

# REPORT OF THE ECONOMIC DEVELOPMENT LEGISLATIVE SUBCOMMITTEE

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## SENATE BILL 677

S. 677 -- Senators Davis, Goldfinch, Jackson, Shealy, Grooms, Gambrell, Matthews, Turner, Alexander, Hutto, Talley, Kimpson, McElveen, Stephens, M. Johnson, Williams, Kimbrell, Campsen, Sabb and Climer: A BILL TO AMEND SECTION 12-2-100 OF THE 1976 CODE, RELATING TO TAX CREDITS, TO PROVIDE FOR THE ALLOCATION OF A TAX CREDIT OR UNUSED CREDIT AMOUNT CARRIED FORWARD THAT IS EARNED BY A PARTNERSHIP OR LIMITED LIABILITY COMPANY TAXED AS A PARTNERSHIP.

***Received by Ways and Means:*** April 13, 2021

***Summary of Bill:*** This bill provides for the allocation of a tax credit or unused credit amount carried forward that is earned by a partnership or limited liability company taxed as a partnership. The allocation must be allowed without regard to any provision of the Internal Revenue Code, or regulation promulgated pursuant to it, that may be interpreted as contrary to the allocation, including, without limitation, the treatment of the allocation as a disguised sale.

***Estimated Revenue Impact:*** This bill will not have a fiscal impact on the General Fund.

***Subcommittee Recommendation:*** Favorable report as amended on 4/27/2021.

The adopted amendment restored the bill as it was first introduced to include the state mill credit, state historic credit, and the affordable housing credit.

***Other Notes/Comments:*** This bill passed the Senate by a vote of 43-0.

HOUSE  
AMENDMENT

THIS AMENDMENT  
ADOPTED

GOOD/DOWNEY  
APRIL 27, 2021

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CLERK OF THE HOUSE

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REP. BALLENTINE PROPOSES THE FOLLOWING  
AMENDMENT No. TO S. 677

(USERS\KIMJACKSON\APPDATA\LOCAL\MICROSOFT\WINDOWS\INETCACHE\CONTENT.OUTLOOK\IG4C3A04\S. 677 SUBCOMMITTEE AMENDMENT):

REFERENCE IS TO PRINTER'S DATE 4/7/21-S.

**AMEND THE BILL, AS AND IF AMENDED, BY  
STRIKING SECTION 1 AND INSERTING:**

**/ SECTION 1. SECTION 12-2-100 OF THE  
1976 CODE IS AMENDED TO READ:**

**“SECTION 12-2-100. (A) UNLESS  
OTHERWISE PROVIDED BY LAW, A TAX CREDIT  
ADMINISTERED BY THE DEPARTMENT MUST BE  
USED IN THE YEAR IT IS GENERATED AND MUST  
NOT BE REFUNDED.**

**(B) A TAX CREDIT EARNED BY A PARTNERSHIP OR LIMITED LIABILITY COMPANY TAXED AS A PARTNERSHIP PURSUANT TO SECTIONS 12-6-3535, 12-6-3795, OR 12-65-10, INCLUDING ANY UNUSED CREDIT AMOUNT CARRIED FORWARD, MAY BE PASSED THROUGH TO THE PARTNERS OR MEMBERS AND MAY BE ALLOCATED AMONG ANY OF ITS PARTNERS OR MEMBERS ON AN ANNUAL BASIS, INCLUDING, WITHOUT LIMITATION, AN ALLOCATION OF THE ENTIRE CREDIT TO ANY PARTNER OR MEMBER WHO WAS A PARTNER OR MEMBER AT ANY TIME IN THE YEAR IN WHICH THE CREDIT OR UNUSED CARRYFORWARD WAS ALLOCATED. THE ALLOCATION MUST BE ALLOWED WITHOUT REGARD TO ANY PROVISION OF THE INTERNAL REVENUE CODE, OR REGULATION PROMULGATED PURSUANT TO IT, THAT MAY BE INTERPRETED AS CONTRARY TO THE ALLOCATION, INCLUDING, WITHOUT LIMITATION, THE TREATMENT OF THE ALLOCATION AS A DISGUISED SALE.” /**

**RENUMBER SECTIONS TO CONFORM.**  
**AMEND TITLE TO CONFORM.**



**SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE**  
**STATEMENT OF ESTIMATED FISCAL IMPACT**  
**(803)734-3780 • RFA.SC.GOV/IMPACTS**

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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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**Bill Number:** S. 0677 Amended by Senate Finance Sales & Income Tax  
Subcommittee on March 25, 2021

**Author:** Davis

**Subject:** Tax Credits

**Requestor:** Senate Finance

**RFA Analyst(s):** Jolliff

**Impact Date:** March 25, 2021

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### **Fiscal Impact Summary**

This bill amends Section 12-2-100 regarding allocations of the S.C. Housing Tax Credit earned by a partnership or limited liability company (LLC) taxed as a partnership to partners or members of the LLC. This bill is not expected to impact expenditures for the Department of Revenue (DOR). The agency will manage the changes with existing staff and resources.

In our analysis of the fiscal impact for Act 137 of 2020 (H. 3998), which enacted the credit, we determined the estimated tax credits and revenue reduction assuming that the full amount of allowable tax credits would be taken in the year earned. The analysis did not factor in any potential reduction for disallowing credit allocations related to a disguised sale as outlined in DOR's Revenue Ruling on the implementation of the credit. Therefore, this clarification does not impact the General Fund revenue estimate.

### **Explanation of Fiscal Impact**

#### **Amended by Senate Finance Sales & Income Tax Subcommittee on March 25, 2021**

##### **State Expenditure**

This bill as amended makes changes to how a tax credit earned pursuant to §12-6-3795, the S.C. Housing Tax Credit, by a partnership or limited liability company taxed as a partnership may be passed through to partners or members. This bill is not expected to impact expenditures for DOR. The agency will manage the changes with existing staff and resources.

##### **State Revenue**

This bill specifies that a tax credit earned by a partnership or LLC taxed as a partnership pursuant to §12-6-3795, the S.C. Housing Tax Credit, including any unused credit amount carried forward, may be passed through to the partners or members of the LLC on an annual basis. This change allows an allocation of the entire credit to any partner or member who was a partner or member of the partnership or LLC at any time in the year in which the credit or unused carryforward was allocated. The bill also requires that the allocation must be allowed without regard to any provision of the Internal Revenue Code (IRC) that may be interpreted as contrary to the allocation, including the treatment of the allocation as a disguised sale.

The S.C. Housing Tax Credit was enacted by Act 137 of 2020 (H. 3998). The tax credit is based upon the federal housing tax credit as provided in IRC §42 and is available for any qualified project placed in service in South Carolina after January 1, 2020, and before December 31, 2030. The amount of the credit is equal to the federal housing tax credit allowed for the qualified project. In guidance issued by DOR for the new credit in S.C. Revenue Ruling #21-5, the agency specified that a taxpayer cannot sell or transfer any portion of the credit allocation or carryforward. Further, in regard to a disguised sale, because the statute does not specifically allow allocation of credits in a disguised sale as in Section 12-67-140(B)(6), DOR determined that it is specifically not allowed for the S.C. Housing Tax Credit. This bill would specify that allocation of the tax credit is allowed, even if federal law would determine that the allocation is a disguised sale.

Based upon discussions with DOR, this bill may affect the timing of when credits are used due to the changes in rules for the allocation of the credits. However, in our analysis of the fiscal impact for Act 137, we determined the estimated tax credits and revenue reduction assuming that the full amount of allowable tax credits would be taken in the year earned. The analysis did not factor in any potential reduction for disallowing credit allocations related to a disguised sale as outlined in DOR's Revenue Ruling. Therefore, this clarification does not impact the General Fund revenue estimate since the estimate includes a reduction for the full amount of credits earned.

**Local Expenditure**

N/A

**Local Revenue**

N/A



Frank A. Rainwater, Executive Director

**South Carolina General Assembly**  
124th Session, 2021-2022

**S. 677**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Davis, Goldfinch, Jackson, Shealy, Grooms, Gambrell, Matthews, Turner, Alexander, Hutto, Talley, Kimpson, McElveen, Stephens, M. Johnson, Williams, Kimbrell, Campsen, Sabb and Climer

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Introduced in the Senate on March 16, 2021

Introduced in the House on April 13, 2021

Last Amended on April 1, 2021

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

Summary: Tax credits

**HISTORY OF LEGISLATIVE ACTIONS**

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
3/16/2021	Senate	Introduced and read first time ( <a href="#">Senate Journal-page 6</a> )
3/16/2021	Senate	Referred to Committee on <b>Finance</b> ( <a href="#">Senate Journal-page 6</a> )
3/31/2021	Senate	Committee report: Favorable with amendment <b>Finance</b> ( <a href="#">Senate Journal-page 13</a> )
4/1/2021	Senate	Committee Amendment Adopted ( <a href="#">Senate Journal-page 61</a> )
4/7/2021	Senate	Read second time ( <a href="#">Senate Journal-page 61</a> )
4/8/2021	Senate	Read third time and sent to House ( <a href="#">Senate Journal-page 43</a> )
4/8/2021	Senate	Roll call Ayes-43 Nays-0 ( <a href="#">Senate Journal-page 43</a> )
4/13/2021	House	Introduced and read first time ( <a href="#">House Journal-page 13</a> )
4/13/2021	House	Referred to Committee on <b>Ways and Means</b> ( <a href="#">House Journal-page 13</a> )

View the latest [legislative information](#) at the website

**VERSIONS OF THIS BILL**

[3/16/2021](#)

[3/31/2021](#)

[4/1/2021](#)

[4/7/2021](#)

1 ~~Indicates Matter Stricken~~

2 Indicates New Matter

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4 COMMITTEE AMENDMENT ADOPTED

5 April 7, 2021

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**S. 677**

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9 Introduced by Senators Davis, Goldfinch, Jackson, Shealy, Grooms,  
10 Gambrell, Matthews, Turner, Alexander, Hutto, Talley, Kimpson,  
11 McElveen, Stephens, M. Johnson, Williams, Kimbrell, Campsen,  
12 Sabb, and Climer

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14 S. Printed 4/7/21--S.

15 Read the first time March 16, 2021.

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**A BILL**

TO AMEND SECTION 12-2-100 OF THE 1976 CODE, RELATING TO TAX CREDITS, TO PROVIDE FOR THE ALLOCATION OF A TAX CREDIT OR UNUSED CREDIT AMOUNT CARRIED FORWARD THAT IS EARNED BY A PARTNERSHIP OR LIMITED LIABILITY COMPANY TAXED AS A PARTNERSHIP.

Amend Title To Conform

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

SECTION 1. Section 12-2-100 of the 1976 Code is amended to read:

“Section 12-2-100. (A) Unless otherwise provided by law, a tax credit administered by the department must be used in the year it is generated and must not be refunded.

(B) A tax credit earned by a partnership or limited liability company taxed as a partnership pursuant to Section 12-6-3795, including any unused credit amount carried forward, may be passed through to the partners or members and may be allocated among any of its partners or members on an annual basis, including, without limitation, an allocation of the entire credit to any partner or member who was a partner or member at any time in the year in which the credit or unused carryforward was allocated. The allocation must be allowed without regard to any provision of the Internal Revenue Code, or regulation promulgated pursuant to it, that may be interpreted as contrary to the allocation, including, without limitation, the treatment of the allocation as a disguised sale.”

SECTION 2. This act takes effect upon approval by the Governor and applies to a qualified project in service after January 1, 2020,

1 but before December 31, 2030, if the project is issued an eligibility  
2 statement after May 14, 2020.  
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