Job Development Credits, Jobs Tax Credits and Other Enterprise Zone Benefits - 2010

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Introduction

This brochure highlights the principal benefits available to qualifying South Carolina businesses under the South Carolina Enterprise Zone Act, as modified by the Economic Development Industrial Cluster Act of 1996 and the Rural Development Act of 1996 (as so modified, and as amended, the "EZA"). Companies seeking EZA benefits should not construe this document as legal advice, but should seek the advice of counsel before submitting any application.

Overview

In recent years, South Carolina has implemented a number of aggressive incentive programs to spur capital investment and job creation in the State. The Enterprise Zone Program constitutes the latest of these, with its Job Development Credit initiative as the crown jewel. Under the EZA, the more jobs a company creates and maintains, the more it benefits from the State's incentives. Moreover, by using a benchmark of 10 new, full-time jobs as the statutory minimum for most benefits, the EZA sends a clear signal that businesses as small as "Joe's machine shop", as well as Fortune 100 companies, may benefit. This brochure describes the benefits which are available for companies creating 100 or more new jobs. Separate requirements apply to smaller companies, and a summary of these requirements is available upon you request.

The 1996 Rural Development Act, in an effort to eliminate certain anomalies which resulted from excluding certain areas of the State from Enterprise Zone status, adopted the concept of categorizing all counties under four tiers ranging from least-developed to developed. The State had previously employed this technique in the State's tax credit programs. Companies locating in any area of the State may now receive substantial benefits, whereas they might not have received any under prior law. In addition, to encourage development in rural areas which have the most need for assistance, the State provided the highest degree of incentives to those areas. **Attachment A** hereto contains a list of the four statutory tiers showing the 2006 status of each county and the level of benefits available in each tier.

Key Benefits

While the primary benefits under the EZA stem from the Job Development Credits, the benefit categories include:

Job Development Credits. Qualifying businesses may set aside from employees' State withholding up to 5% of gross employee wages (the "Job Development Credits") for a period of 10-15 years and may use such Credits to reimburse themselves for paying certain project costs. Eligible costs include expenditures for acquiring and improving, and in certain cases leasing, real property; utility improvements; fixed transportation facilities; pollution control equipment; and employee training and the facilities therefor. See the discussion below under the heading *"Mechanics of the Job Development Credit"*.

Rural Infrastructure Fund. The State deposits an amount equal to the difference between the maximum allowable Job Development Credits and the amount actually obtained by businesses into a State Rural Infrastructure Fund administered by the State's Coordinating Council for Economic Development. The Coordinating Council will allocate the bulk of the moneys in the Fund to assist local governments located in the least-developed and under-developed counties for training costs and facilities; improvements to regionally-planned public and private water and sewer systems; improvements to public and private electricity, natural gas and telecommunications systems; and fixed transportation facilities.

Retraining Fee. Qualifying businesses may also obtain $500 from the State withholding for each production employee being retrained, where such retraining is necessary for the business to remain competitive or to introduce new technology and where the program has been approved by the participating technical college under the auspices of the State Board for Technical and Comprehensive Education. The company must use such funds for retraining and must provide matching funds on a dollar for dollar basis. Collected funds cannot exceed $2,000 per employee over a five year period.

Jobs Tax Credit. Although not strictly part of the State's Enterprise Zone Program, the Jobs Tax Credit, which may be claimed in connection with job creation as a credit against State income tax or insurance premium tax liability up to fifty percent of such liability, provides the legal framework for the structure of the Job Development Credit. As with the Job Development Credit, the State requires a minimum of ten new, full-time jobs and has tiered the value of the Job Tax Credit according to the level of development of the county in which the company locates the project. The State Department of Revenue ranks each County on an annual basis. The credit ranges from $1,500 per year for five years for each new, full-time job in the developed counties to $8,000 per year for five years in the least-distressed counties. Two half-time jobs count as one full-time job, and companies may carry-forward credits for up to 15 years. **Attachment A** sets forth the status of each county within the tier structure and the level of Jobs Tax Credit available in each. The types of businesses which qualify for the credit are the same as those qualifying for Job Development Credits and are described herein under the heading *"Qualification for Benefits"*. Note also that businesses may increase the credit by $1,000 per job by locating in a multi-county industrial park and by as much as $500 per job (possibly more in the least-developed counties) by hiring and retaining persons then on Aid to Families with Dependent Children. There are other property and income tax credits and sales and license tax exemptions too numerous to mention here, and companies should consult with their economic development professionals or South Carolina counsel as to the availability of tax incentives.

Qualification for Benefits

In order to qualify for EZA incentives, a business must meet the following statutory criteria (item (1) below being applicable to Jobs Tax Credit as well):

(1) The business must operate a manufacturing, tourism, processing, warehousing, distribution, research and development, corporate office or qualifying service-related facility in South Carolina. Retail and service related industries may also qualify if located in a least-developed county or certain counties which are underdeveloped. "Tourism facilities" include theme parks; amusement parks; historical, educational or trade museums; botanical gardens; cultural centers; theaters; motion picture production studios; convention centers, arenas, auditoriums and spectator or participatory sports facilities; new hotel and motel construction (for which the job creation requirement is twenty or more) and similar facilities where entertainment, education or recreation is provided to the general public. "Qualifying service-related facilities" include (i) those used for an activity listed under SIC Code 80, which includes a broad range of health care businesses from doctor's offices to hospitals; or (ii) those businesses (other than legal, accounting, investment services or retail) which create at least 250 jobs at a single location; 125 jobs at a single location where the average cash compensation for those jobs is 1.5 times the county average; 75 jobs where the compensation is 2 times the county average; or 30 jobs where the compensation is 2.5 times the county average.

(2) The business must provide a benefits package to all full-time employees which includes health care;

(3) The business must enter into a revitalization agreement with the South Carolina Coordinating Council (except that no revitalization agreement is required for an otherwise qualifying business to obtain Job Development Credits for retraining production employees); and

(4) The Coordinating Council must determine that the available incentives are appropriate for the project and must certify that the total benefits of the project exceed the costs to the public and that the business otherwise fulfills EZA requirements.

Mechanics of the Job Development Credit

In order to qualify for Job Development Credits, a business must submit an application to the Coordinating Council projecting project costs, employment levels and wages; specifying the other State and local incentives anticipated for the project; and demonstrating the viability of the project. The Council will ask the business to specify expected minimum capital investment and employment. Based upon the information set forth in the application, the Council will conduct a cost-benefit analysis and approve or disapprove the project. The business may reimburse itself for expenditures incurred on or after the date which is 60 days prior to such approval date. An application fee of $4,000 must be paid to the Coordinating Council.

Following approval by the Council, the business and the Council will formalize the arrangement through a standard form revitalization agreement which should be executed and delivered no later than the date the business wishes to commence drawing down Job Development Credits. Since the initial draw down of Job Development Credits triggers the ten-fifteen year collection period, companies are well advised to defer the initial retention until hiring nears its peak level. The revitalization agreement will obligate the business to reach its minimum investment and employment projections within five years and to maintain employment at the projected minimum. Should anticipated investment and employment exceed the levels specified in the revitalization agreement, the business should seek approval by the Council for a new agreement.

Qualifying businesses must make payroll books and records available for inspection by the Coordinating Council and the South Carolina Department of Revenue and Taxation. Businesses which collect more than $10,000 annually must also are required to furnish to the Coordinating Council and the Department an audited report prepared by an independent, certified public accountant itemizing the sources and uses of the Job Development Credits. This report must be filed by June 30 following the calendar year in which the funds were collected.

The amount of Job Development Credits which a business may obtain depends upon wage levels and the development level of the County. Qualifying businesses locating in the least-developed counties may obtain 100% of Job Development Credits calculated based upon gross wages in accordance with the following table.

PERCENTAGE OF GROSS WAGES WHICH MAY BE COLLECTED AS A JOB DEVELOPMENT CREDIT

Hourly Wage[1]	Maximum % Obtained By Company
$8.37 to $11.14	2%
$11.15 to $13.94	3%
$13.95 to $20.91	4%
More than $20.92	5%

[1] Subject to annual adjustment for inflation

The amount of Job Development Credits that may be claimed must be adjusted according to the economic development category of the county within which the facility is located. Counties are ranked for this purpose as “least developed” (for which 100% of the maximum withholding may be obtained); “under developed” (for which 85% of the maximum withholding may be obtained); “moderately developed” (for which 70% of the maximum withholding may be obtained); or “developed” (for which 55% of the maximum withholding may be obtained). See **Attachment A** hereto. The revitalization agreement will specify the allowable percentage, which will be fixed at the time of the agreement for its full term.

The Coordinating Council may waive up to 95% of the limits described in the preceding paragraph for certain very large projects. Generally, investment of at least $150 million with 125 jobs or at least $400 is required.

Failure to Achieve Goals

If a qualifying business fails to achieve the minimum levels of capital investment or employment set forth in the revitalization agreement or to maintain the anticipated minimum level of employment, the Coordinating Council may terminate the revitalization agreement and reduce or suspend all or any part of the Job Development Credit incentives until the time the anticipated capital investment and employment levels are met. However, suspension cannot be imposed retroactively.