

South Carolina General Assembly
121st Session, 2015-2016

Bill 3725

A BILL

TO AMEND SECTION 12-67-120, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS IN REGARD TO THE SOUTH CAROLINA ABANDONED BUILDINGS REVITALIZATION ACT, SO AS TO ADD THE DEFINITION OF "STATE-OWNED ABANDONED BUILDINGS"; TO AMEND SECTION 12-67-140, RELATING TO THE ELIGIBILITY OF A TAXPAYER TO RECEIVE A TAX CREDIT FOR REHABILITATING AN ABANDONED BUILDING, SO AS TO PROVIDE IF A TAX CREDIT IS EARNED BY A TAXPAYER WHO REHABILITATES A STATE-OWNED ABANDONED BUILDING THE CREDIT MUST BE CLAIMED OVER A TWO-YEAR PERIOD AND TO PROVIDE REQUIREMENTS FOR A TAXPAYER WHO SELLS A BUILDING SITE; TO AMEND SECTION 12-6-3535, RELATING TO INCOME TAX CREDITS FOR MAKING QUALIFIED REHABILITATION EXPENDITURES FOR A CERTIFIED HISTORIC STRUCTURE, SO AS TO PROVIDE AN ADDITIONAL INCOME TAX CREDIT OPTION FOR TAXPAYERS, TO PROVIDE ADDITIONAL REQUIREMENTS FOR WHEN A TAX CREDIT MAY BE TAKEN WHEN A TAXPAYER REHABILITATES A STATE-OWNED ABANDONED BUILDING, AND TO PROVIDE REQUIREMENTS FOR TAX CREDITS EARNED BY A PASS-THROUGH ENTITY; BY ADDING SECTION 12-67-160 SO AS TO PROVIDE REQUIREMENTS FOR A CERTIFICATION OF THE ABANDONED BUILDING SITE; BY ADDING SECTION 12-6-3586 SO AS TO ALLOW A TAX CREDIT TO A TAXPAYER WHO CONSTRUCTS, PURCHASES, OR LEASES A NONRESIDENTIAL SOLAR ENERGY SYSTEM; AND TO AMEND SECTION 12-6-3587, RELATING TO THE PURCHASE AND INSTALLATION OF SOLAR ENERGY SYSTEMS FOR HEATING WATER, SPACE HEATING, AIR COOLING, OR GENERATING ELECTRICITY, SO AS TO PROVIDE THAT THE CREDIT IS ALLOWED WITHOUT REGARD TO WHETHER THE TAXPAYER OCCUPIES THE INSTALLATION SITE.

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

SECTION 1. Section 12-67-120 of the 1976 Code, as added by Act 57 of 2015, is amended by adding an item at the end to read:

"(8) 'State-owned abandoned building' means an abandoned building and its ancillary service buildings or a project consisting of two or more abandoned buildings, the aggregate square footage of which is greater than forty thousand square feet, that has been abandoned for more than five years, and before the taxpayer's acquisition of the buildings, all or a portion, but not less than half, was most recently owned by the State, or an agency, instrumentality, or political subdivision of the State. For purposes of this item, 'taxpayer' includes an entity under common control or common ownership with the taxpayer."

SECTION 2. A. Section 12-67-140(B)(3) of 1976 Code, as added by Act 57 of 2015, is amended to read:

"(3)(a) ~~The Except for a credit claimed in connection with the rehabilitation of a state-owned abandoned building, the~~ entire credit is earned in the taxable year in which the applicable phase or portion of the building site is placed in service but must be taken in equal installments over a five-year period beginning with the tax year in which the applicable phase or portion of the building site is placed in service. ~~If the credit is earned in connection with the rehabilitation of a state-owned abandoned building, the entire credit is earned in the taxable year in which the applicable phase or portion of the building site is placed in service but must be claimed in equal installments over a two-year period beginning with the tax year in which the applicable phase or portion of the building site is placed in service.~~ Unused credit may be carried forward for the succeeding five years.

(b) The entire credit earned pursuant to this subsection may not exceed five hundred thousand dollars for ~~any~~ a taxpayer in a tax year for each abandoned building site. The limitation provided in this subitem applies to each unit or parcel deemed to be an abandoned building site. ~~The limitation provided for in this subitem does not apply to any state-owned abandoned building.~~"

B. Section 12-67-140(C) of the 1976 Code, as added by Act 57 of 2015, is amended by adding an item at the end to read:

"(6) If a taxpayer sells the building site, or any phase or portion of the building site, the taxpayer may transfer all or part of the remaining credit, associated with the rehabilitation expenses incurred with respect to that phase or portion of the site, to the purchaser of the applicable portion of the building site. To the extent that the taxpayer transfers the credit, the taxpayer shall notify the county auditor of the transfer in the manner the department prescribes."

SECTION 3. Section 12-6-3535(A) and (C) of the 1976 Code is amended to read:

"(A) A taxpayer who is allowed a federal income tax credit pursuant to Section 47 of the Internal Revenue Code for making qualified rehabilitation expenditures for a certified historic structure located in this State is allowed to claim a credit against income taxes and license fees imposed by this title. For the purposes of this section, 'qualified rehabilitation expenditures' and 'certified historic structure' are defined as provided in the Internal Revenue Code Section 47 and the applicable treasury regulations. Except as provided in item (1), the amount of the credit is ten percent of the expenditures that qualify for the federal credit. To claim the credit allowed by this subsection, a taxpayer filing a paper return ~~must~~ shall attach a copy of the section of the federal income tax return showing the credit claimed, along with other information that the Department of Revenue determines is necessary for the calculation of the credit provided by this subsection.

(1) A taxpayer may elect a twenty-five percent tax credit instead of the ten percent tax credit.

(2) A taxpayer electing a twenty-five percent tax credit may not claim a credit that exceeds one million dollars for each certified historic structure. The limitation provided for in this item does not apply to credits claimed for qualified rehabilitation expenditures related to any state-owned abandoned building.

(C)(1) Except for a credit claimed in connection with the rehabilitation of a state-owned abandoned building, the entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in equal installments over a five-year period beginning with the year in which the property is placed in service. If the credit is claimed in connection with the rehabilitation of a state-owned abandoned building, the entire credit may not be taken for the taxable year in which the property is placed in service, but, rather must be taken in equal installments over a two-year period beginning with the year in which the property is placed in service. For purposes of this section, 'state-owned abandoned building' has the same meaning as provided in Section 12-67-120. 'Placed in service' means the rehabilitation is completed and allows for the intended use. Any unused portion of any credit installment may be carried forward for the succeeding five years.

(2) The credit earned pursuant to this section by an 'S' corporation owing corporate level income tax must be used first at the entity level. Remaining credit passes through to each shareholder in a percentage equal to each shareholder's percentage of stock ownership. The credit earned pursuant to this section by a general partnership, limited partnership, limited liability company, or other pass-through entity ~~taxed as a partnership~~ must be passed through to its partners and may be allocated among partners, including without limitation, an allocation of the entire credit to one partner, in a manner agreed by the partners ~~that is consistent with Subchapter K of the Internal~~

~~Revenue Code.~~ As used in this item the term " partner" means a partner, member, or owner of an interest in the pass-through entity, as applicable. If the taxpayer makes a pass-through election under Section 50(d)(5) of the Internal Revenue Code with respect to federal income tax credits available under Section 47 of the Internal Revenue Code, the taxpayer may elect to either pass the tax credit claimed pursuant to this section to the tenant of the eligible structure or to retain the tax credit for its own use."

SECTION 4. Chapter 67, Title 12 of the 1976 Code is amended by adding:

"Section 12-67-160. (A) A taxpayer may apply to the municipality or county in which the abandoned building is located for a certification of the abandoned building site made by ordinance or binding resolution of the governing body of the municipality or county. The certification must include findings that:

(1) an abandoned building site is an abandoned building as defined in Section 12-67-120; and

(2) the geographic area of the abandoned building site is consistent with Section 12-67-120.

(B) A taxpayer may apply to the municipality or county in which the state-owned abandoned building is located for a certification of the state-owned abandoned building site made by ordinance or binding resolution of the governing body of the municipality or county. The certification must include findings that:

(1) a state-owned abandoned building site was a state-owned abandoned building as defined in Section 12-67-120; and

(2) the geographic area of the state-owned abandoned building site is consistent with Section 12-67-120.

(C) The taxpayer conclusively may rely upon a certification made pursuant to this section in determining the credit allowed. If the taxpayer is relying upon a certification, the taxpayer shall include a copy of the certification on the first return for which the credit is claimed."

SECTION 5. A. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

"Section 12-6-3586. (A) As used in this section:

(1) 'Solar energy system' is a nonresidential system that, as determined by the State Energy Office, uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity not greater than one megawatt alternating current, distillation, desalination, detoxification, or the production of industrial or commercial process heat. The term also includes related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy.

(2) 'Tax liability' includes income taxes imposed pursuant to this chapter, license taxes imposed pursuant to Chapter 20 of this title, bank and building and loan taxes imposed pursuant to Chapters 11 and 13 of this title, and premium taxes imposed pursuant to Title 38.

(3) 'Department' means the South Carolina Department of Revenue.

(B)(1) For tax years beginning after 2015 and before 2019, if a taxpayer that has constructed, purchased, or leased a nonresidential solar energy system, the taxpayer, subject to the limitations provided for in subsection (E), is allowed a credit against his tax liability equal to twenty-five percent of the cost of the system in the taxable year in which the system is placed in service.

(2) The entire credit may not be taken for the taxable year in which the system is placed in service but must be taken in three equal annual installments beginning with the taxable year in which the system is placed in service, and subject to this annual limit, unused credit may be carried forward for taxable years four through ten succeeding the year the system was placed in service.

(3) If a taxpayer is not allowed all or part of the credit, the taxpayer is authorized to receive, because of the limitations provided for in subsection (E), the carry forward years provided in item (1) beginning in the year in which all or part of the credit is first allowed. However, if the credit is not allowed before tax year 2019, the taxpayer is not eligible to claim the credit.

(C) If, in one of the years in which the installment of a credit accrues, the solar energy system, with respect to which the credit was claimed, is disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. A disposition does not include the sale or assignment of the partnership interests or limited liability company interests of a partnership or limited liability company that owns or leases a solar energy system. The taxpayer, however, may take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted pursuant to subsection (B) of this section. For purposes of calculating the credit, if the solar energy system

was provided, in whole or in part, by public funds, the amount of public funds expended on the solar energy system is not considered a cost of the system. The amount of any credit allowed pursuant to this section must be reduced by any credit claimed pursuant to Section 12-6-3587 or any other credit allowed pursuant to this title for the solar energy system. Public funds do not include proceeds of the investment credit pursuant to Section 48 of the Internal Revenue Code, or the grant in lieu thereof under Section 1603 program administered by the United States Department of Treasury. In no case may a credit allowed pursuant to this section exceed one-half of the taxpayer's tax liability for a taxable year.

(D) The credit allowed by this section may not exceed three hundred thirty-three thousand dollars for each solar energy system installation and the credit may not exceed one million dollars for any taxpayer.

(E)(1) The total amount of credits allocated for all taxpayers in a taxable year may not exceed five million dollars in the aggregate. For purposes of this subsection, notwithstanding subsection (B), the entire credit is considered taken in the tax year in which the system is placed in service.

(2) If an allocation provided for in this item is not completely exhausted, the remaining amount may be carried forward by the department to the next year and used for the same purpose, and is in addition to the aggregate amount provided for in item (1). No amount may be carried forward by the department beyond tax year 2018.

(F) If the taxpayer leases the solar energy system, or part of the solar energy system, the taxpayer may transfer any applicable remaining credit associated with the solar energy system expenses incurred with respect to that part of the solar energy system to the lessee of the solar energy system. The provisions of this subsection apply to a lessee that is an entity taxed as a partnership.

(G) To the extent that the taxpayer is a partnership or a limited liability company taxed as a partnership, the credit may be passed through to the partners or members and may be allocated by the taxpayer among any of its partners or members on an annual basis including, without limitation, an allocation of the entire credit to any partner or member who was a member or partner at any time during the year in which the credit is allocated.

(H) This credit does not imply or allow the third party sale of electricity between parties nor does this section modify the provisions of Title 58 and 'lessee' refers to the financial structuring of the payment for the 'solar energy system'.

(I)(1) After the system is placed in service, a taxpayer seeking to claim the credit provided in this section shall submit an application to the State Energy Office for tentative approval of the credit. Within forty-five days of receipt of the application, the State Energy Office shall review the application and tentatively shall approve the application upon determining that the taxpayer qualifies for the credit, and only if the aggregate credit, pursuant to subsection (E), has not yet been reached for the taxable year. The State Energy Office shall notify the applicant whether all or part of the credit may be claimed and the amount that may be claimed in the current year. Also, the State Energy Office shall forward the notice to the department.

(2) The credit is allowed on a first-come, first-served basis. The aggregate amount of tax credits approved by the State Energy Office for all taxpayers in a taxable year may not exceed the limitations specified in subsection (E). For tax years 2016 and 2017, if the taxpayer timely files an application for the credit but is not allowed all or part of the credit the taxpayer is authorized to receive because of the limitations provided for in subsection (E), the taxpayer must be added to a priority waiting list of applications, prioritized by the date of the taxpayer's first filed application. With respect to the credit allocation in subsequent years, a taxpayer on the priority waiting list shall have priority over other taxpayers who apply for the credit for an installation in the subsequent year. For purposes of subsection (E), if a taxpayer on the priority waiting list is allowed the credit in a taxable year after the system is placed in service, then the entire credit is considered taken in the year in which the credit is first allowed.

(J)(1) The department, in consultation with the State Energy Office, shall develop an application form. Also, the department and the State Energy Office shall adopt rules to provide for the administration of this credit. The State Energy Office, with assistance from the department, shall create a mechanism to track and report the status and availability of credits for the public to review on a regular basis, as determined by the State Energy Office.

(2) There is a nonrefundable application fee equal to one percent of the credit applied for, but no more than two thousand five hundred dollars. The fee must accompany the application. The fee must be credited to the State Energy Office and must be used to meet the requirements of this section.

(K) In addition to the carry forward of unused credit allowed pursuant to this section, unused credit may be transferred, devised, or distributed, with or without consideration, by an individual, partnership, limited liability company, corporation, trust, or estate. To be effective, such a transfer, devise, or distribution requires written notification to and approval by the department with the unused credit maintaining all its original attributes in the hands of the original recipient including, but not limited

to, the limit on the amount by which the taxpayer's tax liability may be reduced. With regard to the sale or exchange of a credit allowed pursuant to this section, general income tax principles apply for purposes of the state income tax.

(L) Not later than June 1, 2017, and by June first each year thereafter, the State Energy Office shall prepare a report detailing:

- (1) the number of taxpayers applying for the credit, the amount applied for, and the system sizes, including the total cost of the system installed against which the credit is being claimed, and the county in which the system was installed;
- (2) the number of taxpayers allocated the credit, the amount allocated, and the system sizes, including the total cost of the system installed against which the credit is being claimed, and the county in which the system was installed;
- (3) the number of taxpayers denied the credit based on an ineligibility determination by the department; and
- (4) the number of taxpayers eligible for the credit, but placed on the waiting list due to the limitations provided for in subsection (E).

The report must be delivered to the Governor, the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, the Public Utilities Review Committee, the Public Service Commission, and the Office of Regulatory Staff. The report also must be made available in a conspicuous place on the website maintained by the State Energy Office."

B. This SECTION applies to solar energy systems placed in service in taxable years beginning after 2015 and before 2019.

SECTION 6. A. Section 12-6-3587(A) of the 1976 Code is amended to read:

"(A) There is allowed as a tax credit against the income tax liability of a taxpayer imposed by this chapter an amount equal to twenty-five percent of the costs incurred by the taxpayer in the purchase and installation of a solar energy system or small hydropower system for heating water, space heating, air cooling, energy-efficient daylighting, heat reclamation, energy-efficient demand response, or the generation of electricity in or on a facility in South Carolina and owned by the taxpayer. The tax credit allowed by this section must not be claimed before the completion of the installation. The credit is allowed without regard to whether the owner-taxpayer occupies the installation site. The amount of the credit in any year may not exceed three thousand five hundred dollars for each facility or fifty percent of the taxpayer's

tax liability for that taxable year, whichever is less. If the amount of the credit exceeds three thousand five hundred dollars for each facility, the taxpayer may carry forward the excess for up to ten years."

B. Section 12-6-3587 of the 1976 Code is amended by adding a subsection at the end to read:

"(D) With respect to solar energy systems, this section only applies to a system placed in service after tax year 2007 and before tax year 2019."

SECTION 7. Unless specified otherwise, this act takes effect upon approval by the Governor and applies for tax years beginning after 2015. The provisions of Section 1B of Act 57 of 2015 apply to the provisions of Sections 12-67-120 and 12-67-140 of the 1976 Code as amended by this act.