

NEXT CHALLENGE. NEXT LEVEL.

NEXSEN | PRUET

Nexsen Pruet

Incentives for Real Estate Developers

Presentation

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INFRASTRUCTURE TAX CREDIT

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General

The Infrastructure Tax Credit was the first, and for many years, the only economic development tax incentive available to real estate developers.

Perhaps for that reason it has been very widely overlooked.

INFRASTRUCTURE TAX CREDIT

Credit Amount

South Carolina Code §12-6-3420 allows a corporation a credit against corporate income tax or bank tax for the construction or improvement of a qualifying infrastructure project equal to 50% of (i) the contributions or expenses paid or accrued by the taxpayer; (ii) contributions made to a governmental entity; or (iii) contributions made to a qualified private entity (in the case of water or sewer lines and their related facilities in areas served by a private water and sewer company).

INFRASTRUCTURE TAX CREDIT

Credit Amount

A taxpayer-developer can have multiple qualifying projects in a year. Each *project* is capped at \$10,000 per year SC TAM #89-14. Any unused credit, up to \$30,000 for each project, may be carried forward for 3 years. The maximum infrastructure credit that may be claimed for each project is \$40,000.

INFRASTRUCTURE TAX CREDIT

Qualifying Infrastructure Project

A qualifying infrastructure project includes water and sewer lines, their related facilities, and roads that:

1. Do not exclusively benefit the taxpayer;
 2. Are built to applicable standards; and
 3. Are dedicated to public use or, in the case of water or sewer lines in areas served by a private water and sewer company, are deeded to a qualified private entity.
- Section 12-6-3420(C).

INFRASTRUCTURE TAX CREDIT

Credit Amount

If the infrastructure project benefits more than the taxpayer, the expenses of the taxpayer must be allocated to the various beneficiaries, and only those expenses not allocated to the taxpayer's benefit qualify for the credit. Section 12-6-3420(D).

INFRASTRUCTURE TAX CREDIT

Credit Amount

A qualifying private entity (utility) is not allowed a tax credit for expenses it incurs in building or improving facilities it owns, manages, or operates. Section 12-6-3420(F).

INFRASTRUCTURE TAX CREDIT

When the Credit is Earned

Presumably the credit is earned in the year which road, water or sewer is dedicated to public use.

The credit may be claimed before dedication or conveyance if the taxpayer submits with its tax return a letter of intent signed by the chief operating officer of the appropriate governmental entity or qualified private entity stating that upon completion the governmental entity or qualified private entity shall accept the infrastructure project for the appropriate use. Section 12-6-3420(F).

INFRASTRUCTURE TAX CREDIT

Corporations Which File on a Consolidated Basis

A corporation which files or is required to file a consolidated return is entitled to the income tax credit allowed by this section on a consolidated basis. The tax credit may be determined on a consolidated basis regardless of whether or not the corporation entitled to the credit contributed to the tax liability of the consolidated group. Section 12-6-3420(H).

INFRASTRUCTURE TAX CREDIT

Clawbacks

If a road qualifying for the credit is subsequently removed from the state highway or public road system, the amount of the credit allowed for the construction of the road must be added to any corporate income tax due from the taxpayer in the first taxable year following the removal of the road from public use. Section 12-6-3420(G).

INFRASTRUCTURE TAX CREDIT

Issues

Non-Corporate Entities

- ✓ The infrastructure tax credit is a corporate income tax credit.
- ✓ Individual members of an LLC taxed as a partnership may use the credit against IIT liabilities.
- ✓ May expenditures made by a general partnership flow through to the corporate partners for a credit on the corporations tax return? On appeal to the South Carolina Supreme Court, *Centex Homes v. SCDOR*

INFRASTRUCTURE TAX CREDIT

Issues

Statute of Limitations

Many developers have failed to claim the credit.

Normally a 3 year statute of limitations to amend income tax return to claim incentive after it has been earned, presumably within 3 years of the year of dedication of the road, water or sewer.

INFRASTRUCTURE TAX CREDIT

Issues

The credit is limited on a “per project” basis; what’s the definition of a “project”?

Can one real estate development be sliced into multiple projects?

INFRASTRUCTURE TAX CREDIT

Issues

Is the entity which made the expenditures the same entity which is claiming the credit?

INFRASTRUCTURE TAX CREDIT

Issues

Is the credit assignable? Not generally.

The merger, consolidation, or reorganization of a corporation where tax attributes survive does not create new eligibility in a succeeding corporation but unused credits may be transferred and continued by the succeeding corporation. In addition, a corporation may assign its rights to its unused credit to another corporation if it transfers all, or substantially all, of the assets of the corporation or all, or substantially all, of the assets of a trade or business or operating division of a corporation to another corporation. Section 12-6-3420(I).

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