

# REPORT OF THE

## Sales and Income Tax SUBCOMMITTEE

(Crawford, Simrill, Stavrinakis, Erickson & Daning - Staff Contact: Emma Hall)

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## HOUSE BILL 4017

H. 4017 -- Reps. Simrill and Pope: 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 2020, 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, AND TO PROVIDE FOR THE TAX TREATMENT OF THE PAYCHECK PROTECTION PROGRAM AND CERTAIN EXPENSES AS PROVIDED FOR IN THE FEDERAL CONSOLIDATED APPROPRIATIONS ACT OF 2021.

***Received by Ways and Means:*** 3/3/2021

***Summary of Bill:***

This bill would conform the reference to the Internal Revenue Code to the to the year 2020 and extend the sections for state income tax purposes if the Internal Revenue Code adopted in these sections are extended. Provides for tax treatment of certain COVID-19 relief programs and certain expenses included in the federal Appropriations Act of 2021.

***Estimated Revenue Impact:***

The bill would adopt all of the changes to the IRC and reduce General Fund individual income tax revenue \$246,469,000 and corporate income tax by \$1,514,000 for a total reduction of \$247,983,000 in FY 2021-22. Further, the bill would increase General Fund individual income tax revenue \$2,913,000 and corporate income tax revenue by \$753,000, for a total increase of \$3,666,000 in FY 2022-23. South Carolina may choose to adopt or not adopt any or all of the provisions in Table 1 to alter this impact. Further, this bill would also adopt the changes outlined in Tables 2 and 3, but these changes have either been incorporated in or are already affecting revenue currently and would not have further impact on revenue.

***Other Notes/Comments:***

Passed favorably out of subcommittee 3/16/21 with understanding of need for an amendment to decouple from some federal provisions.



# SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE

## STATEMENT OF ESTIMATED FISCAL IMPACT

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*This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.*

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<b>Bill Number:</b>	H. 4017	Introduced on March 3, 2021
<b>Author:</b>	Simrill	
<b>Subject:</b>	Income Tax Conformity	
<b>Requestor:</b>	House Ways and Means	
<b>RFA Analyst(s):</b>	Jolliff	
<b>Impact Date:</b>	March 17, 2021	

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### Fiscal Impact Summary

This bill updates South Carolina's conformity to the Internal Revenue Code (IRC) through December 31, 2020. 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.

The bill would adopt all of the changes to the IRC and reduce General Fund individual income tax revenue \$246,469,000 and corporate income tax by \$1,514,000 for a total reduction of \$247,983,000 in FY 2021-22. Further, the bill would increase General Fund individual income tax revenue \$2,913,000 and corporate income tax revenue by \$753,000, for a total increase of \$3,666,000 in FY 2022-23. South Carolina may choose to adopt or not adopt any or all of the provisions in Table 1 to alter this impact. Further, this bill would also adopt the changes outlined in Tables 2 and 3, but these changes have either been incorporated in or are already affecting revenue currently and would not have further impact on revenue.

### Explanation of Fiscal Impact

#### Introduced on March 3, 2021

##### State Expenditure

This bill updates South Carolina's conformity to the IRC through December 31, 2020. 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, 2020. In addition, this bill proactively adopts any expired provisions of the federal code that are extended, but not otherwise amended, by congressional enactment during 2021.

Research by DOR identified four federal tax laws enacted by Congress that impact South Carolina's conformity through December 31, 2020.

- Families First Coronavirus Response Act (Families First Act) (PL 116-127) enacted on March 18, 2020
- Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (PL 116-136) enacted on March 27, 2020

- Paycheck Protection Program Flexibility Act of 2020 (PPPF Act) (PL 116-142) enacted on June 5, 2020
- Consolidated Appropriations Act of 2021 (CAA of 2021) (PL 116-260) enacted on December 27, 2020

The provisions in Table 1 would affect South Carolina if the state conforms to these recent changes in the federal law as provided in the bill. Revenue and Fiscal Affairs (RFA) utilizes U.S. estimates by the Joint Committee on Taxation and adjusts those estimates to project the impact of adopting these federal provisions on South Carolina. Further, based upon research by RFA and discussions with the Department of Revenue (DOR) and the South Carolina Association of CPAs (SCACPA), RFA made additional adjustments to refine these estimates with respect to South Carolina. However, the state may choose to adopt or not adopt any or all of the provisions in Table 1.

Further, the bill adds additional language in Section B to specify that South Carolina adopts the federal tax treatment for any exclusion from federal taxable income or allowance of expenses as provided in the CAA of 2021. As these provisions are not codified in the IRC, these additional sections of the bill allow for administration of the provisions. S.C. Act 147 of 2020, which adopted IRC Conformity through December 31, 2019, specifically provides that for tax year 2020 paycheck protection program (PPP) loans that were forgiven and excluded from gross income under the CARES Act are excluded for South Carolina income tax purposes and to the extent the federal government allows the deduction for expenses associated with the forgiven PPP loans, these expenses will be allowed as a deduction for South Carolina income tax purposes. The bill adopts this federal tax treatment for 2021 as allowed by the CAA. As the provisions were adopted in Act 147 for 2020 and these special provisions are a unique event not typically in the revenue stream, extending this treatment to 2021 will not affect the current revenue forecast. These provisions are noted in Section B of Table 1 and have no effect on revenue.

The CAA also extended certain provision that have been regularly extended by Congress. The extended provisions are listed in Table 2. These provisions are included in the current forecast by the Board of Economic Advisors, as the forecast expectation was that these provisions would be extended. Therefore, there is no revenue impact as a result of adopting these extended provisions. If South Carolina does not adopt the provisions, however, revenue would increase as the reductions are already in the forecast.

Table 3 provides information on those provisions that DOR advises us they believe are already affecting South Carolina regardless of conformity to the IRC because federal law determines how these provisions are implemented, and they cannot be avoided. Essentially, the change in revenue resulting from these provisions will occur regardless of whether South Carolina adopts this bill to extend conformity to 2020. Many of these provisions are already affecting revenues and will be accounted for by the Board of Economic Advisors in the revenue forecast.

In summary, South Carolina may choose to adopt or not adopt any or all of the provisions in Table 1. As drafted, the bill would adopt all of the changes and reduce General Fund individual

income tax revenue \$246,469,000 and corporate income tax by \$1,514,000, for a total reduction of \$247,983,000 in FY 2021-22. Further, the bill would increase General Fund individual income tax revenue \$2,913,000 and corporate income tax revenue by \$753,000, for a total increase of \$3,666,000 in FY 2022-23.

Please note, on March 11, 2021, Congress passed the American Rescue Plan Act of 2021 (PL 117-2), which includes additional federal stimulus programs and other provisions. Because the Act passed after December 2020, this bill does not address these provisions, some of which would significantly impact revenues if South Carolina conformed. Of particular interest, the Act included a provision that prohibits using any of the State and Local Fiscal Recovery Funds to reduce taxes. The Act specifically states:

*(A) In general.—A State or territory shall not use the funds provided under this section or transferred pursuant to section 603(c)(4) to either directly or indirectly offset a reduction in the net tax revenue of such State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase.*

The U.S. Treasury has not yet issued guidance as to what constitutes a tax reduction. Conforming to federal tax law changes would potentially reduce tax revenue. Notably, guidance has not been issued at this time to determine if conformity would constitute a tax reduction that would impact use of federal recovery funds.

#### **Local Expenditure and Local Revenue**

N/A

**Table 1. Provisions Affecting Revenue**

Line	Provision	IRC §	Individual or Corporate		FY 2021-22	FY 2022-23
1	\$300 charitable deduction allowed without itemizing deductions in 2020 (See also Line 2)	62	I		(\$3,808,000)	\$0
2	Certain charitable contributions deductible by non-itemizers in 2021 (\$300/\$600 married joint) (See also Line 1)	170	I		(\$7,035,000)	\$0
3	Modification of limits on charitable contributions for 2020 (See also Line 4)	170	I/C		(\$10,498,000)	\$5,225,000
4	Temporary modification of limitations on charitable contributions for 2021 (See also Line 3)	170	I/C		(\$7,000,000)	\$3,481,000
5	Modifications to income limitations for net operating losses for 2018, 2019, and 2020 (Carrybacks not allowed by SC)	172	I	*	(\$38,577,000)	\$1,363,000
6	Modification of limitation on losses for non-corporate taxpayers in 2018, 2019, and 2020	461(1)	I	*	(\$172,070,000)	\$729,000
7	Personal protective equipment expenses included in educator expense deduction (DOR recommends adopting)	62(a)(2)(D)	I		(\$5,000)	(\$5,000)
8	Temporary allowance of full deduction for business meals through 2022	274(n)	I		(\$5,483,000)	(\$6,176,000)
9	Special rules for qualified disaster relief charitable contributions	170	I		(\$195,000)	\$68,000
10	Special rules for qualified disaster-related personal casualty losses	165	I		(\$3,312,000)	(\$1,019,000)
<b>Section B of H. 4017- Additional Changes to Section 12-6-40(A)(1)</b>						
11	Small Business Association loan forgiveness				\$0	\$0
12	Emergency financial aid grants to students not included in gross income		I		\$0	\$0
13	Clarification of loan forgiveness and other business financial assistance				\$0	\$0
<b>Individual Income Tax</b>					(\$246,469,000)	\$2,913,000
<b>Corporate Income Tax</b>					(\$1,514,000)	\$753,000
<b>Total Provisions Affecting Revenue</b>					<b>(\$247,983,000)</b>	<b>\$3,666,000</b>

\* Applies to tax years 2018, 2019, and 2020

**Table 2. Provisions Extended - Currently in Revenue Forecast**

Line	Provision	IRC §	Individual or Corporate		FY 2021-22	FY 2022-23
14	Energy efficient commercial buildings deduction modified and made permanent	179D	I		(\$174,000)	(\$174,000)
15	Benefits provided to volunteer firefighters and emergency medical responders made permanent	139B	I		(\$174,000)	(\$177,000)
16	Permanent extension of medical expense deduction for expenses in excess of 7.5% of AGI	213(f)	I		(\$2,425,000)	(\$2,422,000)
17	Modification and Extension of exclusion from gross income for discharge of qualified principal residence indebtedness	108	I		(\$1,316,000)	(\$1,355,000)
18	Extension of 7-year recovery period for Motorsports Entertainment Complexes through 2025	168(i)(15)(D)	I		(\$86,000)	(\$98,000)
19	Extension of expensing rules for certain film, television, and live theatrical productions	181	I		(\$2,018,000)	(\$1,002,000)
20	Extension of certain empowerment zone tax incentives	1391, 1397A, 1397B	I		(\$638,000)	(\$660,000)
21	Extension of exclusion from income certain employer payments of student loans	127	I		(\$1,571,000)	(\$1,660,000)
22	Extension of mortgage insurance premiums treated as qualified residence interest through 2021	163(h)(3)	I		(\$432,000)	\$0
23	Extension of classification of certain racehorses as 3-year property for depreciation purposes	168(c)(3)(A)	I		\$0	\$0
24	Extension of accelerated depreciation for business property on Indian Reservations	168(j)	I		(\$34,000)	(\$22,000)

**Total of Extended Provisions Currently in Revenue Forecast**

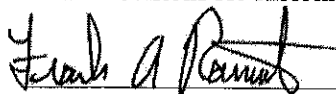
**(\$8,868,000) (\$7,570,000)**

**Table 3. Other Provisions for Information Only - Largely Already Affecting Revenue**

Line	Provision	IRC §	Individual or Corporate		FY 2021-22	FY 2022-23
25	Employee income exclusion for certain employer payments of student loans	127	I		(\$1,129,000)	\$0
26	Special Rules for Retirement Plans	72(t), 401, 402, 403, 408, 457	I		(\$239,644)	(\$40,882)
27	Temporary waiver of required minimum distribution rules for certain retirement plans and accounts for 2020	401, 402, 403, 408, 457	I		(\$28,786,702)	\$2,266,302
28	Technical amendments to TCJA regarding qualified improvements to property	168	I		\$0	\$0
29	Single-employer delay in minimum contribution funding for defined benefit plans	430(j), 436	I		\$13,047,811	(\$1,018,977)
30	New pension plan rules applied to certain charitable employers	414(y)	I		(\$2,455)	(\$2,455)
31	Health Saving Account (HAS) exemption for telehealth services	223	I		\$0	(\$159,599)
32	Inclusion of certain over-the-counter medical products as qualified medical expenses	106, 220, 223	I		(\$137,500)	(\$1,227,683)
33	Application of special rules to money purchase pension plans	no section	I		(\$174,331)	(\$36,830)
34	2020 election to terminate transfer period for qualified transfers from pension plans	420(f)	I/C		\$130,470	\$102,201
35	Beer, wine and distilled spirits - exempt aging process from certain inventory capitalization rules.	239A(f)(4)	I		(\$37,000)	(\$32,000)
36	Repeal of deduction for higher education qualified tuition and related expenses for tax years beginning after 2020	222	I		(\$3,167,421)	(\$3,075,345)
37	Minimum age for distribution during working retirement	401(a)(36)	I		\$0	\$0
38	Temporary rule preventing partial plan termination	411(d)(3)	I		\$0	\$0
39	Temporary rules for health and dependent care flexible suspending arrangements	125	I		\$93,000	\$39,000
40	Disaster related rules for use of retirement funds	72(t), 401, 402, 403, 408, 457	I		(\$67,523)	(\$15,960)

**Total Provisions for Information Only**

**(\$20,470,296) (\$3,202,227)**



Frank A. Rainwater, Executive Director

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**A BILL**

11 TO AMEND SECTION 12-6-40, AS AMENDED, CODE OF  
12 LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE  
13 APPLICATION OF THE INTERNAL REVENUE CODE TO  
14 STATE INCOME TAX LAWS, SO AS TO UPDATE THE  
15 REFERENCE TO THE INTERNAL REVENUE CODE TO THE  
16 YEAR 2020, TO PROVIDE THAT IF THE INTERNAL  
17 REVENUE CODE SECTIONS ADOPTED BY THIS STATE ARE  
18 EXTENDED, THEN THESE SECTIONS ALSO ARE  
19 EXTENDED FOR SOUTH CAROLINA INCOME TAX  
20 PURPOSES, AND TO PROVIDE FOR THE TAX TREATMENT  
21 OF THE PAYCHECK PROTECTION PROGRAM AND  
22 CERTAIN EXPENSES AS PROVIDED FOR IN THE FEDERAL  
23 CONSOLIDATED APPROPRIATIONS ACT OF 2021.

24  
25 Be it enacted by the General Assembly of the State of South  
26 Carolina:

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28 SECTION 1. A. Section 12-6-40(A)(1)(a) and (c) of the 1976  
29 Code, as last amended by Act 147 of 2020, is further amended to  
30 read:

31  
32 “(a) Except as otherwise provided, ‘Internal Revenue Code’  
33 means the Internal Revenue Code of 1986, as amended through  
34 December 31, ~~2019~~ 2020, and includes the effective date provisions  
35 contained in it.

36  
37 (c) If Internal Revenue Code sections adopted by this State  
38 which expired or portions thereof expired on December 31, ~~2019~~  
39 2020, are extended, but otherwise not amended, by congressional  
40 enactment during ~~2020~~ 2021, these sections or portions thereof also  
41 are extended for South Carolina income tax purposes in the same  
42 manner that they are extended for federal income tax purposes.”



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2 B. Section 12-6-40(A)(1) of the 1976 Code, as last amended by Act  
3 147 of 2020, is further amended by adding appropriately lettered  
4 subitems to read:

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6 “( ) To the extent loans are forgiven and excluded from gross  
7 income for federal income tax purposes under the paycheck  
8 protection program in Section 1102 of the Coronavirus Aid, Relief,  
9 and Economic Security Act (Public Law 116-136), or from any  
10 extension of the paycheck protection program, those loans are  
11 excluded for South Carolina income tax purposes. Further, to the  
12 extent the federal government allows the deduction of expenses  
13 associated with the forgiven paycheck protection program loans,  
14 these expenses will be allowed as a deduction for South Carolina  
15 income tax purposes.

16 ( ) South Carolina adopts the federal tax treatment for any  
17 exclusion from federal taxable income or allowance of expenses as  
18 provided in the federal Consolidated Appropriations Act of 2021 in  
19 Sections 276 (Clarification of Tax Treatment of Forgiveness of  
20 Covered Loans), 277 (Emergency Financial Aid Grants), and 278  
21 (Clarification of Tax Treatment of Certain Loan Forgiveness and  
22 Other Business Financial Assistance).”

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24 SECTION 2. This act takes effect upon approval by the Governor.

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