



License Tax Infrastructure Credit Report

SOUTH CAROLINA DEPARTMENT OF REVENUE

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History of the Credit (S.C. Code § 12-20-105)

THE EXPANSION OF TAX CREDITS FOR INDUSTRY

In the mid-1990s, the State of South Carolina began looking at new tax credits to encourage businesses, particularly medium to large manufacturers, to establish facilities in this State. This resulted in a number of revisions to existing tax credits and the enactment of new tax credits. In 1995, the Enterprise Zone Act was enacted, creating the Job Development Credit and the Worker Retraining Credit. In 1996, the Rural Development Act made additional changes to the qualification requirements of the Job Development Credit, the Jobs Tax Credit, and the Fee in Lieu of Taxes incentive to further encourage companies to locate or expand in this State.

One of the new tax credits that was added by the Rural Development Act was a tax credit that permitted a taxpayer that paid the license tax under Code Section 12-20-100 to claim a credit against their license tax liability (“License Tax Credit”) if they provided cash for a qualifying project and the cash was used to pay for eligible infrastructure.¹ The cash could be given to the county in which the qualifying project was locating or to the company operating the qualifying project, but under both scenarios the cash had to be used to pay for eligible infrastructure.

THE ORIGINAL LICENSE TAX CREDIT

Under the statute as originally written, there were three major components to the credit: (1) a taxpayer seeking the License Tax Credit that was subject to the license tax under Code Section 12-20-100; (2) a qualifying project needing infrastructure; and (3) eligible infrastructure.

To meet the first requirement for the License Tax Credit, the taxpayer had to be subject to the license tax under Code Section 12-20-100. The primary taxpayers that are subject to such a license tax are utilities such as waterworks companies, power companies, light companies, gas companies, and telephone companies (“Utility Taxpayer”).

In order to meet the second requirement of the License Tax Credit, there had to be a qualifying project for which the Utility Taxpayer was willing to provide financial support in the form of cash. To be a qualifying project, the project had to be eligible for income tax credits, job development credits, investment tax credits, or a fee in lieu of taxes.

Lastly to meet the third requirement of the License Tax Credit, the cash provided to the county or the company operating the qualifying project had to be used to pay for eligible infrastructure. Eligible infrastructure is infrastructure that is necessary, suitable, or useful to the qualifying project, and

¹ The statute providing for the License Tax Credit was originally contained in Code Section 12-6-3490 and was located in the income tax chapter of the South Carolina Code of Laws. At a later date, Code Section 12-6-3490 was repealed and the provisions of the License Tax Credit were reenacted in Code Section 12-20-105 which is now part of the license tax chapter.

includes, but is not limited to, improvements to public and private water and sewer systems, improvements to public or private electric, natural gas, and telecommunications systems, and fixed transportation facilities including highway, rail, water, and air.

A Utility Taxpayer could claim up to \$300,000 of License Tax Credit in a single year. If the credit earned during a taxable year exceeds the tax liability for the applicable tax year, the excess may be carried forward to the next taxable year. The License Tax Credit is nonrefundable and can only be used against the Utility Taxpayer's license tax liability, not income tax liability or another type of tax liability.

AMENDMENTS TO THE LICENSE TAX CREDIT

While the original three requirements of the License Tax Credit remain in place (Utility Taxpayer, Qualifying Project, Eligible Infrastructure), the License Tax Credit provisions themselves have been amended over the years.

In 1997, the License Tax Credit provisions were amended to provide that if a project consisted of an office, business, commercial, or industrial park constructed by a county or political subdivision of the State ("Park"), it would qualify as a qualifying project without having to qualify for any other tax credits or incentives. This allowed a county or political subdivision to receive cash from a Utility Taxpayer to construct roads and infrastructure in such a park in order to recruit businesses.

In 1999, the provisions were further amended to allow eligible infrastructure to include industrial shell buildings and the purchase of land for a qualifying project that consisted of a qualifying Park, further allowing the county or political subdivision to create Parks designed to attract new projects to the county or political subdivision.

In 2003, an amendment to the License Tax Credit provisions expanded qualifying Park projects to include those Parks that were owned by a county or political subdivision of the State in addition to those that were constructed by a county or political subdivision.

In 2007, amendments were made to allow the county or political subdivision to sell the industrial shell building or all or part of the industrial Park to a third party after the Utility Taxpayer had provided the cash for the infrastructure, so long as the Park was considered a qualifying project and the infrastructure consisted of eligible infrastructure at the time the cash was given to the county or political subdivision.

The License Tax Credit provisions were clarified in 2008 to further address the qualifying Park project. Additionally, the types of allowable infrastructure were expanded to include improvements for wastewater or hydrogen fuel. Eligible infrastructure was also expanded to include due diligence expenditures relating to environmental conditions relating to a qualifying Park if the expenditures were incurred after the county or political subdivision had acquired contractual rights to the Park.

In 2010 and 2012, the License Tax Credit provisions were further amended to clarify the provisions relating to qualifying projects to provide that a project located in an office, business, commercial, or industrial park, or combination of these parks, used for economic development and owned or

constructed by a county, political subdivision, or agency of this State at the time the cash was provided by the Utility Taxpayer is considered a qualifying project for purposes of the License Tax Credit. This replaced the previous statutory language concerning the qualifying Parks. Additionally, for these types of projects, eligible infrastructure was expanded to include incubator buildings, site preparation costs, and the refurbishment of buildings that are owned or controlled by a county or municipality and used exclusively for economic development. In 2012, the amount of License Tax Credit that could be claimed by a Utility Taxpayer in a single taxable year was increased from \$300,000 to \$400,000.

In 2014, an additional provision was added that allows a county or municipality owned multiuse sports and recreational complex located in a county in which at least \$5 million in state accommodations tax is collected in at least one fiscal year to qualify as an eligible project. Certain infrastructure associated with this type of qualifying project was also made eligible infrastructure.

Under the amendments to the License Tax Credit provisions, the Department of Revenue (“Department”) is required to provide a report to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Secretary of the Department of Commerce. This report must outline the history of the credit and include the amount of credit allowed and the types of infrastructure provided to qualifying projects.

COMFORT LETTERS

Shortly after the Rural Development Act was passed and the License Tax Credit provisions became effective, Utility Taxpayers, particularly electric cooperatives, began forwarding requests to the Department asking the Department to provide informal written advice that the project was a qualifying project for purposes of the License Tax Credit and that the infrastructure met the requirements for eligible infrastructure. The Department has developed a procedure to handle these requests and issues informal written advice to Utility Taxpayers making such requests. By statute, the Department is allowed to charge \$35 for each comfort letter. While a Utility Taxpayer may request advice through a comfort letter as to whether the project and infrastructure qualify for the License Tax Credit, a Utility Taxpayer is not required to obtain a comfort letter and may still claim the License Tax Credit on its return even if it does not obtain a comfort letter.

SUMMARY OF CURRENT LAW

The License Tax Credit under S.C. Code § 12-20-105 allows a utility company who pays the license tax required by S.C. Code § 12-20-100 a credit against its corporate license fee liability for 100 percent of the amount paid in cash for eligible infrastructure for a qualifying project. The qualifications for the credit are:

- The taxpayer must be a company subject to the license fee under S.C. Code § 12-20-100, such as a power, water, gas, or telephone company
- The taxpayer must give cash for a qualifying project. The types of qualifying projects include:

- Projects that qualify for specific tax credits, such as job development credits, job tax credits, fee in lieu, etc.;
 - Projects such as an office, business, commercial, and/or industrial Park used exclusively for economic development and owned or constructed by a county, political subdivision, or agency of the State; and
 - For certain counties, i.e., those counties that collect at least \$5 million in state accommodations tax in at least one fiscal year, a project can include a qualifying multiuse sports and recreation complex.
- The cash must be used to pay for eligible infrastructure within a qualifying project such as sewer line improvements, transportation facilities, road improvements, shell buildings, etc.

The maximum nonrefundable credit that may be earned in any tax year by a taxpayer is \$400,000. Any unused credit can be carried forward to the next succeeding year.

Total Infrastructure Credits Used in 2021

License Tax Credits were reported on 26 tax returns processed in Calendar Year 2021. In order to properly reflect the amount of License Tax Credits associated with these returns, it is necessary to highlight two points. First, each return earns credits for investments made during the taxpayer's taxable year. The amount of credits earned on returns processed during 2021 was \$9,577,313. Second, each return also *applies* some or all of the credits to reduce license tax liabilities. The amount of credits *applied* against license tax liabilities on returns processed during 2021 was \$9,424,258. The difference between the two amounts results from carry forwards utilized by taxpayers and from the inability to fully utilize earned credits.

Types of Infrastructure Provided

The descriptions of infrastructure included on tax returns filed in 2021 include:

- water, wastewater, and sewer line improvements
- natural gas system improvements
- road improvements
- shell or incubator buildings (sometimes referred to as "spec" buildings)
- purchases of land for an office, business, commercial, and/or industrial park
- environmental due diligence expenditures
- clearing, grubbing, and grading land for site preparation
- building restoration

Appendix

CREDIT AMOUNTS PER RETURN TYPE (CALENDAR YEAR 2021)

Form	Type of Return	Number of Returns Reporting	Credits Earned	Credits Utilized
CL-4	Annual Reports of Electric Cooperatives	21	\$6,037,929	\$5,905,286
SC1120U	Public Utility Tax Returns	1	\$318,427	\$318,427
Consolidated SC1120	Corporate Tax Return	4	\$3,220,957	\$3,200,545
Total	-	26	\$9,577,313	\$9,424,258

QUALIFYING INFRASTRUCTURE BY CODE SECTION (CALENDAR YEAR 2021)

Improvements	Code Section
Water, wastewater, and sewer line improvements	§ 12-20-105(C)(1)
Natural Gas System Improvements	§ 12-20-105(C)(2)
Road improvements	§ 12-20-105(C)(3)
Shell or incubator buildings (“spec” buildings)	§ 12-20-105(C)(4)
Purchases of land for an office, business, commercial, and/or industrial park	§ 12-20-105(C)(4)
Environmental due diligence expenditures	§ 12-20-105(C)(5)
Clearing, grubbing, and grading land for site preparation	§ 12-20-105(C)(6)
Building restoration	§ 12-20-105(C)(6)