

# South Carolina's Major Economic Development Incentive Change

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On June 22, 2022, Henry McMaster, the Governor of South Carolina, signed South Carolina Bill 901 (the "Bill") into law. The Bill amends the Enterprise Zone Act of 1995's section on Job Development Credits (JDCs), one of South Carolina's primary discretionary economic development incentives that allow entities to obtain a refund of employee withholding taxes to reimburse the cost of certain qualifying business expenditures.

## Before the Adoption of the Bill

Before the Bill's adoption, to be eligible for JDCs, a qualified business had to create at least ten new jobs and enter into a Revitalization Agreement with South Carolina's Coordinating Council for Economic Development. The Revitalization Agreement sets forth specific minimum jobs and capital investment requirements that the qualified business must meet, on its own, to claim the JDCs. This presented a significant challenge to larger businesses with complex corporate structures that had different subsidiaries that created the jobs and made the capital investment. Prior to the Bill's adoption, such businesses had a difficult time obtaining JDCs because they could not satisfy the requirement that the same legal entity create the jobs *and* make the capital investment.

## Job Development Credits Post-Adoption of the Bill

The amendments to the JDC program contained in the Bill considerably increase the eligibility for companies to receive JDCs. Now, the qualified business and up to two related persons can work together to meet the minimum jobs and minimum capital investment requirements set forth by the Revitalization Agreement. The Bill uses the Internal Revenue Code's definition of relationships to determine what persons or entities qualify as related persons for purposes of the JDC program. This addition allows companies within the same controlled group (i.e., parent-subsidiary and brother-sister company relationships) to be considered related persons that can now jointly seek JDCs. To adhere to the Bill's definition of related person, the qualified business must include any related persons in the Revitalization Agreement with South Carolina's Coordinating Council for Economic Development.

The amendments to the JDC program contained in the Bill also include a stipulation regarding single-member limited liability companies and the maximum allowance of related persons. For the purposes of related person designations, single-member limited liability companies and qualified subchapter S

subsidiaries are treated as two separate entities. This means when they are jointly seeking JDCs, they can only have one other related person.

If you have any economic development questions, including questions relating to your entity's eligibility for South Carolina Incentives like JDCs, please contact the author of this alert or the Womble Bond Dickinson attorney with whom you normally work.

*This client alert features contributions from Taylor Conley, Summer Associate with Womble Bond Dickinson.*

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