

South Carolina General Assembly
122nd Session, 2017-2018

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Bill 58

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COMMITTEE AMENDMENT ADOPTED AND AMENDED

January 26, 2017

S. 58

Introduced by Senators J. Matthews, Hutto, Johnson, Malloy, M.B. Matthews and Williams

S. Printed 1/26/17--S. [SEC 1/27/17 12:14 PM]

Read the first time January 10, 2017.

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE "PORT ENHANCEMENT ZONE ACT"; TO AMEND SECTION 12-6-3360, AS AMENDED, RELATING TO THE JOB TAX CREDIT, SO AS TO PROVIDE FOR A PORT ENHANCEMENT ZONE; TO AMEND SECTION 12-6-3367, RELATING TO THE MORATORIUM ON CERTAIN TAXES FOR CERTAIN TAXPAYERS, SO AS TO EXTEND THE MORATORIUM TO TAXPAYERS CREATING AT LEAST FIFTY NEW FULL-TIME JOBS IN A PORT ENHANCEMENT ZONE; TO AMEND SECTION 12-6-3375, AS AMENDED, RELATING TO THE TAX CREDIT FOR PORT CARGO VOLUME INCREASE, SO AS TO INCREASE THE MAXIMUM ANNUAL CREDIT AMOUNT FROM EIGHT MILLION TO NINE MILLION DOLLARS AND TO PROVIDE THAT ONE MILLION DOLLARS MAY BE AWARDED TO A NEW WAREHOUSE OR DISTRIBUTION FACILITY THAT MEETS CERTAIN REQUIREMENTS AND EMPLOYS AT LEAST FIFTY NEW FULL-TIME JOBS IN A PORT ENHANCEMENT ZONE; TO AMEND SECTION 12-10-80, AS AMENDED, RELATING TO JOB DEVELOPMENT CREDITS, SO AS TO ALLOW EIGHTY-FIVE PERCENT OF THE MAXIMUM CREDIT TO BE CLAIMED BY BUSINESSES LOCATED IN A PORT ENHANCEMENT ZONE; TO AMEND SECTION 12-14-60, RELATING TO THE INVESTMENT TAX CREDIT, SO AS TO DOUBLE THE AMOUNT OF THE CREDIT FOR ANY QUALIFIED MANUFACTURING AND PRODUCTIVE EQUIPMENT PROPERTY LOCATED IN A PORT ENHANCEMENT ZONE; AND TO AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO EXEMPTIONS FROM THE STATE SALES TAX, SO AS TO EXTEND THE EXEMPTION FOR MATERIALS HANDLING TO A TAXPAYER THAT INVESTS AT LEAST TWENTY MILLION DOLLARS IN A PORT ENHANCEMENT ZONE, AND TO EXTEND THE EXEMPTION FOR

CONSTRUCTION MATERIALS TO A TAXPAYER THAT INVESTS AT LEAST FORTY MILLION DOLLARS, IN REAL AND PERSONAL PROPERTY, IN A PORT ENHANCEMENT ZONE.

Amend Title To Conform

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

SECTION 1. This act may be cited as the "Port Enhancement Zone Act".

SECTION 2. A. Section 12-6-3360(E)(1) of the 1976 Code is amended to read:

"(1) Taxpayers which qualify for the job tax credit provided in subsection (C) and which are 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 Constitution of this State or in a port enhancement zone as defined in subsection (M) are allowed an additional one thousand dollar credit for each new full-time job created. This additional credit is permitted for five years beginning in the taxable year following the creation of the job."

B. Section 12-6-3360(M) of the 1976 Code, as last amended by Act 256 of 2016, is further amended by adding an appropriately numbered item to read:

"() 'Port enhancement zone' means an area that as of January 1, 2015, meets all of the following conditions:

- (a) it is comprised of one or more contiguous census tracts as defined by the United States Census Bureau's American Community Survey in 2014;
- (b) all of the area is located within a twenty-three mile radius of the intersection of two interstate highways that is no more than sixty miles from the Port of Charleston and is capable of being used to enhance port operations;
- (c) every census tract that comprises the area has at least eighteen percent of households with incomes of fifteen thousand dollars or less; and
- (d) all of the area is in a county ranked as either Tier III or IV, provided that a census tract in a Tier I or II county with at least thirty-five percent of households with incomes of fifteen thousand or less also qualifies if it meets all of the other conditions of this subsection.

The area of a county that is included in one or more port enhancement zones must not exceed five percent of the total area of the county. Upon application of a county, the Secretary of Commerce shall make a written determination whether an area is a port enhancement zone that satisfies the conditions of this item. The application must include all of the information listed in this subsection. A determination pursuant to this section is effective until December thirty-first of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all port enhancement zones with a description of their boundaries, including:

- (i) a map showing the census tracts that would comprise the zone;
- (ii) a detailed description of the boundaries of the area that would comprise the zone;
- (iii) a certification regarding the size of the proposed zone;
- (iv) detailed census information on the county and the proposed zone;
- (v) a resolution of the board of county council requesting the designation of the area as a port enhancement zone; and

(vi) any other material required by the Secretary of Commerce."

SECTION 3. Section 12-6-3367(A) and (B) of the 1976 Code are amended to read:

"(A) A taxpayer creating and maintaining at least one hundred full-time new jobs, as defined in Section 12-6-3360(M), at a facility of a type identified in Section 12-6-3360(M) or fifty new full-time jobs in a port enhancement zone as defined in Section 12-6-3360(M), may petition, utilizing the procedure in Section 12-6-2320(B), for a moratorium on state corporate income taxes imposed pursuant to Section 12-6-530 or insurance premium taxes imposed pursuant to Title 38 for the ten taxable years beginning the first full taxable year after the taxpayer qualifies and ending either ten years from that year or the year when the taxpayer's number of full-time new jobs falls below one hundred, or fifty new full-time jobs in a port enhancement zone, whichever is earlier. For purposes of insurance premium taxes, the petition pursuant to Section 12-6-2320(B) must be made to and approved by the Director of the Department of Insurance.

(B)(1) To qualify for the moratorium pursuant to subsection (A), a taxpayer shall:

(a)(i) create at least one hundred full-time new jobs at a facility in a county with an average annual unemployment rate of at least twice the state average during each of the last two completed calendar years, based on the most recent unemployment rates available, or that is one of the three lowest per capita income counties, based on the average of the three most recent years of available average per capita income data, or create fifty new full-time jobs in a port enhancement zone; and

(ii) invest at least ninety percent of its total investment in this State in the moratorium county; or

(b)(i) create at least one hundred full-time new jobs, and invest at least one hundred fifty million dollars, at a manufacturing facility in a county with an average annual unemployment rate of at least twice the state average during each of the last two completed calendar years, based on the most recent unemployment rates available, or that is one of the three lowest per capita income counties, based on the average of the three most recent years of available average per capita income data;

(ii) create at least one hundred full-time new jobs, and invest at least one hundred fifty million dollars, at a manufacturing facility in a second county which is designated as distressed, least developed, or underdeveloped pursuant to Section 12-6-3360; and

(iii) invest at least ninety percent of its total investment in this State in one or both of the counties specified in subsubitems (i) and (ii) of subsection (B)(1)(b).

(2) Taxpayers qualifying pursuant to subsection (B)(1)(b) are entitled to the moratorium for separate ten-year periods pursuant to subsection (A) for income attributable to facilities in each county, beginning with the first full taxable year after the taxpayer qualifies in the respective county and ending with respect to the income attributable to facilities in that county either ten years from that year or the year when the taxpayer's number of full-time new jobs in that county falls below one hundred, whichever is earlier. Loss of the moratorium in one county due to job reduction does not impact the moratorium for income attributable to facilities in the other county."

SECTION 4. Section 12-6-3375 of the 1976 Code, as last amended by Act 81 of 2013, is further amended to read:

"Section 12-6-3375. (A)(1) A taxpayer engaged in any of the following: manufacturing, warehousing, freight forwarding, freight handling, goods processing, cross docking, transloading, wholesaling of goods, or distribution, exported or imported through port facilities in South Carolina and which increases its port cargo volume at these facilities by a minimum of five percent in a single calendar year over its base year port cargo volume is eligible to claim an income tax credit or a credit against employee withholding in the amount determined by the Coordinating Council for Economic Development (council).

(2) The maximum amount of tax credits allowed to all qualifying taxpayers pursuant to this section may not exceed ~~eight~~ nine million dollars for each calendar year. The credits may be claimed against the taxes imposed pursuant to Sections 12-6-530 and 12-6-545 and against employee withholdings. The council has sole discretion in allocating the credits provided by this section and must consider the following factors:

- (a) the amount of base year port cargo volume;
- (b) the total and percentage increase in port cargo volume; and
- (c) factors related to the economic benefit of the State or other factors.

(3)(a) If the income tax credit exceeds the taxpayer's income tax liability for the taxable year, the excess amount may be carried forward and claimed against income taxes in the next five succeeding taxable years.

(b) If the credit against withholding taxes exceeds the taxpayer's withholding tax liability for the taxable quarter that is not otherwise refunded ~~under~~ pursuant to Title 12 of the 1976 Code, the excess amount may be carried forward and claimed against withholding liability that is not otherwise refunded ~~under~~ pursuant to Title 12 of the 1976 Code in the next twenty succeeding taxable quarters.

(B)(1) For every year in which a taxpayer claims the credit, the taxpayer shall submit an application to the council after the calendar year in which the increase in port cargo volume occurs. Allocations of the credit may be made on a monthly, quarterly, or annual basis. The taxpayer shall attach a schedule to the taxpayer's application to the council with the following information and information requested by the council or the department:

- (a) a description of how the base year port cargo volume and the increase in port cargo volume was determined;
- (b) the amount of the base year port cargo volume;
- (c) the amount of the increase in port cargo volume for the taxable year stated both as a percentage increase and as a total increase in net tons of non-containerized cargo, measurement of cargo, and TEUs of cargo, including information which demonstrates an increase in port cargo volume in excess of the minimum amount required to claim the tax credits pursuant to this section;
- (d) any tax credit utilized by the taxpayer in prior years; and
- (e) the amount of tax credit carried over from prior years.

(2) To receive the credit the taxpayer shall claim the credit on its income tax or withholding return in a manner prescribed by the department. The department may require a copy of the certification form issued by the council be attached to the return or otherwise provided.

(C) As used in this section:

(1) 'TEU' means a twenty-foot equivalent unit; a volumetric measure based on the size of a container twenty feet long by eight feet wide by eight feet, six inches high. A 'weighted TEU' is equal to seven and one-half tons. A 'measured TEU' is equal to thirty-eight and one-half cubic meters.

(2) 'Base year port cargo volume' initially means the total amount of net tons of non-containerized cargo, measured equivalent of non-cargo or TEUs of cargo actually transported by way of a waterborne ship through a port facility during the period from January first through December thirty-first of the same year. Base year port cargo volume must be at least seventy-five net tons of non-containerized cargo, three hundred eighty-five cubic meters, or ten TEUs for a taxpayer to be eligible for the credits provided in this section. For a taxpayer that does not ship that amount in the year ending December thirty-first of the

previous year, including a taxpayer who locates in South Carolina after December thirty-first of the previous year, its base cargo volume will be measured by the initial January first through December thirty-first calendar year in which it meets the requirements of seventy-five net tons of non-containerized cargo, three hundred eighty-five cubic meters, or ten loaded TEUs. Base year port cargo volume must be recalculated each calendar year after the initial base year.

(3) 'Port facility' means any publicly or privately owned facility located within this State through which cargo is transported by way of a waterborne ship or vehicle to or from destinations outside this State and which handles cargo owned by third parties in addition to cargo owned by the port facility's owner.

(4) 'Port cargo volume' means the total amount of net tons of non-containerized cargo or containers measured in twenty-foot equivalent units (TEUs) of cargo transported by way of a waterborne ship or vehicle through a port facility, or measured cubic meters of cargo.

(D) The council annually may award up to one million dollars of the nine million dollars of credits against employee withholdings that are not otherwise refundable pursuant to this title to a new warehouse or distribution facility which commits to expending at least forty million dollars at a single site and creating one hundred new full-time jobs, and the base year cargo shall not be less than five thousand TEUs or its non-containerized equivalent. The council may make the award in the year the facility is announced provided that it may not tender the certificate until it has received satisfactory proof that the capital investment and job creation requirements have, or will be, satisfied. Any credit certificate expires three years after issuance if satisfactory proof has not been received. If the credit exceeds the taxpayer's withholding tax liability for the taxable quarter that is not otherwise refundable pursuant to this title, the excess amount may be carried forward and claimed against withholding liability that is not otherwise refundable pursuant to this title in the next twenty succeeding taxable quarters.

(E) The council annually may award up to one million dollars of the nine million dollars of credits against employee withholdings that are not otherwise refundable pursuant to this title to a new warehouse or distribution facility that commits to expending at least twenty million dollars at a single site and creating fifty new full-time jobs in a port enhancement zone as defined in Section 12-6-3360(M), and the base year cargo must not be less than five thousand TEUs or its non-containerized equivalent. The council may make the award in the year the facility is announced provided that it may not tender the certificate until it has received satisfactory proof that the capital investment and job creation requirements have been, or will be, satisfied. A credit certificate expires three years after issuance if satisfactory proof has not been received. If the credit exceeds the taxpayer's withholding tax liability for the taxable quarter that is not otherwise refundable pursuant to this title, the excess amount may be carried forward and claimed against withholding liability that is not otherwise refundable pursuant to this title in the next twenty succeeding taxable quarters.

(F)(1) A taxpayer engaged in the movement of goods imported or exported through South Carolina's port facilities may be eligible for the port volume tax credit if the cargo supports a presence in the State and the taxpayer does not have a distribution center in the State at the time of initial approval of the port volume tax credit, so long as:

(a) the taxpayer employs at least two hundred and fifty full-time or full-time equivalent South Carolinians in operations statewide;

(b) the taxpayer completes the construction of the distribution facility in South Carolina, and is operational, within five years of the initial approval of the port volume tax credit; and

(c) the base year for the taxpayer shall be not less than five thousand TEUs or its non-containerized equivalent.

(2) Any credit certificate expires three years after issuance if satisfactory proof has not been received.

~~(F)~~(G) The council has discretion to award the credits pursuant to either subsection (D), ~~or~~ (E), or (F).

~~(G)~~(H) Notwithstanding Section 12-54-240, the department and the Department of Commerce may exchange information submitted by a taxpayer pursuant to this section.

~~(H)~~(I)(1) If a taxpayer receives the credit under subsection (D) but fails to meet the requirements of subsection (D) at the end of the three-year period, the taxpayer must repay the department a pro rata portion of the credits claimed.

(2) If a taxpayer receives the credit under subsection ~~(E)~~(F) but fails to meet the requirements of subsection ~~(E)~~(F)(1) at the end of the five-year period, the taxpayer must repay the department a pro rata portion of the credits claimed."

SECTION 5. Section 12-10-80(D)(1) of the 1976 Code is amended by adding a new subitem to read:

"(e) eighty-five percent or the maximum job development credits may be claimed by businesses located in a port enhancement zone, as defined in Section 12-6-3360(M)."

SECTION 6. Section 12-14-60(A) of the 1976 Code, is amended by adding a new item to read:

"(3) Notwithstanding item (2), the amount of the credit is doubled for any qualified manufacturing and productive equipment property located in a port enhancement zone as defined in Section 12-6-3360(M)."

SECTION 7. Section 12-36-2120(51) and (67) of the 1976 Code is amended to read:

"(51) material handling systems and material handling equipment used in the operation of a distribution facility or a manufacturing facility including, but not limited to, racks used in the operation of a distribution facility or a manufacturing facility and either used or not used to support a facility structure or part of it. To qualify for this exemption, the taxpayer shall notify the department before the first month it uses the exemption and shall invest:

(a) at least thirty-five million dollars in real or personal property in this State; or

(b) twenty million dollars in a port enhancement zone as defined in Section 12-6-3360(M) over the five-year period beginning on the date provided by the taxpayer to the department in its notices. The taxpayer shall notify the department in writing that it has met the ~~thirty-five million dollar~~ investment requirement or, after the expiration of the five years, that it has not met the ~~thirty-five million dollar~~ investment requirement. The department may assess any tax due on material handling systems and material handling equipment purchased tax-free pursuant to this item but due the State as a result of the taxpayer's failure to meet the ~~thirty-five million dollar~~ investment requirement. The running of the periods of limitations for assessment of taxes provided in Section 12-54-85 is suspended for the time period beginning with notice to the department before the taxpayer uses the exemption and ending with notice to the department that the taxpayer either has met or has not met the ~~thirty-five million dollar~~ investment requirement.

As used in this item (51), 'distribution facility' includes a port facility, as that term is defined in Section 12-6-3375;

(67) effective July 1, 2011, construction materials used in the construction of a new or expanded single manufacturing or distribution facility, or one that serves both purposes, with:

(a) a capital investment of at least one hundred million dollars in real and personal property at a single site in the State over an eighteen-month period, ~~or~~;

(b) at least forty million dollars in real and personal property at a single site located in a port enhancement zone as defined in Section 12-6-3360(M); or

(c) effective November 1, 2009, construction materials used in the construction of a new or expanded single manufacturing facility where:

(i) the taxpayer invests at least seven hundred fifty million dollars in real or personal property or both comprising or located at the facility over a seven-year period; and

(ii) the taxpayer creates at least three thousand eight hundred new full-time ~~new~~ jobs at the facility during that seven-year period.

To qualify for this exemption, the taxpayer shall notify the department before the first month it uses the exemption and shall make the required investment over the applicable time period beginning on the date provided by the taxpayer to the department in its notices. The taxpayer shall notify the department in writing that it has met the investment requirement or, after the expiration of the applicable time period, that it has not met the investment requirement. The department may assess any tax due on construction materials purchased tax free pursuant to this subitem but due the State as a result of the taxpayer's failure to meet the investment requirement. The running of the periods of limitations for assessment of taxes provided in Section 12-54-85 is suspended for the time period beginning with notice to the department before the taxpayer uses the exemption and ending with notice to the department that the taxpayer either has met or has not met the investment requirement.

As used in this subitem, 'taxpayer' includes a person who bears a relationship to the taxpayer as described in Section 267(b) of the Internal Revenue Code.

As used in this item (67), 'distribution facility' includes a port facility, as that term is defined in Section 12-6-3375;"

SECTION 8. This act takes effect upon approval by the Governor.

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This web page was last updated on January 27, 2017 at 12:15 PM