



# This Week in State Tax (TWIST)

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## South Carolina: Appeals Court Finds Investment Credit Cap is Annual Limit, Not Lifetime

The statutory \$5 million limit on the ability of a taxpayer to claim the South Carolina investment credit is an annual limitation and not a lifetime cap, according to a recent appellate court decision. South Carolina offers a credit against its income tax for any investment in qualified manufacturing and productive equipment property. For investments made after June 30, 1998, the credit is limited to \$5 million by statute. Using tax forms that called for the application of the credit cap on an annual basis, the taxpayer claimed a credit of approximately \$25 million over a five-year period. The South Carolina Department of Revenue (Department) subsequently updated the relevant tax forms to apply the credit cap on a lifetime basis. On audit, the Department imposed an adjustment of approximately \$20 million (reflecting the difference between the application of the cap on a lifetime basis instead of an annual basis). An administrative law court upheld the adjustment, ruling that while the statute was ambiguous, the Department correctly treated the cap as a lifetime one and that the change in interpretation of the credit cap was not improper.

On appeal, the taxpayer argued that the statute unambiguously applied on an annual basis; alternatively, it argued that the Department's fifteen-year history of applying the cap on an annual basis precluded it from later applying it on a lifetime basis. Although the court acknowledged that the statute did not contain any time-specific language concerning the credit cap, it noted that the statute provided that the credit itself was available "in any taxable year" and that the credit was against a tax that was imposed "annually." It also noted that the purpose of the credit was to encourage "the formation of new businesses and the retention and expansion of existing businesses;" applying the credit on a lifetime basis would preclude its ability to encourage the expansion of an existing businesses that had reached the lifetime cap. Accordingly, the court ruled that the statute was not ambiguous and applied the credit cap on an annual basis, reversing the administrative court. Contact [Jeana Parker](#) with questions on [Duke Energy Co. v. Department of Revenue](#).

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