal Revenue Service Rev. Rul. #87-41 to help determine whether a person is an employee or independent contractor. South Carolina has not, however, adopted the Section 530 "relief" provisions of the Revenue Act of 1978 or Internal Revenue Code §3508, "Treatment of Real Estate Agents and Direct Sellers."

¹ SC Code §12-8-510.

² SC Code §12-8-10(4).

³ SC Code §12-8-10(3).

Generally, an employer paying wages at the rate of \$800 or more a year to an employee must withhold income tax for that employee using the tables and rules promulgated by the Department.⁴

Note: It has been the Department’s longstanding policy to determine whether withholding is applicable based on an annual computation. For example, an employee paid \$200 for three weeks for a total of \$600 in wages is considered to be paid wages “at the rate of \$800 or more per year” (*i.e.*, wages of \$200 per week exceeds the rate of \$15.38 per week (\$800 divided by 52 weeks)) and subjects the employee to South Carolina withholding.

In addition, a payee and payor may enter into an agreement to withhold income tax from any other type of payment that is includable in South Carolina gross income. A properly executed withholding exemption certificate furnished by the payee to the payor, constitutes a request for withholding. If the payor agrees, the agreement is effective for a mutually agreed upon period unless the payor or payee furnishes a signed written notice to the other party terminating the agreement.⁵

“Wages” is defined as all remuneration for services of any nature performed by an employee for an employer, including the fair market value of all remuneration paid in a medium other than cash.⁶

Withholding is not required for remuneration paid:⁷

1. To a resident employee receiving wages in another state if the wages are subject to the withholding laws of the state in which they are earned and the employer is withholding income taxes on behalf of the other state.

Note: If a South Carolina resident is working in a state that does not require withholding, such as Tennessee, Florida, Texas, or Alaska, then South Carolina tax is to be withheld.

2. To an employee obtaining a waiver of withholding. An employee may request waiver of the withholding requirements if the employee files a withholding exemption certificate annually on or before January 1 and certifies that he: (a) incurred no liability for South Carolina income tax in the previous taxable year; and (b) anticipates no South Carolina income tax liability for the current year.⁸

⁴ SC Code §12-8-520(A).

⁵ SC Code §12-8-600.

⁶ SC Code §12-8-520(D).

⁷ SC Code §12-8-520(C) and (D).

⁸ SC Code §12-8-1040.

3. For personal services performed on occasional, sporadic, or casual visits to South Carolina by nonresident employees in connection with their regular employment outside of this State.

Note: Employees performing construction, installation, engineering, or similar services are considered to have earned wages in South Carolina if the situs of the job is in South Carolina.⁹

4. For reimbursement of employee business expenses if, at the time of the payment, it is reasonable to believe that the reimbursement is excluded from South Carolina taxable income.
5. For employee moving expenses if it is reasonable to believe that the reimbursement is excluded from South Carolina taxable income.
6. For group-term life insurance premium payments on the life of an employee that are excluded from South Carolina taxable income.
7. In the form of payments to or from employee benefit plans which are excluded from South Carolina taxable income.
8. For payments to a self-employed retirement fund (Keogh Plan) or to an individual retirement account or program as permitted under the Internal Revenue Code if, at the time of the payment, it is reasonable to believe that the amounts are excludable or deductible from South Carolina gross income.
9. For domestic services performed in a private residence.

2. Exemption Certificate

Every employee must furnish the employer with a signed withholding exemption certificate on or before the date employment begins indicating the number of withholding exemptions which the employee claims.¹⁰ A withholding exemption certificate is effective upon the first payment of wages after the certificate is furnished to the employer and continues in effect until a new certificate is furnished to the employer.¹¹

⁹ SC Code §12-8-520(D)(3).

¹⁰ SC Code §12-8-1010(A)(1).

¹¹ SC Code §12-8-1010(B).

Requirements exist concerning the number of exemptions that may be claimed.¹² These are:

1. The number of exemptions claimed for South Carolina may not exceed the lesser of:
(a) the number allowed under Internal Revenue Code §3402, or (b) the number actually claimed for federal income tax withholding purposes.

Note: An employee may not claim more exemptions for South Carolina purposes than is claimed for federal tax purposes.

2. If an employee fails to furnish an employer with a withholding exemption certificate, the number of withholding exemptions claimed is zero.

Rules also exist concerning the withholding exemption certificate. These are:

1. A properly completed federal withholding exemption certificate, Form W-4, is accepted for South Carolina purposes.

Note: If the employee claims the same number of exemptions for federal and South Carolina purposes, the employee does not have to complete a separate federal Form W-4 for South Carolina purposes.

2. If an employee claims fewer exemptions for South Carolina than for federal purposes, the employee must furnish the employer with a properly completed federal Form W-4 indicating that it is “For State Purposes.”¹³
3. If a change occurs which decreases the number of exemptions for an employee, the employee must furnish the employer with a revised federal Form W-4 within 30 days from the date of change.¹⁴
4. If an employer receives a withholding exemption certificate from an employee claiming 10 or more withholding exemptions, or he believes an employee’s withholding exemption certificate is incorrect, the employer must furnish a copy of the certificate to the Department within 30 days after it is received. Until otherwise informed by the Department the employer shall withhold on the basis of the claimed exemptions.¹⁵

South Carolina’s tax tables are available on Form WH-1603 and Form WH-1603F (Computer Formula.)

¹² SC Code §12-8-1010(A)(2) and (C).

¹³ SC Code §12-8-1010(A)(2).

¹⁴ SC Code §12-8-1020.

¹⁵ SC Code §12-8-1030.

3. Withholding Agent Duties

a. Registration and Tax Deposits

A withholding agent must first apply for a South Carolina withholding account number. This is done by submitting Form SCTC-111, “Business Tax Application,” to the Department prior to withholding.¹⁶

Resident withholding agents (*i.e.*, any person whose principal place of business is in South Carolina) who deposit and pay withholding to the Internal Revenue Service must remit all South Carolina taxes withheld on or before the date their federal withholding taxes are due.¹⁷ If a resident withholding agent is required under the Internal Revenue Code to deposit withheld funds at a financial institution, then the withholding agent must deposit the funds required to be withheld at a financial institution approved by the State Treasurer.¹⁸

Note: A resident withholding agent may make deposits by electronic funds transfer¹⁹ or may make deposits at financial institutions with payment coupons provided by the Department that are preprinted with the taxpayers name and withholding account number.

Note: South Carolina Code §12-54-250(A) provides that a withholding agent whose South Carolina withholding tax is \$15,000 or more during a quarter must pay by electronic funds transfer. Any withholding agent may voluntarily participate in electronic funds transfer.

Form WH-1601, “SC Withholding Tax Payment,” is used to remit the withholding payment. If, however, a withholding agent remits funds by electronic fund transfer, then Form WH-1601 is not used. Form WH-1601 is not filed by the withholding agent if there is no withholding for the period.

Note: If Form WH-1601 is altered, photocopied, not preprinted by the Department, or remitted with a late payment, then it must be mailed or delivered to the Department and may not be deposited at a financial institution.

¹⁶ Form SCTC-111 may be submitted by regular mail or electronically through the SC Department of Revenue Business One Stop website at <http://dorbos.sctax.org>.

¹⁷ SC Code §12-8-1520(A)(1). SC Code §12-8-10(5) defines “nonresident” as an individual domiciled outside this State and any entity whose principal place of business is outside of this State. For corporations, principal place of business is defined in SC Code §12-6-30(9).

¹⁸ SC Code §12-8-1520(A)(2).

¹⁹ See Section .07 A. 1. of this portfolio for information on electronic funds transfer.

Resident withholding agents not required to deposit and pay federal withholding to the Internal Revenue Service and nonresident withholding agents (*i.e.*, any person whose principal place of business is outside South Carolina) must remit South Carolina withholding to the Department on or before the 15th day of the month following the month in which the aggregate amount withheld is \$500 or more, or on or before the last day of the month following the quarter in which funds were withheld if the aggregate amount withheld in a calendar quarter is less than \$500.²⁰

Note: Nonresident withholding agents must make payments directly to the Department using Form WH-1601, “SC Withholding Tax Payment,” Form WH-1605, “Quarterly Tax Return,” or by electronic funds transfer.²¹

A withholding agent²² who fails to withhold or pay the amount required to the Department is personally and individually liable for the amount of tax not withheld or paid.²³ If a withholding agent fails to remit an amount withheld from a taxpayer, the taxpayer is allowed a credit for the amount of income tax withheld from him but not remitted.²⁴ The amount required to be withheld may not be collected from a withholding agent who fails to withhold income tax after the taxpayer whose wages or payments should have been withheld upon pays the tax applicable to that withholding. However, the payment by the taxpayer does not relieve the withholding agent from liability for penalty and interest.²⁵

In order to maintain conformity with the federal withholding system, the Department may by rule adopt new federal withholding regulations.²⁶ All resident and nonresident withholding agents who have a federal obligation to pay taxes may deposit and pay withholding taxes on the due dates required under the South Carolina tax deposit regulations or on the due dates required under the federal tax deposit regulations. Therefore, withholding agents generally deposit and pay South Carolina income taxes withheld on the same dates as they due for federal withholding tax purposes. South Carolina, however, continues to allow nonresident withholding agents, and

²⁰ SC Code §12-8-1520(B).

²¹ SC Code §12-54-250(A) provides that a withholding agent whose South Carolina withholding tax is \$15,000 or more during a quarter must pay by electronic funds transfer. Any withholding agent may voluntarily participate in electronic funds transfer. See Section .07 A. 1. of this portfolio for information on electronic funds transfer.

²² SC Code §12-8-2010(D). For purposes of this provision, the term “withholding agent” includes an officer or employee of a corporation, or a member or employee of a partnership, who is under a duty to perform the act in respect of which the violation occurs.

²³ SC Code §12-8-2010(A).

²⁴ SC Code §12-8-2010(B).

²⁵ SC Code §12-8-2010(C).

²⁶ SC Code §12-8-1520(C).

require all withholding agents who do not have a federal withholding responsibility, to pay on a monthly or quarterly basis. If the amount withheld reaches \$500 at the end of any month, a remittance must be made within 15 days following the end of that month. If the total withholding is less than \$500 per quarter, then payment is due on the last day of the month following the quarter in which the wages were withheld.

For quarterly and annual return periods, South Carolina has adopted the federal employment tax deposit de minimis rule regulations. Accordingly, if the total amount of accumulated employment taxes for the return period is less than \$2,500 and the amount is fully deposited or remitted with a timely filed return for the return period, the amount deposited or remitted will be deemed to have been timely deposited.²⁷

b. Quarterly Returns and Annual Reconciliations

i. General Provisions

A withholding agent must file a quarterly return indicating the total amount withheld during the calendar quarter and pay the balance of tax due, if any.²⁸ A quarterly return must be filed for all open withholding accounts²⁹ even when no taxes have been withheld for the quarter. The return must be filed on or before the dates required for filing federal quarterly withholding returns specified in Internal Revenue Code §6071 and Regulation 31.6071(a)(1), except for the fourth quarter/annual return.³⁰ The due dates of Form WH-1605, “Quarterly Tax Return,” or Form WH-1606, “Fourth Quarter/Annual Reconciliation of Income Tax Withheld,” are:

First Quarter	April 30
Second Quarter	July 31
Third Quarter	October 31
Fourth Quarter/Annual	February 28, or 29 if leap year

Form WH-1606 is used to transmit South Carolina copies of Form W-2 and/or Form 1099 with South Carolina income tax withheld.

Note: Form WH-1606 must be filed if the withholding account was open for any portion of the calendar year.

²⁷ SC Rev. Info. Bull. #01-2.

²⁸ SC Code §12-8-1530(A).

²⁹ A taxpayer may close a South Carolina withholding tax account if there is no payroll anticipated by filing Form C-278, “Account Closing Form,” or calling the Department’s Withholding Section. The withholding tax account can be reactivated within three years if the ownership remains the same. See Section .11 Worksheet 1 for contact information.

³⁰ SC Code §12-8-1530(A).

An amended quarterly return can be filed only if the taxpayer is correcting an originally filed return. Form WH-1605A, “Amended Quarterly Tax Return,” and Form WH-1606A, “Amended Fourth Quarter/Annual Reconciliation of Income Tax Withheld,” are used to report a change to a previously filed return.

A withholding agent may discontinue filing returns only after the withholding agent:³¹

1. Notifies the Department in writing that he is no longer required to withhold; and
2. Has remitted all taxes withheld or required to be withheld.

A withholding agent who notifies the Department that he is no longer required to withhold must file all applicable quarterly returns, Form WH-1605, and furnish the Department with Form WH-1606, “Fourth Quarter/Annual Reconciliation of Income Tax Withheld,” due on or before the last day of February following the calendar year.

ii. Rules for Claiming Job Development or Job Retraining Credits

Withholding agents who have qualified and been approved by the South Carolina Coordinating Council for Economic Development may obtain a refund of a portion of the South Carolina income tax withheld from their employees.³² Unique preprinted withholding forms, Forms WH-1605Z and WH-1606Z, are provided by the Department for each business approved for job development or job retraining credit benefits to claim the appropriate withholding refund. These forms should be used by businesses approved for job development or job retraining credit benefits even if no job development or job retraining credit is claimed in a particular quarter.

Note: Employees receive full credit for withholding even though a portion of the withholding is refunded to the withholding agent in the form of job development or job retraining credit benefits.

c. Forms W-2 and 1099's

A person required to withhold South Carolina income tax, or who would have been required to withhold a tax under SC Code §12-8-520 if the taxpayer had claimed a single exemption, must furnish on or before January 31st of the following year a properly completed federal wage and tax statement, Form W-2, or Form 1099 to the taxpayer with respect to the remuneration paid during the calendar year, showing the following:³³

1. The withholding agent’s name, address, and South Carolina withholding tax account number.

³¹ SC Code §12-8-1530(B).

³² See Section .09 H. of this portfolio for a complete discussion of the job development benefits.

³³ SC Code §12-8-1540.

2. The taxpayer's name, address, and social security or federal employer identification number.
3. The total amount of wages or payments.
4. The total amount withheld.

On or before the last day of February following the calendar year of the withholding, the following items must be filed with the Department:³⁴

1. The original copy of the federal wage and tax statement, Form W-2, or Form 1099.
2. A recapitulation and reconciliation of taxes withheld and paid, Form WH-1606.

A withholding agent may request in writing a 30 day extension of time for filing this information.³⁵

Where essentially the same information is submitted to the Internal Revenue Service on magnetic media, the same method must be used for South Carolina.³⁶ Form WH-1612, "Transmitter Summary Report Wage and Tax Information," is remitted with the magnetic tape, diskette, or cartridge.

Note: In an effort to reduce the paperwork burden for taxpayers, if the taxpayer files a federal Form 1099 with the Internal Revenue Service and there is no South Carolina withholding, then the taxpayer is not required to file the Form 1099 or South Carolina equivalent with the Department. This does not eliminate the requirement to file Form 1099 with the Internal Revenue Service or to give one to the payment recipient. If there are South Carolina wages, Form W-2, however, is required to be filed with the Department whether or not it has South Carolina withholding.

C. S Corporation Nonresident Shareholder Withholding

1. General Provisions

Corporations having a valid "S" election for South Carolina income tax purposes are required to withhold income taxes at a rate of 5% on a nonresident shareholder's share of South Carolina taxable income of the corporation, whether distributed or undistributed.³⁷

³⁴ SC Code §12-8-1550(A).

³⁵ SC Code §12-8-1550(B).

³⁶ SC Code §12-8-1550(C).

³⁷ SC Code §12-8-590(A).

The S corporation should use Form SC1120S-WH, “Withholding Tax on Income of Nonresident Shareholders,” to remit the withholding tax on the income of nonresident shareholders. Also, the S corporation should submit a schedule to the Department disclosing each nonresident shareholder’s name, address, taxpayer identification number, South Carolina taxable income, and amount of tax withheld. The return and schedule are due on or before the 15th day of the third month following the close of the S corporation’s tax year.³⁸

An extension of time to file the S corporation tax return does not extend the time to pay the withholding tax. S corporations that extend the time to file their income tax return must estimate the nonresident shareholder’s share of South Carolina taxable income and pay the withholding tax on this estimated amount. The estimated amount of South Carolina income to be allocated to nonresident shareholders and the amount of tax due should be computed on the appropriate lines of Form SC1120S-WH. The word “ESTIMATED” should be written on the top of Form SC1120S-WH.³⁹

The S corporation must provide the Department and each nonresident shareholder for whom tax was withheld federal Form 1099-MISC. Since this form is to be used only for South Carolina purposes, “SC ONLY” should be marked on the top of the form. The information reported should include the shareholder’s name, address, social security number, and amount of income tax withheld on his behalf. The S corporation must furnish Form 1099-MISC to the shareholders and the Department by the 15th day of the third month following the close of its tax year. A copy of Form 1099-MISC must be attached to the nonresident shareholder’s South Carolina income tax return as verification for claiming credit for the withholding taxes paid.⁴⁰

Taxes withheld in the name of the nonresident shareholder must be used as a credit against taxes due at the time the nonresident files income taxes for the taxable year.⁴¹ Each shareholder will account for the taxes withheld in his tax year in which the S corporation’s tax year ends. For example:

1. Calendar year taxpayers. A calendar year S corporation remits withholding taxes for 2004 on March 15, 2005. The individual shareholder may claim a credit on his 2004 individual income tax return (generally filed on or before April 15, 2005) for the taxes withheld by the S corporation on his behalf.
2. Other than calendar year entity. An S corporation with a January 31, 2005 year end remits the withholding taxes on behalf of its nonresident shareholders on April 15, 2005. The calendar year end shareholder may claim a credit on his 2005 individual income tax return (generally filed on or before April 15, 2006) for the taxes withheld by the S corporation on his behalf.

³⁸ SC Code §12-8-590(A) and (B).

³⁹ SC Rev. Proc. #92-5.

⁴⁰ SC Code §12-8-590(B) and SC Rev. Proc. #92-5.

⁴¹ SC Code §12-8-590(A).

2. Exceptions

There are exceptions to these withholding requirements and requirements to file Form SC1120S-WH.⁴² These exceptions are:

1. An S corporation is not required to withhold income taxes with respect to any shareholder who submits an affidavit stating that he is a nonresident shareholder subject to the personal jurisdiction of South Carolina. The Department has a preprinted affidavit, Form I-309, “Nonresident Shareholder or Partner Affidavit and Agreement,” available for use by shareholders.⁴³ See the subsection below for information concerning the affidavit. The S corporation is not required to file Form SC1120S-WH in any tax year in which it has previously filed an affidavit with the Department on behalf of all of its nonresident shareholders or filed an affidavit on behalf of some of its nonresident shareholders and reported the income of the remainder of its nonresident shareholders on a composite return.
2. An S corporation is not required to withhold income taxes with respect to any shareholder for which the S corporation reports the nonresident shareholder’s income on a composite tax return.⁴⁴ The S corporation is not required to file Form SC1120S-WH in any tax year in which it reports the income of all of its nonresident shareholders on a composite return.
3. An S corporation is not required to withhold income taxes under SC Code §12-8-590 on income attributable to the sale of real property which is subject to withholding under SC Code §12-8-580, “Withholding on Sales of Real Property and Associated Tangible Personal Property by Nonresidents.”⁴⁵
4. An S corporation is not required to withhold income taxes with respect to any nonresident shareholder that provides a statement that the shareholder is an organization exempt from income taxes under Internal Revenue Code §501(a). The statement must contain the shareholder’s name, federal identification number, Internal Revenue Code section exemption number, and a copy of the Internal Revenue Service exemption letter.⁴⁶
5. An S corporation is not required to withhold and file Form SC1120S-WH in any tax year in which it has no South Carolina source income allocable or apportionable to any shareholder.

⁴² SC Rev. Proc. #92-5.

⁴³ SC Code §12-8-590(F)(3).

⁴⁴ SC Rev. Proc. #92-5. See Section .07 B. 2. of this portfolio for information on composite returns.

⁴⁵ SC Code §12-8-590(F)(2). See Section .09 G. of this portfolio

⁴⁶ SC Code §12-8-590(E).

3. Helpful Tips

S corporations should be aware of the following Department procedures concerning the withholding requirement exception for nonresident shareholder's agreeing to be subject to the personal jurisdiction of South Carolina:⁴⁷

1. Form I-309, "Nonresident Shareholder or Partner Affidavit and Agreement," should be used by any nonresident S corporation shareholder to request an exemption from this withholding requirement. In lieu of the Department's affidavit, an affidavit containing the same information will be accepted. In filing the affidavit, the shareholder agrees to timely file appropriate South Carolina tax returns and make payment of all South Carolina taxes required by law and agrees to be subject to the personal jurisdiction of the Department and the courts of South Carolina for the purpose of determining and collecting any South Carolina taxes, including estimated taxes, interest, and penalties.
2. A nonresident shareholder should fully complete the affidavit. A separate affidavit must be submitted by each shareholder for stock that is jointly owned. The shareholder should submit the affidavit directly to the S corporation as soon as possible. The shareholder should file an affidavit with the S corporation only in the first year in which the shareholder agrees to the terms contained in the affidavit.
3. The S corporation should remit all affidavits to the Department at one time. S corporations should attach the affidavits to withholding Form SC1120S-WH and submit to the Department on or before the 15th day of the third month following the close of the S corporation's tax year. Affidavits should not be attached to the S corporation income tax return or extension to file the S corporation tax return. In future years if the S corporation needs to file additional affidavits, the affidavits should be filed with Form SC1120S-WH even though the S corporation may not otherwise be required to file a Form SC1120S-WH. Any additional affidavits should be filed with the Department on or before the 15th day of the third month following the close of the S corporation's tax year.
4. Once remitted to the Department, affidavits remain valid for all subsequent tax years and should not be resubmitted to the S corporation or Department. The affidavit is not valid if: (a) the shareholder's nonresident status changes, (b) the shareholder's request for the withholding exemption is revoked by the Department, or (c) the shareholder revokes the affidavit in writing and notifies the S corporation and the Department.
5. The affidavit does not need to be completed by shareholders whose income will be reported on a composite return.

⁴⁷ SC Rev. Proc. #92-5.

D. Qualified Subchapter S Subsidiaries

A parent and qualified subchapter S subsidiary (“QSub”) are treated as one entity for South Carolina tax purposes. For payroll and other withholding purposes, the Department allows a parent and QSub to remit withholding taxes using the taxpayer name and federal identification number used for federal purposes. Specific questions and requests for exceptions should be directed to the Department’s Withholding Section.⁴⁸

E. Taxpayers Temporarily Conducting Business in South Carolina

1. General Provisions

A person⁴⁹ hiring or contracting with a nonresident⁵⁰ conducting a business or performing personal services of a temporary nature within South Carolina must withhold 2% of each payment in which the South Carolina portion of the contract exceeds or could reasonably be expected to exceed \$10,000.⁵¹

Comment: It is the Department’s longstanding administrative policy that the \$10,000 contract amount is based on each calendar year.

This tax is withheld by the person letting the contract at the time payment is made to the nonresident and is due to the Department at the same time and using the same method (*i.e.*, bank deposit, electronic funds transfer, etc.) as the business’s regular payroll withholding tax.⁵²

The withholding agent must provide the nonresident and the Department a federal Form 1099-MISC. The information reported should include the nonresident’s name, address, social security or federal employer identification number, total contract amount, total amount withheld, and the withholding agent’s name, address, and South Carolina withholding tax account number.

Note: Since this form is to be used only for South Carolina purposes, “SC ONLY” should be marked on the top of the form.

⁴⁸ SC Code §12-2-25(B). See Section .11 Worksheet 1 of this portfolio for contact information.

⁴⁹ The term is defined in SC Code §12-8-10(1) to include an individual, trust, estate, partnership, receiver, association, company, corporation, or any other entity in the United States, a state, a political subdivision or agency of the United States or any state, and a municipality located in this State.

⁵⁰ The term is defined in SC Code §12-8-10(5) as an individual domiciled outside this State and an entity whose principal place of business is outside of this State. For corporations, principal place of business is defined in SC Code §12-6-30(9) to mean the domicile of a corporation. However, when none of the business of the corporation is in the state of domicile, the Department determines the principal place of business of the corporation based upon the available evidence.

⁵¹ SC Code §12-8-550(A).

⁵² SC Code §§12-8-1520 and 12-54-250. See Section .09 B. of this portfolio for details on wage withholding.

The withholding agent must submit Form 1099-MISC to the nonresident on or before January 31st of the following year⁵³ and to the Department on or before the last day of February following the calendar year of the withholding.⁵⁴ A copy of Form 1099-MISC must be attached to the nonresident's South Carolina income tax return as verification for claiming credit for the withholding taxes paid.

2. Exceptions

This 2% withholding requirement does not apply to:

1. Payments on purchase orders for tangible personal property when the payments are not accompanied by services to be performed in South Carolina.⁵⁵
2. Nonresident contractors who are not conducting business in South Carolina.
3. Nonresident contractors for contracts that are less than \$10,000.
4. Payments to a nonresident who (a) registers with the Department or the Secretary of State and (b) provides Form I-312, "Nonresident Taxpayer Registration Affidavit Income Tax Withholding," to the person letting the contract.

The nonresident registers with the Department by filing Form SCTC-111, "Business Tax Application" and completing Section B, "Exemption from Withholding on Nonresidents." The nonresident registers with the Secretary of State by filing Form CL-1, "Initial Annual Report of Corporations" and "Application by a Foreign Corporation for a Certificate of Authority to Transact Business in the State of South Carolina."

Comment: By administratively registering, the nonresident agrees to be subject to the jurisdiction of the Department and the courts of this State to determine its South Carolina tax liability, including withholding and estimated taxes, together with any related interest and penalties, if any. Registering with the Department or the Secretary of State is not an admission of tax liability nor is it construed to require the filing of an income tax or license tax return.⁵⁶

⁵³ SC Code §12-8-1540.

⁵⁴ SC Code §12-8-1550(A).

⁵⁵ SC Code §12-8-550(C).

⁵⁶ SC Code §12-8-550.

If the person hiring, contracting, or having a contract with a nonresident obtains an affidavit from the nonresident stating that the nonresident is registered with the Department or with the Secretary of State, the person is relieved of the withholding responsibility on the contract. The affidavit is valid for all contracts between the nonresident and the person hiring or contracting with them, unless revoked by the Department.

Note: Although the Department may revoke the exemption granted upon registration if it determines that the nonresident taxpayer is not cooperating with the Department in the determination of the nonresident taxpayer's correct South Carolina tax liability, such revocation does not revive the duty of a person hiring, contracting, or having a contract with a nonresident to withhold, until the person receives notice of the revocation.⁵⁷

5. Classes of transactions partially or totally exempted by the Department.⁵⁸

Comment: Although this provision has rarely been used, a taxpayer requesting an exemption should contact the Department's Withholding Section and submit a complete summary of the relevant facts and a nexus questionnaire⁵⁹ for approval.

6. A nonresident contractor who guarantees compliance with the provisions of Chapter 6 of Title 12, "South Carolina Income Tax Act," and the requirements of a withholding agent by furnishing the Department with:

- a. A bond secured by an insurance company licensed by the South Carolina Department of Insurance;
- b. A deposit of securities which have been approved by the State Treasurer; or
- c. A cash bond (which does not bear interest.)

The amount of the bond or deposit must be at least as much as the withholding otherwise required.⁶⁰

⁵⁷ SC Code §12-8-550.

⁵⁸ SC Code §12-8-560(A).

⁵⁹ A nexus questionnaire can be obtained from the Department's website at www.sctax.org under "Tax Information" and "Voluntary Disclosure Program." See Section .11 Worksheet 1 of this portfolio for contact information.

⁶⁰ SC Code §12-8-560(B).

Note: The provision allowing a nonresident taxpayer to contract with a bonding company to act as surety is essentially obsolete since the statute was expanded to allow the nonresident contractor to administratively register with the Department on Form SCTC-111 and then file an affidavit, Form I-312, with the person letting the contract, at no charge.

Comment: If a person hiring or contracting with a nonresident fails to withhold the 2% or obtain an affidavit, then the Department provides the person letting the contract the following remedy upon audit if the nonresident contractor timely filed returns and paid South Carolina withholding and income taxes.⁶¹ The South Carolina taxpayer letting the contract remains responsible for the withholding tax, interest, and penalties, however, he may receive a conditional credit for the 2% withholding taxes providing he verifies that the nonresident contractor filed South Carolina withholding and income tax returns for the periods in question and executes a waiver agreeing to pay any delinquent taxes due or subsequently found to be due from the nonresident contractor for the periods under audit. The credit can reduce or eliminate the 2% withholding taxes otherwise due, however, penalties and interest are imposed from the date the withholding tax is due until the later of the due date of the nonresident's income tax return or the date the tax is paid by the nonresident. The interest and penalties are based on the withholding tax that is not collected from the nonresident and remitted to South Carolina by the person letting the contract.

F. Rents and Royalties

1. General Provisions

A person⁶² making rent or royalty payments to a nonresident⁶³ of \$1,200 in any calendar year or more annually for the use or privilege of using property in South Carolina must withhold 7% of each payment to a nonresident individual, partnership, trust, or estate, and 5% of each payment to a nonresident corporation or any other nonresident entity.⁶⁴

⁶¹ SC Rev. Proc. #90-1.

⁶² The term is defined in SC Code §12-8-10(1) to include an individual, trust, estate, partnership, receiver, association, company, corporation, or any other entity in the United States, a state, a political subdivision or agency of the United States or any state, and a municipality located in this State.

⁶³ The term is defined in SC Code §12-8-10(5) as an individual domiciled outside this State and an entity whose principal place of business is outside of this State. For corporations, principal place of business is defined in SC Code §12-6-30(9) to mean the domicile of a corporation. However, when none of the business of the corporation is in the state of domicile, the Department shall determine the principal place of business of the corporation based upon the available evidence.

⁶⁴ SC Code §12-8-540(A).

This tax is withheld at the time payment is made to the nonresident and is due to the Department at the same time and using the same method (*i.e.*, bank deposit, electronic funds transfer, etc.) as the business's regular payroll withholding tax.⁶⁵

The withholding agent must provide the nonresident and the Department a federal Form 1099-MISC. The information reported should include the nonresident's name, address, social security or federal employer identification number, total rent or royalty payment amount, total amount withheld, and the withholding agent's name, address, and South Carolina withholding tax account number. The withholding agent must submit Form 1099-MISC to the nonresident on or before January 31st of the following year⁶⁶ and to the Department on or before the last day of February following the calendar year of the withholding.⁶⁷ A copy of Form 1099-MISC must be attached to the nonresident's South Carolina income tax return as verification for claiming credit for withholding taxes paid.

Note: Since this form is to be used only for South Carolina purposes, "SC ONLY" should be marked on the top of the form.

2. Exceptions

Typically, this provision applies to corporations renting commercial property. This withholding requirement does not, however, apply to:

1. A person renting residential housing units, including short-term rentals, when four or fewer units are owned by the nonresident.
2. An individual who pays rent directly to a nonresident solely for a residential housing unit which is his legal residence.
3. Payments to a nonresident for rent or royalty payments less than \$1,200 in a calendar year.
4. A nonresident who (a) registers with the Department or the Secretary of State and (b) provides Form I-312, "Nonresident Taxpayer Registration Affidavit Income Tax Withholding," to the person making the rent or royalty payment.

Note: A nonresident can register with the Department by filing Form SCTC-111, "Business Tax Application" and completing Section B, "Exemption from Withholding on Nonresidents," or can register with the Secretary of State by filing

⁶⁵ SC Code §§12-8-1520 and 12-54-250. See Section .09 B. of this portfolio for details on wage withholding.

⁶⁶ SC Code §12-8-1540.

⁶⁷ SC Code §12-8-1550(A).

Form CL-1, “Initial Annual Report of Corporations” and “Application by a Foreign Corporation for a Certificate of Authority to Transact Business in the State of South Carolina.”

Note: By administratively registering, the nonresident agrees to be subject to the jurisdiction of the Department and the courts of this State to determine its South Carolina tax liability, including estimated taxes, together with any related interest and penalties, if any. Registering with the Department or Secretary of State is not an admission of tax liability nor is it construed to require the filing of an income tax or license tax return.⁶⁸

If the person renting from or having a royalty contract with a nonresident obtains an affidavit from the nonresident stating that the nonresident is registered with the Department or with the Secretary of State, the person is relieved of the withholding responsibility on the rent or royalty payment.⁶⁹ The affidavit is valid for all payments between the nonresident and the person making the payment, unless revoked by the Department. Although the Department may revoke the exemption granted upon registration if it determines that the nonresident taxpayer is not cooperating with the Department in the determination of the nonresident taxpayer’s correct South Carolina tax liability, such revocation does not revive the duty of a person making the rent or royalty payment to a nonresident to withhold, until the person receives notice of the revocation.⁷⁰

5. Classes of transactions partially or totally exempted by the Department.⁷¹

Comment: Although this provision has never been used, a taxpayer requesting an exemption should contact the Department’s Withholding Section and submit a complete summary of the facts and a nexus questionnaire⁷² for approval.

6. A nonresident who guarantees compliance with the provisions of Chapter 6 of Title 12, “South Carolina Income Tax Act,” and the requirements of a withholding agent by furnishing the Department with:

⁶⁸ SC Code §12-8-540(B)(3).

⁶⁹ SC Code §12-8-540(B)(3).

⁷⁰ SC Code §12-8-540(B).

⁷¹ SC Code §12-8-560(A).

⁷² A nexus questionnaire can be obtained from the Department’s website at www.sctax.org under “Tax Information” and “Voluntary Disclosure Program.” See Section .11 Worksheet 1 of this portfolio for contact information.

- a. A bond secured by an insurance company licensed by the South Carolina Department of Insurance;
- b. A deposit of securities which have been approved by the State Treasurer; or
- c. A cash bond (which does not bear interest.)

The amount of the bond or deposit must be at least as much as the withholding otherwise required.⁷³

Note: The provision allowing a nonresident taxpayer to contract with a bonding company to act as surety is essentially obsolete since the statute was expanded to allow the nonresident to administratively register with the Department on Form SCTC-111 and then file an affidavit, Form I-312, with the person making the rent or royalty payment, at no charge.

G. Sale of Real Property and Associated Tangible Personal Property

1. General Provisions

A person⁷⁴ who purchases real property, or real property and associated tangible personal property, from a nonresident⁷⁵ seller is required to withhold South Carolina income taxes from the nonresident seller.⁷⁶

The amount of the withholding is:

⁷³ SC Code §12-8-560(B).

⁷⁴ SC Code §12-8-10(1) defines person to include an individual, trust, estate, partnership, receiver, association, company, corporation, or any other entity including the United States, a state, a political subdivision or agency of the United States or any state, and a municipality located in this State.

⁷⁵ SC Code §12-8-580(C) defines nonresident for purposes of this provision to include a corporation incorporated outside of South Carolina and a partnership whose principal place of business is located outside of South Carolina. A nonresident seller, however, is considered a resident for this purpose if the seller is: (1)(a) a corporation incorporated outside South Carolina that has its principal place of business in South Carolina and does no business in its state of incorporation or (b) a corporation that has a certificate of authority to do business in South Carolina, has been in business in South Carolina during the last two taxable years, including the year of sale, and will continue substantially in the same business in South Carolina after the sale, and has filed at least one South Carolina income tax return and is not delinquent with respect to filing South Carolina income tax returns, and (2) the seller provides the buyer an affidavit certifying the above requirements and that the seller will report the sale on a timely filed South Carolina income tax return.

⁷⁶ SC Code §12-8-580.

1. 5% of the gain recognized on the sale⁷⁷ by a nonresident corporation or other nonresident entity (7% of the gain recognized on the sale by a nonresident individual, partnership, trust, or estate) if the seller provides the buyer with an affidavit stating the amount of gain.⁷⁸ Gain is computed as provided in Internal Revenue Code §1001(a) as adopted for South Carolina income tax purposes. Gain recognized is the amount required to be included in the seller's South Carolina gross income.⁷⁹
2. 5% of the amount realized on the sale for a nonresident corporation or any other nonresident entity (7% of the amount realized on the sale for a nonresident individual, partnership, trust, or estate) if the seller does not provide the buyer with an affidavit stating the amount of gain.⁸⁰ The amount realized on the sale is defined in Internal Revenue Code §1001(b) as adopted for South Carolina income tax purposes. It is the amount used for computing gain before subtracting the basis of the property (*i.e.*, sales price less selling expenses.)⁸¹
3. 100% of the net proceeds payable to the nonresident seller, if the amount required to be withheld, based on either the gain stated in the seller's affidavit or the amount realized, exceeds the net proceeds payable to the seller.⁸² The net proceeds payable to the seller is computed by reducing the total sales price by mortgages or liens paid at closing on the property⁸³ and selling expenses, such as real estate commissions, attorney fees, deed recording fees, and termite or heating and air conditioning letter fees.⁸⁴

⁷⁷ SC Code §12-8-580(B)(1) defines "sale" as a transfer where gain or loss is computed in accordance with Internal Revenue Code §1001 with modifications provided in Chapter 6 of Title 12 for South Carolina income tax purposes.

⁷⁸ SC Code §12-8-580(A)(1)(a).

⁷⁹ SC Rev. Adv. Bull. #02-6.

⁸⁰ SC Code §12-8-580(A)(1)(b).

⁸¹ SC Rev. Adv. Bull. #02-6.

⁸² SC Code §12-8-580(A)(1).

⁸³ SC Rev. Adv. Bull. #02-6 provides that only mortgages and liens on the property being sold may be deducted from the sales price. Liens, mortgages, advances on credit lines, and other debt secured by the properties assumed by the buyer in contemplation of the sale (*i.e.*, has as one of its purposes reducing the amount withheld) cannot be deducted from the sales price. Loans or advances where the entire proceeds are used to purchase or improve the property being sold are not loans in contemplation of the sale. Unless the buyer knows otherwise, the buyer can presume that any liens, mortgages, or advances on credit lines made more than one year before the closing are not in contemplation of the sale and may be deducted. If the lien, mortgage, or credit line advance is made less than one year prior to the closing, the buyer cannot deduct the mortgage, lien, or credit line advance unless the buyer obtains an affidavit from the seller, which states that the loan or advance was not made in contemplation of the sale.

⁸⁴ SC Rev. Adv. Bull. #02-6.

The buyer is liable for collecting and remitting the withholding to the Department. The buyer remits the withholding to the Department on Form I-290, “Nonresident Real Estate Withholding,” on or before the 15th day of the month following the month in which the sale takes place. The Department may extend the time for withholding and remitting payments for seller financed sales.⁸⁵

If there is more than one seller (*e.g.*, tenants in common) a separate Form I-290 should be used for each seller. If the seller is an S corporation, partnership, estate, or trust, the buyer should issue one Form I-290 to the entity and report the total amount of withholding. The entity will allocate the tax withheld to each shareholder, partner, or beneficiary in proportion to their percentage ownership in the property sold. This amount should be reported on the applicable federal Schedule K-1 as an “Other credit” or “Other” and identified as “South Carolina Income Tax Withheld on Nonresident Real Estate Sale.”⁸⁶

The seller may apply amounts withheld against an estimated income tax liability. The seller should report amounts withheld as estimated taxes paid during the period in which the withholding was actually withheld. For example, if a seller is a calendar year individual taxpayer and payment is made to the seller on April 20th from which an amount is withheld, the seller will report this as an estimated payment made after April 15th and before June 15th.

The seller should attach a copy of Form I-290 to the income tax return reporting the sale. Upon filing a South Carolina income tax return reporting the gain or loss on the sale, the seller applies the withholding against any income tax due; any excess withholding will be refunded.

In order to revise the amount of withholding originally remitted to the Department on Form I-290 before filing an income tax return for the year of the sale, the seller may submit Form I-290X, “Nonresident Real Estate Withholding - Amended,” with the Department. The seller must enclose the original Form I-290 completed at closing, an attachment explaining the reasons for the revision, and any supporting computations.

The reasons for revising the withholding amount are:⁸⁷

1. The seller did not provide an affidavit to the buyer at the time of sale and the withholding was based on the amount realized. The seller is amending the return to state the amount of gain recognized on the sale.
2. The amount withheld and remitted to the Department was incorrect because of an error in computing the withholding amount, including an overstatement of the amount of gain.

⁸⁵ SC Code §12-8-580(D).

⁸⁶ SC Rev. Adv. Bull. #02-6.

⁸⁷ SC Code §12-8-580(F) and SC Rev. Adv. Bull. #02-6.

3. The amount was erroneously withheld and remitted to the Department because the parties were unaware of the applicable withholding exceptions at closing.

Part or all of the withholding may be refunded to the seller, however, the seller must file an income tax return to claim the balance of any withholding payment. The seller must attach a copy of Form I-290X to the income tax return reporting the sale.

2. Sale Subject to or Exempt From Withholding

A sale is a transfer where gain or loss is computed in accordance with Internal Revenue Code §1001 with modifications provided in Chapter 6 of Title 12 for income tax purposes. A sale does not include tax exempt or tax deferred transactions, other than installment sales. The Department may exempt certain other classes of transactions from these provisions if it determines that the benefits to the State are insufficient to justify the burdens imposed on the buyer and seller.⁸⁸

The sale of the following types of property require withholding:

1. The sale of any interest in real estate. This includes the sale of time shares, leases, standing timber⁸⁹ and minerals in place. Withholding is not required, however, upon the transfer of title to real estate held solely to secure a loan in connection with the assignment of the loan. For example, where a deed is retained merely as a security interest by a seller who has sold property to a buyer under a “land contract,” no withholding is required for a transaction in which the seller assigns his rights under the land contract, including possession of the deed.
2. The sale of tangible personal property if sold as part of a transaction involving the sale of an interest in real estate.

A sale is any transfer where gain or loss for South Carolina income tax purposes would be computed in accordance with Internal Revenue Code §1001 (*i.e.*, any taxable sale or exchange.) A sale takes place when it takes place for South Carolina income tax purposes. If the seller retains the deed purely as a security device, the sale takes place when the benefits and burdens of ownership are transferred, not when the deed is finally delivered.

A sale does not include tax exempt or tax deferred transactions, other than installment sales. Examples of transactions which are not “sales” include, but are not limited to:⁹⁰

⁸⁸ SC Code §12-8-580(B).

⁸⁹ SC Rev. Adv. Bull. #02-6 and SC Info. Ltr. #94-31 (Administrative Pronouncement). A contract for the sale of timber to be cut is a contract for the sale of personal property and, therefore, not subject to these withholding requirements. A contract for the sale of timber and the underlying land is a contract for the sale of real property, and both the standing timber and the underlying land are treated as real property subject to withholding on the sale of real property by nonresidents.

⁹⁰ SC Rev. Adv. Bull. #02-6.

1. Sales of a principal residence where the entire gain is excluded under Internal Revenue Code §121.
2. Gifts and inheritances which are tax free under Internal Revenue Code §102.
3. Like kind exchanges which are tax deferred under Internal Revenue Code §1031.⁹¹
4. Tax free exchanges of property for stock in a corporation which qualify under Internal Revenue Code §351.
5. Transfers of property as part of a tax free corporate reorganization.
6. Tax free exchanges of property for a partnership interest under Internal Revenue Code §721.
7. Transfers of property from the U.S. Government, agencies of the U.S. Government, South Carolina and its agencies, and political subdivisions. These transfers include any transfer made by a deed signed by a federal or South Carolina judicial or other government official acting in his or her official capacity.
8. Transfers of property from organizations exempt from income taxes under Internal Revenue Code §501(a) and insurance companies exempt from South Carolina taxes on income.
9. Involuntary conversions or condemnations excluded under Internal Revenue Code §1033.

3. Affidavit

Form I-295, “Seller’s Affidavit,” is an affidavit of fact provided by the nonresident seller, under penalty of perjury, to the buyer that may relieve the buyer of this withholding requirement, if the seller is a resident, a deemed resident, or if the transaction is exempt, or it may allow the buyer to withhold based on the gain stated instead of a higher amount. The buyer should retain the affidavit and produce it if requested during an audit; the affidavit should not be sent to the Department. In lieu of the Department’s affidavit, an affidavit containing the same information is accepted.

The buyer may rely on the seller’s affidavit if the buyer does not know the affidavit is false, and the seller, under penalties of perjury, states the following:⁹²

⁹¹ Tax must be withheld where replacement property has not been identified at the time of sale. See Section .09 G. 4. of this portfolio for a discussion of withholding when a simultaneous exchange does not take place.

⁹² See Form I-295.

1. Seller's name, address, and social security or other federal tax identification number.
2. Closing date of the sale.
3. Description of the property, including for real property, the county location and tax map number.⁹³
4. A reason for the calculation of the withholding amount.⁹⁴

The affidavit may be used to indicate the following:⁹⁵

1. The seller is a South Carolina resident.
2. The seller is a deemed resident.⁹⁶
3. The seller is a tax exempt organization.
4. The amount of gain recognized or the amount the gain will not exceed.
5. The withholding is based on the entire net proceeds since the appropriate withholding percentage (5% or 7%) of the amount realized or gain recognized exceeds the net proceeds due to a mortgage being paid off at closing.
6. The withholding from an installment sale is based on an amortization schedule.
7. The gain is not recognized because of Internal Revenue Code §§121(sale of principal residence) or 1033(involuntary conversion).
8. The gain is not recognized because of Internal Revenue Code §1031 (like kind exchange.)
9. An employee's property is being sold by an employer or relocation company in connection with a transfer. When the employee treats the ultimate sale as a sale on his income tax return and neither the employer nor the relocation service is required to treat it as a sale for income tax purposes, then the sale is from the employee to the

⁹³ SC Code §12-8-580(E).

⁹⁴ See Form I-295 check off blocks for reasons.

⁹⁵ SC Rev. Adv. Bull. #02-6.

⁹⁶ Note: The Department has allowed a nonresident REIT subsidiary selling real estate in South Carolina to be a "deemed resident" exempt from withholding since it owned other property in South Carolina. The only reason the subsidiary did not file its own South Carolina income tax return was because the parent REIT files a South Carolina return that includes the subsidiary's sales.

ultimate purchaser and only it is subject to withholding. When the employer or relocation service is required to treat the advance and the ultimate sale as a purchase and sale by it, then both the sale from the employee to the employer or relocation service, and the sale from the employer or relocation service to the ultimate purchaser, may be subject to withholding. The identity of the seller should not be determined by looking at the deed. If the buyer obtains an affidavit from the employer or relocation service stating that it is the seller, and stating that (a) the transaction is exempt from withholding or (b) the amount of gain, then the buyer may rely on such an affidavit and withhold based on it.

4. Like Kind Exchanges

When a transaction is intended to be a deferred nontaxable like kind exchange, there can be no guarantee when the first property is transferred that the transaction will qualify as a deferred like kind exchange. The rules regarding withholding on non-taxable like kind exchanges depend on the type of transaction, *i.e.*, whether or not a simultaneous exchange takes place. SC Rev. Adv. Bull. #02-6 provides for the requirements and special rules for like kind exchanges as follows:

1. If a simultaneous exchange takes place. The nonresident seller may furnish the buyer a “Seller’s Affidavit” stating (a) the transaction is a nontaxable like kind exchange under Internal Revenue Code §1031 and (b) whether the entire gain is deferred under Internal Revenue Code §1031 or the amount of gain that will be partially recognized. Withholding is required as provided in SC Rev. Adv. Bull. #02-6 to the extent the “Seller’s Affidavit” states gain will be recognized.
2. If a simultaneous exchange does not take place. Since there is no guarantee when the first property is transferred that the intended deferred nontaxable like kind exchange transaction will be successfully completed, there are two withholding options available. The two options are:

Option 1: The seller may choose to use personal funds to pay the South Carolina withholding so that all of the funds could be reinvested in the like kind exchange. The buyer remits the withholding to the Department on Form I-290 on or before the 15th day of the month following the month the first property is transferred. If the §1031 exchange occurs, the seller can revise the amount of withholding originally remitted to the Department on Form I-290X to request a refund of withholding since it has been determined the transaction qualifies as a nontaxable exchange.

Option 2: If the buyer and seller agree to use a qualified intermediary, then the withholding requirements may be satisfied as follows:

- a. The seller furnishes the buyer a “Seller’s Affidavit” stating it is intended that the transfer qualify as a nontaxable like kind exchange under Internal Revenue Code §1031.
- b. Form I-290 is completed as if the sale is taxable and given to a qualified intermediary along with the amount necessary to pay the withholding.

- c. The buyer enters into a contract with the qualified intermediary that provides that the qualified intermediary will file Form I-290 and pay the withholding for the buyer if the transaction does not qualify. (The buyer remains liable for the payment.) The payment must be made by the 15th day of the month following the month it is first apparent that the transaction will not qualify. It will be apparent that the transaction will not qualify on the earlier of the date the exchange is abandoned, or the time for the exchange expires.

If the transaction qualifies as a nontaxable like kind exchange, Form I-290 is not filed and no payment is made to the Department. The buyer should retain the “Seller’s Affidavit” and the contract with the qualified intermediary and provide them if requested during an audit. These documents are not sent to the Department.

5. Installment Sales

In general, the buyer must withhold on each payment to the seller. The buyer must complete and provide Form I-290 to the seller each time a withholding payment is made to the Department. If a seller finances all or part of the transaction, in lieu of remitting the tax due on each installment payment, the seller may give the buyer an affidavit stating that, for South Carolina income tax purposes, he will elect out of installment sales treatment, as defined by Internal Revenue Code §453, and then the buyer will remit the entire amount of tax in one payment.⁹⁷

SC Rev. Adv. Bull. #02-6 provides detailed information on installment sales and examples of the withholding computation. Other information regarding installment sales includes:

1. When the amount to be withheld and paid to the Department on any payment is less than \$500, the buyer may wait to remit the amounts withheld to the Department until the 15th day of the month following the month when the amounts withheld equal \$500 or more. If the amounts withheld during a calendar year, however, do not equal \$500, the withholding must be remitted by January 15th of the following year.
2. Withholding on an installment sale is not required for any year where the total amount to be withheld and paid to the Department for the entire calendar year is less than \$350. Sales to a single buyer or to a related group of buyers are aggregated to determine if this limitation has been exceeded.
3. If the seller files a tax return reporting the entire loss or gain on the installment sale, the seller may request the Department’s Withholding Section provide a letter exempting future principal payments from withholding.⁹⁸ The Department will forward a copy of the exemption to the seller and the buyer. The buyer is relieved from withholding on any future payments upon notification by the Department.

⁹⁷ SC Code §12-8-580(A)(2).

⁹⁸ See Section .11 Worksheet 1 of this portfolio for contact information.

H. Job Development or Job Retraining Credits (Refunds of Wage Withholding)

1. General Provisions

Job development credit benefits⁹⁹ allow a qualifying new or expanding business making an investment and creating new jobs in South Carolina to obtain a refund of employee withholding to use for, or to reimburse expenses for, purposes approved by the Coordinating Council for Economic Development (“Council”) at the Department of Commerce.

To be a qualifying business eligible to apply for job development credit benefits, a business must be located in South Carolina and must meet the following criteria:¹⁰⁰

1. The business must be primarily engaged in a type of business identified in the job tax credit, such as manufacturing, tourism, processing, distribution, research and development, or a technology intensive facility.¹⁰¹
2. The business must provide a benefits package, including health care, to full time employees at the project site where the investment is made.
3. The business must enter into a revitalization agreement with the Council.¹⁰²
4. The Council must determine that the negotiated incentives are appropriate for the project, and the Council must certify that the total benefits of the proposed project exceed the total costs to the public, and that the qualifying business otherwise fulfils the statutory requirements.-
5. The business must create a minimum of 10 new, full time jobs, as defined in SC Code §12-6-3360(M) at the project within 5 years of the effective date of an agreement.¹⁰³

Comment: In evaluating whether the new jobs at the project are eligible for benefits, the Council will compare the hourly wage of each new job to the lower of (a) the per capita income for the county in which the project locates or expands as determined by

⁹⁹ Job development credit benefits are contained in SC Code §§12-10-80 (for a business of the type qualifying for a job tax credit) or 12-10-81 (for certain tire manufacturers).

¹⁰⁰ SC Code §12-10-50(A).

¹⁰¹ A technology intensive facility is a qualifying business effective for tax years beginning after June 30, 2001. See Section .06 B. 2. of this portfolio for a discussion of the types of businesses qualifying for the job tax credit. See Regulation 117-750.1 for a definition of the term facility.

¹⁰² See Section .09 H. 2. of this portfolio for a discussion of the revitalization agreement process.

¹⁰³ SC Code §12-10-80(A)(4).

the most recent data available from the South Carolina Board of Economic Advisors (divided by 2000 hours) or (b) the regional average wage for comparable jobs as determined by the most recent applicable wage survey compiled by the South Carolina Employment Security Commission or similar source.¹⁰⁴

Comment: The Council has determined that temporary and leased employees do not qualify as new jobs for this benefit.¹⁰⁵

6. The business must not have officially announced its expansion or its new project.¹⁰⁶

Job retraining credit¹⁰⁷ benefits allow a qualifying business to obtain a refund of employee withholding to use for, or to reimburse the cost of, retraining production or technology employees. A production employee is an employee directly engaged in manufacturing or processing at a manufacturing or processing facility.¹⁰⁸ A technology employee is an employee at a technology intensive facility¹⁰⁹ who is directly engaged in technology intensive activities (*i.e.* 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).¹¹⁰ The retraining must be completed through a technical college.

To be a qualifying business eligible for job retraining credit benefits, a business must be an existing South Carolina business and must meet the following criteria:¹¹¹

1. The business must be engaged in manufacturing, processing, or technology at a manufacturing, processing, or technology intensive facility.¹¹²

¹⁰⁴ Coordinating Council Enterprise Program Guideline (February 1, 2004).

¹⁰⁵ Coordinating Council Enterprise Program Guideline (December 15, 1998) addresses leased employees.

¹⁰⁶ Coordinating Council Enterprise Program Guideline (February 1, 2004).

¹⁰⁷ SC Code §12-10-95.

¹⁰⁸ SC Code §12-10-30(14). The terms manufacturing facility and processing facility are defined in SC Code §12-6-3360(M)(5) and (6), respectively, in the job tax credit statute. See Regulation 117-750.1 for a definition of the term “facility.”

¹⁰⁹ The term “technology intensive facility” is defined in SC Code §12-6-3360(M)(14).

¹¹⁰ SC Code §§12-10-30(13) and (17) define technology employee and technology intensive activities, respectively.

¹¹¹ SC Code §12-10-50(B).

¹¹² See SC Code §12-6-3360(M)(5), (6), and (14), respectively, for definitions of these facilities and Section B. 2. of this portfolio. See Regulation 117-750.1 for a definition of the term “facility.”

2. The business must demonstrate that the retraining of qualifying production or technology employees is necessary for the qualifying business to remain competitive, introduce new technologies, or enable or increase its ability to export products, or is for apprenticeship programs.¹¹³
3. The business must provide a benefits package, including health care, to employees being retrained.
4. The business must match on a dollar-by-dollar basis the amount claimed as a job retraining credit.¹¹⁴
5. The business must enter into a retraining agreement with the Council.
6. The retraining must be approved and performed by a technical college under the jurisdiction of the State Board for Technical and Comprehensive Education. The technical college may provide the retraining program directly or contract with other training entities.¹¹⁵

Note: The Council administers the approval of these discretionary incentives and has developed written guidelines concerning a business qualifying for and claiming job development or job retraining credit benefits. The guidelines also preclude the charging of a contingency fee based upon the approval, or a taxpayer's receipt, of job development or job retraining benefits. A copy of the guidelines can be obtained from the Council.¹¹⁶

2. Job Development Credit Application, Revitalization Agreement, Certification, and Renewal Process

In order to receive the job development credit benefits, a qualifying business must complete an application, a revitalization agreement, and a certification process. Once a business begins receiving the credit it must complete an annual renewal process. The entire process is:

Step 1: Application Process - An application to receive the job development credit benefits and a \$4,000 application fee must be submitted to the Council.¹¹⁷ The application fee

¹¹³ SC Code §§12-10-95(A) and (H).

¹¹⁴ SC Code §12-10-95(E).

¹¹⁵ SC Code §12-10-95(C).

¹¹⁶ Coordinating Council Enterprise Program Guideline (August 28, 2003). See Section .11 Worksheet 1 for contact information.

¹¹⁷ SC Code §12-10-100(B). Unless this temporary proviso is reenacted by the General Assembly in the next legislative session, the application fee will revert to \$2,000 on July 1, 2005.

is required at the time of application and is non-refundable for approved applicants.¹¹⁸

Step 2: Revitalization Agreement Process - If approved, the application generally serves as the “preliminary revitalization agreement.” In order to have an expenditure reimbursed from job development credits the expenditure must be incurred during the term of the revitalization agreement or within 60 days before the Council’s receipt of an application for job development credit benefits.¹¹⁹

Within 36 months from the date of the preliminary revitalization agreement, a business must enter into a “final” revitalization agreement with the Council.¹²⁰ A revitalization agreement¹²¹ describes the project and the negotiated terms and conditions, including the minimum capital investment and minimum job requirements, for a business to qualify for a job development credit.¹²² If a business fails to enter into a timely revitalization agreement, the Council may provide that benefits may no longer be available for the project.

Both consideration and caution should be exercised when stating in the revitalization agreement the number of jobs to be created. For example: If the business creates the 100 new jobs specified in the revitalization agreement but later reduces employment, then the credit is not allowed during the time the 100 jobs are not maintained and the time period approved for benefits continues to run.¹²³ Further, if the number of jobs created exceeds the 100 jobs specified in the revitalization agreement within the 5 year time period, then the credit is limited to the 100 jobs specified in the revitalization agreement, unless the business submits a new application to the Council for approval of benefits for the additional new jobs.¹²⁴

¹¹⁸ If the Council denies the application for benefits, \$2,000 of the application fee is refundable. Coordinating Council Enterprise Program Guideline (August 26, 2002).

¹¹⁹ SC Code §12-10-80(C)(1).

¹²⁰ Coordinating Council Enterprise Program Guideline (March 20, 2003).

¹²¹ SC Code §12-10-60.

¹²² SC Code §12-10-30(10) and Coordinating Council Enterprise Program Guideline (February 1, 2004). A business filing an application after February 1, 2004, may claim job development credit benefits only if it maintains 100% of the minimum job requirement stated in the revitalization agreement.

¹²³ Coordinating Council Enterprise Program Guideline (February 1, 2004).

¹²⁴ Coordinating Council Enterprise Program Guideline (February 1, 2004).

If a qualified business fails to achieve the level of capital investment or employment set forth in the revitalization agreement by the date provided in the revitalization agreement, the Council may terminate the revitalization agreement and reduce or suspend all, or any part of, the incentives granted until the time the anticipated investment or employment levels are met. The incentives may not be suspended retroactively.¹²⁵

Step 3: Certification Process - Once a final revitalization agreement has been executed, the business certifies to the Council in writing that the minimum capital investment and minimum job requirements have been met. The Council then certifies the business to the Department. The Council will notify the business of the certification date (*i.e.*, the date it can begin claiming the job development credit.) After such notification, the Department will send the business the appropriate withholding forms to claim the job development credit. The business must begin claiming the job development benefits no later than the first quarter of the sixth year from the date of the preliminary revitalization agreement.¹²⁶ The business may not go back to previous quarters and request a refund of previous withholdings.¹²⁷ Withholding may only be refunded for quarters subsequent to Council approval.¹²⁸

Step 4: Renewal Process – Once a business begins receiving the job development credit it must remit certain renewal fees. The Council imposes an annual \$500 renewal fee.¹²⁹ Further, a business claiming more than \$10,000 in job development credits in one calendar year must remit a \$1,000 fee to the Department. The fee is used to reimburse the Department for costs in auditing the benefits at least once every three years.¹³⁰

3. Claiming a Job Development Credit

A business obtains the amounts from employee withholding to use for, or to reimburse the cost of, qualifying expenditures by means of a “job development credit.” A business remits all South Carolina employee withholding to the Department as required under the withholding

¹²⁵ SC Code §12-10-90.

¹²⁶ Coordinating Council Enterprise Program Guideline (May 2000).

¹²⁷ SC Code §12-10-80(A).

¹²⁸ Coordinating Council Enterprise Program Guideline (June 29, 1999).

¹²⁹ Unless this temporary provision is reenacted by the General Assembly in the next legislative session, the annual renewal fee will cease on June 30, 2005.

¹³⁰ SC Code §12-10-105.

laws¹³¹ and claims a credit for the amount of allowable job development benefits when it files the quarterly South Carolina withholding tax returns, Form WH-1605Z, “Quarterly EZA/RDA” and Form WH-1606Z, “Fourth Quarter/Annual Reconciliation EZA/RDA.”¹³² The withholding overpayment resulting from the job development credit is refunded to the business.

To claim a job development credit, the following requirements must be met:¹³³

1. The business must be current with respect to all South Carolina state taxes.
2. The business must maintain the minimum employment and investment levels set forth in the revitalization agreement for the entire withholding quarter it claims the credit.
3. The Department must receive certification from the Council that the business has met the required minimum employment and capital investment levels that were negotiated with the Council.

A business may claim a job development credit for a period not to exceed 15 years.¹³⁴

Comment: The Council has determined that the job development credit will be paid for a maximum 10 year period. It may allow a 15 year benefit period for “significant economic development projects” or projects locating in a distressed county. A “significant economic development project” is considered one that (a) is located in a least developed county, creates 100 jobs with half of those jobs paying at least 1.5 times the county per capita income, and makes a \$100 million investment, with at least 10% in land, site improvements, or new building construction, or (b) is located in an under developed, moderately developed, or developed county, creates 200 jobs with half of those jobs paying at least 1.5 times the county per capita income, and makes a \$200 million investment, with at least 10% in land, site improvements, or new building construction.¹³⁵

¹³¹ The withholding laws are contained in Chapter 8 of Title 12.

¹³² SC Code §12-10-80(A)(1). These forms are provided by the Department to taxpayers after they qualify for job development benefits and, therefore, are not available on the Department’s website.

¹³³ SC Code §12-10-80(A)(2) and (3).

¹³⁴ SC Code §12-10-80(A)(5).

¹³⁵ Coordinating Council Enterprise Program Guideline (February 1, 2004).

The amount that may be claimed is generally based on the designation of the county¹³⁶ in which the business is located and the gross wages paid.¹³⁷ The designation of the county at the time the preliminary revitalization agreement is approved is “locked in” and the county designation for purposes of the job development credit does not change in future years, unless a new revitalization agreement is approved.¹³⁸ If a single project facility is physically located in more than one county, the Council will determine the county designation based primarily on where the majority of the jobs will be located, but may also consider other factors, including, but not limited to, location of capital investment and mailing address.¹³⁹ The credit amounts are as follows:¹⁴⁰

1. A business in a “distressed county” or in a “least developed” county when approved for benefits may claim 100% of the maximum allowable job development credit.
2. A business located in an “under developed” county when approved for benefits may claim 85% of the maximum allowable job development credit.
3. A business in a “moderately developed” county when approved for benefits may claim 70% of the maximum allowable job development credit.
4. A business in a “developed” county when approved for benefits may claim 55% of the maximum allowable job development credit.¹⁴¹

¹³⁶ The county designations are defined in SC Code §12-6-3360(B) and (L) (job tax credit statute). The Department annually publishes a SC Info. Ltr. listing the ranking of each of South Carolina’s 46 counties for job tax credit purposes. These documents are available on the Department’s website at www.sctax.org.

¹³⁷ SC Code §§12-10-80(B)(1) and 12-10-81(C)(1). In Coordinating Council Enterprise Program Guideline - February 1, 2004, the Council determined the job development credit will not exceed \$3,250 per year per job unless the project qualifies as a “super fee” project pursuant to SC Code §§4-12-30(D)(4), 4-29-67(D)(4), or 12-44-30(8).

¹³⁸ SC Code §12-10-80(D)(3).

¹³⁹ Coordinating Council Enterprise Program Guideline (January 17, 2001).

¹⁴⁰ SC Code §12-10-80(D)(1).

¹⁴¹ SC Code §§12-10-80(D)(2) and 12-15-30(1)(b). The Council may waive a portion of this limit for (a) a life sciences facility as defined in SC Code §12-15-20, investing \$100 million in the South Carolina project and creating 200 new, full time jobs at certain annual cash compensation levels during July 1, 2004 to June 30, 2008, or (b) a qualifying business making a significant capital investment as defined in SC Code §§4-12-30(D)(4), 4-29-67(D)(4), or 12-44-30(8). Generally, a \$600 million investment, or a \$400 million investment with 200 new full time jobs at the site is required; additional state investments may also be required depending upon the qualifying business.

The Council certifies to the Department the maximum job development credit for each qualifying business. The Department remits an amount equal to the difference between the maximum allowable job development credit and the job development credit actually claimed to the State Rural Infrastructure Fund.¹⁴²

The maximum allowable job development credit is based on a percentage of the gross wages¹⁴³ of each new employee.¹⁴⁴ A new employee does not include an employee whose job was created in South Carolina before the taxable year of the business in which it enters into a preliminary revitalization agreement.¹⁴⁵ The hourly gross wage figures are adjusted annually by an inflation factor determined by the State Budget and Control Board.¹⁴⁶

In order to compute the hourly wages for new employees, the business may divide the amount of total wages subject to South Carolina quarterly withholding for each new employee by the sum of the hours worked by the employee, plus hours of paid leave for vacation, illness, and other purposes. Alternatively, the business may elect to take the total amount of wages subject to South Carolina quarterly withholding for each new employee, and divide it by the number of hours the employee is deemed to work. Each new employee will be deemed to work 40 hours each week employed, or 500 hours if employed for the entire calendar quarter.¹⁴⁷

An example best explains this calculation. For purposes of this example it is assumed that: (1) the employer's total South Carolina withholding for all employees in all locations during the calendar quarter is \$15,000; (2) the employer is located in a distressed county and therefore may claim 100% of the maximum allowable job development credit; (3) the employees gross wages are less than \$65,000 and therefore the cap of \$3,250 maximum job development credit per job¹⁴⁸ does not apply; and (4) the employer has certified that it is current with respect to all State taxes and has maintained its minimum job requirement for the entire quarter.

¹⁴² SC Code §12-10-85 defines and provides for the State Rural Infrastructure Fund and grants. SC Code §12-10-80(E) provides for disbursements to the Fund.

¹⁴³ Gross wages is defined in SC Code §12-10-30(4) as wages subject to withholding.

¹⁴⁴ SC Code §12-10-80(B)(1). The business may claim a job development credit equal to 2% to 5% of the gross wages of each new employee. Special rules exist for a qualifying business that is a tire manufacturer meeting the substantial job and capital requirements of SC Code §12-10-81.

¹⁴⁵ SC Code §12-10-80(A)(7).

¹⁴⁶ SC Code §12-10-80(B)(2). The hourly gross wage figures for job development credit purposes by year can be obtained from the Department of Commerce or the Department's publication South Carolina Tax Incentives for Economic Development at www.sctax.org.

¹⁴⁷ SC Info. Ltr. #95-29.

¹⁴⁸ Coordinating Council Enterprise Program Guideline (February 1, 2004).

GROSS WAGES PER HOUR OF NEW EMPLOYEE FOR 2005	PERCENTAGE BASED ON WAGES	AMOUNT EARNED DURING CALENDAR QUARTER BY ELIGIBLE EMPLOYEES IN EACH PAY RANGE	TENTATIVE AMOUNT TO CLAIM (% BASED ON WAGES X GROSS WAGES X % BASED ON COUNTY)
\$7.64 to \$10.17	2%	\$ 35,000	\$ 700
\$10.18 to \$12.72	3%	\$ 40,000	\$1,200
\$12.73 to \$19.08	4%	\$ 60,000	\$2,400
\$19.09 and more	5%	\$100,000	\$5,000
		\$235,000	\$9,300

In this example, the business may claim a \$9,300 job development credit against the total South Carolina employee withholding since the total South Carolina withholding (\$15,000) exceeds the amount that is calculated to be claimed (\$9,300). In no event may a business claim a job development credit that exceeds all withholding from all employees for the quarter.¹⁴⁹ The Department will refund \$9,300 to the business to use for, or reimburse the cost of, eligible expenditures. No amount is remitted to the State Rural Infrastructure Fund.

Note: From the standard terminology used in practice, the term “gross wages” is a misnomer. It is taxable employee compensation subject to withholding. Gross wages generally means wages before pretax medical, dental, disability, retirement, 401(k) contributions, pretax dependent care plan deductions, and pretax medical reimbursement plan deductions. An employee earning \$20 per hour gross or \$41,600 per year, who elects pre tax family medical and dental coverage of \$100 per week, a \$5,000 annual pre tax medical reimbursement, a \$5,000 pre tax dependent care reimbursement, and 15% 401(k) contribution, only “grosses” (*i.e.*, nets) \$9.64 per hour for purposes of the job development credit calculation. For this reason, a business considering this incentive program should consider the pre tax benefits, other than medical, it may make available to employees.

A business may make an irrevocable election to assign job development credit benefits to a designated trustee or other designee at the time it enters into a revitalization agreement. A “designated trustee” is the single financial institution designated by the Council to receive all assignments of payments. An “other designee” is a taxpayer that receives a minimum of 70% of the goods or services produced by the qualifying business at the project. The election must be made on a form provided by the Department, including a waiver of confidentiality.¹⁵⁰

Comment: An assignment and assumption agreement is available from the Council.¹⁵¹

¹⁴⁹ SC Code §12-10-80(B).

¹⁵⁰ SC Code §§12-10-82 and 12-54-240.

¹⁵¹ See Section .11 Worksheet 1 for contact information.

4. Use of Job Development Credit

The expenditure of the job development credit as authorized by the revitalization agreement¹⁵² is restricted to the following purposes or financing the costs of the following:¹⁵³

1. Training costs and facilities, including relevant employee training that enables or increases a company's ability to export its products.
2. Apprenticeship programs.
3. Acquiring and improving real estate and in certain instances, leasing real estate.¹⁵⁴
4. Improvements to public and private utility systems, including water, sewer, electricity, natural gas, and telecommunications.
5. Fixed transportation facilities, including highway, rail, water, and air.
6. Construction or improvements of real property and fixtures for the purpose of complying with environmental laws and regulations.
7. Employee relocation expenses associated with new or expanded technology intensive facilities or life science facilities¹⁵⁵.
8. Relocation expenses of a new national corporate headquarters as defined in SC Code §12-6-3410(J)(1)(a).¹⁵⁶

¹⁵² SC Code §12-10-80(C)(2).

¹⁵³ SC Code §12-10-80(C)(3).

¹⁵⁴ Coordinating Council Enterprise Program Guideline (February 1, 2004) provides that operating leases on existing facilities are not a reimbursable expenditure. Operating or capital leases associated with the acquisition of real estate by a qualifying company or its affiliates may be eligible for reimbursement, provided the amount does not exceed the value of the real estate improvements. Real estate improvements do not include the purchase price of an existing facility.

¹⁵⁵ SC Code §12-15-30(1)(a). SC Code §12-15-20 defines life sciences facility as a business engaged in pharmaceutical, medicine, and related laboratory instrument manufacturing, processing, or research and development. It includes North American Industrial Classification Systems Codes 3254 (Pharmaceutical and Medical Manufacturing) and 334516 (Analytical Laboratory Instrument Manufacturing). This provision applies with respect to a new or expanded life sciences facility investing \$100 million in the South Carolina project and creating 200 new, full time jobs at certain annual cash compensation levels during July 1, 2004 to June 30, 2008.

¹⁵⁶ SC Code §§12-10-80(C)(3)(f). SC Code §12-6-3410(J)(1)(a) provides that a "national corporate headquarters" must be the sole corporate headquarters in the nation and handle headquarters-related functions on a national basis. A national headquarters shall be deemed to handle headquarters-related functions on a national basis from this State if the corporation has a facility in this State from which the

For purposes of the job development credit, an expenditure is incurred if it is accrued under the accrual method of accounting for income tax purposes, without regard to Internal Revenue Code §461(h). In general, under the accrual method of accounting, an expense or liability is incurred when all the events have occurred that establish the fact of the liability and the amount of the liability can be determined with reasonable accuracy.¹⁵⁷ To the extent any job development credit is not used for the approved purposes, it is treated as misappropriated employee withholding.¹⁵⁸

The Department will audit each business claiming more than \$10,000 in job development credits or job retraining credits in one calendar year at least once every 3 years.¹⁵⁹

5. Claiming and Use of a Job Retraining Credit

In order to receive the job retraining benefits, a qualifying business must submit a retraining agreement¹⁶⁰ and a \$500 processing fee to the Council. The fee is nonrefundable.¹⁶¹ A revitalization agreement is not required to apply for the job retraining credit. A qualifying business must submit a retraining program for approval by a technical college under the jurisdiction of the State Board for Technical and Comprehensive Education. The technical college may provide the retraining or contract with other training entities to conduct the training. The business must match all amounts claimed as job retraining credits.¹⁶²

A qualifying business may negotiate with the Council to claim a job retraining credit equal to \$500 a year for a 5 year period for the following:

1. Retraining of a production employee or technology employee¹⁶³ if the retraining is necessary for the business to remain competitive or to introduce new technologies.

corporation engages in interstate commerce by providing goods or services for customers outside of this State in return for compensation.

¹⁵⁷ SC Info. Ltr. #95-29.

¹⁵⁸ SC Code §12-10-80(A)(6).

¹⁵⁹ SC Code §12-10-80(A)(9).

¹⁶⁰ SC Code §12-10-30(15).

¹⁶¹ Coordinating Council Enterprise Program Guideline (August 26, 2002).

¹⁶² SC Code §12-10-95(C).

¹⁶³ A technology employee qualifies effective for tax years beginning after June 30, 2001.

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 South Carolina.
3. Apprenticeship programs.¹⁶⁴ A production employee is an employee directly engaged in manufacturing or processing at a manufacturing or processing facility.¹⁶⁵ A technology employee is an employee at a technology intensive facility¹⁶⁶ who is directly engaged in technology intensive activities (*i.e.* 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).¹⁶⁷

A business may not, however, claim a job retraining credit in excess of \$2,000 over a 5 year period for any single employee being retrained.¹⁶⁸ Further, a business may not claim the job retraining credit and the job development credit on the same employee.¹⁶⁹ The retraining credit is not available for retraining of temporary or contract employees¹⁷⁰ and is not available for travel expenses, lodging expenses, or wages of retraining participants.¹⁷¹

A company obtains the amounts from employee withholding to use for, or to reimburse the cost of, job retraining by means of a job retraining credit. A company remits all South Carolina employee withholding to the Department as required under the withholding laws¹⁷² and claims a credit for the amount of allowable job retraining credits when it files the quarterly South

¹⁶⁴ SC Code §§12-10-95(A) and 12-10-95(H).

¹⁶⁵ SC Code §12-10-30(14). The terms manufacturing facility and processing facility are defined in SC Code §12-6-3360(M)(5) and (6), respectively, in the job tax credit statute. See Regulation 117-750.1 for a definition of the term “facility.”

¹⁶⁶ The term technology intensive facility is defined in SC Code §12-6-3360(M)(14).

¹⁶⁷ SC Code §§12-10-30(13) and (17), respectively, define technology employee and technology intensive activities.

¹⁶⁸ SC Code §12-10-95(A).

¹⁶⁹ SC Code §12-10-95(G)(b).

¹⁷⁰ SC Code §12-10-95(G)(a).

¹⁷¹ SC Code §12-10-95(D).

¹⁷² The withholding laws are contained in Chapter 8 of Title 12.

Carolina withholding tax returns, Forms WH-1605Z and WH-1606Z.¹⁷³ Any withholding overpayment resulting from the job retraining credit is refunded to the business.¹⁷⁴ The business must pay all amounts received as a refund for retraining and all of the matching funds to the technical college.¹⁷⁵

6. General Record Keeping Requirements

Any business claiming a job development credit or job retraining credit must satisfy the following reporting and auditing requirements:

1. The business must provide the Council and the Department documentation regarding the job development credit or job retraining credit and the use of any overpayments resulting from claiming the credits.¹⁷⁶
2. The business must provide access to all its payroll books and records any time the Council or Department requests them for inspection.¹⁷⁷
3. Any business claiming job development credits or job retraining credits in a calendar year must furnish the Council and the Department with a report which itemizes the sources and uses of the funds. The business must file its report no later than June 30th following the calendar year the job development or job retraining credits are claimed. The Council may grant a written extension of time, for good cause, to file the report.¹⁷⁸

Note: The Department will impose a penalty up to \$500 pursuant to SC Code §12-54-210 for failure to timely file annual reports with the Council and the Department.¹⁷⁹

7. Frequently Asked Questions and Helpful Tips

Important points to remember concerning the job development credit are listed below. In some instances, these points are published Council guidelines.¹⁸⁰

¹⁷³ These forms are provided by the Department to taxpayers after they qualify for job retraining benefits and, therefore, are not available on the Department's website.

¹⁷⁴ SC Code §12-10-95(B).

¹⁷⁵ SC Code §12-10-95(E).

¹⁷⁶ SC Code §§12-10-80(A)(8) and 12-10-95(F).

¹⁷⁷ SC Code §§12-10-80(A)(8) and 12-10-95(F).

¹⁷⁸ SC Code §§12-10-80(A)(9), 12-10-80(A)(10), and 12-10-95(F).

¹⁷⁹ SC Code §§ 12-10-80(A)(9), 12-10-80(A)(10), and 12-54-210(A).

1. The minimum job creation requirement to apply for benefits is 10 new, full time jobs.¹⁸¹ Generally, only those jobs paying the per capita income for the county in which the project is locating or expanding or paying the regional average wage for comparable jobs are eligible for job development credit benefits.¹⁸² Leased employees used by the business do not qualify for benefits.¹⁸³ A qualifying business can claim benefits on part time and /or full time employees, providing the position is entitled to health care benefits.¹⁸⁴
2. The job development credit is based on the location of the business and gross wages paid (*i.e.*, wages subject to withholding.)¹⁸⁵ The hourly gross wage figures for each employee must be adjusted annually for inflation.¹⁸⁶ The amount of the credit is affected by the status of the county in which the business is located when approved for benefits as stated in the revitalization agreement and by Council guidelines.¹⁸⁷
3. The business must meet all minimum investment and job creation requirements within 5 years of approval of the final revitalization agreement or the benefits will be lost.
4. The business must be current with all South Carolina withholding taxes and all other taxes due the State in order to claim a job development credit for the quarter. If a qualifying business is not current with all taxes due the State as of the date of the return on which the job development credit would be claimed, without regard to extensions, the business is barred from claiming the credit that would otherwise be allowed for that quarter.¹⁸⁸

¹⁸⁰ South Carolina Tax Incentives for Economic Development.

¹⁸¹ SC Code §12-10-80(A)(4).

¹⁸² Coordinating Council Enterprise Program Guideline (February 1, 2004).

¹⁸³ Coordinating Council Enterprise Program Guideline (December 15, 1998).

¹⁸⁴ Coordinating Council Enterprise Program Guideline (May 2000).

¹⁸⁵ SC Code §§12-10-80(B)(1) and (D)(1).

¹⁸⁶ SC Code §12-10-80(B)(2). This inflation factor is determined by the State Budget and Control Board.

¹⁸⁷ SC Code §12-10-80(D)(3).

¹⁸⁸ SC Code §12-10-80(A)(2).

5. The job development credit is claimed only for the time period approved by the Council. The time period approved is usually 10 years, but may be no more than 15 years for a significant economic development project.¹⁸⁹ The “10 year” or “15 year” time period to obtain benefits begins with the first request for a refund of withholding.
6. The credit cannot be claimed before the effective date of the revitalization agreement. Credits can be claimed beginning with the quarter after the business provides proof of meeting minimum investment and job requirements to the Council and after the Council has notified the Department.¹⁹⁰
7. The business must use preprinted Forms WH-1605Z and WH-1606Z sent by the Department to claim the benefits. These preprinted forms must be used even if no credit is claimed in a particular quarter. The Department will generally issue a refund check within 90 days.
8. A business may be eligible to claim both the job development credit and the job retraining credit, but may only claim one of these credits, not both, on the same employee.¹⁹¹
9. An annual \$500 renewal fee is imposed on a business receiving the job development credit.¹⁹²
10. An annual \$1,000 audit fee is imposed on a business receiving over \$10,000 of job development credits in one calendar year.¹⁹³
11. The Council will consent to the assignment of benefits from a business with an approved revitalization agreement to another when the business consolidates or merges with another entity or transfers all or substantially all of its assets if certain conditions are met.¹⁹⁴

¹⁸⁹SC Code Section §12-10-80(A)(5). Coordinating Council Enterprise Program Guideline (February 1, 2004).

¹⁹⁰SC Code §12-10-80(A)(3). Coordinating Council Enterprise Program Guideline (June 29, 1999).

¹⁹¹SC Code §12-10-95(G)(b).

¹⁹²Act No. 248, Part IB, Section 27, Proviso 27.15 (2004).

¹⁹³SC Code §12-10-105.

¹⁹⁴Coordinating Council Enterprise Program Guideline (February 21, 2001).

Important points to remember concerning the job retraining credit are listed below. In some instances, these points are published Council guidelines.¹⁹⁵

1. Although a revitalization agreement is not required to receive a job retraining credit, a qualifying business must enter into a retraining agreement with the Council.¹⁹⁶
2. The retraining credit is available for 5 years beginning from the date of approval.
3. Retraining benefits are available for production employees and technology employees.¹⁹⁷
4. The retraining credit is not available for retraining of temporary or contract employees.¹⁹⁸
5. A business may be eligible to claim both the job development credit and the job retraining credit, but may only claim one of these credits, not both, on the same employee.¹⁹⁹
6. Retraining benefits are not available for travel expenses, lodging expenses, or wages of retraining participants.²⁰⁰
7. The benefits are based upon actual invoices or payments to the technical college. Expenses paid by employees and reimbursed by the business and not invoiced by the technical college do not qualify.
8. The business must use preprinted Forms WH-1605Z and WH-1606Z sent by the Department to claim the benefits. These preprinted forms must be used even if no credit is claimed in a particular quarter. The Department will generally issue a refund check within 90 days.

¹⁹⁵South Carolina Tax Incentives for Economic Development.

¹⁹⁶ SC Code §12-10-30(15).

¹⁹⁷ SC Code §12-10-95(A). The retraining credit is available for technology employees being retrained effective for tax years beginning after June 30, 2001.

¹⁹⁸ SC Code §12-10-95(G)(a).

¹⁹⁹ SC Code §12-10-95(G)(b).

²⁰⁰ SC Code §12-10-95(D).