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06. Tax Moratorium, Credits, and Deferrals

A. Tax Moratorium

A taxpayer at a manufacturing, processing, warehousing, distribution, research and development, corporate office, tourism, qualifying service related, or technology intensive facility¹ who meets certain investment and job requirements in certain economically depressed South Carolina counties may petition the Department to obtain approval to claim a 10 year moratorium (15 year in certain situations) on corporate income taxes or insurance premium taxes.² In order to receive the moratorium, the taxpayer must complete an application, obtain certification from the Coordinating Council for Economic Development at the Department of Commerce ("Council"), and enter into an agreement with the Department.³ The three step process is:

Step 1: Application Process – An application to petition for the moratorium must be submitted to the Council.⁴

Step 2: Certification Process – The Council will conduct a cost/benefit analysis to determine if the facility will have a significant beneficial economic effect on the region for which it is planned and that its benefits to the public exceed its costs. If a positive determination is made, the Council will certify the facility to the Department.

Step 3: Agreement Process – The Department has the discretion to enter into an agreement allowing the moratorium. The taxpayer may enter into the agreement before the required number of jobs are hired, but must enter into the agreement before the beginning of the first year the moratorium will apply. If approved, the Department certifies the moratorium may be claimed even if the county is removed from the list of moratorium counties, provided the jobs are maintained.⁵

¹Definitions of each type of facility are contained in SC Code §12-6-3360(M). Technology intensive facilities qualify for tax years beginning after June 30, 2001.

²SC Code §12-6-3365. This section is repealed effective July 1, 2005. The repeal, however, does not affect any moratorium in effect on that date. Effective June 18, 2003, the applicability of the tax moratorium to corporate income taxes imposed under SC Code §12-6-530 was expanded to include insurance premium taxes imposed under SC Code Chapter 7 of Title 38. Note: A similar corporate income tax moratorium contained in SC Code §12-10-35 for taxpayers qualifying for job development benefits was repealed for tax years beginning after 2003.

³SC Rev. Proc. #04-6 contains the procedure to petition for the tax moratorium. Note: A taxpayer does not have to apply for, or use, an alternative/allocation method in order to obtain approval for the tax moratorium.

⁴An application for qualification for the moratorium can be obtained from the SC Coordinating Council at the Department of Commerce at 803-737-1998. The request should be mailed to: SC Coordinating Council for Economic Development, PO Box 927, Columbia, SC 29202. There is no application fee to petition for the moratorium.

⁵The Department publishes annually a SC Info. Ltr. listing counties qualifying for the tax moratorium. This information can be obtained from the Department's website at www.sctax.org.

The moratorium applies to that portion of a company's corporate income tax or insurance premium tax that represents the ratio of the company's new investment in the moratorium county to its total South Carolina investment. The 10 year moratorium begins the first full taxable year after the taxpayer qualifies (*i.e.*, the year after the required number of jobs have been created) and ends at the earlier of 10 years from that date or the year when the taxpayer's number of new, full time jobs falls below 100. The 15 year moratorium begins the first full taxable year after the taxpayer qualifies and ends at the earlier of 15 years from that date or the year when the taxpayers number of new full time jobs falls below 200.⁶

The corporate moratorium is claimed on Form TC-16, "Corporate Tax Moratorium Per Section 12-6-3365." A corporate income tax return must be filed with the Department even if the moratorium eliminates the entire corporate income tax liability. The moratorium does not apply to the corporate license fee imposed under Chapter 20 of Title 12.⁷ Insurance premium tax returns are filed with the South Carolina Department of Insurance. A taxpayer claiming the moratorium against the insurance premium tax should contact the South Carolina Department of Insurance for forms and instructions on how to properly report the moratorium.⁸

To qualify, the taxpayer must:

1. Create and maintain at least 100 new, full time jobs.⁹ (If the taxpayer creates and maintains at least 200 new, full time jobs, the moratorium period is extended to 15 years.)
2. Create the new jobs within 5 years from the date the first new, full time job is created. The first new job must be created by July 1, 2005.

⁶SC Code §12-6-3360(H) provides that a taxpayer who is eligible for the tax moratorium in SC Code §12-6-3365 and the job tax credit may claim the job tax credit and carry forward the unused job tax credits for up to 15 years after the moratorium period expires.

⁷See Section .08 B. of this portfolio for a discussion of the corporate license fee.

⁸Information on claiming the moratorium against insurance premium taxes can be obtained from the South Carolina Department of Insurance at 803-737-6088.

⁹SC Code §12-6-3360(M)(3) defines "new job," in part, as a job created in South Carolina at the time a new facility or expansion is initially staffed; it does not include a job created when an employee is transferred from an existing location in South Carolina to a new or expanded facility. SC Rev. Rul. #05-5 provides that the term "expansion", for purposes of determining job tax credit eligibility, is an physical expansion (increase in the size of a facility), a capital expansion (an increase in certain capital assets), or a labor force expansion (an increase in the number of new, full time jobs), unless otherwise provided by the statute. SC Code §12-6-3360(M)(4) defines "full time" as a job requiring a minimum of 35 hours of an employee's time a week or two half time jobs requiring a minimum of 20 hours of an employee's time a week. SC Code §12-6-3360(F) provides for the determination of the monthly average number of new full time jobs by comparing the monthly average number of full time employees subject to South Carolina income tax withholding in the applicable county for the taxable year with the monthly average in the prior taxable year. The new jobs must be created at a facility of a type identified in SC Code §12-6-3360(M). See Section .06 B. 2. of this portfolio for details on the job tax credit.

3. Create the new jobs at a facility in a county with an average unemployment rate of at least twice the State average during each of the last 24 months (based on unemployment rate data on November 1), or in a county which is one of the three lowest per capita income counties (based on the average of the three most recent completed calendar years of per capita income data that is available on November 1).
4. Place at least 90% of its total South Carolina investment in the county referred to above.

Comment: The moratorium favors an existing South Carolina business located almost entirely in a qualifying county or a new South Carolina business locating in a moratorium county. A large business with an existing South Carolina investment in a non moratorium county would have difficulty meeting the 90% investment standard. If the investment standard is met, the moratorium is not a 100% tax moratorium, but rather a tax reduction based upon the ratio of the qualifying investment to the total South Carolina investment. If a subsidiary qualifies, the moratorium applies only to the income of the subsidiary. A subsidiary investment will not result in a consolidated group moratorium.

B. Credits¹⁰

1. General Provisions

South Carolina business tax credits¹¹ are generally nonrefundable and useable only in the year generated unless otherwise provided.¹² Only the job development and job retraining credits are refundable and they are only refundable to the extent of withholding actually paid.¹³

The type of tax a credit may be used against depends upon the particular credit. The types of taxes a credit may offset include: corporate income tax, corporate license fee, wage withholding, bank tax, insurance premium tax, or sales and use taxes.

The type of entity that is eligible to generate a credit also depends upon the particular credit. Most of South Carolina's income tax credits may be generated by C corporations, S corporations, partnerships, limited liability companies, and sole proprietors. Each credit, however, has detailed requirements that should be reviewed to determine eligibility. The statutory language of each credit may limit the credit to certain entities subject to tax under a specific South Carolina code section. For example, only a corporation or a limited liability company taxed as a corporation may qualify for the research and development credit, a credit available for use by entities taxed under SC Code §12-6-530 (corporate income tax).

¹⁰See Section .11 Worksheet 3 of this portfolio for a general summary of South Carolina's business income tax credits in chart format.

¹¹SC Code §12-6-3480(A)(5)(b) defines "tax credit" or "credit" to mean a statutorily directed or authorized reduction in the tax liability made after any applicable tax rates are applied.

¹²SC Code §§12-6-3310(A) and 12-2-100.

¹³SC Code Title 12, Chapter 10. See Section .09 H. of this portfolio for a discussion of the job development and job retraining credits.

Unless specifically prohibited, an S corporation, limited liability company taxed as a partnership, or partnership that qualifies for a tax credit may pass through the credit it earned to each shareholder, member, or partner.¹⁴ A credit earned by an S corporation owing corporate level income tax must first be used at the entity level; only the remaining credit passes through to the shareholders.¹⁵ However, a credit passed through may or may not be able to be used by each taxpayer since the statutory language of each particular credit controls whether a credit generated by a pass through entity may actually be used to offset the particular tax of the partner, shareholder, or member.¹⁶ For example, the research and development credit specifically states that the credit is claimed against corporate income taxes imposed under SC Code §12-6-530 or corporate license fees imposed under SC Code §12-20-50; therefore, if the research and development credit is passed through by an S corporation to an individual shareholder, it cannot be used by the shareholder to offset individual income taxes imposed under SC Code §12-6-510.

Note: Generally, a credit that is passed through is not affected by the generating entity's income and is not limited to a percentage of the generating entity's income tax. For example, an S corporation may pass through the job tax credit even if it has a South Carolina loss. Once a credit is passed through, however, it may not be later used by the entity generating the credit. Most credits can be used against all South Carolina income tax reported by the partner, shareholder, or member. A credit may be limited to a percentage of the partner's, shareholder's, or member's income tax liability or married couple's income tax liability.¹⁷

The amount of the credit allowed a shareholder, partner, or member is equal to the percentage of the shareholder's stock ownership, partner's interest in the partnership, or member's interest in the limited liability company for the taxable year multiplied by the amount of the credit earned by the entity and available for pass through. Limitations upon reduction of income tax liability by use of a credit are computed based on the shareholder's, partner's, or member's tax liability.¹⁸

Comment: It is clear for S corporations that credits pass through based upon stock ownership. For partnerships and limited liability companies taxed as partnerships where their organizational documents contain special allocation provisions, the partner or member's "interest" is not as clear. In the authors' opinion, consistent with its substantial conformity with the Internal Revenue Code, South Carolina has adopted I.R.C. § 704(b) allocation of credit provisions, and therefore, South Carolina will allocate credits passed through by partnerships and limited liability companies taxed as partnerships based upon Treas. Reg. § 1.704-1(b)(4)(ii). For partnerships and limited liability companies taxes as partnerships that separately allocate profits and capital, this reliance will generally result in allocation of credits consistent with the allocation of profits.

¹⁴SC Code §12-6-3310(B)(1).

¹⁵SC Code §12-6-3310(B)(2).

¹⁶SC Code §12-6-3310(B)(3).

¹⁷SC Rev. Rul. #99-5.

¹⁸SC Code §12-6-3310(B)(3).

Note: With regard to individuals and closely held corporations, Internal Revenue Code §469 does not apply to passive South Carolina credits. For example, a South Carolina resident with South Carolina wage, interest, and dividend income, who is a passive partner, member, or shareholder in a South Carolina pass through entity generating losses and credits, may use those credits to offset the South Carolina tax on his non passive income, even though for both federal and South Carolina income tax purposes, he may not utilize his passive losses against his other active income.

a. Ordering

Certain rules exist relating to the use of tax credits.¹⁹ These rules include:

1. The taxpayer may apply tax credits in Chapter 6 (The Income Tax Act) of Title 12 in any order.

Comment: This provision does not include other credits contained in Chapters 14 and 20 or other titles in the South Carolina Code of Laws (*e.g.*, Titles 6 and 11). It appears a taxpayer can use credits earned pursuant to Chapters 14 or 20 of Title 12 and credits earned pursuant to other applicable titles in the South Carolina Code before or after any credits earned under Chapter 6.

2. All credits must be used to the extent possible first by the company that earned the credit, and second against the tax which generated them.
3. No credit may be used more than once.

Comment: In the authors' view, the statutory language providing that a credit may be used only once, does not prohibit a taxpayer from using a credit available against both corporate income taxes and corporate license fees, such as the research and development credit, against both the corporate income tax and the license fee on the same tax return, providing the income limitation rules and ordering provisions are properly applied.

4. Any limitations on the total amount of liability for taxes or license fees that can be reduced by the use of a credit must be computed before applying any other credit.

Comment: In the authors' view, the statutory language providing that any limitations for taxes or fees that can be reduced by the use of "a credit" be before "any other credit" means that the limitation must be computed one credit at a time.

¹⁹SC Code §12-6-3480.

For example, assume a taxpayer has a \$10,000 income tax liability and has generated two tax credits in Chapter 6 that are limited to 50% of its tax liability - a \$6,000 job tax credit and a \$6,000 child care credit. The amount of credits that can be claimed could be computed as follows:

Tax Liability	\$10,000	Limited Liability	\$5,000
1 st Limitation %	<u>50%</u>	2 nd Limitation %	<u>50%</u>
Limited Liability	\$5,000	Limited Liability	\$2,500

Only \$7,500 of the liability may be offset by the credits. The first limitation amount of \$5,000 applies to either credit the taxpayer chooses. The second limitation amount of \$2,500 applies to the remaining credit.

Planning Point: From a practitioner’s planning perspective, a taxpayer should elect to first use the credits with 50% limits that will expire first. Thus, if a corporation has a 15 year jobs tax credit carryover and a 10 year research and development (R & D) credit carryover, the 50% limit should be applied first to the R & D credit. This would promote faster utilization of the R & D credit, which expires earlier. A statement reflecting utilization should be attached to the tax return to document the election. The election may be changed annually.

- Any income tax credit in Chapter 6 (The Income Tax Act) that is earned by one member of a controlled group may be used by that member and any other member of the group. The term “controlled group of corporations” has the same meaning as provided under Internal Revenue Code §1563 without regard to §1563(a)(4), (b)(2)(A), only with respect to corporations which are in existence for less than one-half the number of days in the tax year, and (b)(2)(C) and (D).²⁰

b. Credits of “Consolidated” (Combined) Corporations

Corporations which file consolidated returns²¹ who are entitled to one or more income tax credits, including the carryover of unused credits from prior years, may determine income tax credits on a consolidated basis. Limitations on credits which refer to the income or the income tax liability of a corporation are deemed to refer to the income or income tax liability of the consolidated group. Credits may reduce the consolidated group’s tax liability regardless of whether or not the corporation entitled to the credit contributed to the tax liability of the consolidated group.²²

²⁰See Section .07 of this portfolio for a discussion of the general credit rules for a “consolidated” corporate income tax return.

²¹See Section .07 B. of this portfolio for an explanation of South Carolina’s “consolidated” (combined) return, hereafter referred to as a consolidated return.

²²SC Code §12-6-5020. See Section .04 C. of this portfolio for a discussion of the consolidated return rules, including net operating loss limitations and Internal Revenue Code §382 limitations.

2. Job Tax Credit

a. General Provisions

A job tax credit is allowed against South Carolina income taxes²³ of corporations, sole proprietorships, partnerships, S corporations, and limited liability companies who create and maintain a required minimum number of “new, full time jobs” at the time the taxpayer’s new facility or expansion of a particular type of business is initially staffed.²⁴ The “basic” credit amount for each new job is \$1,500 to \$8,000 per year depending, in part, on which South Carolina county a taxpayer’s facility is located. The “additional” credit amount for each new qualifying job, subject to certain dollar limitations, is \$1,000 per year for a taxpayer located in a multi-county industrial park, and is \$1,000 per year for a taxpayer creating qualifying new, full time jobs on property where a response action has been completed pursuant to a nonresponsible party voluntary cleanup contract under Title 44, Chapter 56, Article 7 (the Brownfields Voluntary Cleanup Program.) The credit is available for 5 years and is first claimed on the taxpayer’s tax return for the year following the creation of the new jobs (Year 2), provided the jobs are maintained. Additionally, during the 5 year credit period, a credit is allowed for additional new, full time jobs created during the 5 years beginning in the year following the year in which the qualifying additional new jobs are created.²⁵ Any unused credit may be carried forward for 15 years.²⁶ The job tax credit is claimed on Form TC-4, “New Jobs Credit.”

b. Types of Qualifying Businesses

A business must be engaged in manufacturing, processing, tourism, warehousing, distribution, or research and development, or must be a qualifying service related facility, corporate office facility, or technology intensive facility.²⁷ A retail facility or service related industry located in a distressed county or a least developed county may also qualify for the credit.²⁸

²³The credit is available only against taxes imposed under SC Code §§12-6-510 (individual income), 12-6-530 (corporate income), or insurance premium tax imposed under Chapter 7 of Title 38. The credit is not available for use against taxes imposed under SC Code §§12-11-20 (tax imposed on banks) or 12-13-30 (tax imposed on savings and loan associations).

²⁴SC Code §12-6-3360. See Section .06 B. 2. c. of this portfolio for an explanation of the meaning of the term “expansion” for job tax credit eligibility purposes.

²⁵See SC Rev. Rul. #99-5 for a detailed question and answer document on the job tax credit, including calculation of the credit.

²⁶SC Code §12-6-3360(H).

²⁷See SC Code §12-6-3360(M)(5) through (14) for definitions of each listed type of business. A technology intensive facility is a qualifying type of business effective for tax years beginning after June 30, 2001.

²⁸SC Code §12-6-3360(A).

A “facility” is generally a single physical location where a taxpayer’s business is conducted or where its services or industrial operations are performed. Where two or more distinct and separate economic activities are performed at a single physical location, each separate economic activity will be treated as a separate facility when: (1) each activity has its own separate and dedicated personnel; (2) separate reports can be prepared on the number of employees, their wages and salaries, sales, or receipts and expenses; and (3) employment and output are significant as to the activity. For purposes of item (2), it is irrelevant if separate reports are actually prepared, so long as separate reports can be prepared, this criteria is met.²⁹

In general, a taxpayer must increase employment by a monthly average of 10 new, full time jobs to qualify for the credit, regardless of the county in which the employer is located. Exceptions include:

1. Tourism facilities that consist of hotels and motels must create 20 new, full time jobs in order to qualify for the credit. Other tourism facilities defined in SC Code §12-6-3360(M)(13) are only required to increase employment by 10 new, full time jobs. See the definition of “tourism facility” for requirements regarding the types of qualifying jobs.
2. A qualifying service related facility³⁰ must create at least:
 - a. 250 jobs at a single location;³¹
 - b. 125 jobs at a single location where the average cash compensation for those jobs is 1.5 times the county average;³²
 - c. 75 jobs at a single location where the average cash compensation for those jobs is 2 times the county average; or
 - d. 30 jobs at a single location where the average cash compensation for those jobs is 2.5 times the county average.

²⁹SC Reg. §117-750.1.

³⁰A qualifying service related facility may not be engaged in legal, accounting, investment services, or retail sales. See SC Code §12-6-3360(M)(13)(b).

³¹A qualifying service related facility located in a county designated as a “distressed county” or a “least developed county” or a facility classified under North American Industry Classification System (NAICS) Manual Section 62, subsectors 621 (ambulatory health care services), 622 (hospitals), and 623 (residential care facilities) located in any county are only required to increase employment by 10 new, full time jobs. See SC Code §§12-6-3360(A) and (M)(13)(a).

³²The per capita income for each county is received annually from the Board of Economic Advisors. Upon receipt, the Department publishes a SC Info. Ltr. listing the most recent per capita income data for each county. This information can be obtained from the Department’s website at www.sctax.org.

c. Qualifying Jobs

There are strict requirements on what type of new job qualifies for the credit. A “new job” is a job created in South Carolina at the time a new facility or an expansion is initially staffed.³³ The initial staffing of a new facility is fairly easy to determine and document. The initial staffing of an “expansion,” however, is not defined in Code Section 12-6-3360 or in South Carolina case law. In SC Rev. Rul. #05-5, the Department provides that an “expansion,” for purposes of determining job tax credit eligibility, means the following: (1) a physical expansion, (2) a capital expansion, or (3) a labor force expansion, unless otherwise provided by the statute, *e.g.*, new hotels and motels. Examples of the Department’s interpretation of “expansion” include:

1. Physical expansion (New Facility) - A physical expansion is a physical enlargement of the taxpayer’s existing building or facility where a taxpayer’s qualifying business is conducted or where it’s qualifying services or activities are performed by increasing the square footage of an existing building, or constructing, leasing, or acquiring a new building. Examples include the addition of a new wing, construction of a separate building, addition of another floor, or relocation to a larger facility.
2. Capital Expansion (Capital Expenditures) - A capital expansion is a capital expenditure for real or tangible personal property for a qualifying facility that necessitates the hiring of new employees. Examples include the occupancy of a floor that was previously leased or used by another taxpayer, the occupancy of a basement area that was unoccupied, the purchase or acquisition of additional capital equipment and machinery, the capital acquisition or purchase of equipment and machinery required by industrial advances and technological improvements provided such property directly results in the hiring of new, full time jobs at the facility. The new jobs do not have to work directly in the expansion, but the capital expenditures must necessitate the hiring of new employees. A capital expenditure does not include the repairing or upgrading of capital equipment or property.
3. Labor Force Expansion (Creation of New Jobs) - A labor force expansion is the increase in the labor force at an existing facility³⁴ of a qualifying taxpayer of at least the average minimum monthly average of new, full time jobs required in a taxable year, unless otherwise provided by the statute. Examples include creating new, full time qualifying jobs upon the addition of a second or third shift, or in response to the taxpayer’s increase in production. It does not include jobs created by closing operations at one location and reopening the operations at the same or another location.

³³SC Code §12-6-3360(M)(3).

³⁴For example, jobs created at an existing hotel or at a renovated motel do not qualify as an “expansion” for job tax eligibility purposes. For purposes of a tourism facility defined in Code Section 12-6-3360(M)(12), an “expansion” of a hotel or motel means new, full time jobs created at “new hotel or motel construction.”

A “new job” also includes (1) existing jobs which are reinstated after the employer has rebuilt a facility (a) because of its destruction (more than 50% of the facility) by accidental fire, natural disaster, or (b) act of God or due to involuntary conversion as a result of condemnation or exercise of eminent domain by the State, political subdivisions of the State, or the federal government, or (2) jobs created at a manufacturing facility in a least developed county when an unrelated taxpayer hires over 500 full time employees who had been employed by a company operating under Chapter 11 of the United States Bankruptcy Code immediately before their employment by the taxpayer, and the taxpayer acquires substantially all of the assets of the bankrupt company as of July 10, 2002.³⁵

The term “new job” does not include a job created when an employee is shifted from an existing South Carolina location to a new or expanded facility whether the transferred job is from, or to, a facility of the taxpayer or a related person.³⁶ However, a “new job” includes a job transferred from one facility of the taxpayer in South Carolina to another facility located in a county that has an “applicable federal facility.”³⁷

Further, the new job must be a full time job. A “full time” job is one requiring a minimum of 35 hours of an employee’s time each week for the entire normal year of company operations. Two half time jobs requiring a minimum of 20 hours of each employee’s time a week qualify as one “full time” job.³⁸

Comment: The problem of creating a qualifying increase can be a particularly vexing one for many mid-sized companies. A monthly increase of 1 new job each month only raises the annual average by 6.5. In fact, unless jobs are added early in the tax year, even a 20 job increase occurring in August for a calendar year taxpayer will fail to raise the monthly average to the minimum 10 increase. (Although if sustained, it would create a qualifying 12 job increase in the following year.)

The Department’s position is that leased or temporary agency employees do not count as employees until they are subject to South Carolina wage withholding by the employer seeking to claim the job tax credit or seeking to obtain the qualifying increase for the job development credit in SC Code §12-10-80.³⁹ The method of calculating job increases and the Department’s position on leased or temporary agency employees give rise to the following interesting planning idea, which may or may not work:

³⁵SC Code §12-6-3360(M)(3). This provision is effective for tax years beginning after 2002, where the job tax credit was earned after June 1, 2002.

³⁶SC Code §12-6-3360(M)(3). A related person includes any entity or person that bears a relationship to the taxpayer as described in Internal Revenue Code §267.

³⁷Currently, the only counties that have an “applicable federal facility” are Aiken and Barnwell.

³⁸SC Code §12-6-3360(M)(4).

³⁹See Section .09 H. 7. of this portfolio.

A taxpayer could use a temporary agency if it is contemplating a phased job increase late in the year. The taxpayer would hire the temporary employees during the first month of the taxpayer's next tax year. Use of a temporary agency keeps the leased employees from initially being included in the employee count until the first month of the new tax year in which the leased employees (along with any subsequent additions) are hired by the taxpayer.⁴⁰ If it works, this technique would defer the credit for a year, but it could significantly increase the eventual credit an employer can claim. On the downside, if it does not work, the taxpayer could lose the credit for these employees. Whether or not this technique works depends upon whether a sufficient number of "new jobs" is created. A "new job" is defined as a job created "at the time a new facility or an expansion is initially staffed."⁴¹ So far the Department has not given any advice on whether "temporary" or "permanent" employees initially staff the new facility or expansion.

d. County Rankings

The amount of credit that a business may receive for each job created is determined by the county where the business's facility is located.⁴² The 46 counties in South Carolina are ranked and designated as "distressed,"⁴³ "least developed," "under developed," "moderately developed," or "developed." Rankings are done annually with equal weight given to unemployment rate and per capita income and then adjusted in accordance with special rules in SC Code §§12-6-3360(B)(5) and 12-6-3360(L), as applicable.⁴⁴

Companies planning significant expansions may lock-in credits without regard to whether or not a particular county is removed from the list of distressed, least developed, under developed, or moderately developed counties.

Note: In order to ensure qualification for a planned expansion of jobs, companies should file Form SC616 before the initial staffing of the new facility or expansion begins.⁴⁵ This will ensure the company that the Department is aware of the planned expansion and that the company will be entitled to the designated credits in future years without regard to whether a particular county's designation changes in a later year.

⁴⁰SC Code §12-6-3360(F) looks to the number of employees subject to withholding by the employer.

⁴¹SC Code §12-6-3360(M)(3).

⁴²SC Code §12-6-3360(C).

⁴³The "distressed" county ranking is effective for qualifying new, full time jobs where the job tax credit was first earned after June 18, 2002, and increases in such jobs.

⁴⁴The Department annually publishes a SC Info. Ltr. listing the ranking of each of South Carolina's 46 counties for job tax credit purposes. This information can be obtained from the Department's website at www.sctax.org.

⁴⁵SC Code §12-6-3360(J).

e. Credit Amount

The “basic” job tax credit amount for each new, full time job is substantial and is listed below:

1. \$8,000 per year for each new, full time job created in a distressed county;
2. \$4,500 per year for each new, full time job created in a least developed county;
3. \$3,500 per year for each new, full time job created in an under developed county;
4. \$2,500 per year for each new, full time job created in a moderately developed county;
and
5. \$1,500 per year for each new, full time job created in a developed county.⁴⁶

Furthermore, a company may be entitled to an “additional” job tax credit amount for each new, full time job created in the following locations:

1. A company located in a business or industrial park jointly established and developed by a group of counties pursuant to Section 13 of Article VIII of the South Carolina Constitution may be allowed an additional \$1,000 credit amount per year for 5 years for each new, full time job created beginning in the taxable year following the creation of the job.⁴⁷

Comment: Two or more counties determine if an area in the county is designated as multi-county industrial park by entering into an agreement. This determination is not made by the Department.

2. A company that creates qualifying new, full time jobs on property where a response action has been completed pursuant to a nonresponsible voluntary cleanup contract under Title 44, Chapter 56, Article 7 (the Brownfields Voluntary Cleanup Program) may be allowed an additional \$1,000 credit amount per year for 5 years for each new, full time job created beginning in the year following the creation of the job.⁴⁸

⁴⁶SC Code §12-6-3360(C).

⁴⁷SC Code §12-6-3360(E)(1).

⁴⁸SC Code §12-6-3360(E)(2). This additional credit is available for jobs created after May 28, 2002, for taxpayers receiving a certification of completion from the South Carolina Department of Health and Environmental Control after May 28, 2002.

CAUTION: The maximum credit amount that may be claimed for any tax year for a single employee under the job tax credit statute and the “basic” part of the family independence credit statute⁴⁹ is \$5,500. The \$5,500 limitation is not applicable to a taxpayer qualifying for the job tax credit in a distressed county.⁵⁰

An S corporation must first use the credit against its own income tax liability, if any, before passing the credit through to its shareholders.⁵¹ The amount of credit allowed a shareholder, partner, or member of a limited liability company is equal to the shareholder’s percentage of stock ownership, partner’s interest in the partnership, or member’s interest in the limited liability company for the taxable year multiplied by the amount of the credit the entity would have been entitled to if it were taxed as a corporation.⁵² The job tax credit taken in one tax year may not exceed 50% of the taxpayer’s income tax liability.⁵³ If the credit is passed through, the 50% limitation is determined at the shareholder, partner, or member level. Any unused credit may be carried forward for 15 years.⁵⁴

f. Calculating the Credit

The job tax credit is claimed on the taxpayer’s tax return for 5 years (Years 2 through 6) beginning in the year (Year 2) following the year of the creation of the new jobs (Year 1), provided the jobs are maintained.⁵⁵ The credit is not claimed in the year the new jobs are created (Year 1). The number of new and additional new full time jobs is determined by comparing the monthly average number of full time employees subject to South Carolina income tax withholding in the applicable county for the taxable year with the monthly average for the prior taxable year.⁵⁶ A taxpayer investing at least \$50 million at a “single site” within a 3 year period may elect, however, to determine the number of new, full time jobs created by using the monthly average number of full time jobs created at that one site. A “single site” is a stand-alone building whether or not several stand alone buildings are located in one geographical location.⁵⁷

⁴⁹SC Code §12-6-3470(A). See Section .06 B. 8. of this portfolio for more information on the family independence credit.

⁵⁰SC Code §12-6-3360(N).

⁵¹SC Code §12-6-3360(K)(2)(b).

⁵²SC Code §12-6-3360(K).

⁵³SC Code §12-6-3360(A).

⁵⁴SC Code §12-6-3360(H).

⁵⁵SC Code §12-6-3360(C).

⁵⁶SC Code §12-6-3360(F)(1).

⁵⁷SC Code §12-6-3360(F)(2).

The credit is adjusted for job increases or job decreases and is allowed for the job level that is maintained in the taxable year that the credit is claimed.⁵⁸ No credit is allowed for the year or any subsequent year in which the net employment falls below the minimum level.⁵⁹ If the job level for which a credit was claimed decreases, the 5 year period for eligibility for the credit continues to run. A decrease of jobs that does not fall below the minimum required will result in the credit being allowed in Years 2 through 6 for those jobs that are maintained. Additional credits are allowed for increases in full time jobs, if the company already qualifies for the credit. This additional credit is earned for additional jobs created in Years 2 through 6 of a qualified credit period and runs for 5 years beginning the year after the jobs are created.

g. Frequently Asked Questions and Helpful Tips

SC Rev. Rul. #99-5 provides numerous questions and answers regarding the job tax credit. In addition, the instructions to the job tax credit form, Form TC4, provide helpful examples regarding the computation of the job tax credit. The Department has published points to remember concerning the job tax credit.⁶⁰ These include:

1. To qualify for the credit, a business must be a certain type of business and must create and maintain a required minimum number of “new, full time jobs” at the time a new facility or expansion is initially staffed.
2. In general, the job tax credit amount is based on the county designation during the year the new jobs are actually created (Year 1). However, if Form SC616 is filed, the credit is based on (a) the county designation at the time Form SC616 is filed or (b) the county designation at the time the new jobs are created in Year 1, whichever county designation results in the largest credit.
3. Form SC616 is not required to be filed; it is a planning tool that can prove to be beneficial if the county ranking where the jobs are to be created changes prior to creation of the jobs. The filing of Form SC616 “locks in” a county designation; it cannot be detrimental to a taxpayer. Form SC616 is valid for all new jobs created during the original 5 year credit period. Additionally, any increases in new jobs occurring during this original 5 year credit period are automatically included in the “lock in” period. Form SC616 is required to be sent to the Department before the initial staffing of the new facility.
4. Whether or not Form SC616 is filed, the credit created in Year 1 and claimed in Years 2 through 6 is not affected by any future redesignation of the county in which the taxpayer is located for jobs created in Year 1.
5. Year 1 is the year of job creation that generates a job tax credit. The credit is not claimed in Year 1.

⁵⁸SC Code §12-6-3360(D).

⁵⁹SC Code §12-6-3360(C).

⁶⁰See the Department’s publication *South Carolina Tax Incentives for Economic Development*.

6. The credit is claimed after the jobs are created on Form TC4 that is filed with the tax return in Years 2 through 6. The credit is for a 5 year period and is taken each year for 5 years, if the jobs are maintained.
7. A monthly average increase of new, full time jobs (ranging from 10 to 250 jobs) for the tax year must be created and maintained for a taxpayer to qualify for the credit. When computing the increase in new, full time jobs each year, the taxpayer must round down to the lowest whole number of jobs. The credit is not earned when a total of 10 jobs are created by the end of a tax year or when a total of 10 jobs are created over several years.
8. The months to reflect on Form TC4 are the months of the business' tax year. Further, an appropriate and justifiable day in the month to determine the monthly number of new, full time employees, such as the last day of each month, must be used. Once a day of the month is chosen, it must be used for all future months and years.

Comment: One way to do a preliminary job increase evaluation to see if a taxpayer may qualify for the job tax credit is to review the taxpayer's Form UCE-120/101, "Employer Quarterly Contribution and Wage Report." This form contains the total number of employees covered for unemployment insurance purposes as of the 12th day of each month. If properly completed, it serves as a record of headcount for any month that assists in determining the total number of jobs. The taxpayer can then use other records to determine the number of qualifying "full time" "new jobs," as defined in the job tax credit statute.

9. Generally, the credit is computed on a county by county basis; the credit is not computed on a facility by facility basis or on a statewide basis. The only exception to this rule is for a taxpayer that invests at least \$50 million at a single site within a three year period.⁶¹ Generally, a taxpayer may not transfer employees from one county to another county to create a qualifying job increase. The only exception to this rule is for transfers to a county in which an applicable federal facility is located.⁶²
10. A computer designed form or spreadsheet is acceptable in lieu of Form TC4 providing all information on Form TC4 is reflected on the substitute form.
11. Form TC4 should be completed and attached to each year's tax return, even if there is no South Carolina taxable income. This allows the taxpayer to claim the credit and establish a credit carryforward. Any unused credit can be carried forward 15 years from the taxable year in which it is earned.

⁶¹SC Code §12-6-3360(F)(2).

⁶²SC Code §12-6-3360(M)(3).

12. The credit generated by a pass through entity is limited to 50% of the partner's, shareholder's, or member's income tax liability or married couples income tax liability. Once the credit is passed through by the entity generating it, the credit may not later be used by the entity.
13. During the original 5 year credit period (Years 2 through 6), a business can take credit for additional new, full time jobs added and maintained, even if fewer than 10 additional jobs are added. This additional credit is claimed for 5 years beginning in the year following the year in which the qualifying additional new, full time jobs are created.
14. The credit amount for any number of additional new, full time jobs created is based on the county designation at the time Form SC616 is filed or the county designation for the year the additional new, full time jobs are created, whichever results in the largest credit. If Form SC616 is not filed, the credit amount for any additional new jobs created is based on the county designation for the year the additional new jobs are created.
15. The merger, consolidation, or reorganization of a taxpayer where tax attributes survive does not create new eligibility in a succeeding taxpayer, but unused credits may be transferred to, and continued by, the succeeding taxpayer subject to the limitations in Internal Revenue Code §383.⁶³ In addition, a taxpayer may assign its rights to the job tax credit to another taxpayer if it transfers all, or substantially all, of the assets of a business or operating division related to the generation of the credit to another taxpayer and the required number of new jobs is maintained.⁶⁴ The job tax credit cannot be sold.

h. Example

The job tax credit calculation is a 3 step process:

Step 1 - Compute the monthly average increase in full time employees

Step 2 - Compute the employees eligible for the credit

Step 3 - Compute the eligible credit amount.

An example explains the job tax credit calculation. It is based on the following facts.⁶⁵ The taxpayer is engaged in manufacturing, has one location in a distressed county, has a calendar tax year, initially staffed the new facility in 2005, and hired 12 full time employees on January 1, 2005.

⁶³SC Code §12-6-3320.

⁶⁴SC Code §12-6-3360(I).

⁶⁵See *South Carolina Tax Incentives for Economic Development*.

For simplicity, the example shows the credit computation for Years 2 through 6 (2006 - 2010) only. The example does not show the entire 5 year credit period for additional jobs created in 2006 through 2015.

STEP 1: COMPUTATION OF AVERAGE INCREASE IN FULL TIME EMPLOYEES							
	Prior Year (2004)	Year 1 (2005)	Year 2 (2006)	Year 3 (2007)	Year 4 (2008)	Year 5 (2009)	Year 6 (2010)
1. Cumulative Total of Full Time Employees in Each County for Each Month. (e.g., Year 1 has 12 employees working 12 months)	0	153	168	156	192	276	288
2. Divided by Number of Months in Operation	0	12	12	12	12	12	12
3. Monthly Average of Full Time Employees	0	12*	14	13	16	23	24
4. Less: Previous Year Monthly Average		0	12	14	13	16	23
5. Average Increase in Full Time Employees (Line 3 minus Line 4)		12	2	(1)**	3	7	1

* Note: The increase in new jobs is determined by rounding down to the lowest whole number.

STEP 2: COMPUTATION OF EMPLOYEES ELIGIBLE FOR CREDIT					
	Year 2	Year 3	Year 4	Year 5	Year 6
Year 1 Increase	12	12	12	12	12
Year 2 Increase		1***	1	1	1
Year 3 Increase			0	0	0
Year 4 Increase				3	3
Year 5 Increase					7
Number of New Jobs	12	13	13	16	23

**Note: The Year 3 decrease of 1 job (see Step 1) affects the computation of employees eligible for the credit in Step 2 as follows:

1. ***The Year 2 increase is reduced by 1 job (2 job increase in Year 2 minus 1 job decrease in Year 3) in Years 3 through 7 since the credit may be claimed in Year 3 only for those jobs created in Year 2 and maintained in subsequent years.
2. The Year 3 increase is 0 in Years 4 through 8 since there was an average decrease of jobs.

STEP 3: COMPUTATION OF ELIGIBLE CREDIT AMOUNT					
	Year 2 (2006)	Year 3 (2007)	Year 4 (2008)	Year 5 (2009)	Year 6 (2010)
Number of New Jobs	12	13	13	16	23
Multiply by Credit Amount for Distressed County	\$8,000	\$8,000	\$8,000	\$8,000	\$8,000
Job Tax Credit (Limited to 50% of tax liability)	\$96,000	\$104,00 0	\$104,00 0	\$128,00 0	\$184,000

Note: This example only shows the entire credit period for the initial 12 jobs created in 2005. The credit is first claimed in the year following the creation of the new jobs; it is not claimed in the year the new jobs are created. For example, qualifying new jobs created in this example in the 2005 tax year generate a credit available for first use on the 2006 tax return, filed March 15, 2007. Additional credits are created for the job increases in 2006, 2008, 2009, and 2010. The credit for the 2006 increase is claimed on the 2007 through 2011 tax returns, the credit for the 2008 job increases is claimed for 5 years beginning with the 2009 tax return, and so on, providing the jobs are maintained.

3. Job Development and Job Retraining Credits

Job development and job retraining credits are significant tax incentives available to qualifying corporations which are refunded from withholding payments made to the Department.⁶⁶

4. Research and Development Credit

A corporation is allowed a credit against corporate income taxes or corporate license fees⁶⁷ equal to 5% of the qualified research expenses⁶⁸ made in South Carolina.⁶⁹ For a taxpayer to qualify for the credit, the taxpayer must claim a federal income tax credit pursuant to Internal Revenue Code §41 for increasing research activities for the taxable year.

The credit is limited to 50% of the taxpayer's tax liability remaining after all other credits have been applied. Any unused credit can be carried forward, but must be used before a taxable year beginning 10 years or after from the date of the qualified expenditure. The credit is claimed on Form TC-18, "Research and Development Credit."

⁶⁶See Section .09 H. of this portfolio for a summary of the job development and job retraining credits.

⁶⁷The credit may be used against license fees imposed under SC Code §12-20-50 only. See Section .08 of this portfolio for a discussion of corporate license fees.

⁶⁸For purposes of this credit, qualified research expenses has the same meaning as provided in Internal Revenue Code §41.

⁶⁹SC Code §12-6-3415 is effective for tax years beginning after June 30, 2001.

Comment: Although a taxpayer must claim the federal research activity credit pursuant to Internal Revenue Code §41 (R&D credit) to qualify for the South Carolina credit, the South Carolina credit is available for all South Carolina qualified research expenses; it is not limited to the increase in research activities allowed by the federal credit. Also, unlike the federal credit, a taxpayer may also deduct qualifying R & D creditable expenses in computing South Carolina taxable income.⁷⁰ The taxpayer is not required to make an Internal Revenue Code §280C adjustment even though the South Carolina credit will generally exceed the federal credit.

5. Credit for Investing in an Economic Impact Zone

A taxpayer is allowed an “economic impact zone investment tax credit” for qualified manufacturing and productive equipment properties which are placed in service during the taxable year in the economic impact zone.⁷¹ The amount of the income tax credit for qualifying investments is:

1. 1% of the total aggregate bases of 3 year property;
2. 2% of the total aggregate bases of 5 year property;
3. 3% of the total aggregate bases of 7 year property;
4. 4% of the total aggregate bases of 10 year property; and
5. 5% of the total aggregate bases of 15 year or greater property.⁷²

This credit does not apply to any property to which other tax credits apply, unless the qualifying business waives such credits.⁷³

Examples of credits that may be waived are the headquarters credit or the infrastructure credit. Any unused credit may be carried forward for 10 years.⁷⁴ The credit is claimed on Form TC-11, “Economic Impact Zone Property Investment Credit.” Any recapture is reported on Form TC-11-R, “Recapture of Economic Impact Zone Property Investment Credit.”

⁷⁰See SC Code §12-6-1130.

⁷¹SC Code §12-14-60. SC Rev. Rul. #97-8 provides that a taxpayer does not have to be an “economic impact zone business,” as defined in SC Code §12-14-70, to be eligible to claim the credit.

⁷²SC Code §12-14-60(A). Whether property is 3, 5, 7, 10, or 15 year or greater property is determined based on the applicable recovery period for the property under Internal Revenue Code §168(e).

⁷³SC Code §12-14-60(C).

⁷⁴SC Code §12-14-60(D) and (H). When originally enacted in April 4, 1995, the statute did not contain a carry forward provision; it was added in 1997 and is effective for tax years beginning after 1996. The credit is limited to \$5 million for a taxpayer subject to the license tax under SC Code §12-20-100. See Section .08 D. 2. of this portfolio for a discussion of taxpayer’s subject to this license tax.

Rules exist requiring:

1. Property basis reduction for the amount of the credit claimed.⁷⁵ A corresponding decrease in the depreciation deduction will result in an addition to federal taxable income for South Carolina income tax purposes.
2. Recapture of the credit if the property is disposed of or removed from the economic impact zone before the end of the applicable recovery period. A pro rata portion of the credit previously claimed for that property must be recaptured.⁷⁶ A taxpayer required to recapture the credit may increase the basis of the property by the amount of any basis reduction attributable to the credit claimed in prior years. The basis must be increased in the year of recapture.⁷⁷

For the purpose of this credit, “economic impact zone qualified manufacturing and productive equipment property” is any property that is:

1. Constructed, reconstructed, or erected in the economic impact zone, or
2. Acquired by the taxpayer if the original use of such property begins with the taxpayer inside the economic impact zone, and which is:⁷⁸
 - a. Used as an integral part of manufacturing, production, or extraction of or furnishing transportation, communications,⁷⁹ electrical energy, gas, water, or sewage disposal services in the economic impact zone,
 - b. Tangible property depreciable under Internal Revenue Code §168, and
 - c. Internal Revenue Code §1245 property.
3. Computer software that may be depreciated or amortized that is used to control or to monitor a manufacturing or production process inside the economic impact zone.

⁷⁵SC Code §12-14-60(F).

⁷⁶SC Code §12-14-60(E).

⁷⁷SC Code §12-14-60(F).

⁷⁸SC Code §12-14-60(B).

⁷⁹SC PLR #98-2 concluded that the providing of telephone service to South Carolina economic impact zone counties is the business of “furnishing communications” that is eligible for the credit and determined what property constitutes an integral part of furnishing communications.

Comment: This credit is very similar to the former federal investment tax credit (ITC). For this reason, a practitioner may wish, in questionable cases, to consider whether the extensive federal regulations, rulings, and cases under that section prior to its repeal might be used as persuasive authority for interpreting SC Code §12-14-60. It should be noted, however, that the Department will not automatically follow such authority. For example, it has been the Department’s administrative policy that property, including transportation property, must be used solely within the economic impact zone, whereas federal regulations permitted the ITC on airplanes used in international service.

The following South Carolina counties are designated as “economic impact zone” counties: Aiken, Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Clarendon, Colleton, Dillon, Dorchester, Edgefield, Florence, Georgetown, Greenwood, Hampton, Horry, Jasper, Lexington, Marion, McCormick, Newberry, Orangeburg, Richland, Saluda, and Williamsburg.⁸⁰

6. Corporate Headquarters Credit

a. General Provisions

A corporation is allowed a credit against corporate income tax or corporate license fees⁸¹ equal to 20% of the qualifying costs for establishing a corporate headquarters in South Carolina, or expanding or adding to an existing corporate headquarters.⁸² The credit is made up of two parts: Part 1 - the real property costs and Part 2 - the personal property costs. Each part has specific minimum investment and job creation requirements. A taxpayer may qualify for only Part I of the credit or may qualify for both Parts I and II of the credit. The credit requirements are described below.

If a taxpayer claims the headquarters credit, for South Carolina income tax purposes the basis of any property used to calculate the credit must be reduced by the amount of the credit claimed.⁸³

Planning Point: For taxpayers who own property qualifying for the credit, the basis reduction required by the headquarters credit statute reduces the taxpayers South Carolina depreciation deduction. Generally, taxpayers who lease their headquarters property will

⁸⁰SC Info. Ltr. #96-23. The county designation of “economic impact zone” counties reported does not change annually.

⁸¹See Section .08 of this portfolio for a discussion of corporate license fees.

⁸²SC Code §12-6-3410(A). SC Code §12-6-3410(J)(9) provides that a limited liability company subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) formed to operate or take functional control of electric transmission assets is a “corporation” for purposes of this credit regardless of whether the limited liability company is taxed as a corporation or a partnership . Effective date provisions apply.

⁸³SC Code §12-6-3410(H).

not have basis in the lease to reduce. Accordingly, these taxpayers achieve an advantage — the headquarters credit for the leased property and the deduction of the entire amount paid as rent.

Any unused credit may be carried forward for 10 years, or if the 75 new job and per capita income requirements set forth in SC Code Section 12-6-3410(D) are met, the credit can be carried forward for 15 years. No credit may be claimed for a tax year during which the corporation fails to meet the qualifying employment requirements. The carry forward period is not extended for any year in which the credit may not be claimed for failure to meet the employment requirements, but the remaining eligible carryforward may be claimed in the year that the corporation requalifies for the credit by meeting the employment requirements.⁸⁴ The credit is claimed on Form TC-8, “Corporate Headquarters Credit.”

b. Qualifying Headquarters

The term “corporate headquarters”⁸⁵ means the facility⁸⁶ or portion of a facility where corporate staff employees are physically employed, and where the majority of the company’s financial, personnel, legal, planning, information technology, or other headquarters related functions are handled either on a regional or national basis.

A corporate headquarters must be a regional corporate headquarters or a national headquarters to qualify. These terms are defined as follows:

1. A “national” corporate headquarters must be the sole corporate headquarters in the nation and handle headquarters related functions on a national basis. The corporation must have a facility in South Carolina from which it engages in interstate business to qualify for the headquarters credit.⁸⁷

⁸⁴SC Code §12-6-3410(F).

⁸⁵SC Code §12-6-3410(J)(1).

⁸⁶SC Reg. §117-750.1 defines the term “facility.” A “facility” is generally a single physical location where a taxpayer’s business is conducted or where its services or industrial operations are performed. Where two or more distinct and separate economic activities are performed at a single physical location, each separate economic activity will be treated as a separate facility when: (1) each activity has its own separate and dedicated personnel; (2) separate reports can be prepared on the number of employees, their wages and salaries, sales, or receipts and expenses; and (3) employment and output are significant as to the activity. For purposes of item (2), it is irrelevant if separate reports are actually prepared, so long as separate reports can be prepared, this criteria is met.

⁸⁷SC Code §12-6-3410(J)(1)(a).

2. A “regional” corporate headquarters must be the sole corporate headquarters within the region and must handle headquarters related functions on a regional basis. “Region” or “regional” means a geographic area comprised of: (a) at least five states, including South Carolina, or (b) two or more states, including South Carolina, if the entire business operations of the corporation are performed within fewer than five states.⁸⁸

Note: A corporation doing business solely within South Carolina does not meet the definition of corporate headquarters.

c. Real Property Costs

The real property portion of the headquarters credit is equal to 20% of:⁸⁹

1. Qualifying real property costs incurred in the design, preparation, and development of establishing, expanding, or adding to a corporate headquarters; and
2. Direct construction costs or, with respect to leased facilities, direct lease costs for the first 5 years of operations for the corporate headquarters. Direct lease costs are cash lease payments and do not include any accrued, but unpaid costs.⁹⁰

In order to qualify for the headquarters credit, the qualifying real property costs and job creation requirements must be met:⁹¹

1. The qualifying real property costs must be at least \$50,000. For corporations constructing a headquarters, these costs are costs incurred in the design, preparation, and development of establishing or adding to a corporate headquarters, and direct construction costs. For corporations leasing a facility, these costs are direct lease costs during the first 5 years of corporate headquarters operations.

⁸⁸SC Code §12-6-3410(J)(1)(b).

⁸⁹SC Code §12-6-3410 (B) and (C).

⁹⁰SC Code §12-6-3410(J)(8).

⁹¹SC Code §12-6-3410(B).

2. The headquarters establishment, addition, or expansion must create at least 40 new,⁹² full time,⁹³ permanent jobs in South Carolina performing headquarters related functions and services⁹⁴ or research and development⁹⁵ related functions and services. At least 20 of these jobs must be headquarters staff employees⁹⁶ performing headquarters related functions and services.

d. Personal Property Costs

A headquarters that meets the real property costs and job requirements above may also qualify for an additional credit equal to 20% of the cost of tangible personal property if certain requirements are met. These requirements are:⁹⁷

1. The personal property is purchased for the establishment, expansion, or addition of a corporate headquarters or research and development facility which is part of the same corporate project as the headquarters establishment or expansion.
2. The personal property is used for corporate headquarters or research and development related functions and services in South Carolina. The credit may not be claimed, however, for personal property which is replacing personal property for which the credit can be claimed.⁹⁸

⁹²SC Code §12-6-3410(J)(2). A “new job” is a job created in South Carolina at the time the new facility, expansion, or addition is initially staffed, but does not include a job created when an employee is shifted from an existing location in South Carolina to work in a new or expanded facility. An employee may be employed at a temporary location in South Carolina pending completion of the new or expanded facility.

⁹³SC Code §12-6-3410(J)(3). A “full time” job requires a minimum of 35 hours of an employees time a week.

⁹⁴SC Code §12-6-3410(J)(4). “Headquarters related functions and services” are those functions involving financial, personnel, administrative, legal, planning, information technology, or similar business functions.

⁹⁵SC Code §12-6-3410(J)(6) and (7). “Research and development” means laboratory, scientific, or experimental testing and development related to new products, new uses for existing products, or improving existing products; it does not include efficiency surveys, management studies, consumer surveys, economic surveys, advertising, promotion, or research in connection with literary, historical, or similar projects. “Research and development facility” is the building or buildings or portion of a building where research and development functions and services are physically located.

⁹⁶SC Code §12-6-3410(J)(5). “Headquarters staff employees” means executive, administrative, or professional workers performing headquarters related functions and services. See SC Code §12-6-3410(J)(5)(a), (b), and (c) for definitions the terms “executive employee,” “administrative employee,” and “professional employee.”

⁹⁷SC Code §12-6-3410(D).

⁹⁸SC Code §12-6-3410(E)(1).

3. The personal property is capitalized for income tax purposes under the Internal Revenue Code.
4. The headquarters or research and development establishment or addition creates at least 75, new, full time jobs performing headquarters related or research and development related functions and services.

Note: At least 20 of these jobs must be headquarters staff employees.⁹⁹

5. The jobs created must have an average cash compensation level of more than 1.5 times the South Carolina per capita income based on the most recent per capita income data available as of the end of the taxpayer's tax year in which the jobs are filled.¹⁰⁰
6. The average South Carolina employee cash compensation level for all employees in South Carolina must be more than 2 times the South Carolina per capita income based on the most recent per capita income data available as of the end of the taxpayer's tax year in which the jobs are filled. For example, if the taxpayer is a calendar year taxpayer, the State per capita income figure available as of December 31 of the tax year in which the 75th new, full time employee is hired is used in determining if the pay requirements have been met.¹⁰¹

e. Claiming the Credit

For facilities which are constructed, the credit is claimed for the taxable year when the headquarters establishment is placed in service for federal income tax purposes. For construction projects completed in phases and placed in service in more than one tax year, the credit is first claimed in the first tax year in which a portion of the qualifying property is placed in service. A corporation may not, however, claim the credit for costs incurred more than 3 taxable years after the taxable year in which the first property for which the credit is claimed is placed in service. If the entire project is not completed by the end of the 3 taxable years, the corporation may claim the credit for all property placed in service within the proper time limitation.

For leased real property, the credit must be claimed in the taxable year in which the first direct lease costs are incurred. Direct lease costs during the first five years of operations of the corporate headquarters are qualifying real property costs. Direct costs are cash lease payments and do not include any accrued, but unpaid costs.¹⁰²

⁹⁹SC Code §12-6-3410(B)(2).

¹⁰⁰The State per capita income is received from the Board of Economic Advisors generally twice a year, usually in May and October. Upon receipt, the Department publishes a SC Info. Ltr. listing the most recent data.

¹⁰¹SC Rev. Rul #99-11.

¹⁰²SC Code §12-6-3410(J)(8).

For constructed or leased facilities, all staffing requirements must be met by the end of the second taxable year following the last taxable year in which the credit is claimed.¹⁰³ The corporation must have documented plans to meet the initial staffing requirements at the time the credit is claimed. If the corporation fails to meet the staffing requirements within the time limitation, the corporation must increase its tax liability for the current taxable year by the amount of the credit used.¹⁰⁴

Examples best explain the timeline for meeting the requirements and claiming the credit.

Example 1: Assume a corporate headquarters is placed in service in one year. The claiming of the credit and the staffing requirements are as follows:

Year 1 - First property placed in service for federal income tax purposes. Credit is claimed.
Year 3 - Staffing requirements must be met or the credit claimed is recaptured.

Example 2: Assume the corporate headquarters is placed in service over a 3 year period or that 5 years of direct lease costs are incurred. The claiming of the credit and the staffing requirements are as follows:

Year 1 - First property placed in service for federal income tax purposes or first year direct lease costs are incurred. Credit may be claimed for these costs.
Year 2 - Additional property placed in service or direct lease costs incurred. Credit may be claimed for these costs.
Year 3 - Additional property placed in service or direct lease costs incurred. Credit may be claimed for these costs.
Year 4 - Last year credit may be claimed for direct construction, and design, preparation, and development costs. Credit may be claimed for direct lease costs.
Year 5 - Last year credit may be claimed for direct lease costs.
Year 6 - Staffing requirements must be met, if facility is constructed, otherwise credits claimed must be recaptured.
Year 7 - Staffing requirements must be met, if facility is leased, otherwise credits claimed must be recaptured.

f. Frequently Asked Questions and Helpful Tips

The following are tips concerning the headquarters credit:

1. If the headquarters building is sold and leased back, then the seller-lessee corporation is entitled to the credit if the sale-leaseback transaction is a financing arrangement for income tax purposes and the seller-lessee retains the benefits and burdens of ownership in the new building.¹⁰⁵

¹⁰³SC Code §12-6-3410(E).

¹⁰⁴SC Code §12-6-3410(E)(2).

¹⁰⁵SC PLR #88-19.

2. Design, construction, and management services performed by the headquarters or its subsidiaries qualify for the credit provided that the cost of such services does not exceed the fair market value of the services. Payment for services provided by employees of the headquarters and management costs do not qualify since the credit is for the costs of establishing a headquarters, not for the normal operating costs of the company.¹⁰⁶
3. A corporate division or management corporation engaged to manage the operations and functions of another company does not qualify as a regional or national headquarters.
4. Buildings planned and constructed as part of the same project based on a plan of construction or expansion are considered as one construction or expansion and require the corporation to meet the employment requirements only once for all buildings and not for each building separately.¹⁰⁷
5. For an expansion, the new employees must be located in the South Carolina headquarters complex, but do not have to be located in the expanded portion of the headquarters.¹⁰⁸
6. Initial staffing may occur prior to the completion of the new building, if the purpose for early staffing is to train the new employees and these employees will be placed in the corporate headquarters during the construction of the expansion or immediately after its completion.¹⁰⁹
7. The 20 headquarter staff jobs created for the real property portion of the credit count toward (*i.e.*, they are not addition to) the 75 qualifying new jobs required for the 15 year carryforward and the personal property portion of the credit.
8. The purchase price of land not already owned by the corporation to build a headquarters is a qualifying real property cost. The purchase price of an existing building is not a qualifying real property cost. Other examples of qualifying real property costs include: steel, concrete, heating and air conditioning, windows, and engineering and architectural design costs.

¹⁰⁶SC PLR #91-2.

¹⁰⁷SC PLR #89-19.

¹⁰⁸SC PLR #89-19.

¹⁰⁹SC PLR #89-19.

9. The moving of furniture or other personal property to the new location does not qualify for the credit.¹¹⁰
10. The purchase of new personal property qualifies for the personal property portion of the credit. The lease of new personal property qualifies for the personal property portion of the credit if the taxpayer is considered the owner of the property for income tax purposes, the taxpayer capitalizes the property, and the headquarters is the headquarters for that taxpayer.¹¹¹

7. Construction or Improvement of Infrastructure Project Credit

A corporation is allowed a credit against corporate income tax equal to 50% of the contributions or expenses paid or accrued by the taxpayer for the construction or improvement of water lines, sewer lines, and road projects that are eventually dedicated to public use or a qualifying private entity.¹¹² A credit is available for each infrastructure project of the taxpayer, but is limited to \$10,000 per project per year. Any unused credit, up to \$30,000 for each project, may be carried forward for 3 years.¹¹³ The maximum infrastructure credit that may be claimed for each project is \$40,000. The credit is claimed on Form TC-6, "Infrastructure Credit."

Requirements concerning the credit include:

1. Expenses incurred in constructing infrastructure projects that solely benefit the taxpayer do not qualify for the credit.¹¹⁴ If the infrastructure project benefits more than the taxpayer, the expenses must be allocated to the various beneficiaries. The credit only applies to expenses not allocated to the taxpayer's benefit.¹¹⁵

¹¹⁰SC PLR #91-2.

¹¹¹SC PLR #91-2.

¹¹²SC Code §12-6-3420(C)(2) defines "qualified private entity" as an entity holding the required permits, certifications, and licenses from the SC Department of Health and Environmental Control, the SC Public Service Commission, and any other state agencies, departments, or commissions, from which approvals must be obtained in order to operate as a utility furnishing water supply services or sewage collection or treatment services, or both, to the public. In addition, SC Code §12-6-3420(F) provides that a qualified private entity is not allowed this credit for expenses it incurs in building or improving facilities it owns, manages, or operates.

¹¹³SC Code §12-6-3420(A) and (B).

¹¹⁴SC Code §12-6-3420(C).

¹¹⁵SC Code §12-6-3420(D).

2. The credit may be claimed before dedication or conveyance if the taxpayer submits with its tax return a letter of intent signed by the chief operating officer of the appropriate governmental entity or qualified private entity stating that upon completion they will accept the infrastructure project for the appropriate use.¹¹⁶
3. If a road qualifying for the credit is subsequently removed from the state highway or public road system, the amount of the credit allowed for the construction of the road must be added to any corporate income tax due in the first taxable year following the removal of the road from public use.¹¹⁷
4. The merger, consolidation, or reorganization of a corporation where tax attributes survive does not create new eligibility in a succeeding corporation, but unused credits may be transferred and continued by the succeeding corporation. In addition, a corporation may assign its rights to the infrastructure credit to another corporation if it transfers all, or substantially all, of the assets of the corporation or all, or substantially all, of the assets of a trade or business or operating division of a corporation to another corporation.¹¹⁸ The infrastructure credit cannot be sold.
5. A company that claims the license tax credit for infrastructure provided in Chapter 20 of Title 12 is not eligible to claim this infrastructure income tax credit.¹¹⁹

Comment: This credit, including the “exclusive benefit” provision and the meaning of the term “project,” was the subject of litigation. See *South Carolina Department of Revenue v. SCANA Corporation, Court of Common Pleas, Civil Action No. 99-CP-40-1274 and 1358*. The court held that a taxpayer in the business of developing real estate for profit was entitled to the credit provided the infrastructure improvements were dedicated to a public use. The court also held that the credit had to be reduced by the amount of benefit the taxpayer received from the improvements.

8. Credit for Hiring Family Independence Recipient

An income tax credit is available to employers who employ persons who received family independence payments¹²⁰ within South Carolina for three months immediately before becoming employed part time or full time.¹²¹ In order to qualify for the credit, the employer

¹¹⁶SC Code §12-6-3420(E).

¹¹⁷SC Code §12-6-3420(G).

¹¹⁸SC Code §12-6-3420(I).

¹¹⁹SC Code §12-20-105(G).

¹²⁰SC Code §12-6-3470(G). “Family independence payments” means financial assistance provided under Title IV, Part A of the Social Security Act.

¹²¹SC Code §12-6-3470(A).

must make health insurance available to the employees who received family independence payments. All conditions, including employer contributions and employer imposed waiting periods, must be on the same basis and under the same conditions as that of any other employee. The employer is not required to pay for all or part of any health insurance coverage for family independence payment recipients hired in order to claim the credit if an employer does not pay for all or part of health insurance coverage for any other employee. An employer may claim the credit from the date of hire for each full month of employment even if there is an employer mandated waiting period for health insurance not to exceed 12 months.¹²²

The employer must submit an employee release and must request in writing from the South Carolina Department of Social Services certification of family independence eligibility for each of the newly hired employees.¹²³ The employer has until 15 days after the end of its tax year in which the recipient is hired to request verification. South Carolina Department of Social Service Form 12108 is used to request eligibility. The Department of Social Services has 30 day to approve or deny this certification.¹²⁴ The employer may not take the credit if another employee was terminated in order to hire the family independence recipient.¹²⁵

A qualifying employer receives a “basic” credit amount equal to:¹²⁶

1. 20% of wages paid to such employee for each full month of employment during the first 12 months of employment;
2. 15% of wages paid to such employee for each full month of employment during the second 12 months of employment; and
3. 10% of wages paid to such employee for each full month of employment during the third 12 months of employment.

The total amount claimed per employee under both the job tax credit¹²⁷ and the “basic” part of the family independence credit is limited to \$5,500 for all taxpayers not located in a “distressed county.” The \$5,500 limitation is not applicable to a taxpayer qualifying for the job tax credit in a “distressed county.” Notwithstanding the \$5,500 limitation amount, employers located in a South Carolina county designated for job tax credit purposes as a “distressed county”

¹²²SC Code §12-6-3470(C).

¹²³See Section .11 Worksheet 1 of this portfolio for contact information.

¹²⁴SC Code §12-6-3470(D).

¹²⁵SC Code §12-6-3470(E).

¹²⁶SC Code §12-6-3470(A).

¹²⁷See job tax credit discussion above.

or “least developed county”¹²⁸ may be able to receive the “additional” part of the family independence credit.¹²⁹ An employer located in a “distressed county” or “least developed” county who employs a former family independence payment recipient to work full time in that county is allowed an additional \$175 credit per qualifying employee for each full month during the first 36 months of employment, up to an additional \$2,100, for each qualifying year. Any unused credit may be carried forward for 15 years.

Comment: It is the authors’ opinion that the designation of the county as “distressed” or “least developed” is based on the county designation at the time the family independence payment recipient is employed by the taxpayer.

Form TC-12, “Credit for Employers Hiring Recipients of Family Independence Payments,” is used to claim the “basic” credit and Form TC-12-A, “Additional Credit for Employers Hiring Recipients of Family Independence Payments in a Distressed County or Least Developed County,” is used to claim the “additional” credit.

9. Credit for Hiring Persons Terminated from Employment as Result of Closing or Realignment of Federal Military Installation

An income tax credit is allowed to employers who hire employees who were employed in an economic impact region and whose job was terminated as a result of the closing or realignment of an “applicable federal military installation” or an “applicable federal facility.”¹³⁰ The amount of the credit is equal to 10% of the “qualified wages”¹³¹ paid to the terminated employee¹³² in the tax year. Qualified wages include up to \$10,000 of wages for services

¹²⁸The Department annually publishes a SC Info. Ltr. listing the ranking of each of South Carolina’s 46 counties as distressed, least developed, under developed, moderately developed, or developed as provided in SC Code §12-6-3360.

¹²⁹SC Code Section 12-6-3470(B).

¹³⁰SC Code §12-6-3450.

¹³¹SC Code §12-6-3450(A)(3) and (4). “Qualified wages” means wages paid by an employer to an employee if (a) at least 90% of the employee’s services for the employer during the taxable year are directly related to the conduct of the employer’s trade or business within an applicable federal military installation or economic impact region, or (b) at least 50% of the services of the employee for the employer during the tax year are performed within the installation or region. The term does not include wages paid for services performed as an employee of the federal government or an agency or instrumentality of the federal government.

¹³²SC Code §12-6-3450(A)(5) defines “terminated employee” as an individual who is certified by the South Carolina Employment Security Commission as being an individual, whether or not a federal employee, who was employed in an economic impact region, and whose job was terminated by reason of the closing or realignment of the installation. An individual is not a terminated employee after the later of: (1) the end of the second calendar year following the calendar year in which commencement of the job termination occurs, or (2) the end of the first year period beginning with the date the employee first begins work for an employer after the job termination. See Section .11 Worksheet 1 of this portfolio for contact information.

rendered during the one year beginning with the day the individual first works for an employer after becoming a “terminated employee.” Any unused credit may be carried forward for 10 years.¹³³ Any deduction for wages of an employer claiming the credit must be reduced by the amount of the credit when calculating the South Carolina income tax liability.¹³⁴

The following have been designated “economic impact region” counties: Aiken, Allendale, Bamberg, Barnwell, Berkeley, Charleston, Colleton, Dorchester, Edgefield, Florence, Georgetown, Hampton, Horry, Lexington, Marion, Orangeburg, and Williamsburg.¹³⁵

Form TC-10, “Base Closure/Federal Facility Employment Reduction Hiring Credit,” is used to claim the credit.

10. Tax Credit for State Contractors Having Subcontracts with Minority Firms

Taxpayers having contracts with the State who award a subcontract to a certified South Carolina based minority business are eligible for an income tax credit equal to 4% of the payments to a minority subcontractor for work pursuant to the State contract.¹³⁶ The credit is limited to a maximum of \$25,000 annually. A taxpayer is eligible to claim the credit for 6 consecutive taxable years beginning with the taxable year in which the credit is first claimed. There is no carryforward of unused credits.

The subcontractor must be certified as a minority firm.¹³⁷ A taxpayer claiming the credit must maintain evidence of work performed for a State contract by the minority subcontractor and must attach to its South Carolina income tax return a copy of the certificate issued to the subcontractor by the Small and Minority Business Assistance Office.¹³⁸ Any payment made to a minority subcontractor prior to the date of certification does not qualify for the credit.¹³⁹ The credit is claimed on Form TC-2, “Minority Business Credit.”

11. Community Development Corporation Investment Credit

A taxpayer is allowed a tax credit against South Carolina income tax, bank tax, or insurance premium tax for a business investing in a community development corporation or

¹³³SC Code §12-6-3450(E).

¹³⁴SC Code §12-6-3450(D).

¹³⁵SC Info. Ltr. #96-23.

¹³⁶SC Code §12-6-3350.

¹³⁷The term is defined in SC Code §11-35-5010 and regulations thereunder.

¹³⁸See Section .11 Worksheet 1 of this portfolio for contact information.

¹³⁹Instructions to Form TC-2.

community development financial institution.¹⁴⁰ The amount of the credit is 33% of the investment (see exceptions below). The total credit that may be claimed by all taxpayers is \$1 million in one calendar year and \$5 million for all calendar years. Any unused credit may be carried forward. The carry forward must be used before the taxable year that begins on or after 10 years from the date of the acquisition of stock or other equity interest that is the basis for the credit. The credit is claimed on Form TC-14, “Community Development Tax Credit.”

The following requirements apply to the credit:

1. The community development corporation or community development financial institution must be certified by the SC Department of Commerce¹⁴¹ at the time the investment is made.
2. A taxpayer must obtain a certificate from the SC Department of Commerce certifying that: (a) the investment is in a certified community development corporation as defined in SC Code §34-43-20(2) or a certified community development financial institution as defined in SC Code §34-43-20(3), and (b) the credit will not exceed the \$5 million limitation.¹⁴²
3. Banks and financial institutions chartered by the State may invest up to 10% of their total capital and surplus in a community development corporation or community development financial institution.
4. The taxpayer must file with the Department of Revenue the form issued by the Department of Commerce certifying the stock or other equity interest.

Exceptions to the amount of credit eligible to be claimed include:

1. The credit is not allowed if the taxpayer claims a charitable contribution deduction under Internal Revenue Code §170 for the investment in a community development financial institution.
2. If stock or another equity interest is the investment and is redeemed by the community development corporation or community development financial institution within 5 years of the date acquired, the credit is disallowed and must be repaid with the tax return for the period the redemption occurred. The amount collected must be handled as if no credit had been allowed.

¹⁴⁰SC Code §12-6-3530. This credit is effective for tax years beginning after 2000 and terminates on June 30, 2010.

¹⁴¹See Section .11 Worksheet 1 for contact information.

¹⁴²Department of Commerce form DC-06075 must be attached to the SC tax return when claiming the credit. See Section .11 Worksheet 1 for contact information.

3. One community development corporation or community development financial institution may not receive more than 25% of the total tax credits authorized in any one tax year.
4. If on April 1, 2001, or as soon thereafter as the SC Department of Commerce is able to determine, the total amount of tax credits claimed by all taxpayers exceeds the limitations, the SC Department of Commerce will determine the credits on a pro rata basis.

Comment: The Department of Commerce has informed the Department that this limitation has not been exceeded April 2005.

12. Employee Child Care Programs Credit

An employer may claim as a credit against its income tax, bank tax, or insurance premium tax liability an amount equal to:

1. 50% of its capital expenditures in South Carolina but no more than \$100,000 for costs incurred in establishing a child care program for its employees' children¹⁴³ and
2. 50% of the child care payments made not to exceed \$3,000 for each participating employee per year.¹⁴⁴

The program and operation of the program must meet the licensing, registration, and certification standards prescribed by law.¹⁴⁵ The credit taken in any one tax year cannot exceed 50% of the employer's liability for that year.¹⁴⁶ Any unused credit can be carried forward for 10 years.¹⁴⁷ The credit is claimed on Form TC-9, "Credit for Child Care Program."

For purposes of the capital expenditures portion of the credit, qualifying expenditures incurred for establishing a child care program include, but are not limited to:¹⁴⁸

1. Mortgage or lease payments for child care facilities;
2. Purchases of playground and classroom equipment, kitchen appliances, and cooking equipment;

¹⁴³SC Code §12-6-3440(A).

¹⁴⁴SC Code §12-6-3440(C).

¹⁴⁵SC Code §12-6-3440(B).

¹⁴⁶SC Code §12-6-3440(D).

¹⁴⁷SC Code §12-6-3440(E).

¹⁴⁸SC Code §12-6-3440(B) and (C)(2).

3. Purchases of real property and improvements.
4. Donations to a nonprofit organization that qualifies under Internal Revenue Code §501(c)(3) in order to help that organization establish a child care facility for the employees' children. The employer may not, however, also claim a charitable deduction for the contribution made to the §501(c)(3) organization.
5. Expenses incurred in organizing and administering the direct payment program (see discussion below) the first year.

For purposes of the child care portion of the credit, 50% of the following payments not to exceed \$3,000 for each participating employee per year qualify for the credit:¹⁴⁹

1. Payments incurred by the taxpayer to operate a child care program for the taxpayer's employees in South Carolina.
2. Payments made directly to licensed or registered independent child care facilities in the name of, and for the benefit of, the employer's employees who are residents of and employed in South Carolina qualify if the children are kept at the facility during the employee's working hours. In addition, the employer may include any administrative costs, not to exceed 2%, that are associated with payment to a licensed or registered independent child care facility.

Comment: Establishing or altering an Internal Revenue Code §129 dependent care assistance program to require direct pay to qualified providers should provide for creditable expenditures. In such a plan, an employee elects at the beginning of the year to forgo taxable compensation in return for corporate reimbursement of qualifying expenses. If the plan provides for direct pay rather than reimbursement, the direct payment should qualify for the credit. The reimbursement of employee paid expenses do not qualify for the South Carolina child care credit. Many companies, however, are not willing to modify their plan.

The requirements of the child care payment portion of the credit include:

1. The payment may not exceed the amount charged to non employee's children of like age and abilities.
2. The taxpayer must retain information concerning the child care facility's federal identification number, license or registration number, payment amount, and in whose name and for whose benefits the payments were made.

¹⁴⁹SC Code §12-6-3440(C).

13. Conservation Credit

A taxpayer who is entitled to and claims a federal charitable deduction for a gift of land for conservation or for a qualified conservation contribution donated after May 31, 2001, on a qualified real property interest located in South Carolina may claim a South Carolina income tax credit equal to 25% of the deduction attributable to the gift of land for conservation or to the qualified real property interest located in South Carolina.¹⁵⁰ The credit cannot exceed \$250 per acre of property to which the qualified conservation contribution or gift of land for conservation applies and the total credit claimed by a single original taxpayer may not exceed \$52,500 per year. The credit is claimed on Form TC-19, "Credit for Conservation or Qualified Conservation Contribution of Real Property."

Any unused credit may be carried forward until used. The unused credit may be transferred, devised, or distributed, with or without consideration, to another taxpayer upon written notification to, and approval by, the Department of the transfer.¹⁵¹ The unused credit retains all its original attributes in the hands of the recipient. The gain on the sale or exchange of this credit is subject to South Carolina income taxes. To obtain Department approval of credit transfer, the taxpayer must submit a request in writing to the Department¹⁵² containing the following:

1. The name, address, telephone number, and taxpayer identification number of the transferor and transferee of the credit.
2. The date the transfer, devise, or distribution of the credit will be effective.
3. The total credit available for the year, the amount of the credit to be transferred to each transferee and the amount of credit, if any, used by the transferor, and to be retained by the transferor.
4. A complete description of the consideration that was paid for the transfer, devise or distribution of the credit, and if the consideration was not in cash, check, or money order, the fair market value of the consideration.
5. A waiver of the right to claim that portion of the credit being transferred by the taxpayer who is transferring the credit. If the taxpayer transferring the credit is an S corporation, a partnership, or an LLC taxed as a partnership, the waiver must be executed by all shareholders, partners, or members that would otherwise be eligible to

¹⁵⁰SC Code §12-6-3515 is effective June 1, 2001.

¹⁵¹SC Rev. Proc. Bull. #01-11 provides a method for a taxpayer to request approval for the transfer, devise, or distribution of the conservation credit.

¹⁵²The request should be mailed to: SC Department of Revenue, Corporate Tax Section, PO Box 125, Columbia, SC 29214. Questions concerning the transfer of the conservation credit should be directed to the Corporate Section at 803-898-5777.

claim the credit. Any waiver must also include each shareholder's, partner's, or member's name, address, telephone number and taxpayer identification number. If the credit is to be transferred to an entity that will transfer the credit to another entity or to multiple entities, a waiver must be executed for all persons or entities that would be able to use the credit.

Comment: The conservation credit is limited to: (1) \$250 per acre of qualifying property (excluding property lying within the intertidal zone) and (2) \$52,500 per original taxpayer. For example, an individual privately makes one qualified conservation contribution of 300 acres of land worth \$400,000 during the tax year. Notwithstanding the per acre limitation, the contribution would generate a \$100,000 conservation credit (25% x \$400,000). After applying the per acre limitation, the conservation credit would be limited to a total of \$75,000 (\$250 x 300 acres). Accordingly, the credit claimed in the current tax year is limited to \$52,500 and the credit carryover is limited to \$22,500 (\$75,000 - \$52,500).

For purposes of applying the per taxpayer limitations, the attribution rules of Internal Revenue Code §267 apply.¹⁵³ For example, assume that a husband makes a qualified conservation contribution of land worth \$500,000 he separately owns and, in the same year his wife makes a qualified conservation contribution of land worth \$300,000 she separately owns. Assuming the credit does not exceed \$250 an acre, they are entitled to a \$200,000 conservation credit (25% x \$800,000). Based upon the attribution rules in §267 the couple is considered one person that qualifies for a maximum conservation credit of \$52,500 in the current year and can carry forward the remaining \$147,500.

Because a transferor cannot transfer more than he has, it is the authors' opinion that the maximum \$52,500 limitation applies per year and per original transferor. For example, an individual generates a \$1,000,000 conservation credit. He uses \$52,500 of the credit in the current year and transfers the remaining \$947,500 credit to 10 individuals the following year. These 10 individuals may claim a \$5,250 conservation credit in the year of the transfer (*i.e.*, the total claimed by all persons with respect to a single donation may not exceed \$52,500 per year.) Each receives an \$89,500 credit carry forward. The carry forward amount that may be used each year is limited to up to \$5,250 per individual (subject to each individuals own \$52,500 limit if he has other conservation credits – see item 3 below.)

In another example assume that (1) Partnership ABC has 6 equal partners and makes a qualified conservation contribution of land worth \$400,000, the \$250 an acre limitation does not apply, so the contribution generates a \$100,000 conservation credit (25% x \$400,000), (2) Partner X subsequently transfers his share of this conservation credit, and (3) Partner Y is the only partner that has additional conservation credits from other sources. The conservation credit may be taken as follows.

¹⁵³SC Code §12-6-3515(C)(3).

1. Credit Amount From Original Transferor (Partnership ABC). The partnership passes its entire \$100,000 credit through to its partners, but must instruct each partner how his share of the credit is limited by the partnership's maximum conservation credit of \$52,500. In this case they must instruct each partner that he may take up to an \$8,750 conservation credit (subject to the partner's own \$52,500 limit if he has other conservation credits – see item 3 below) and may carry forward his remaining credit, \$7,917 $((\$100,000 - \$52,500) \div 6)$ plus any amount of the \$8,750 the partner could not take in the year of donation.
2. Amount of Credit Transferred by Partner X. Partner X immediately transfers his credit equally to two other individuals outside of Partnership ABC. He must instruct each of them that they may take up to a \$4,375 credit (subject to the individual's own \$52,500 limit if he has other conservation credits – see item 3 below) and may carry forward \$3,959 plus any amount of the \$4,375 the individual transferee could not take in the year of transfer (these amounts are 50% of Partner A's maximum current credit and carryover amount calculated above in item (1)).
3. Partner Y Maximum Credit Amount. Partnership ABC passes through to Partner Y the ability to take up to an \$8,750 conservation credit in the year of the donation. During the same tax year, he individually makes an additional qualified conservation contribution of another property that generates a \$50,000 conservation credit. The maximum conservation credit amount that he may claim from all sources in the current tax year is \$52,500. The taxpayer may choose which conservation credit to use first; careful consideration should be used since it may affect the amount of carryover that may be used in future years. For example, if he chooses to use the \$50,000 from his individual credit first, then he may only claim \$2,500 of the \$8,750 credit from Partnership ABC, for a maximum \$52,500 conservation credit. The remaining \$6,250 (\$8,750 original credit passed through less \$2,500 credit amount used) and the \$7,917 credit carryover from Partnership ABC (see item (1) above) would carry forward. The \$14,616 carry forward that may be used in the following year is limited to \$8,750 (*i.e.*, the amount of the original credit amount passed through from Partnership ABC.) Alternatively, if he chooses to use the \$8,750 conservation credit passed through from Partnership ABC first and then use \$41,250 of his individual credit, for a maximum \$52,500 conservation credit, then the entire \$14,616 carry forward (\$7,917 carry forward from the credit passed through by Partnership ABC, which is less than the \$8,750 original credit amount passed through, and \$8,750 carry forward from his individual credit (\$50,000 - \$41,250) may be used in the succeeding tax year.

Note: In discussions with taxpayers concerning tax planning ideas related to this credit, the Department has made it clear it will apply judicially created doctrines, such as the sham and step transaction doctrines, to prevent abuse.

For purposes of this credit, “qualified conservation contribution” and “qualified real property interest” have the same meaning as defined in Internal Revenue Code §170(h). The term “gift of land for conservation” is a charitable contribution of fee simple title to real property conveyed for conservation purposes as defined in Internal Revenue Code §170(h)(4)(A) to a qualified conservation organization as defined in Internal Revenue Code §170(h)(3).

Notwithstanding Internal Revenue Code §170(h) and applicable regulations, a taxpayer is not disqualified from claiming this credit because of silvacultural and forestry practices permitted by or undertaken pursuant to a conservation contribution on a real property interest provided that: (1) the practices conform to Best Management Practices established by the South Carolina Forestry Commission existing at the time the conservation contribution is made, or at the time a particular forestry or silvacultural practice is undertaken; (2) the conservation contribution otherwise conforms to the requirements of Internal Revenue Code §170(h); and, (3) the taxpayer provides the Department with information to determine that the taxpayer would otherwise be eligible for the deduction under Internal Revenue Code §170(h). The credit is 25% of the deduction that would otherwise be allowable under Internal Revenue Code §170(h) but for the silvacultural and forestry activities performed on the real property interest and is subject to all the other conditions and limitations of this section.

The fair market value of all qualified donations must be substantiated by a “qualified appraisal” prepared by a “qualified appraiser” as defined under applicable federal law and regulations relating to charitable contributions.

14. Credit for Purchase and Installation of Certain Energy Conservation and Renewable Energy Production Measures

A taxpayer may claim a credit equal to 25% of all expenditures paid or incurred during the taxable year for the purchase and installation of the following energy conservation and renewable energy production measures:¹⁵⁴

1. Conservation tillage equipment. The term conservation tillage equipment planter is defined in the instructions to the credit form to mean one which plants directly into an undisturbed seedbed (stubble, previous crop residue, cover crop, etc.) with no land preparation prior to planting.
2. Drip/trickle irrigation systems. The systems include all necessary measures and equipment including, but not limited to, dams, pipes, pumps, wells, installation charges, and other related expenses. The term is defined in the instructions to the credit form to mean a low pressure, low volume irrigation that delivers water to the root zone or base of plants through a system of surface and/or subsurface line, tubing, and emitters.

¹⁵⁴SC Code §12-6-3340.

3. Dual purpose combination truck and crane equipment. This term is defined in the instructions to the credit form to mean machinery consisting of a unibodied construction which contains a crane which is mounted to a mobile chassis and must remain mounted to be operational. It must be self propelled and possess the characteristics that would allow the equipment to operate legally upon South Carolina highways.

A taxpayer may claim the credit only one time for each of the three measures in a lifetime. The maximum credit that may be claimed for each measure is \$2,500. In the case of pass through entities, the credit is determined at the entity level and is limited to \$2,500. Any unused credit can be carried forward for 5 years. The credit is claimed on Form TC-1, "Drip/Trickle Irrigation Systems Credit."

15. Credit for Construction, Installation, or Restoration of Water Impoundments, and Water Control Structures

A taxpayer may claim a credit equal to 25% of all expenditures incurred for the construction, installation, or restoration of certain ponds, lakes, other water impoundments, and water control structures designed for the purposes of water storage for irrigation, water supply, sediment control, erosion control or aquaculture and wildlife management, providing these items are not located in or adjacent to and filled primarily by coastal waters of the State.¹⁵⁵ To qualify for the credit the taxpayer must obtain a construction permit issued by the South Carolina Department of Health and Environmental Control or proof of exemption from permit requirements issued by the Department of Health and Environmental Control, the Natural Resources Conservation Service, or a local Soil and Water Conservation District.

The maximum credit that may be claimed is \$2,500. In the case of pass through entities, the credit is determined at the entity level and is limited to \$2,500. Any unused credit can be carried forward for 5 years. The credit is claimed on Form TC-3, "Water Resources Credit."

The instructions to the credit form provide that restoration of ponds, lakes, and other water impoundments, and water control structures include all materials and services for:

1. Changing the height of a dam.
2. Increasing the spillway capacity of a dam.
3. Removing sediment from an impoundment.
4. Adjusting the water depth to improve an impoundment for aquiculture or wildlife management.

¹⁵⁵SC Code §12-6-3370. Commission Decision #91-49 (August 28, 1991) concluded that the homeowners association organized as a not for profit corporation to repair a dam was entitled to the credit. The 40 homeowners who owned the lake and dam and conveyed the property to the corporation are not entitled to the credit.

5. Removing trees greater than 4 inches in diameter from a dam, including removing stumps and replacing with impervious material.
6. Installing a filter or drainage system to control seepage through a dam.
7. Work requiring excavation into the embankment fill or foundation of a dam (*e.g.*, replacing deteriorated pipe).
8. Work requiring removal or replacement of major structural components of a dam (*e.g.*, replacing deteriorated concrete, gates, etc.).
9. Any other work to improve the capacity, service, or safety of a water impoundment or water control structure, except the items below.

The instructions to the credit form provide that restoration does not include:

1. Routine care (*e.g.*, cutting grass).
2. Reseeding eroded embankment and shore areas.
3. Removing bush and small trees up to 4 inches in diameter from a dam.
4. Replacing stop logs or flash boards with identical components.
5. Sealing cracks in spillway slabs.
6. Replacing trash guards.
7. Replacing or repairing any component of a water supply or irrigation system when the work is done on a component that is not part of the dam, water impoundment, or their appurtenant works.
8. Any other work that does not improve the capacity, service, or safety of a water impoundment or water control structure.

16. Textile Revitalization Credits

a. General Provisions

A taxpayer is allowed a credit against either income taxes imposed under Chapter 6 of Title 12 or real property taxes for rehabilitation expenses incurred in the renovation, improvement, or redevelopment of an abandoned¹⁵⁶ textile mill in South Carolina.¹⁵⁷ For

purposes of this credit, “rehabilitation expenses,” are expenses incurred in the rehabilitation of the eligible site,¹⁵⁸ excluding the cost of acquiring the eligible site or the cost of personal property maintained at the eligible site.¹⁵⁹

The type of credit and amount is:¹⁶⁰

1. An “income tax credit”¹⁶¹ equal to 25% of the rehabilitation expenses or
2. A “real property tax credit”¹⁶² equal to 25% of the rehabilitation expenses made to the eligible site times the local taxing entity ratio¹⁶³ for each local taxing **entity**¹⁶⁴ consenting to the credit, up to 75% of the real property taxes due on the site each year.¹⁶⁵

The taxpayer elects whether to claim the income tax credit or the real property tax credit.¹⁶⁶ There is no formal procedure to elect the income tax credit; it is simply claimed on the taxpayer’s income tax return. To elect the property tax credit, the taxpayer must provide written notification to the South Carolina Department of Commerce prior to the date the eligible site is

¹⁵⁶SC Code §6-32-30(1). “Abandoned” means at least 80% of the facilities of the eligible site has been continuously closed to business or nonoperational for at least one year immediately prior to the time the determination is to be made.

¹⁵⁷Chapter 32, Title 6 contains the South Carolina Textile Communities Revitalization Act. The credits apply to eligible sites placed in service on or after July 1, 2004, and to rehabilitation expenses incurred, without regard to the date incurred. This Act is repealed on July 1, 2014.

¹⁵⁸SC Code §6-32-30(2). “Eligible site” is a site that is designed for use or has been used as a textile manufacturing facility or uses ancillary to it and is located in South Carolina.

¹⁵⁹SC Code §6-32-30(6).

¹⁶⁰SC Code §6-32-40.

¹⁶¹SC Code §6-32-40(A)(2).

¹⁶²SC Code §6-32-40(A)(1).

¹⁶³SC Code §6-32-30(4). “Local taxing entity ratio” is the percentage computed by dividing the millage rate of each local taxing entity by the total millage rate for the eligible site.

¹⁶⁴SC Code §6-32-30(3). “Local taxing entities” is a county, municipality, school district, special purpose district, and any other entity or district with the power to levy ad valorem property taxes against the eligible site.

¹⁶⁵SC Code §6-32-40(B)(1).

¹⁶⁶SC Code §6-32-40(D).

placed in service.¹⁶⁷ If the taxpayer does not affirmatively make the property tax credit election timely in writing before the date the site is placed in service¹⁶⁸ or does not obtain the required county approvals in SC Code §6-32-40(B), then the taxpayer is deemed to have elected the income tax credit.¹⁶⁹

b. Income Tax Credit

The income tax credit is claimed in equal installments over a 5 year period beginning with the year the property is placed in service. Any unused credit may be carried forward for 5 years.¹⁷⁰ The credit is claimed on Form TC-23, “Credit for Textiles Rehabilitation.”

A partnership or limited liability company taxed as a partnership may pass the credit earned to each partner or member in any manner agreed to by the partners or members, including an allocation of the entire credit to one partner or member.¹⁷¹ An S corporation must first use the credit against its own income tax liability, if any, before passing the credit through to its shareholders based on their percentage of stock ownership.¹⁷²

Note: A taxpayer may claim this income tax credit in addition to the credit for rehabilitation of a certified historic structure allowed under South Carolina Code §12-6-3535.¹⁷³

c. Property Tax Credit

If a taxpayer elects the property tax credit, the municipality (or county if the site is located in an unincorporated area) must determine the eligibility of the site and the proposed project. A majority vote of the local governing body must approve the project by resolution, and the determinations and the final approval must be by public hearing and ordinance.¹⁷⁴

¹⁶⁷For questions regarding the property tax credit election notification, contact the South Carolina Department of Commerce at 803-737-0448.

¹⁶⁸SC Code §6-32-30(5). “Placed in service” is the date the eligible site is suitable for occupancy for the purposes intended.

¹⁶⁹SC Code §6-32-40(D).

¹⁷⁰SC Code §6-32-40(C)(1).

¹⁷¹SC Code §6-32-40(C)(3).

¹⁷²SC Code §6-32-40(C)(2).

¹⁷³SC Code §6-32-40(C)(4).

¹⁷⁴SC Code §6-32-40(B)(1).

No later than 45 days before holding the public hearing, the governing body of the municipality or county must give notice to all taxing entities where the site is located of its intention to grant the tax credit. If the local taxing entity does not file an objection, it is deemed to have consented to the credit if the actual tax credit does not exceed the credit stated in the public hearing notice.¹⁷⁵

The ordinance shall allow the credit to be taken against up to 75% of the real property taxes due on the site each year not to exceed 8 years.¹⁷⁶ The credit vests in the taxpayer in the year in which the eligible site is placed in service. The credit may be carried forward up to 8 years.¹⁷⁷

17. Credit for Rehabilitation of a Certified Historic Structure

A taxpayer is allowed a credit equal to 10% of the qualified rehabilitation expenditures for a certified historic structure located in South Carolina that qualify for the federal rehabilitation credit provided in Internal Revenue Code Section 47.¹⁷⁸ The credit is claimed in equal amounts over a 5 year period beginning with the year that the property is placed in service.¹⁷⁹ Any unused credit may be carried forward for the succeeding 5 years.¹⁸⁰ To claim this credit, the taxpayer must attach to the South Carolina income tax return a copy of the appropriate federal forms showing the amount of federal rehabilitation credit claimed.¹⁸¹ This credit is claimed on Form TC-21, "Credit for a Certified Historic Structure Placed in Service after June 30, 2003."

An S corporation, limited liability company, or partnership that qualifies for the rehabilitation of a certified historic structure credit may pass the credit earned through to each shareholder, member, or partner. The amount of the credit allowed a shareholder, member, or partner is equal to the shareholder's percentage of stock ownership, member's interest in the limited liability company, or partner's interest in the partnership for the taxable year multiplied

¹⁷⁵SC Code §6-32-40(B)(2).

¹⁷⁶SC Code §6-32-40(B)(1).

¹⁷⁷SC Code §6-32-40(B)(3).

¹⁷⁸SC Code §12-6-3535(A). This credit is effective for taxable years beginning after 2002, for property placed in service after June 30, 2003. SC Code §12-6-3535(B) contains a similar credit, a credit for rehabilitation of a certified historic residential structure. Since it is available to individual taxpayers that do not qualify for the federal rehabilitation credit, it is not discussed in this corporate portfolio.

¹⁷⁹SC Code §12-6-3535(C)(1). "Placed in service" means the rehabilitation is completed and allows for the intended use.

¹⁸⁰SC Code §12-6-3535(C)(1).

¹⁸¹SC Code §12-6-3535(A).

by the amount of the credit earned by the entity. The credit earned pursuant to this section by an S corporation owing corporate level income tax must first use the credit earned at the entity level. Only the remaining credit passes through to each shareholder.¹⁸²

The terms “taxpayer,” “qualified rehabilitation expenditures,” and “certified historic structure” have the same meaning as provided in Internal Revenue Code Section 47 and the applicable treasury regulations.¹⁸³

Other credit provisions include:

1. Additional work done by the taxpayer while the credit is being claimed, for a period of up to 5 years, must be consistent with the Secretary of the Interior’s Standards for Rehabilitation. During this period, the State Historic Preservation Officer may inspect and review additional work to the certified historic structure. If this work is not consistent with the Standards for Rehabilitation, the taxpayer and Department must be notified in writing and any unused portion of the credit, including carry forward, is forfeited.¹⁸⁴
2. The South Carolina Department of Archives and History has developed an application and certification process.¹⁸⁵ A copy of the application and certification information can be obtained from the South Carolina Department of Archives and History.¹⁸⁶ A taxpayer may appeal a decision of the State Historic Preservation Officer to a committee of the State Review Board.¹⁸⁷

18. Habitat Management Credit

A taxpayer may claim an income tax credit equal to 50% of the costs incurred for habitat management or construction and maintenance of improvements on real property that are made to land described in SC Code §50-15-55(A) as a certified management area for endangered species, or of species in need of management, and which meets the requirements of regulations promulgated by the Department of Natural Resources.¹⁸⁸ To qualify for the credit, all costs must

¹⁸²SC Code §12-6-3535(C)(2).

¹⁸³SC Code §12-6-3535(A).

¹⁸⁴SC Code §12-6-3535(D).

¹⁸⁵SC Code §12-6-3535(E).

¹⁸⁶See Section .11 Worksheet 1 for contact information.

¹⁸⁷SC Code §12-6-3535(F).

¹⁸⁸SC Code §12-6-3520. This credit is available only if, in the opinion of the Department, sufficient funding is available to fund the credit. Currently, the Department of Natural Resources is in the process of drafting regulations setting forth the credit requirements.

be incurred on land that has been designated as a certified management area for endangered species provided in SC Code §50-15-40 or for nongame and wildlife species determined to be in need management under SC Code §50-15-30.

The credit must be claimed in the year that the costs are incurred and may not exceed 50% of the taxpayer's income tax liability. Any credit generated by an S corporation must be used first against any tax liability of the S corporation and any remaining credit passes through to the shareholders. Any unused credit can be carried forward 10 years.

Rules exist requiring recapture of the credit. If the landowner voluntarily chooses to leave the agreement made concerning the certified areas after taking the tax credit, then the taxpayer's tax liability for the current tax year must be increased by the full amount of the credit previously claimed.

Note: The Department of Natural Resources is in the process of promulgating regulations concerning this credit. Until regulations are promulgated, the credit is not available.

19. Venture Capital Investment Tax Credit Certificates

The Venture Capital Investment Act of South Carolina is designed to increase the availability of funding to emerging, expanding, relocating, and restructuring enterprises within South Carolina.¹⁸⁹ In general, the South Carolina Venture Capital Fund will receive loans from lenders, *i.e.*, a banking institution subject to bank tax under Chapter 11, Title 12, an insurance company subject to a state insurance premium tax liability under Chapter 7, Title 38, or a captive insurance company regulated under Chapter 90, Title 38.¹⁹⁰ The money will be placed with qualifying investors that will invest the money in qualifying South Carolina businesses and receive stock, partnership interests, or other rights evidencing ownership in the business.¹⁹¹ The Fund must be located within the Department of Commerce.¹⁹²

If the Fund has insufficient monies to repay a principal or interest payment due, the Board of Directors of the Fund will issue a tax credit certificate¹⁹³ that states the amounts, year, and conditions of a tax credit¹⁹⁴ to meet the obligation. The tax credit may be used to offset a

¹⁸⁹The Venture Capital Investment Act of South Carolina is contained in Title 11, Chapter 45.

¹⁹⁰SC Code §11-45-30(11).

¹⁹¹SC Code §§11-45-30(3), 11-45-30(5), and 11-45-70.

¹⁹²SC Code §11-45-40(C). Questions concerning the Fund should be addressed to the South Carolina Department of Commerce at 803-737-1115.

¹⁹³SC Code §11-45-30. "Certificate" means a document executed by the fund verifying a tax credit for any year to which a lender is entitled.

¹⁹⁴SC Code §11-45-30(9). "Tax credit" means a credit against a lender's bank tax liability under Chapter 11, Title 12, insurance premium tax liability under Chapter 7, Title 38, or other tax liability under Title

lender's South Carolina bank tax liability or insurance premium tax liability. Any unused credit may be carried forward indefinitely; the credit is not refundable.¹⁹⁵ Further, the tax credit may be transferred among bank or insurance company lenders for consideration and then used by the subsequent holder.¹⁹⁶

The Board of Directors of the Fund must insure that no more than \$50 million in tax credits are issued and outstanding at any time, and that only \$20 million of tax credits may be used in a single year. Any tax credit certificates issued in one year but carried forward and redeemed in a subsequent year do not count against the \$20 million limitation.¹⁹⁷

20. Palmetto Seed Capital Corporation or Palmetto Seed Capital Fund Limited Partnership Investment Credit¹⁹⁸

A taxpayer is allowed a credit¹⁹⁹ against income taxes or bank taxes imposed under Title 12, or insurance premium taxes imposed under Chapter 7 of Title 38 for qualified investments in the Palmetto Seed Capital Corporation or the Palmetto Seed Capital Fund Limited Partnership.²⁰⁰ The credit is equal to the lesser of: (a) all qualified investments during the tax year multiplied by 30%, plus any credit carryover or (b) 50% of all qualified investments during all tax years multiplied by 30%.

The use of the credit is limited to the taxpayer's tax liability for the year, after the application of all other credits. Any unused credit may be carried forward 10 years from the date of the qualified investment. The credit is claimed on Form TC-7, "Palmetto Seed Capital Credit." To receive the credit, the taxpayer must attach to the return a copy of Form TC-7-A, "Statement of Qualified Investment in Palmetto Seed Capital Limited Partnership or Palmetto Seed Capital Corporation," issued by the corporation indicating the taxpayer's qualified

38, as the case may be, or in the case of a repeal or reduction by the State of the tax liability imposed by these sections, any other tax imposed upon such a lender by this State.

¹⁹⁵SC Code §11-45-50(C).

¹⁹⁶SC Code §11-45-50(D).

¹⁹⁷SC Code §11-45-50(E).

¹⁹⁸Note: 2004 Act No. 187, Section 6 provided that Chapter 44, Title 41, containing the Palmetto Seed Capital Fund Limited Partnership, is repealed once the President of the Palmetto Seed Capital Corporation certifies to the Secretary of State that the remaining investments of the private sector limited partners of the Palmetto Seed Capital Fund Limited Partnership have been liquidated. Any remaining public assets and liabilities of the Palmetto Seed Capital Corporation are transferred to the South Carolina Venture Capital Fund. As of April 2005, the President of the Palmetto Seed Fund Capital Corporation has informed the Department that the fund has not been liquidated and investments qualifying for the credit may still be made.

¹⁹⁹SC Code §12-6-3430.

²⁰⁰The terms are defined in SC Code §41-44-10.

investment. Form TC-7-A must be mailed to the Department on or before the 15th day of the third month following the month the qualified investment is purchased and mailed to the purchaser on or before the 15th day of the second month following the month in which the qualified investment is purchased.

If a qualified investment is redeemed by the fund or the corporation within 5 years of the date it is purchased, the taxpayer must report the redemption to the Department. The credit allowed for the current year is disallowed and a credit previously taken must be recaptured on the return filed for the period the redemption occurred.

21. Motion Picture Project Credit

An income tax credit is available equal to 20% of a taxpayer's cash investment in a company that develops or produces a qualified South Carolina motion picture project.²⁰¹ For a motion picture equity fund created for the sole purpose of facilitating a slate of qualified South Carolina motion pictures projects, the credit is allocated to the fund based upon 20% of the cash value of its investment in a qualified South Carolina motion picture project. The credit is distributed to equity fund members based on their ownership interest.²⁰²

To qualify for the credit, a taxpayer and the project must meet the following criteria:²⁰³

1. The taxpayer must invest cash in a company that develops or produces a qualified South Carolina motion picture project intended for commercial exploitation.²⁰⁴ Only cash investments qualify for the credit. The taxpayer is the person who invests in a qualified South Carolina motion picture project.²⁰⁵ For purposes of a motion picture equity fund created for the sole purpose of facilitating a slate of qualified motion picture projects, the taxpayer is the person (*e.g.*, investor, partner, member, or shareholder) who invests in the motion picture equity fund.

Comment: It is not clear from SC Code §§12-6-3570(A) and (F)(6)(a) whether the taxpayer is the person who invests in a company that develops or produces a qualified motion picture project or is the person who invests in a qualified motion picture project. Until legislation clarifies the definition of taxpayer, it is the author's opinion that only owners (*i.e.*, C corporations, S corporations, individuals, etc.) of a pass

²⁰¹ SC Code §12-6-3570(A). Note: A similar credit contained in SC Code §12-6-3510 was repealed effective July 1, 2004.

²⁰² SC Code §12-6-3570(F)(6)(c).

²⁰³ SC Code §12-6-3570(F).

²⁰⁴ SC Code §12-6-3570(A).

²⁰⁵ SC Code §12-6-3570(F)(6)(a).

through entity (*i.e.*, partnership, S corporation, or limited liability company taxed as a partnership) may qualify for this credit. See *Ellis v. South Carolina Tax Comm.* and Section .05 C. 3. of this portfolio.

2. The motion picture project must submit all required documentation to the South Carolina Department of Commerce. Upon recommendation of the South Carolina Film Commission, a division of the Department of Commerce, and, if appropriate, the Coordinating Council for Economic Development at the Department of Commerce, will certify the motion picture project as an eligible project.²⁰⁶
3. The qualified South Carolina motion picture project must register with the Department and submit a record of allocation of credits and documentation required to meet the credit requirements.
4. The project must incur at least \$250,000 of costs directly in South Carolina to produce a master negative motion picture for theatrical or television exhibition in the United States. At least 20% of the filming days of principal photography, but not less than 10 filming days, must be in South Carolina.
5. The cash investment must be expended for: (a) services performed in South Carolina, (b) tangible personal property dedicated for first use in South Carolina, or (c) real property in South Carolina.

A taxpayer's total credit for a single project is limited to \$100,000 for all years.²⁰⁷ This credit, when combined with all the taxpayer's other South Carolina income tax credits, cannot exceed 50% of the taxpayer's South Carolina income tax liability.²⁰⁸ Any unused credit can be carried forward for 15 years.²⁰⁹ The credit is earned when the cash is spent. If, however, the motion picture project does not meet the statutory requirements within 3 years from the end of the taxpayer's tax year when the credit was first claimed, then the taxpayers who claimed the credit must increase their income tax liability in the fourth year by the amount of the credits previously claimed.²¹⁰ The credit is claimed on Form TC-25, "Motion Picture Credits."

²⁰⁶For credit application and certification procedures, contact the South Carolina Film Commission at 803-737-0490.

²⁰⁷SC Code §12-6-3570(A).

²⁰⁸SC Code §12-6-3570(D).

²⁰⁹SC Code §12-6-3570(A).

²¹⁰SC Code §12-6-3570(C).

22. Motion Picture Production Facility Credit

An income tax credit is available equal to 20% of the taxpayer's investment in a company that constructs, converts, or equips a motion picture production facility or post production facility in South Carolina. The total credit claimed by all taxpayers for a single motion picture production facility or post production facility is limited to \$5 million for all years.²¹¹

To qualify for the credit, a taxpayer²¹² and the project must meet the following criteria:

1. The taxpayer's investment is cash and/or the fair market value of real property, including any improvements. The taxpayer is the person who invests in the company that constructs, converts, or equips a qualified South Carolina motion picture production facility or post production facility.²¹³
2. Investments in cash must be expended for: (a) services performed in South Carolina, (b) tangible personal property dedicated for first use in South Carolina, or (c) real property in South Carolina. Investments in the form of real property must be located in South Carolina on which facilities are located and can include the fair market value of a 36 month or greater lease less the fair market value of any consideration paid for the lease.²¹⁴
3. The total investment in the motion picture production facility must be at least \$2 million, excluding land costs. The total investment in a post production facility must be at least \$1 million, excluding land costs.²¹⁵
4. Application for the credit is made to the South Carolina Department of Commerce. Documentation must be provided to them to confirm the total amount invested.²¹⁶
5. A taxpayer may claim the credit only one time in connection with a single motion picture production facility and only one time for a single post production facility.²¹⁷

²¹¹SC Code §12-6-3570(B). Note: A similar credit contained in SC Code §12-6-3510 was repealed effective July 1, 2004.

²¹²SC Code §12-6-3570(F)(6)(b) defines taxpayer as the person who invests in the company that constructs, converts, or equips a qualified South Carolina motion picture production facility.

²¹³SC Code §12-6-3570(F)(1).

²¹⁴SC Code §12-6-3570(F)(1).

²¹⁵SC Code §12-6-3570(B)

²¹⁶SC Code §12-6-3570(B). For credit application and certification procedures, contact the South Carolina Film Commission at 803-737-0490.

²¹⁷SC Code §12-6-3570(B).

The terms “motion picture production facility” and “post production facility” are defined.²¹⁸ “Motion picture production facility” means a site in this State that contains soundstages designed for the express purpose of film and television production for both theatrical and video release. Production includes, but is not limited to, motion pictures, made for television movies, and episodic television to a national or regional audience. The motion picture production facility site must include production offices, construction shops/mills, prop and costume shops, storage area, and parking for production vehicles, all of which complement the production needs and orientation of the overall facility purpose. The term does not include television stations, recording studios, or facilities predominately used to produce videos, commercials, training films, or advertising films.

“Post production facility” means a site in this State designated for the express purpose of accomplishing the post production stage of film and television production for both theatrical and video release including the creation of visual effects, editing, and sound mixing. A post production facility site is not required to contain a soundstage or be physically located at or near soundstages.

This credit, when combined with all the taxpayer’s other South Carolina income tax credits, cannot exceed 50% of the taxpayer’s South Carolina income tax liability.²¹⁹ Any unused credit can be carried forward for 15 years.²²⁰ The credit is earned when the cash is spent or when qualifying real property is dedicated for use as part of a motion picture production facility or post production facility. If, however, the motion picture production facility or post production facility does not meet the statutory requirements within 3 years from the end of the taxpayer’s tax year when the credit was first claimed, then the taxpayer must increase its income tax liability in the fourth year by the amount of the credits previously claimed.²²¹ The credit is claimed on Form TC-25, “Motion Picture Credits.”

23. Commercial Production Credit

An income tax credit is available to a production company producing a commercial for multi-market distribution via television networks, cable, satellite, or motion picture theaters equal to 10% of its South Carolina investment in the commercial.²²² Any unused credit may be carried forward for 10 years.²²³ The credit is claimed on Form TC-24, “Commercial Credit.”

²¹⁸SC Code §12-6-3570(F).

²¹⁹SC Code §12-6-3570(D).

²²⁰SC Code §12-6-3570(B).

²²¹SC Code §12-6-3570(C).

²²²SC Code §12-6-3560(A)(1).

²²³SC Code §12-6-3560(A)(2).

The following requirements apply to the credit:²²⁴

1. The credit is available to a company producing an advertisement, composed of moving images and words, that is recorded on film, videotape, or digital medium in South Carolina. It is not available to a company producing industrial videos, television broadcasts, cable and satellite networks, or news sporting events.
2. The production company's total base investment in a state certified commercial production must exceed \$500,000 during the calendar year.
3. The production company must apply to and obtain certification of the production from the South Carolina Department of Commerce based on project qualification criteria determined by the Secretary of the Department of Commerce and the South Carolina Film Commission, a division of the Department of Commerce.²²⁵
4. The State has \$1 million in total tax credits to disburse annually to all eligible companies. The amount disbursed is based on the order of approval of the company's application by the Department of Commerce. Once a company is certified, the Department of Commerce will notify the production company and the Department.

24. Recycling Facility Tax Credit

A taxpayer constructing or operating a qualified recycling facility is allowed a 30% credit each year for an investment in recycling property.²²⁶ Recycling property is property incorporated into or associated with a qualified recycling facility. The credit may be used to reduce corporate income tax, sales and use tax imposed by the State or any political subdivision of the State, corporate license fees imposed by SC Code §12-20-50, and any similar tax.²²⁷

In order to qualify as a "qualified recycling facility" the facility must:

1. Manufacture products composed of 50% or more postconsumer waste material, such as scrap metal and iron, used plastics, paper, glass, and rubber.

²²⁴SC Code §12-6-3560(A)(1).

²²⁵For credit application and certification procedures, contact the South Carolina Film Commission at 803-737-0490.

²²⁶SC Code §12-6-3460.

²²⁷SC Code §12-6-3465 also provides a credit for use against these taxes equal to the amount of its job development credits collected under SC Code §12-10-80. The unused credit may be carried forward to subsequent taxable years until such credit is exhausted.

2. Invest at least \$300 million in the acquisition, construction, erection, and installation of real and personal property by the end of the 5th year after the first year of construction or operation.
3. Receive certification from the Department that the facility is a qualified recycling facility.

Any unused credit may be carried forward indefinitely. If the facility does not meet the required minimum investment, all credits must be recaptured. The credit is claimed on Form TC-17, "Recycling Property Tax Credit."

25. Voluntary Environmental CleanUp Credit

A corporation is allowed a credit against corporate income taxes equal to 50% of the voluntary cleanup expenses paid or accrued for environmental contamination site cleanup, or cash contributions to the cleanup, for industrial and commercial site rehabilitation conducted during the tax year pursuant to the Brownfields Voluntary Cleanup Program.²²⁸ The total credit is limited to \$50,000 per tax year.²²⁹ In the final year of cleanup, as evidenced by DHEC issuing a certificate of completion for the site, the taxpayer is allowed an additional 10% of the total cleanup costs, not to exceed \$50,000.²³⁰ Multiple taxpayers working jointly to clean up a single site are allowed the credit in the same proportion as their contribution to payment of cleanup costs. Any unused credit up to \$100,000 may be carried forward 5 years.²³¹ The credit is claimed on Form TC-20, "Credit for Expenses Incurred Through Brownfields Voluntary Cleanup Program."

Requirements concerning the credit include:

1. To qualify for the credit, the taxpayer must have entered into a nonresponsible party voluntary cleanup contract with the South Carolina Department of Health and Environmental Control (DHEC) pursuant to SC Code Section 44-56-750.²³²

²²⁸The Brownfields Voluntary Cleanup Program is contained in SC Code Title 44, Chapter 56, Article 7.

²²⁹SC Code §§12-6-3550(A) and (B). This credit is available for eligible cleanup expenses incurred after 2001, for taxpayers receiving a certification of completion from the SC Department of Health and Environmental Control after May 28, 2002.

²³⁰SC Code §12-6-3550(C).

²³¹SC Code §12-6-3550(B).

²³²SC Code §12-6-3550(D).

2. The credit is available only for site rehabilitation conducted during tax year a tax credit application is submitted to DHEC.²³³ The taxpayer must file a tax credit application with DHEC annually in order to obtain a tax credit certificate. The tax credit application and required documentation must be received by DHEC by December 31. Information included with the application form must include: (a) copies of contracts, invoices or payment records involving the actual costs incurred for the tax year related to the site rehabilitation and (b) a copy of an independent certified public accountant report attesting to the accuracy and validity of the costs.²³⁴
3. DHEC will issue a tax credit certificate upon review of the application and documentation before April 1st if it determines that the applicant has met all requirements. The taxpayer must pay DHEC's administrative review costs pursuant to SC Code Section 44-56-750(D).²³⁵
4. DHEC may revoke or modify any written decision granting eligibility for partial tax credits if it is discovered that the taxpayer submitted false information. DHEC and the taxpayer will notify the SC Department of Revenue any change in the tax credit claimed.²³⁶

26. Credit Against License Tax for Infrastructure

See Section .08 F. 2. of this portfolio for a discussion of this license fee credit.

C. Deferral of Tax on Income Attributable to Foreign Trade Receipts

A taxpayer is allowed up to a 5 year deferral of payment of South Carolina income tax on income attributable to the increase in gross income from foreign trading receipts.²³⁷ The term "foreign trading receipts" is defined as receipts from invoices issued by a seller directly to an unrelated purchaser outside the United States from: (a) the sale, exchange, or other disposition of export property outside the United States, (b) the lease or rental of export property that is used by the lessee outside the United States, (c) the performance of services that is related and subsidiary to the sale, exchange, lease, rental, or other disposition of export property outside the United States by the South Carolina taxpayer including, but not limited to, maintenance and training services, or (d) the performance of engineering, architectural, or consulting services for projects located outside the United States. The term "export property" is defined as property manufactured, produced, grown, or extracted to which value is added in this State for direct use, consumption, or disposition outside the United States.

²³³SC Code §12-6-3550(B).

²³⁴SC Code §12-6-3550(E).

²³⁵SC Code §12-6-3550(F).

²³⁶SC Code §12-6-3550(H).

²³⁷SC Code §12-6-2810 et seq.

The taxpayer may continue to defer taxes until the earlier of: (a) the taxpayer intentionally ceasing to export property or (b) after 3 taxable years in which the taxpayer has no gross income from foreign trading receipts. All deferred tax payments attributable to a particular tax year, however, are due and payable no later than the annual return filing date for the 5th taxable year following the taxable year the payment was deferred. No deferral is allowed, however, if the average annual gross income from foreign trading receipts over the previous 3 taxable years exceeds \$5 million. The taxpayer should file Schedule TD-1 to defer income taxes on the increase in gross income from foreign trade receipts.

The taxpayer must pay interest annually at the base period T-bill rate on the aggregate deferred tax. If the taxpayer fails to pay the interest required, all taxes deferred under this section are due and payable on the date of the unpaid interest. The Internal Revenue Service publishes a list of the base period T-bill rates in a revenue ruling annually.