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Overlooked State Tax Credits

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OVERLOOKED STATE TAX INCENTIVES
POLLUTION CONTROL – SUPPORT EQUIPMENT

South Carolina Code §12-37-220(A)(8) exempts from property taxation all facilities or equipment of industrial plants used in the conduct of their business which are designed for the elimination, mitigation, prevention, treatment, abatement, or control of internal or external water, air, or noise pollution required by the state or federal government.

For equipment that serves a dual purpose of production and pollution control, the value eligible for the property exemption is the difference in cost between this equipment and equipment of similar production capacity or capability without the ability to control pollution.

Manufacturers typically claim the pollution control exemption on their property tax return for classic pollution control equipment but overlook all the supporting equipment that service it – rebar, concrete, wiring, computer hardware and software, etc.

Arguably, support equipment only has to support pollution control 30% of the time to qualify (i.e. can support other functions 70% of the time).

OVERLOOKED STATE TAX INCENTIVES
FILING STATUTE OF LIMITATIONS NOTICE FOR MATERIAL HANDLING AND CONSTRUCTION MATERIAL

South Carolina Code §12-36-2120(67) exempts from sales and use tax construction materials used in the construction of a single manufacturing or distribution facility, or one that serves both purposes, with a capital investment of at least $100 million in real and personal property at a single site in the state over an 18-month period. There is an additional exemption for material handling equipment for capital investments of $35 million.

To qualify for these exemptions, the taxpayer must notify the Department in writing <u>before</u> the first month it uses the exemption. This notification must provide the date the taxpayer intends for the 18-month investment time period to begin.

In addition, the taxpayer must notify the Department in writing when the $100 million investment (construction materials) or $35 million (material handling) requirement has been met. The running of the period of limitations for assessment of taxes is suspended for the time period beginning with notice to the Department before the exemption is used and ending with notice that the investment requirement has or has not been met.

The construction materials and material handling sales tax exemptions are very valuable. File the Notice when you have met the CapX requirements to start the 3 year statute of limitations!!

OVERLOOKED STATE TAX INCENTIVES
CONSTRUCTION MATERIALS - CONTRACTOR

South Carolina Code §12-36-110 provides that a construction contractor is the user or consumer of everything he buys. In general, purchases by construction contractors are retail purchases and are subject to South Carolina sales or use tax. This means your construction contract includes 6 – 10% of sales taxes on construction materials (either separately stated or baked into the bid).

The construction materials sales ax exemption is very valuable typically worth millions of dollars for qualifying projects ($100 million of CapX).

The construction contractors are liable for sales taxes so they have already factored in sales taxes on their materials when they give you bid/construction contract. Your construction contractor has to back our sales taxes on materials or they will enjoy exemption!! Make sure your construction contract(s) explicitly provide this!

OVERLOOKED STATE TAX INCENTIVES
INTANGIBLES

South Carolina Code §12-37-220(A)(10) exempts "intangible personal property" from property taxes. Further, there is no local tax on intangible personal property. South Carolina Code § 12-4-720(A)(3) provides that no application is required to exempt intangible personal property.

Intangibles are exempt for both sales and property tax purposes. Software is a classic intangible but there are many others. Often they become embedded in your property tax return! Examine your fixed asset ledger for software and other capitalized intangibles.

OVERLOOKED STATE TAX INCENTIVES STATUTORY CONSOLIDATED RETURN WHERE YOU HAVE LOSS SUBSIDIARIES

South Carolina uses an unusual method to compute the tax on a “consolidated” corporation income tax return, Form SC1120, which may be filed by certain affiliated corporations.

Generally, corporate taxpayers file separate returns and report their income separately. However, South Carolina Code § 12-6-5020 provides that a consolidated return may be filed for the following controlled corporations.

1. A parent and substantially controlled subsidiary or subsidiaries.

2. Two or more corporations under substantially the entire control of the same interest.

OVERLOOKED STATE TAX INCENTIVES
STATUTORY CONSOLIDATED RETURN WHERE YOU HAVE LOSS SUBSIDIARIES

South Carolina's consolidated return is a single corporate income tax return for two or more corporations in which income or loss is determined as follows:

1. South Carolina taxable income or loss is computed separately for each corporation.

2. Allocable income or loss is allocated separately for each corporation.

3. Apportionable income or loss is computed utilizing separate apportionment factors (e.g., gross receipts or the single sales factor method for each corporation.)

4. Income or loss computed above is added together and reported on one return for the group.

Where you have a loss subsidiary or a parent with tax losses in South Carolina or any other state, consider filing a statutory consolidated return – the losses will net out the taxable income in SC.

The subsidiary/parent must be under the substantial control of the SC taxpayer and must have nexus in South Carolina.

Once the election is filed it can't be withdrawn without DOR consent!

OVERLOOKED STATE TAX INCENTIVES SOURCING FOR MANUFACTURERS – TRANSPORTATION HAS BEEN COMPLETED

A taxpayer that transacts or conducts its business partly within and partly outside of South Carolina is subject to income tax based on the portion of its business carried on in South Carolina. This portion is determined through allocation and apportionment of income. The sum of these amounts is South Carolina taxable income.

South Carolina generally requires the use of the following apportionment methods for manufacturers:

1. A single factor apportionment method (based on sales) for taxpayers whose principal business in South Carolina is dealing in tangible personal property.

South Carolina, like many states, has a single sales factor for manufacturers. Hellerstein, *State Taxation,* points out that SC has a unique, pro-taxpayer, definition of sales subject to apportionment. In SC, the sale is subject to SC income taxes only if the sold product remains in SC <u>after all transportation has been completed</u>. In some states with a 100% sales factor, the sale is considered in-state if title transfers at the manufacturing facility in that state.

OVERLOOKED STATE TAX INCENTIVES
SOURCING FOR SERVICES

Services are taxed differently than sales of tangible personal property. The Dish and DirecTV decisions held that SC is a market or customer sourcing state. While this is anti-taxpayer for sales into South Carolina from another state, it is pro-taxpayer for sales of services from SC to customers in other states.

Do not include that income on your South Carolina tax return even though the services were provided in South Carolina.

OVERLOOKED STATE TAX INCENTIVES
SMALL BUSINESS JOB TAX CREDIT

Qualifying Type Business	Manufacturing, processing, warehousing, distribution, research & development, agribusiness operations, agricultural packaging
Size Requirement	99 or fewer employees worldwide
Credit Amount	$1,500-$25,000 (100% credit amount) or $750-$12500 (50% credit amount) depending on county designation and annualized compensation amount.

The details of the Small Business Job Tax Credit are included in separate power point.

OVERLOOKED STATE TAX INCENTIVES
INVESTMENT TAX CREDIT

South Carolina Code §12-14-60 allows a taxpayer a credit against income taxes for qualified manufacturing and productive equipment properties placed in service during the taxable year in South Carolina.

The amount of the credit or qualifying investments is:

- ½% of the total aggregate bases of 3-year property
- 1% of the total aggregate bases of 5-year property
- 1 ½% of the total aggregate bases of 7-year property
- 2% of the total aggregate bases of 10-year property
- 2 ½% of the total aggregate bases of 15-year or greater property

Whether property is 3, 5, 7, 10 or 15 year or greater property is determined by the applicable recovery period for the property under Internal Revenue Code §168(e).

When I handle incentives for manufacturing clients, I ask to look at their state tax credit form in their prior year's return. Quite a few times the manufacturer has overlooked claiming the State ITC. If you claim the federal ITC for SC activity, claim the State ITC!

OVERLOOKED STATE TAX INCENTIVES
JOB TAX CREDIT IN TIER III AND IV COUNTIES

South Carolina has the highest Jobs Tax Credit in the country for Tier III ($20,250) and Tier IV Counties ($25,000). Lock the credit designation in for your county by filing SC 616. Many counties do not switch Tiers but a few do. Cherokee County went from Tier III to IV last year and may move back to Tier III next year.

OVERLOOKED STATE TAX INCENTIVES
BUSINESS LICENSE TAXES
NEW TAX BASE FOR MANUFACTURERS

Most manufacturers do not pay business license taxes, but some are located in municipalities and some counties (Richland) have business license taxes. South Carolina completely rewrote the BLT Act two years ago and it became effective last year. One of the few substantive changes in the Act was the tax base for manufacturers and it is a very pro-taxpayer change. Prior law provided that the BLT tax base was all gross receipts at the plan (irrespective of where the customers were).

Gross income for manufacturers with a location in the taxing jurisdiction is the lesser of gross income collected from business done at the location, the amount of income allocated and apportioned to that location by the business for purposes of the business's state income tax return, or the amount of expenses attributable to the location as a cost center of the business.

Don’t roll over last year’s BLT tax return!

AGRICULTURE TAX CREDIT

To be eligible for this credit, a company must have a base year in which the company purchases more than $100,000 of agricultural products that have been certified as grown in South Carolina by the South Carolina Department of Agriculture, and then must increase the number of agricultural units purchased in the following year by at least 15% over base-year unit totals. The base-year unit amount will be re-calculated every year after the initial base year.

AGRICULTURE TAX CREDIT

A company must submit an application to the Coordinating Council by no later than September 30 of the year following the year in which it increases purchases. The application will be reviewed by the staff of the Coordinating Council and SCDA to determine eligibility. Based on the recommendation of SCDA, the Coordinating Council will determine the amount of and the type of any tax credit the company will receive. The credit may be up to but not exceed $100,000 per taxpayer in any one year.

UTILITIES

Economic Development Utility Rates (H. 4062)

H. 4062 allows an electric utility subject to PSC Regulation to provide the SC Department of Commerce or a prospective manufacturing entity with a specified economic development rate that is lower than the utility's PSC approved rate, so long as the rate is not lower than the utility's marginal cost. A qualifying customer means a commercial or industrial customer that agrees to locate or expand in South Carolina with a minimum of (a) 500 kilowatts; (b) one hundred new employees; and (c) Cap X of $400,000. The new economic development rates must be approved by the PSC. As of October 8, 2022 no one has applied for the new economic development rate. The Speaker has appointed a special study committee to examine utility rates.