~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 5, 2014

**S. 953**

Introduced by Senators Leatherman, Setzler and O’Dell

S. Printed 2/5/14--S.

Read the first time January 21, 2014.

**THE COMMITTEE ON FINANCE**

To whom was referred a Bill (S. 953) 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:

HUGH K. LEATHERMAN, SR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**REVENUE IMPACT 1/**

We expect that updating conformity to the Internal Revenue Code in §12-6-40(A)(1)(a) through the end of 2013 will have no revenue impact on general fund income tax revenue in FY 2014-15. We also expect no revenue impact from potential federal actions that retroactively reinstate or extend any Internal Revenue Code sections previously adopted by the State that expired on December 31, 2013.

**Explanation**

This bill updates South Carolina’s conformity to the Internal Revenue Code (IRC) through December 31, 2013. Currently, the South Carolina income tax statutes conform to the IRC as amended through January 2, 2013 by the American Taxpayer Relief Act of 2012. Our research, confirmed by the Department of Revenue, finds that no federal tax law changes were enacted during 2013 subsequent to the American Taxpayer Relief Act of 2012. We, therefore, expect that updating conformity in §12-6-40(A)(1)(a) through the end of 2013 will have no revenue impact on general fund income tax revenue in FY 2014-15.

This legislation in §12-6-40(A)(1)(c) also adopts expired provisions of the federal IRC previously adopted by the State in the event any of these expired sections are extended, but not otherwise amended, by the federal government in 2014. This amendment proactively adopts these expired provisions in the event Congress retroactively reinstates these enhanced deductions and exclusions from income. This added language is a result of the U.S. Congress allowing fifty-five federal tax provisions to expire on December 31, 2013. If Congress does not reinstate these provisions, the twenty-four provisions that impact South Carolina taxpayers will increase South Carolina general fund income tax revenue in FY 2014-15 regardless of whether we update conformity through December 31, 2013.

These twenty-four temporary provisions have generally been in the Internal Revenue Code for years and are routinely extended as they were most recently extended in the American Taxpayer Relief Act of 2012. While Congress is expected to address these expired provisions at some point in 2014, they have legally expired and South Carolina could expect an increase in income tax collections as the result of their expiration regardless of whether South Carolina adopts conformity. The attached table provides a brief summary of the twenty-four provisions including their expected income tax revenue impacts that total $28,324,983 in FY 2014-15.

In November 2013 when the Board of Economic Advisors (BEA) set the initial forecast for FY 2014-15, the expectation was that Congress would likely extend these expiring federal tax provisions. The BEA general fund forecast included the revenue impact of extending these provisions as part of the income tax base since most of these provisions have been in effect for many years.

At this point, we believe this issue is still unresolved at the federal level and the Board of Economic Advisors has not decided whether to incorporate the revenue impact of these expired provisions in the forecast for FY 2014-15.

We expect no revenue impact from federal actions that retroactively reinstate or extend the expired provisions. In other words, if Congress reauthorizes or extends these items in 2014 with no amendments, then the $28,324,983 estimated revenue increase would not be realized. The BEA will continue to monitor this situation and any adjustment to the FY 2014-15 revenue forecast will be addressed later in the legislative session based on any federal or state legislation.

  **2013 Expiring Federal Tax Provisions First FY 2014-15**

**that Impact South Carolina State Enacted General**

**Income Tax Revenue in FY 2014-15 Fund**

**Income Tax**

**Increase**

1 Tax credit for research and experimentation

expenses (SC credit uses federal credit to

calculate SC tax liability reduction, without

federal credit the state credit is limited to

credits earned in previous years and carried

forward due to lack of tax liability) 1981 $ 12,943,739

2 Increase in section 179 expensing amounts

and threshold limits to $500,000/

$2,000,000. In 2014 limitations would

revert back to $25,000 with a $200,000

investment limit without further federal

legislation. 2003 $ 5,650,668

3 Deduction for qualified tuition and related

expenses 1978 $ 2,449,170

4 Discharge of indebtedness on principal

residence excluded from gross income

of individuals 2007 $ 1,814,352

5 Tax free distributions from IRA's to

certain public charities for individuals

aged 70-1/2 or older, not to exceed

$100,000 per taxpayer per year; special

transition rules for certain distributions

made in December 2012 and

January 2013 2006 $ 1,259,040

6 Premiums for mortgage insurance

deductible as interest that is qualified

residential interest 2006 $ 947,100

7 15 year straight line cost recovery for

qualified leasehold, restaurant, and

retail improvements 2004 $ 704,598

8 Above the line deduction of up to

$250 for teacher classroom expenses 2002 $ 610,618

9 Special rule for sales or dispositions

to implement Federal Energy Regulatory

Commission or state electric restructuring

policy 2004 $ 359,690

10 Extension of energy efficient commercial

buildings deduction 2006 $ 218,090

11 Basis adjustment to stock of

S corporations making charitable

contributions of property 2006 $ 206,729

12 Placed in service date for partial

expensing of certain refinery property 2005 $ 196,281

13 Change the depreciation classification

for race horses that are two years old or

younger from seven-year property to

three-year property 2008 $ 190,049

14 Enhanced charitable deduction for

contributions of food inventory 2005 $ 175,377

15 Reduction in recognition period for

S corporation built in gains tax 2009 $ 142,982

16 Contributions of capital gain real property

made for qualified conservation purposes 2006 $ 96,881

17 Extends income exclusion for employer

provided mass transit and parking benefits 2009 $ 74,470

18 Empowerment zone tax incentives 1993 $ 67,693

19 Accelerated depreciating for business

property on Indian reservations 1993 $ 60,970

20 7 year recovery period for certain

motorsports racing facilities 2004 $ 51,384

21 Special expensing rules for certain

film and television productions 2004 $ 34,894

22 Election to expense advanced mine

safety equipment 2006 $ 28,724

23 Modify tax treatment of certain

payments under existing arrangements

to controlling exempt organizations 2006 $ 22,341

24 Special rules applicable to qualified

small business stock 1993 $ 19,142

**Total $ 28,324,983**

*Approved By:*

Frank A. Rainwater

Board of Economic Advisors

1/ This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.

**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 2013 AND TO PROVIDE THAT ANY INTERNAL REVENUE CODE SECTIONS ADOPTED BY THE STATE THAT EXPIRED ON DECEMBER 31, 2013, THAT ARE EXTENDED BY CONGRESSIONAL ENACTMENT IN 2014 ARE ALSO 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) of the 1976 Code, as last amended by Act 10 of 2013, is further amended to read:

“(A)(1)(a) Except as otherwise provided, ‘Internal Revenue Code’ means the Internal Revenue Code of 1986, as amended through ~~January 2, 2013~~ December 31, 2013, and includes the effective date provisions contained in it.

(b) For purposes of sections 63 and 179 of the Internal Revenue Code, the amendments made by sections 103 and 202 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, P.L. 108‑27 (May 28, 2003) are effective only for taxable years beginning after December 31, 2003.

(c) If Internal Revenue Code sections adopted by this State which expired or portions thereof expired on December 31, 2013, are extended, but otherwise not amended, by congressional enactment during 2014, 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. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑