

REPORT OF THE SALES AND INCOME TAX SUBCOMMITTEE

(Clemmons, Hosey, Stavrinakis, Whitmire & Moss - Staff Contact: Michael Jackson)

SENATE BILL 408

S. 408 -- Senators Reese, Turner and Campbell: A BILL TO AMEND SECTION 12-6-2295, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ITEMS INCLUDED AND EXCLUDED FROM THE TERMS "SALES" AND "GROSS RECEIPTS", SO AS TO PROVIDE THAT RECEIPTS FROM THE OPERATION OF A CABLE SYSTEM ARE ATTRIBUTABLE TO THIS STATE IN PRO RATA PROPORTION OF THE COSTS OF PERFORMING THE SERVICE.

Received by Ways and Means:

February 28, 2019

Summary of Bill:

This bill relates to the tax parity for the cable industry with regards to corporate income taxes. This legislation will allow for cable companies and satellite companies to be taxed at the same corporate tax level and eliminate differences of market base sources vs. cost of performance base. Further, this legislation assures that cable company and satellite companies are taxed the same way in regards to corporate income taxes.

Estimated Revenue Impact:

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 legislative changes with existing resources.

Subcommittee Recommendation:

Favorable

Full Committee Recommendation:

Pending

Other Notes/Comments:



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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Bill Number:	S.0408	Amended by the House of Representatives 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

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 appellate 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

South Carolina General Assembly
123rd Session, 2019-2020

S. 408

STATUS INFORMATION

General Bill

Sponsors: Senators Reese, Turner and Campbell

Document Path: I:\council\bill\ncd\11157dg19.docx

Introduced in the Senate on January 22, 2019

Introduced in the House on February 28, 2019

Last Amended on February 26, 2019

Currently residing in the House Committee on **Ways and Means**

Summary: Sales and Gross receipts

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
1/22/2019	Senate	Introduced and read first time (Senate Journal-page 11)
1/22/2019	Senate	Referred to Committee on Finance (Senate Journal-page 11)
2/20/2019	Senate	Committee report: Favorable with amendment Finance (Senate Journal-page 12)
2/26/2019	Senate	Committee Amendment Adopted (Senate Journal-page 33)
2/26/2019	Senate	Read second time (Senate Journal-page 33)
2/26/2019	Senate	Roll call Ayes-43 Nays-0 (Senate Journal-page 33)
2/27/2019	Senate	Read third time and sent to House (Senate Journal-page 23)
2/28/2019	House	Introduced and read first time (House Journal-page 68)
2/28/2019	House	Referred to Committee on Ways and Means (House Journal-page 68)

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VERSIONS OF THIS BILL

[1/22/2019](#)

[2/20/2019](#)

[2/26/2019](#)

1 ~~Indicates Matter Stricken~~

2 Indicates New Matter

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4 COMMITTEE AMENDMENT ADOPTED

5 February 26, 2019

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S. 408

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9 Introduced by Senators Reese, Turner and Campbell

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11 S. Printed 2/26/19--S.

12 Read the first time January 22, 2019.

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A BILL

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11 TO AMEND SECTION 12-6-2295, AS AMENDED, CODE OF
12 LAWS OF SOUTH CAROLINA, 1976, RELATING TO ITEMS
13 INCLUDED AND EXCLUDED FROM THE TERMS "SALES"
14 AND "GROSS RECEIPTS", SO AS TO PROVIDE THAT
15 RECEIPTS FROM THE OPERATION OF A CABLE SYSTEM
16 ARE ATTRIBUTABLE TO THIS STATE IN PRO RATA
17 PROPORTION OF THE COSTS OF PERFORMING THE
18 SERVICE.

19 Amend Title To Conform

20
21 Be it enacted by the General Assembly of the State of South
22 Carolina:

23
24 SECTION 1. Section 12-6-2295(A)(7) of the 1976 Code, as added
25 by Act 265 of 2018, is amended to read:

26
27 "(7) receipts from the operation of a cable system, as defined in
28 Section 58-12-300, including receipts from cable service and
29 including receipts from services provided over the network that are
30 associated with or classified as noncable or nonvideo services under
31 federal law, receipts from video service as defined in Section 58-12-
32 300, or receipts from the provision of direct broadcast satellite
33 service that are attributable to this State in pro rata proportion of the
34 costs of performing the service, including the costs of acquiring
35 programming distribution rights and constructing and maintaining
36 distribution infrastructure, that the service provider incurs within
37 this State. For purposes of this subsection, if a pass-through
38 business operates a cable system or a direct broadcast satellite
39 service, or if it has receipts from video service, then a corporation
40 that owns an interest in that pass-through business, either directly or
41 indirectly, must be treated as operating a cable system or a direct
42 broadcast satellite service, or as having receipts from video service.

1 As used in this subsection, the term 'direct broadcast satellite
2 service' means the distribution or broadcasting of programming or
3 services by satellite directly to the subscriber's premises without the
4 use of ground receiving or distribution equipment, except at the
5 subscriber's premises or in the uplink process to the satellite."
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7 SECTION 2. This act takes effect upon approval by the Governor
8 and applies to all open tax periods excluding assessments under
9 judicial review as of the date of the Governor's approval.

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