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COMMITTEE REPORT

May 3, 2022

**H. 5057**

Introduced by Reps. Simrill, Pope, Erickson and W. Newton

S. Printed 5/3/22--S.

Read the first time April 6, 2022.

**THE COMMITTEE ON FINANCE**

To whom was referred a Bill (H. 5057) to amend Section 12‑6‑40, as amended, Code of Laws of South Carolina, 1976, relating to the application of the Internal Revenue Code to state income, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

HARVEY S. PEELER, JR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill updates South Carolina’s conformity to the IRC through December 31, 2021. DOR will administer the changes to income tax provisions with existing staff and resources. Therefore, the bill is not expected to impact expenditures for the agency.

**State Revenue**

This bill updates South Carolina’s conformity to the IRC through December 31, 2021. In addition, the bill proactively adopts any expired provisions extended but not amended in 2022.

Research by DOR identified two federal tax laws enacted by Congress that impact South Carolina’s conformity through December 31, 2021:

 American Rescue Plan Act of 2021 (ARPA) (PL 117-2) enacted on March 11, 2021

 Infrastructure Investment and Jobs Act (IIJA) (PL 117-58) enacted on November 15, 2021

DOR did not identify any expired provisions for 2021 that would impact 2022 if extended.

The bill as amended also specifically adopts the federal provision that targeted Economic Injury Disaster Loan advances and Restaurant Revitalization Grants may be excluded from gross income. Because these special loan and grant funds are a one-time event and are not currently in our tax base, adopting the federal tax treatment for these provisions is not expected to impact revenue.

To estimate the impact of conforming to IRC changes, Revenue and Fiscal Affairs (RFA) utilizes U.S. estimates by the Joint Committee on Taxation and the Congressional Budget Office and adjusts those estimates to project the impact of adopting these federal provisions on South Carolina. Further, based upon research, RFA made additional adjustments to refine these estimates with respect to South Carolina. The provisions affecting South Carolina in these federal law changes are listed in Table 1 attached.

The summary table below provides the potential impact on a fiscal year basis. However, the timing of the impact for provisions affecting tax year 2021 may change depending on when the bill is enacted. Filing season for tax year 2021 has already begun, and taxpayers would be required to file an amended return to take advantage of the changes. If the bill is passed following April 18,2022, the impact for provisions affecting FY 2021-22 will likely be delayed until FY 2022-23.

**Summary of General Fund Impact**

**FY 2021-22 FY 2022-23 FY 2023-24 FY 2024-25 FY 2025-26 FY 2026-27 FY 2027-28**

**Individual** ($14,875,000) ($98,000) ($143,000) ($197,000) ($244,000) ($256,000) ($292,000)

**Income**

**Corporate** ($541,000) ($339,000) ($299,000) ($261,000) ($227,000) ($191,000) $1,442,000

**Income**

**Total ($15,416,000) ($437,000) ($442,000) ($458,000) ($471,000) ($447,000) $1,150,000**

The following summarizes select provisions from Table 1 with larger effects on South Carolina:

Line 1: ARPA includes a provision that extends the limitation on excess business losses of non-corporate taxpayers that is currently in place for tax years 2018-2025 to tax year 2026. In the Tax Cuts and Jobs Act of 2017, the federal code was amended to specifically disallow these losses for tax years 2018-2025, and South Carolina conformed to this provision. In the Coronavirus Aid, Relief, and Economic Security Act of 2020, the IRC was amended to allow these losses for 2018-2020, but South Carolina specifically did not adopt the change. Adopting the ARPA provision would extend the State’s current treatment disallowing these excess losses for tax year 2026. As this is an extension of the existing treatment, the impact is already reflected in the forecast. However, the effect of non-conforming would be to decrease tax liabilities by approximately $46,000,000 for tax year 2026.

While South Carolina does not adopt federal credits, the changes to the Earned Income Tax Credit and the Child Dependent Care credit will impact our state tax credits as the state tax credits are based on the federal credits. These estimated impacts are listed in Table 1 as well.

Lines 3-7: South Carolina’s Earned Income Tax Credit is based upon the federal tax credit. The changes to the calculation of the federal credit amount, therefore, would impact the amount of the state credit. The amount of the state credit is phased-in through 2023 and is 83.33 percent of the federal credit for tax year 2021. The percentage increases to 104.15 for tax year 2022 and 125.00 percent for tax year 2023. Because the state credit is non-refundable, the impact is limited to those returns with tax liabilities. The impact for these federal changes is estimated based upon the current relationship between total federal credits for South Carolina filers and the amount South Carolina taxpayers are able to utilize on their state tax returns.

Line 8: The largest impact is a result of the increase in the federal Child and Dependent Care credit amounts for tax year 2021. This change is a one-year impact only. The federal credit is increased from a maximum of $3,000 to $8,000 for one child and from $6,000 to $16,000 for two or more children. South Carolina’s Child and Dependent Care credit is 7 percent of the federal credit amount. The state credit maximum would increase from $210 to $560 for one child and $420 to $1,120 for two or more children. In tax year 2019, 124,204 returns reported a total of $23,131,815 in state Child and Dependent Care tax credits. Based upon recalculating the 76,298 returns that claimed the maximum at the new credit limits in 2019, the change in the credit amount would increase total credits by approximately $15,274,000. However, credits declined by approximately 28 percent to $17,585,665 in 2020 due to effects of the COVID-19 pandemic. Continued childcare closures and issues from the pandemic likely affected credits for 2021, although not to the extent seen in 2020. The Census Bureau’s Household Pulse Survey indicates that issues with childcare availability remained in 2021 as well. Based on the available information, we anticipate that childcare expenses for 2021 were likely approximately 10 percent lower than would be expected in a normal year. Based on this assumption, the increase in the credit amount for 2021 is expected to increase total credits for one year by $13,746,000. Since tax returns for 2021 are currently being filed, taxpayers would likely need to file an amended return to claim the increased credit.

**Introduced on March 1, 2022**

**State Expenditure**

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**State Revenue**

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To estimate the impact of conforming to IRC changes, Revenue and Fiscal Affairs (RFA) utilizes U.S. estimates by the Joint Committee on Taxation and the Congressional Budget Office and adjusts those estimates to project the impact of adopting these federal provisions on South Carolina. Further, based upon research, RFA made additional adjustments to refine these estimates with respect to South Carolina. The provisions affecting South Carolina in these federal law changes are listed in Table 1 attached.

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Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 12‑6‑40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE APPLICATION OF THE INTERNAL REVENUE CODE TO STATE INCOME TAX LAWS, SO AS TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE TO THE YEAR 2021 AND TO PROVIDE THAT IF THE INTERNAL REVENUE CODE SECTIONS ADOPTED BY THIS STATE ARE EXTENDED, THEN THESE SECTIONS ALSO ARE EXTENDED FOR SOUTH CAROLINA INCOME TAX PURPOSES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 12‑6‑40(A)(1)(a) and (c) of the 1976 Code, as last amended by Act 87 of 2021, is further amended to read:

“(a) Except as otherwise provided, ‘Internal Revenue Code’ means the Internal Revenue Code of 1986, as amended through December 31, ~~2020~~ 2021, and includes the effective date provisions contained in it.

(c) If Internal Revenue Code sections adopted by this State which expired or portions thereof expired on December 31, ~~2020~~ 2021, are extended, but otherwise not amended, by congressional enactment during ~~2021~~ 2022, these sections or portions thereof also are extended for South Carolina income tax purposes in the same manner that they are extended for federal income tax purposes.”

SECTION 2. For tax year 2021, South Carolina adopts the federal exclusion from gross income for targeted Economic Injury Disaster Loan advances received from the Small Business Administration (SBA) and the federal exclusion from gross income for restaurant revitalization grant amounts received from the SBA as provided in Sections 9672 and 9673 of the American Rescue Plan Act.

SECTION 3. This act takes effect upon approval by the Governor.

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