



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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Bill Number:	S.0408	Amended by the Senate on February 26, 2019
Author:	Reese	
Subject:	Sales and Gross Receipts	
Requestor:	House Ways and Means	
RFA Analyst(s):	R. Martin	
Impact Date:	April 22, 2019	

Fiscal Impact Summary

This bill, as amended, would have an indeterminant effect on state General Fund corporate income tax revenue in FY2019-20. This bill would not affect Other Funds revenue or Federal Funds revenue.

Explanation of Fiscal Impact

Amended by the Senate on February 26, 2019

State Expenditure

The Department of Revenue indicates that there will be no expenditure impact to the General Fund, Other Funds, or Federal Funds from this bill. The Department can administer the legislative changes with existing resources.

State Revenue

Section 1. When a corporate taxpayer conducts business in more than one state, they are statutorily required to account for the amount of business attributable to each state. Generally, income is apportioned among the states on a formula basis. The apportionment method becomes clouded when the taxpayer is a service provider rather than a manufacturer. Pursuant to Sections 12-6-2290 and 12-6-2295, taxpayers whose principal business is not manufacturing or dealing in tangible personal property must apportion income using a gross receipts factor. The gross receipts factor is defined as “a fraction in which the numerator is gross receipts from within this State during the taxable year and the denominator is total gross receipts from everywhere during the taxable year.”

During the last legislative session, Act 254 of 2017 amended Section 12-6-2295 to clarify the apportionment language for direct broadcast satellite companies’ services in the definition of gross sales with regard to their assessment of corporate income tax revenue. At the heart of the matter were lawsuits filed by DirecTV, Inc. and Dish DBS Corporation asserting that the satellite companies should not source its revenue to South Carolina for income tax purposes. At issue was the interpretation and delineation of the phrases “income-producing activity” and “costs of performing the service”. The satellite providers argued that the costs of performing the service should be sourced to their headquarters that are not in South Carolina thereby reducing their tax liability sourced to South Carolina. The Department of Revenue argued that the income-producing activity of charging subscription fees to South Carolina subscribers was the appropriate measure to assess the satellite provider’s corporate tax liability. The lawsuit was decided by an Administrative Law Court judge in favor of the defendant, the South Carolina

Department of Revenue. The case was appealed by Dish DBS Corporation to the South Carolina Court of Appeals which upheld the lower court's ruling on October 31, 2018.

This bill would add cable system operators and video streaming services to the definition of gross sales with regard to the apportionment language and their assessment of corporate income tax revenue. This bill, as amended, revises taxation provisions to provide that if a pass-through business operates a cable system or a direct broadcast satellite service, or if it has receipts from a video service, then a corporation that owns an interest in that pass-through business, whether directly or indirectly, must be treated as operating a cable system or a direct broadcast satellite service, or as having receipts from video service. Also, this bill as amended, would include the "receipts from the operation of a cable system, including receipts from cable service and including receipts from services provided over the network that are associated with or classified as noncable or nonvideo services under federal law, receipts from video service" applicable to the sales factor ratio in determining corporate tax liability in South Carolina.

A cable system is defined pursuant to Section 58-12-300 of the South Carolina Code of Laws, and further defined as set forth in US Code 47 U.S.C. Section 522(7) which states:

"(7) the term "cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter 11 of this chapter, except that such facility shall be considered a cable system (other than for purposes of section 541(c) of this title) to the extent such facility is used in the transmission of video programming direct to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 573 of this title; or (E) any facilities of any electric utility used solely for operating its electric utility system".

A cable service is also defined pursuant to Section 58-12-300 of the South Carolina Code of Laws, and further defined as set forth in US Code 47 U.S.C. Section 522(6) which states:

"(6) the term cable service means – (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service".

According to the South Carolina Cable Television Association, there are 128 cable television operators in 461 communities serving over 1,020,000 households. These figures are disproportionately skewed toward the national cable television operators. Charter Communications, Inc. is the second largest cable operator and broadband communications services company in the United States providing video, Internet, and voice services to approximately 28,100,000 residential and small and medium business customers as of December

31, 2018. Based upon figures from the U.S Securities and Exchange Commission as reported by Charter Communications, Inc., an estimated 955,631 residential and business customers are located in South Carolina. These residential and businesses are responsible for an estimated nearly \$1,300,000,000 per year from video, Internet, and voice services in South Carolina. Applying a corporate income tax rate of five percent yields and estimated \$64,000,000 in state General Fund corporate income tax revenue from the sales component of the state apportionment formula.

The revenue impact of this bill would be the difference between the actual corporate income tax returns of Charter Communications filed with the Department of Revenue before any changes in statutory language compared with the corporate income tax return of Charter Communications after the changes in statutory language of this bill on the income-producing activity tax basis as the method of apportionment of income. The income-producing activity basis was ruled in the Department of Revenue's favor by an administrative law court judge and was upheld by the appellant court. Since access to individual company tax returns is confidential and subject to nondisclosure, we cannot affirmatively make a determination about the revenue impact of this legislation. This bill, therefore, would have an indeterminate effect on state General Fund revenue in FY2019-20, and later fiscal years.

Section 2. This act takes effect upon approval by the Governor and shall apply to all open tax periods excluding assessments under judicial review as of the date of the Governor's approval.

Local Expenditure

N/A

Local Revenue

N/A



Frank A. Rainwater, Executive Director