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DEPARTMENT OF REVENUE

Corporate, Estate and Intangible Tax

RULE NO.: 12CER24-2
RULE TITLE: Credit for Qualified Railroad Reconstruction or Replacement Expenditures

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Section 61, Chapter 2024-158, Laws of Florida (L.O.F.), authorizes the Department of Revenue to promulgate emergency rules to implement section 220.1915, F.S., Credit for Qualified Railroad Reconstruction or Replacement Expenditures, as amended by section 40, Chapter 2024-158,

L.O.F., effective July 1, 2024. The promulgation of this emergency rule ensures that the public is notified in the most expedient and appropriate manner regarding the amendments to section 220.1915, F.S.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The Legislature expressly authorized the promulgation of emergency rules to implement the provisions of section 40, Chapter 2024-158, L.O.F., which amends the provisions of section 220.1915, F.S., Credit for Qualified Railroad Reconstruction or Replacement Expenditures. Additionally, this emergency rule is the most expedient and appropriate means of notifying taxpayers of these provisions.

SUMMARY: Emergency Rule 12CER24-2, Credit for Qualified Railroad Reconstruction or Replacement Expenditures, incorporates the provisions of section 220.1915, F.S., as amended by section 40, Chapter 2024-158, L.O.F., effective July 1, 2024, and removes provisions rendered obsolete by the amendment. The emergency rule provides that the calculation of the tax credit is based on the track miles owned or leased by a qualifying railroad on the last day of the prior calendar year. An application for the tax credit may be submitted to the Department once the qualified expenditures are incurred during the taxable year, but no later than May 1 of the following calendar year. Qualifying railroads are limited to one application each taxable year. The requirement to include a copy of federal Form 8900, Qualified Railroad Track Maintenance Credit, or its equivalent, with an application for tax credit is amended to provide that a copy of the federal form is to be submitted to the Department within 60 days of submitting the form to the Internal Revenue Service. The Department will issue a letter to the applicant indicating the amount of the approved credit within 30 days of receiving a completed application. Tax credits approved by the Department may be used in the taxable year of approval and in any of the five subsequent taxable years. Tax credits may be transferred immediately upon approval by the Department. Taxpayers receiving a transferred tax credit may only use the tax credit on tax returns with a due date, or extended due date, after the date of transfer.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Martha Gregory, Technical Assistance and Dispute Resolution, telephone (850)717-6041, email RuleComments@floridarevenue.com.

THE FULL TEXT OF THE EMERGENCY RULE IS:

12CER24-2 ~~12C-1.01915~~ Credit for Qualified Railroad Reconstruction or Replacement Expenditures.

(1) Definitions. For purposes of this rule, the following terms mean:

(a) No change.

(b) “Qualified expenditures” means gross expenditures made in Florida by a qualifying railroad during the taxable year in which the credit is claimed, provided such expenditures were made for track that was owned or leased by a qualifying railroad on the last day of the prior calendar year, and were:

1. through 2. No change.

(c) “Qualifying railroad” means any Class II or Class III railroad operating in Florida on the last day of the calendar year prior to the taxable year for which the credit is claimed, pursuant to the classifications in effect for that year as set by the United States Surface Transportation Board or its successor.

(2) Available Credits for Qualifying Railroads. ~~A For taxable years beginning on or after January 1, 2023,~~ a credit equal to 50 percent of a qualifying railroad’s qualified expenditures incurred in Florida during a taxable year is available against the Florida corporate income tax imposed by Chapter 220, F.S. However, the amount of the credit may not exceed \$3,500 multiplied by the number of miles of railroad track owned or leased in Florida by the qualifying railroad as of the end of the calendar year prior to the taxable year in which the qualified expenditures were incurred.

(a) through (c) No change.

(3) Application Process. To apply for available program credits, a qualifying railroad must submit a Florida Credit for Qualified Railroad Reconstruction or Replacement Expenditures Application for Credit (Form F-11915, incorporated by reference in Emergency Rule 12CER24-4 12C-4.051, F.A.C.) to the Department each taxable year, along with documentation demonstrating that the qualifying railroad’s qualified expenditures meet the criteria to receive credits. Only one Form F-11915 may be submitted per qualifying railroad per taxable year.

(a) If federal Form 8900 (Qualified Railroad Track Maintenance Credit), or its equivalent, is filed with the Internal Revenue Service within 60 days prior to submitting Form F-11915. If the qualifying railroad earned a federal credit under 26 U.S.C. 45G during the taxable year, the supporting documentation must include federal Form 8900 (Qualified Railroad Track Maintenance Credit) or its equivalent. Otherwise, a qualifying railroad must submit federal Form 8900 directly to the Department within 60 days of submitting the form to the Internal Revenue Service.

~~(b) If the qualifying railroad is a taxpayer under Chapter 220, F.S., it must submit Form F-11915 when it files its Florida Corporate Income/Franchise Tax Return (Form F-1120, incorporated by reference in Rule 12C-1.051, F.A.C.).~~

~~(b)(c) The~~ If the qualifying railroad is not a taxpayer under Chapter 220, F.S., it must submit Form F-11915 to the Department no later than May 1 of the calendar year following the year in which the qualified expenditures were made. If the

May 1 due date falls on a Saturday, Sunday, or legal holiday, Form F-11915 will be considered timely if the form is postmarked or electronically submitted on the next succeeding day that is not a Saturday, Sunday, or legal holiday. The May 1 due date may not otherwise be extended.

1. Example: ~~Qualifying railroad X is not a taxpayer under Chapter 220, F.S.~~ Qualifying railroad X operates on a calendar year basis. X has qualified expenditures during calendar year ~~2024 2023~~. X must apply for a credit by submitting Form F-11915 ~~to with~~ the Department no later than May 1, ~~2025 2024~~.

2. Example: ~~Qualifying railroad Y is not a taxpayer under Chapter 220, F.S.~~ Qualifying railroad Y operates on a fiscal year basis, with a January 31 year end. Y has qualified expenditures during the fiscal year beginning February 1, ~~2024 2023~~, and ending January 31, ~~2025 2024~~. Y must apply for a credit by submitting Form F-11915 ~~to with~~ the Department no later than May 1, ~~2026 2025~~.

(d) renumbered (c) No change.

(d) The Department will issue a letter to the qualifying railroad within 30 days after receipt of the completed application indicating the amount of the approved credit.

(4) Determination of Carryforward or Transfer of Unused Credits. When a credit is not fully used during a taxable year, either because the qualifying railroad that earned the credit has insufficient tax liability or because the qualifying railroad is not a taxpayer under Chapter 220, F.S., the credit may be carried forward or may be transferred in accordance with subsection (5). The carryforward or transferred credit may be used in the year approved or any of the 5 subsequent taxable years in which the credit was earned, when the tax imposed by Chapter 220, F.S., for that taxable year exceeds the credit for which the qualifying railroad or transferee is eligible in that taxable year, after applying the other credits and unused carryovers in the order provided by Section 220.02(8), F.S.

~~(a) If the qualifying railroad is a taxpayer under Chapter 220, F.S., the Department will notify the qualifying railroad by letter within 30 days after the receipt of a completed Florida Credit for Qualified Railroad Reconstruction or Replacement Expenditures Application for Credit (Form F-11915), indicating the amount of credit that may be carried forward or transferred.~~

~~(b) If the qualifying railroad is not a taxpayer under Chapter 220, F.S., the Department will notify the qualifying railroad by letter within 30 days after the receipt of completed Form F-11915, indicating the amount of credit that may be transferred.~~

~~(a)(c)1.~~ Amounts that exceed the limitation of \$3,500 multiplied by the number of miles of railroad track owned or leased in Florida by the qualifying railroad as of the end of the calendar year prior to the taxable year in which the qualified expenditures were incurred, as provided in subsection (2), may

not be carried forward to a subsequent taxable year or transferred.

(b)2- Example: Qualifying railroad Corporation A is a taxpayer under Chapter 220, F.S., that incurs \$20,000 of qualified expenditures during its taxable year. Corporation A owns 2 miles of railroad track within Florida as of the end of the calendar year prior to the its taxable year in which the qualified expenditures are incurred.

Corporation A's credit is equal to 50 percent of the \$20,000 qualified expenditures incurred in the taxable year but may not exceed \$3,500 multiplied by the number of miles owned or leased in Florida at the end of the calendar year prior to the its taxable year with the qualified expenditures.

Credit computation: 50% x \$20,000 = \$10,000 but may not exceed \$7,000 (\$3,500 x 2 miles of railroad track). Therefore, Corporation A receives a \$7,000 credit for qualified railroad reconstruction or replacement expenditures.

The amount of computed credit exceeding the limitation amount (\$3,000 = \$10,000 - \$7,000) cannot be used, carried forward, or transferred.

When it files its Florida Corporate Income/Franchise Tax Return (Form F-1120), Corporation A has \$5,000 tax due after application of all credits required to be claimed prior to application of the credit for qualified railroad reconstruction or replacement expenditures. Assuming the Department does not have to make any adjustments to Corporation A's Form F-1120, the Department will issue a letter to Corporation A indicating that the amount of credit available to carry forward or transfer is \$2,000 (\$7,000 - \$5,000).

(5) Transfer of credit. Any For taxable years beginning on or after January 1, 2023, an unused credit may be transferred, in whole or in part. The transfer of a credit does not affect the time limit for taking the credit, and the credit is subject to the same limitations imposed on the transferor in accordance with subsection (4). Transferred credits received by the transferee may only be used on tax returns with a due date or extended due date on or after the date of transfer.

(a) Credits may be transferred to a taxpayer subject to the tax under Chapter 220, F.S., and that either transports property using the rail facilities of any the qualifying railroad, or furnishes railroad-related property or services to any railroad operating in Florida, or is a railroad, as those terms are defined in 26 C.F.R. s. 1.45G-1(b) (March 18, 2018), and herein incorporated by reference (http://www.flrules.org/Gateway/reference.asp?No=Ref-16071), to any railroad operating in Florida, or is a railroad. A copy of this regulation is available from the Department at https://floridarevenue.com/taxes/taxesfees/Pages/corp_tax_inc ent.aspx.

(b) The transferor is required to notify the Department of a credit transfer by submitting a Florida Credit for Qualified

Railroad Reconstruction or Replacement Expenditures Notice of Intent to Transfer a Credit (Form F-11915T, incorporated by reference in Emergency Rule 12CER24-4 12C-1.051, F.A.C.) to the Department within 30 days after the transfer. A separate notice must be submitted for each taxpayer receiving a transfer of credit.

(c) No change.

(6) No change.

PROPOSED EFFECTIVE DATE: July 1, 2024

Rulemaking Authority 213.06(1), 220.1915(7) FS., s. 61, Ch. 2024-158, LOF. Law Implemented 220.02(8), 220.1915 FS., s. 40, Ch. 2024-158, LOF. History—New 12-3-23, 7-1-24.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: 07/01/2024

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