

NEXT CHALLENGE. NEXT LEVEL.

NEXSEN | PRUET

Nexsen Pruet

Incentives for Real Estate Developers

Presentation

October 5, 2012

Burnet R. Maybank, III
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29201
803-771-8900
bmaybank@nexsenpruet.com

TEXTILE REVITALIZATION CREDITS

TEXTILE REVITALIZATION CREDITS

NOTE!

The General Assembly has passed several versions of the Textile Revitalization Act (and has attempted to amend it on several more occasions.)

This Power Point covers sites acquired after December 31, 2007.

Transitional Rules discussed at the end.

TEXTILE REVITALIZATION CREDITS

General

The South Carolina Textile Communities Revitalization Act, contained in Title 12, Chapter 65 provides a credit for the renovation, rehabilitation, and redevelopment of abandoned textile mill sites in South Carolina.

“Textile mill” – a facility or facilities that was initially used for textile manufacturing, dying, or finishing operations and for ancillary uses to those operations.

TEXTILE REVITALIZATION CREDITS

General

The credit is not available to a taxpayer who owned the textile mill site immediately prior to the abandonment if the site was operational at that time or if the site has previously received textile mill credits.

TEXTILE REVITALIZATION CREDITS

General

South Carolina Code §12-65-30 allows a taxpayer who rehabilitates an abandoned textile mill site to choose one of the following tax credits:

1. A credit against income, license, bank or insurance premium taxes equal to 25% of eligible rehabilitation expenses; or
2. A credit against real property taxes equal to 25% of the eligible rehabilitation expenses made to the site multiplied by the local taxing entity ratio for each local taxing entity consenting to the credit.

TEXTILE REVITALIZATION CREDITS

Notice of Intent to Rehabilitate

A taxpayer acquiring the textile mill site after December 31, 2007, must file a “Notice of Intent to Rehabilitate” (Notice) with the Department of Revenue (income tax credit) or the county or municipality (property tax credit) before receiving the building permits for rehabilitating the site, or the applicable phase of the site. Transfers between affiliated taxpayers of any of the developmental phases of the textile mill site are not considered an acquisition that would subject the taxpayer to filing a Notice. *Failure to provide the Notice results in only those rehabilitation expenses incurred after the Notice is provided qualifying the credit.*

TEXTILE REVITALIZATION CREDITS

Notice of Intent to Rehabilitate

The Notice letter submitted by the taxpayer must provide that:

1. The taxpayer intends to rehabilitate the site
2. The location of the site
3. The amount of acreage involved with the site
4. The estimated expenses to be incurred
5. Which buildings on the site are to be renovated or demolished and
6. Whether new construction is to be involved at the site.

TEXTILE REVITALIZATION CREDITS

Income Tax Credit

The credit amount is based upon actual or estimated expenses as follows:

1. The credit is 25% of the actual rehabilitation expenses unless the expenses exceed 125% of the estimated rehabilitation expenses set forth in the Notice.
2. The credit is 25% of 125% of the estimated rehabilitation expenses set forth in the Notice (as opposed to the actual expenses) if the actual rehabilitation expenses exceed 125% of the estimated expenses listed in the Notice.

TEXTILE REVITALIZATION CREDITS

“Rehabilitation expenses” – expenses or capital expenditures incurred in the rehabilitation, renovation, or redevelopment of the textile mill site, including demolition of existing buildings, environmental remediation, site improvements and the construction of new buildings and other improvements on the site, but excluding the cost of acquiring the site or the cost of personal property located at the site. For expenses to qualify for the credit, the textile mill and buildings on the site must be either renovated or demolished.

TEXTILE REVITALIZATION CREDITS

“Textile mill site” – the textile mill together with the land and other improvements on it which were used directly for textile manufacturing operations or ancillary uses. However, the area of the site is limited to the land located within the boundaries where the textile manufacturing, dying or finishing facility structure is located and does not include land located outside the boundaries of the structure or devoted to ancillary uses. Section 12-65-35.

TEXTILE REVITALIZATION CREDITS

“Ancillary uses” – uses related to the textile manufacturing, dying, or finishing operations on a textile mill site consisting of sales, distribution, storage, water runoff, wastewater treatment and detention, pollution control, landfill, personnel offices, security offices, employee parking, dining and recreation areas, and internal roadways or driveways directly associated with such uses.

TEXTILE REVITALIZATION CREDITS

Income Tax Credit

This credit can be used against income taxes imposed under Chapter 6 of Title 12 or license taxes imposed by Chapter 20 of Title 12, or both, or bank taxes imposed under Chapter 11 of Title 12 or insurance premium taxes imposed by Chapter 7, Title 28.

TEXTILE REVITALIZATION CREDITS

Income Tax Credit

The entire credit is earned in the taxable year in which the site (or applicable phase or portion) is placed in service and is claimed in equal installments over a 5 year period beginning with the tax year the site (or applicable phase or portion) is placed in service. It is limited to 50% of the taxpayer's income tax, license or premium tax liability. Any unused credit may be carried forward for 5 years.

TEXTILE REVITALIZATION CREDITS

“Placed in service” – the date the textile mill site is completed and ready for its intended use. If the site is completed and ready for use in phases or portions, each phase or portion is considered placed in service when it is completed and ready for its intended use.

TEXTILE REVITALIZATION CREDITS

Assignability of the Credit

- (A) If the taxpayer leases the textile mill site, or part of the textile mill site, the taxpayer may transfer any applicable remaining credit associated with the rehabilitation expenses incurred with respect to that part of the site to the lessee of the site. The provisions of item (C) below apply to a lessee that is an entity taxed as a partnership. If a taxpayer sells the textile mill site, or any phase or portion of the textile mill 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 textile mill site.
- (B) To the extent that the taxpayer transfers the credit, the taxpayer must notify the department of the transfer in the manner the department prescribes.
- (C) 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. Section 12-65-30(C)(6)&(7).

TEXTILE REVITALIZATION CREDITS

Property Tax Credit

Certification Procedures

South Carolina Code §12-65-60 provides a procedure which allows a taxpayer to apply to the governing body of the municipality or county in which the textile mill site is located for certification of the site. The certification can be done by either ordinance or binding resolution and must include certain findings. A taxpayer who receives this certification is allowed to conclusively rely on the certification in determining the credit allowed.

TEXTILE REVITALIZATION CREDITS

Property Tax Credit

Certification Procedures

To obtain the property tax credit, the municipality or county must first, by resolution, determine the eligibility of the textile mill site and the proposed rehabilitation expenses. If the county or municipality determines the site and the expenditures are eligible, there must be a public hearing and a positive majority vote of the local governing body must approve the rehabilitation and the expenses. Final approval must be by ordinance.

The county or municipality must also make a finding that the credit does not violate a covenant or representation found in any TIF or GO Bond issued by the county or municipality.

TEXTILE REVITALIZATION CREDITS

Property Tax Credit

Negative Option Notice

At least 45 days before holding the public hearing, the governing body of the municipality or county must give notice to all affected local taxing entities where the textile mill site is located of its intention to grant the property tax credit and the amount of estimated credit based on the amount of estimated rehabilitation expenses. If the local taxing entity does not file an objection, it is deemed to have consented to the credit.

TEXTILE REVITALIZATION CREDITS

Property Tax Credit

Amount of the Credit

This credit amount is based upon actual or estimated expenses as follows:

1. The credit is 25% of the actual rehabilitation expenses if the actual expenses incurred in rehabilitating the site are 80% - 125% of the estimated rehabilitation expenses listed in the Notice.
2. The credit is 25% - 125% of the estimated rehabilitation expenses if the actual rehabilitation expenses exceed 125% of the estimated expenses listed in the Notice.
3. No credit is allowed if the actual rehabilitation expenses are below 80% of the estimated expenses.

TEXTILE REVITALIZATION CREDITS

Property Tax Credit

Amount of the Credit

The amount of allowable expenses is multiplied by the local taxing entity ratio of each local taxing entity that has consented to the credit to determine the amount that may offset property taxes. The ordinance shall allow the credit to be taken against up to 75% of the real property taxes due on the textile mill site each year for up to 8 years. The credit may be claimed for each applicable phase or portion of the site beginning for the property tax year the applicable phase or portion is first placed in service. An unused credit may be carried forward for 8 years.

TEXTILE REVITALIZATION CREDITS

Property Tax Credit

“Local taxing entities” – a county, municipality, school district, special purpose district, and any other entity or district with the power to levy ad valorem property taxes against the site.

“Local Taxing entity ratio” – the percentage computed by dividing the millage rate of each local taxing entity by the total millage rate for the site.

TEXTILE REVITALIZATION CREDITS

Property Tax Credit

Eligibility for the Credit

A taxpayer is not allowed the property tax credit if it owned the textile mill site immediately prior to its abandonment and the site was operational at that time. Further, a taxpayer is not eligible to claim a credit if the facility previously received textile mill credits.

TEXTILE REVITALIZATION CREDITS

Transitional Rules

South Carolina Code §12-65-50 was added to provide transitional rules addressing whether the new provisions for the textile facility revitalization credit (Chapter 65, Title 12) apply to a site, or the previous provisions for the textile facility revitalization credit prior to their amendment of (Chapter 32, Title 6) apply to a site. In particular, the transitional rules address textile mill sites (1) that were fully or partially placed in service on or after January 1, 2008; (2) that were fully placed in service prior December 31, 2007; and (3) that were acquired before December 31, 2007 but a portion of the site has been placed in service on or after December 31, 2007.

TEXTILE REVITALIZATION CREDITS

Transitional Rules

In particular, the transitional rules address textile mill sites (1) that were fully or partially placed in service on or after January 1, 2008; (2) that were fully placed in service prior December 31, 2007; and (3) that were acquired before December 31, 2007 but a portion of the site has been placed in service on or after December 31, 2007.

Other rules may apply to a site located on the Catawba River located near Interstate 77.

TEXTILE REVITALIZATION CREDITS

Certification Procedures

The taxpayer may apply to the municipality or county in which the textile mill site is located for a certification of the textile mill site made by ordinance or binding resolution of the governing body of the municipality or county. The certification shall include findings that the:

- (1) textile mill site was a textile mill as defined in Section 12-65-20(3);
- (2) textile mill site has been abandoned as defined in Section 12-65-20(1); and
- (3) geographic area of the textile mill site consistent with Section 12-65-20(4).

The taxpayer may conclusively rely upon the certification in determining the credit allowed; provided, however, that if the taxpayer is relying upon the certification, the taxpayer shall include a copy of the certification on the first return for which the credit is claimed. S.C. Code Section 12-65-50.

NEXT CHALLENGE. NEXT LEVEL.

NEXSEN | PRUET