COMMITTEE REPORT

February 7, 2013

**S. 12**

Introduced by Senators O’Dell and Ford

S. Printed 2/7/13--S.

Read the first time January 8, 2013.

**THE COMMITTEE ON FINANCE**

To whom was referred a Bill (S. 12) to amend the Code of Laws of South Carolina, 1976, by adding Section 12‑10‑108 so as to provide a client company that contracts with a professional service, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

HUGH K. LEATHERMAN, SR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12‑10‑108 SO AS TO PROVIDE A CLIENT COMPANY THAT CONTRACTS WITH A PROFESSIONAL SERVICE EMPLOYER AND IS ASSIGNED EMPLOYEES UNDER THAT CONTRACT, IS ELIGIBLE FOR THE JOB DEVELOPMENT CREDIT, TO SPECIFY THE CONDITIONS UNDER WHICH THE JOB DEVELOPMENT CREDIT MAY BE CLAIMED, AND TO PROVIDE THE PROCESS BY WHICH THE CLIENT COMPANY MAY CLAIM THE CREDIT AND THE PROCESS BY WHICH THE DEPARTMENT OF REVENUE SHALL ADMINISTER THE CREDIT WITH RESPECT TO A CLIENT COMPANY; AND BY ADDING SECTION 40‑68‑145 SO AS TO PROVIDE THAT FOR PURPOSES OF DETERMINING AN INCENTIVE OR BUSINESS PREFERENCE PROGRAM BASED ON EMPLOYMENT, AN ASSIGNED EMPLOYEE IS CONSIDERED AN EMPLOYEE OF THE CLIENT COMPANY.

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

SECTION 1. Chapter 10, Title 12 of the 1976 Code is amended by adding:

“Section 12‑10‑108. (A) As used in this section:

(1) ‘Assigned employee’ means an employee providing services for a client company as affected by a contract between a licensee and a client company in which employment responsibilities are shared.

(2) ‘Client company’ means a person that contracts with a licensee and that is assigned employees under that contract.

(3) ‘Licensee’ means a person licensed under Chapter 68, Title 40 as a professional employer organization to provide professional employer services as that term is defined in Section 40‑68‑10. The term includes a professional employer services group licensed under Section 40‑68‑80.

(B) A client company that is a qualifying business and otherwise meets the requirements of this chapter except that it uses a single licensee to provide assigned employees which perform services at the project, will be eligible for an overpayment of withholding resulting from a job development credit for new jobs filled by assigned employees provided the provisions of this section are met, including the following:

(1) the benefits package, including health care, for employees described in Section 12‑10‑50(A)(2) and (B)(2) is sponsored by either the licensee or the client company;

(2) a revitalization agreement is executed between the qualifying business that is a client company and the council, and an addendum to the revitalization agreement is executed among the qualifying business that is a client company, the council, and the licensee that sets forth the applicable responsibilities of each party and is in a form acceptable to the council.

(3) the licensee makes all books and records concerning a client company available to the department and the council concerning withholding and the claiming of a job development credit in the manner provided by this title and applicable regulations; and

(4) the licensee submits the required income tax withholding payments and returns for all assigned employees working at the project and claims any applicable job development credit attributable to the assigned employees.

(C) On a quarterly basis, the client company shall file with the department and the council information concerning:

(1) the number of assigned employees at the project attributable to the licensee;

(2) the amount of South Carolina income tax withholding for assigned employees for the licensee;

(3) the total amount of job development credits associated with the assigned employees attributable to the licensee; and

(4) such other information the department or council may require.

If the client company also has employees subject to South Carolina withholding taxes payable by the client company, the client company is eligible to claim a job development credit for any such employee. The client company also shall provide the information set forth in this subsection concerning such employees.

(D)(1) In lieu of refunding any applicable overpayment of withholding attributable to a job development credit to a licensee, the department shall pay to the client company any applicable overpayment of withholding attributable to the job development credit for assigned employees. Once payment is made to the client company, the licensee has no further claim to any overpayment of withholding attributable to the job development credit and paid to the client company and shall hold the department and the council harmless for any overpayment of withholding paid to the client company pursuant to this item.

(2) To the extent that any overpayment of withholding results from an improper claiming of a job development credit, it must be treated as misappropriated withholding with the client company being liable for the amount and the licensee only liable if the licensee commits fraud attributable to the claiming of a job development credit.

(3) Qualifications and calculations of job development credits pursuant to this chapter must be made on a client company basis and not on a licensee basis.

(4) The department and the council may specify the form and manner of any information to be submitted under this section.

(5) All notices pertaining to the claiming of the job development credit must be sent to both the licensee and the client company.

(E) If a contract entered into pursuant to Section 40‑68‑60 between a client company and a licensee is terminated, the client company shall send notice of termination to the department and the council within thirty business days of the date of termination. If and until a new licensee becomes a party to the addendum, the client company shall be responsible for all of the licensee’s responsibilities under the addendum to the revitalization agreement.

(F) The client company shall be responsible for submitting any reports or fees to the council or the department required by this chapter including itemized sources and uses of funds and paying any penalty imposed for failure to submit a report or fee without an extension.

(G) Notwithstanding Section 12‑10‑80(A)(1) and (2), a client company must be considered current with respect to withholding tax if the licensee is current with respect to withholding taxes. If the client company has its own employees that are subject to a job development credit, in addition to assigned employees, the client company also must be current with respect to all withholding taxes.

(H) The licensee and the client company agree to waive the taxpayer confidentiality provisions of Section 12‑54‑240 and allow the exchange of information concerning withholding tax and the claiming of job development credit among the licensee, client company, department and the council.

(I) Any claim for a retraining credit pursuant to Section 12‑10‑95 must be treated the same as a job development credit under this section.

(J) The client company must pay an additional three hundred dollar administrative fee to be split equally between the department and the council to cover the cost of administering the provisions of this section.

(K) The department and the council may establish such rules and regulations as are necessary to administer this section.

(L) All the provisions of this chapter remain applicable to a client company and the claiming of the job development credit.”

SECTION 2. Chapter 68, Title 40 of the 1976 Code is amended by adding:

“Section 40‑68‑145. (A) Except as otherwise provided by law, for purposes of determining an incentive or business preference program based on employment, an assigned employee is considered an employee solely of the client company, not the licensee. Notwithstanding that the licensee is the W‑2 reporting employer, the client company is entitled to the benefit of or to continue to qualify for an incentive, business preference program, or other benefit arising from the employment of assigned employees.

(B) Except as otherwise provided by law, for the purposes of an incentive or business preference program based on the number of employees, assigned employees, and direct employees of the client company are considered employees solely of the client company, but not the licensee.

(C) On request by the client company, the state, or any governmental entity, a licensee shall provide employment information and applicable books and records required by the state or governmental entity responsible for the administration of the incentive or business preference program and necessary to support a request, claim, application, or other action by a client company seeking an incentive or participation in a business preference program, or an audit of the client company’s claiming of the incentive or business preference if based in whole, or in part, on the assigned employees.

(D) In providing information required pursuant to subsection (C), a licensee may not be required to:

(1) complete forms on behalf of a client;

(2) attest, certify, and verify the accuracy of information originally provided by or based on information provided by the client company to the licensee, however, any information submitted to the licensee by the client company must be signed by a person authorized to sign a return under Section 12‑2‑75 and shall be treated as though such information were submitted in connection with a return submitted to the Department of Revenue;

(3) create new information or records; or

(4) provide employment information beyond the applicable statute of limitations for assessing taxes provided in Section 12‑54‑85.

(E) The licensee and the client company agree to waive the taxpayer confidentiality provisions of 12‑54‑240 and allow the exchange of information concerning the applicable incentive or business preference program among the client company, the licensee and any public entity administering the applicable incentive or business preference program.

(F) A licensee may charge a client company a fee for information provided pursuant to subsection (C).”

SECTION 3. This act takes effect for tax years beginning after December 31, 2012, and only applies to revitalization agreements and retraining agreements entered into after December 31, 2012.

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