

STATE TAX INCENTIVES NEWSLETTER

Issue 7, July 2001

Advanced Property Tax Seminar for Manufacturers and Electric Utilities Scheduled for

August 10th

On August 10th, 2001, NPJP Member Burnet R. Maybank, III will moderate the property tax segment of the upcoming State Chamber of Commerce seminar: Advanced Property Tax & Incentives. Topics include preparing the PT-100, PT-300, and PT-300W property tax return forms as well as a discussion of property tax exemptions and credits. These include Special Source Credits, Manufacturer's Abatement, Research & Development, Pollution Control, Ghost Assets, and Contaminated Property. Lastly, there will be a discussion of the taxation of Co-Gens and Merchant Power Plants. Speakers include NPJP Member April Lucas; Carol Coleman, Jerilynn Van Story, and Len Callahan of the Department of Revenue; property tax consultants Bob Bates, Tom Buckley, Doug Hinkle, and Wayne Welch; and Doug Warner of Hill Construction.

Interested persons may request a Registration Form from Tish Anderson (via e-mail register@scchamber.net with the words "register request" on the subject line or via fax at 803-779-6043).

Legislative Update

The 2001 legislative session was one of the least productive for economic development in years. As detailed below, the Budgets for state agencies most directly involved in economic development were slashed, Commerce's ability to use set-aside funds was somewhat curtailed, and the benefits of the one economic development bill which did pass, H.3885, were focused on one industry segment - electric utilities.

Important Note: Most of the provisions found below were contained in H.3885. The Governor signed H.3885 into law on July 20th just days prior to this printing.

Agency Budgets

The Budgets for three of the agencies most directly involved in economic development are found below. All three agencies were cut, with the Department of Commerce receiving one of the largest cuts of any state agency. The budgets for the Department of Transportation and the Ports Authority do not come from the state's general fund, and they fared considerably better.

1. Commerce

2000-2001 Fiscal Year Budget: \$16.1 million;

2001-2001 Fiscal Year Budget: \$13.2 million.

Percent change: 18 percent.

2. Parks Recreation & Tourism

2000-2001 Fiscal Year Budget: \$37.9 million.

2001 - 2001 Fiscal Year Budget: \$35.5 million

Percent change: 6.8 percent

3. Revenue

2000-2001 Fiscal Year Budget: \$40.5 million

2001-2001 Fiscal Year Budget: \$34 million

Percent change: 16 percent

Income Taxes:

Corporate Headquarters Credit

The definition of "corporate headquarters" was amended to make explicit that "information technology" is a qualifying corporate headquarters function.

Property Tax: Fee-in-Lieu

1. Millage Rate

Prior law stated that the millage contained in a fee agreement could not be any lower than June 30th of the prior year the inducement agreement was signed. It was assumed at the time this provision was drafted that the millage on June 30th of the prior year would always be equal to, or lower than, the millage at the time the County approved the fee. The General Assembly subsequently adopted rollback millage requirements, and millage in many counties dropped – sometimes substantially – in reassessment years. Consequently, in such cases the millage on June 30th of the prior year was higher. The General Assembly consequently changed the law to provide that the millage rate in certain circumstances may be the millage rate in effect on the date the initial lease agreement is signed.

2. Super Fee

A new class of super fee is created for companies with more than \$500 million in capital investment and 1,000 employees. This new incentive only applies to the "Big Fee." Normally a company with a super fee has eight years to reach its required investment and ten years to complete the project. Under the enhanced super fee, a company has ten years to meet its required investment and fifteen years to complete the project. In addition, the fee may last up to forty-five years versus thirty-seven years for the regular super fee.

Enterprise Zone Act

1. 60 Day Look-back

In one of the bill's more important provisions, the starting date for the 60 look-back was changed from the date of Committee approval of the application to the date of filing.

2. Delinquent Taxes

Companies with delinquent taxes will be precluded from filing an amended return to claim Job Development Credits when they have satisfied their tax obligations.

3. Preferential Treatment of Certain Counties.

Each County is annually ranked for both Job Development Credit purposes. The ranking is important in that it affects not only the amount of the credit, but, in least developed counties, whether many businesses are even eligible to apply. The new law provides that counties not transversed by an interstate highway are granted a tier which is one tier higher (*i.e.* the amount of Job Development Credits granted is higher) than would otherwise be the case.

4. Retraining Credit Technical Corrections.

The bill contains a host of technical corrections which conform to existing Council Guidelines.

5. Increase in Filing Fees.

Filing fees are increased from \$2,000 to \$4,000 and an annual fee of \$500 is established.

6. Inflation Adjustment

Each year the Job Development Credit tier levels are adjusted for inflation. The bill provides the following: Two percent of gross wages for employees who earn from \$6.95 to \$9.27 per hour; Three percent of gross wages for employees who earn between \$9.27 and \$11.58; Four percent of gross wages for employees who earn between \$11.58 and \$17.38; and Five percent for employees who earn \$17.38 or more.

7. Enterprise Zone Program Guidelines.

In addition to the above legislation the Enterprise Zone Committee has also promulgated a number of new guidelines. These include:

* The \$4,000 and \$500 application fee for the Job Development Credit and the retraining credit is non-refundable.

* Companies that have executed an Revitalization Agreement ("RVA") and certified that minimum job and investment stated in RVA have been met prior to the "cut-off-date" (4th quarter of the 5th year) claim the initial refund/ reimburse- ment no later than then 1st quarter of the 6th year of the application.

* A qualifying business applying for the Enterprise Program Incentive can claim Job Development Credits on half-time and/or full-time employees; however, only those positions entitled to health care benefits will be eligible for the purpose of Job Development Credits.

* In the event a single project facility is physically located in more than once county, the Enterprise Committee will determine the county designation for the purpose of claiming Job Development Credits. The Council will primarily base this determination on where the majority of the jobs will be located, but may also consider other factors, including but not limited to location of capital investment and mailing address.

* The Coordinating Council staff is given the authority to provide the Council's consent to the assignment of Enterprise Program benefits from a company with an approved preliminary or final the RVA to another entity when the company consolidates or merges with another entity or transfers all or substantially all of its assets, provided that the surviving entity (a) assumes in writing the original company's obligations under the RVA, (b) provides satisfactory evidence that its assets exceed its liabilities before and after the transaction and that it will be able to pay its debts when due, and (c) represents and warrants that it is in and will be in compliance with the RVA. The staff will report to the Council on the number of transfers approved each quarter.

Highway Set-Aside Funds

When the Gas Tax was increased in the last eighties, Governor Carroll Campbell insisted as a condition to signing the legislation that a portion of the new tax be dedicated to economic development. This fund which annually totals about \$18 million, is commonly referred to as the SHIMS or set-aside fund. Prior law allowed the Department of Commerce great discretion in

using the fund for "economic development." The Department of Transportation and the Highway Users group made a legislative push to transfer these fund to the Department of Transportation. Although this effort failed, the General Assembly did limit the use of the funds to water/sewer, road construction/improvement, and site prep, including surveying environmental and geo-technical study and mitigation, clearing, filling and grading.

Electric Utilities

South Carolina is one of a relatively few states which provide tax incentives to regulated electric utilities, and many of the more substantive provisions in H.3885 were limited to utilities.

1. Super Fee - Combining Unrelated Investment.

Except in limited circumstances, two taxpayers who are parties to a fee agreement may not combine or aggregate their investments for purpose of meeting the minimum investment requirement. H.3885 allows a sale source electricity provider to combine its investment with that of a contiguous manufacturer or other entity for purposes of meeting the super fee requirements.

2. Super Fee Reduced Job Creation Requirement

Normally a manufacturer must invest \$400 million and create 200 new jobs to qualify for the Super Fee. The new legislation allows a gas fired combined cycle power facility which creates only 25 jobs to qualify for a super fee where it invests \$400 million and has a capital investment already in place of \$500 million (or spends an additional \$500 million), for a total capital investment of \$900 million.

3. Deed Recording Fees Exemption.

LLCs which are regulated under the Federal Power Act are exempt from Deed Recording Fees where the deeds relate to the transfer, purchase, or exchange of facilities used to transmit electricity.

4. Sales Tax Exemption

Electric Facilities (*i.e.* machinery and equipment and other items of tangible personal property) which are transferred to an LLC regulated by the Federal Power Act are exempt from Sales taxes.

5. Headquarters Credit.

An LLC subject to the Federal Power Act is eligible for the Headquarters Credit regardless of whether it meets the general corporate headquarters test.

Horry County Case Still Pending in the Supreme Court

The Horry School District filed suit last year against Horry County Council and the City of Myrtle Beach challenging the constitutionality of Multicounty Business Parks and Special Source Credits. The Trial Judge ruled in favor of the incentives. An appeal was taken by the School District and oral arguments were heard before the S.C. Supreme Court in January of this year. As we go to press, the Supreme Court has still not ruled on the appeal. The delay has caused concerns in the economic development community as the Court has ruled on virtually all the other cases that were argued during that time period.

NPJP Member Burnet R. Maybank, III filed an Amicus Brief arguing the constitutionality of the incentives for the State Chamber and the Manufacturer's Alliance.

Tobacco Bond Sale Nets \$785.8 Million

The State netted \$785.8 million from the largest bond issue in its history. The proceeds are allocated to four program areas including \$78.6 million for economic development. These funds will go to the S.C. Water and Wastewater Infrastructure Fund primarily to help rural counties attract economic development. The Department of Commerce will oversee the Fund.

Legislators Request LAC Audit of Doc

More than 70 legislators - perhaps a record number - signed a request for the Legislative Audit Council to investigate spending at the Department of Commerce. (The LAC is the state counterpart to the federal GAO.) According to published reports, Legislators were concerned about excessive spending for state travel as well as the Department's Audio Visual Room. The DOC defended the spending and welcomed the opportunity to showcase the Audio visual Room.

Incentives Updates by E-Mail

NPJP will introduce its first e-mail edition of this newsletter in the near future.

E-mail Burnie Maybank (Bmaybank@npj.com) to receive future editions of this publication, as well as timely updates of incentive topics, by e-mail.

How to Get Back Issues

Past (and future) issues of this newsletter are posted on our Website at www.NPJP.com. You may use the contact form on the web site to be kept informed of new legal developments in your area of interest. Please visit www.NPJP.com for this free service.

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