

# STAFF DRAFT

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State of South Carolina  
**Department of Revenue**  
301 Gervais Street, P. O. Box 12265, Columbia, South Carolina 29211  
Website Address: <http://www.sctax.org>

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## SC REVENUE PROCEDURE #09-Draft/06/04/09

- SUBJECT:** Infrastructure Credit Informal, Nonbinding Eligibility Letter (License Fee)
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- SUPERSEDES:** All previous advisory opinions and any oral directives in conflict herewith.
- REFERENCES:** S.C. Code Ann. Section 12-20-105 (Supp. 2008)  
S.C. Code Ann. Section 12-20-100 (2000)  
S.C. Code Ann. Section 12-4-388(C) (Supp. 2008)
- AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2000 and Supp. 2008)  
S. C. Code Ann. Section 1-23-10(4) (2005)  
SC Revenue Procedure #09-3
- SCOPE:** The purpose of a Revenue Procedure is to provide procedural guidance to the public and Department personnel. It is an advisory opinion issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. It is effective until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

## GENERAL INFORMATION

Code Section 12-20-105 allows a tax credit for companies subject to the license tax under Code Section 12-20-100 who pay for eligible infrastructure projects. Code Section 12-20-100 imposes a license fee on specifically designated companies, including power companies, water companies, and telephone companies.

Subject to certain exceptions for property owned or constructed by a county or political subdivision, to be eligible for the credit, the project must qualify for income tax credits under Chapter 6, Title 12; withholding tax credit under Chapter 10, Title 12; income tax credits under Chapter 14, Title 12; or fees in lieu of property taxes under either (1) Chapter 12, Title 4; (2) Chapter 29, Title 4; or (3) Chapter 44, Title 12. S.C. Code Ann. Section 12-20-105(B).

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According to Code Section 12-20-105(C), “infrastructure” means:

improvements for water, wastewater, hydrogen fuel, sewer, gas, steam, electric energy, and communication services made to a building or land that are considered necessary, suitable, or useful to an eligible project. These improvements include, but are not limited to:

- (1) improvements to both public or private water and sewer systems;
- (2) improvements to both public or private electric, natural gas, and telecommunications systems including, but not limited to, ones owned or leased by an electric cooperative, electric utility, or electric supplier, as defined in Chapter 27, Title 58;
- (3) fixed transportation facilities including highway, road, rail, water, and air;
- (4) for a qualifying project under subsection (B)(2), infrastructure improvements include shell buildings and the purchase of land for an office, business, commercial, or industrial park, or combination of these, used exclusively for economic development which is owned or constructed by a county or political subdivision of this State. The county or political subdivision may sell the shell building or all or a portion of the park at any time after the company has paid in cash to provide the infrastructure for an eligible project; and
- (5) for a qualifying project pursuant to subsection (B)(2), infrastructure improvements also include due diligence expenditures relating to environmental conditions made by a county or political subdivision after it has acquired contractual rights to an industrial park. Due diligence expenditures include such items as Phase I and II studies and environmental or archeological studies required by state or federal statutes or guidelines or similar lender requirements. Contractual rights include options to purchase real property or other similar contractual rights acquired before the county or political subdivision files a deed to the property with the Register of Mesne Conveyances.

For additional information about the credit, please refer to South Carolina Revenue Ruling #96-11 and South Carolina Revenue Ruling #99-6.

Code Section 12-4-388(C) allows the Department to impose a \$35 fee for providing an **informal, nonbinding** letter concerning eligibility for the infrastructure credit under Code Section 12-20-105. These letters are not binding on the Department and at a later date the Department may determine that the project does not qualify for the credit. The letter is considered written advice under Code Section 12-58-100 for purposes of penalty and interest waiver provided the “the specific facts and circumstances of the activity or transaction were fully described in the request” and the other conditions of Code Section 12-58-100 are met.

This Revenue Procedure provides a recommended format for requesting such a letter and the information required by the Department before such a letter will be issued.

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## **RECOMMENDED FORMAT FOR AN INFORMAL, NONBINDING LETTER**

Below is the suggested format for requesting an informal, nonbinding letter concerning eligibility for the infrastructure credit under Code Section 12-20-105. This format is not required, it is merely a suggestion for taxpayers to follow.

### **Address**

The letter should be addressed to:

South Carolina Department of Revenue  
Research and Review  
PO Box 125  
Columbia, SC 29214-0019

### **Introductory Paragraph**

Provide the name, address and FEI number of the company and state that the company is subject to the license fee in Code Section 12-20-100. State that the company is interested in a credit against license tax as allowed under Code Section 12-20-105.

### **Second Paragraph**

Give the name and location of the project and specifically identify by code section the income tax credit, withholding tax credit, or fee in lieu of property taxes described in Code Section 12-20-105(B) for which the project qualifies. Give details on why the project qualifies under the particular code section. If qualifying under a fee in lieu of property taxes, state the county that has approved the fee agreement and if an ordinance was enacted by the county, provide a copy of that ordinance.

If the project consists of an office, business, commercial, or industrial park which is owned or constructed by a county or political subdivision of the state, the project does not have to qualify for the credits or fee in lieu of property taxes described in Code Section 12-20-105(B). Provide information describing the project and information about the county or political subdivisions' involvement in the project including verification from the county of its involvement in the project or the name of a contact person at the county who can discuss the county involvement with the Department.

### **Third Paragraph**

Describe and explain how the project qualifies as an "infrastructure project" under Code Section 12-20-105(C). Also, provide the amount and description of anticipated payments.

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## **Fourth Paragraph**

Provide the Department with the name, address and telephone number of a contact person in the event additional information is needed by the Department or there are questions about the project.

Include with your letter a \$35 payment to the South Carolina Department of Revenue. If the company is represented by a third party such as an attorney or CPA and the company wants the Department to be able to talk with this third party about the letter, the company should execute a Power of Attorney, Form SC2848.

## **ADDITIONAL QUESTIONS**

Any questions concerning these letters should be directed to the Research and Review Section of the South Carolina Department of Revenue at (803) 898-5786.