~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 3, 2010

**S. 1174**

Introduced by Senators Leatherman, O’Dell and Setzler

S. Printed 3/3/10--S.

Read the first time February 16, 2010.

**THE COMMITTEE ON FINANCE**

To whom was referred a Bill (S. 1174) 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, etc., respectfully

**REPORT:**

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

Amend the bill, as and if amended, by striking SECTION 3B, page 2, and inserting:

/ B. Section 12‑6‑50 of the 1976 Code, as last amended by Act 16 of 2009, is further amended by inserting two new items after item (5) to read:

“(5A) Section 108(i) relating to the deferral and ratable inclusion of income arising from business indebtedness discharged by the reacquisition of a debt instrument;

(5B) Section 163(e)(5)(F) relating to original issue discount on certain high yield obligations;” /

Renumber sections to conform.

Amend title to conform.

HUGH K. LEAHTERMAN, SR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**REVENUE IMPACT 1/**

Based on an analysis of federal law changes impacting South Carolina taxpayers by the Department of Revenue for the two tax bills enacted in 2009, we expect that the net effect of the various tax law changes will decrease general fund income tax revenue by $674,584 in FY 2009-10 and by $2,373,779 in FY 2010-11.

**Explanation**

Section 1 of this bill updates the South Carolina tax code to federal tax law changes enacted in 2009. Some of the larger tax changes included in the American Recovery and Reinvestment Tax Act of 2009 impacting South Carolina income tax revenue include: 1) a deduction of sales tax paid for new cars and trucks which we estimate reduces General Fund income tax revenue by $100,758 in FY 2009-10 and by $301,562 in FY 2010-11; 2) increasing the exclusion from income of qualified transportation benefits paid to employees from a employer sponsored plan, revenue reduction of $135,453 in FY 2009-10 and $2,390,633 in FY 2010-11; extension of increased Section 179 expensing to $250,000 for small businesses which reduces revenue by $1,525,633 in FY 2009-10 and $1,009,959 in FY 2010-11; and, repeal special exemptions in Treasury Notice 2008-83 relating to limitations on built in losses following ownership change to limit the losses in future years which we estimate will increase revenues by $1,483,786 in FY 2009-10 and by $1,832,790 in FY 2010-11. The second bill, the Worker, Homeownership, and Business Assistance Act of 2009 excludes from income the payments made to military homeowners who are relocated due to military orders or base closures to offset the decline in real estate prices. We estimate that this provision will reduce general fund individual income tax revenue by $282,789 in FY 2009-10 and by $97,431 in FY 2010-11. We expect that the net effect of the various tax law changes will decrease general fund income tax revenue by $674,584 in FY 2009-10 and by $2,373,779 in FY 2010-11.

Section 2 of the bill adopts Public Law 111-126 relating to charitable deductions for Haiti relief made in January and February 2010. These donations made in early 2010 can be claimed as a deduction on taxpayers 2009 returns. We anticipate no revenue impact from this provision.

Section 3 of the bill decouples from the South Carolina income tax code the federal deduction from gross income of up to $2,400 of unemployment compensation, the five year deferral of tax liability on cancellation of debt income until 2015, and the waiver of the applicable high yield debt obligation rules for debt created between September 2008 and the end of 2009. We estimate the general fund revenue reduction from these provisions would total $14,760,176 in FY 2009-10 and $32,556,629 in FY 2010-11 if South Carolina adopted these provisions.

Section 4 of this bill allows the department to waive estimated tax penalties for corporations that remit South Carolina estimated tax payments based on federal law timing modifications. This codifies existing policy and would have no impact on revenue.

Sections 5 and 6 delete provisions in the South Carolina code from previous years that are repealed in the IRS code.

*Approved By:*

William C. Gillespie

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 2009; TO ADOPT THE PROVISIONS OF PUBLIC LAW 111‑126 RELATING TO THE TIMING OF DEDUCTIONS FOR CHARITABLE CONTRIBUTIONS FOR HAITI RELIEF; TO AMEND SECTION 12‑6‑50, AS AMENDED, RELATING TO PROVISIONS OF THE INTERNAL REVENUE CODE NOT ADOPTED BY STATE LAW, SO AS TO ADD PROVISIONS TO THOSE NOT ADOPTED; TO AMEND SECTION 12‑6‑3910, AS AMENDED, RELATING TO ESTIMATED STATE INCOME PAYMENTS, SO AS TO ALLOW THE DEPARTMENT OF REVENUE TO WAIVE PENALTIES ON CORPORATE TAXPAYERS WHO CALCULATE SOUTH CAROLINA ESTIMATED TAX PAYMENTS BASED ON FEDERAL ESTIMATED TAX PERIODS THAT DO NOT CONFORM TO STATE LAW; AND TO AMEND ACT 110 OF 2007 AND ACT 16 OF 2009, RELATING TO MISCELLANEOUS REVENUE PROVISIONS AND CONFORMITY OF STATE INCOME TAX LAW TO THE INTERNAL REVENUE CODE, SO AS TO DELETE OBSOLETE PROVISIONS.

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

SECTION 1. Section 12‑6‑40(A)(1)(a) of the 1976 Code, as last amended by Act 16 of 2009, 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, ~~2008~~ 2009, and includes the effective date provisions contained in it.”

SECTION 2. Public Law 111‑126, relating to charitable deductions for Haiti relief enacted on January 22, 2010, is adopted for South Carolina income tax purposes, including the effective dates therein.

SECTION 3. A. Items (4) and (16) of Section 12‑6‑50 of the 1976 Code, as last amended by Act 16 of 2009, are further amended to read:

“(4) Sections 78, 85(c), 86, 87, 168(k), 168(l), 168(m), 168(n), 196, and 280C relating to dividends received from certain foreign corporations by domestic corporations, unemployment compensation, taxation of social security and certain railroad retirement benefits, the alcohol fuel credit, bonus depreciation, deductions for certain unused business credits, and certain expenses for which credits are allowable;

(16) Sections 2001 through 7655, 7801 through 7871, and 8001 through 9602, except for Sections 6015 and 6701, and except for Sections 6654 and 6655 which are adopted as provided in Section 12‑6‑3910 and Section 12‑54‑55. However, Section 6654(d)(1)(D) relating to estimated tax payments for qualified individuals as defined in that item is not adopted.”

B. Section 12‑6‑50 of the 1976 Code, as last amended by Act 16 of 2009, is further amended by inserting a new item after item (5) to read:

“(5A) Section 108(i) relating to the deferral and ratable inclusion of income arising from business indebtedness discharged by the reacquisition of a debt instrument;”

SECTION 4. Section 12‑6‑3910 of the 1976 Code, as last amended by Act 363 of 2002, is further amended by adding a new subsection at the end to read:

“(E) The department may waive estimated tax payment penalties for corporations that calculate South Carolina estimated tax payments based on a federal law that increases estimated tax payments in one estimated tax payment period and decreases estimated tax payments for one estimated tax payment period, or changes the dates estimated tax payments are due for not more than one month.”

SECTION 5. Act 110 of 2007 is amended by deleting Section 49 which reads:

“Section 49. A taxpayer must not be penalized for following the provisions of Section 401 of the Federal Tax Increase Prevention and Reconciliation Act of 2005 for South Carolina purposes.”

SECTION 6. Act 16 of 2009 is further amended by deleting Section 3 which reads:

“Section 3. For purposes of Section 12‑6‑3910, as last amended by Act 363 of 2002, a taxpayer must not be penalized for following the provisions of Section 3094 of the federal Housing Economic Recovery Act of 2008 (PL 110‑289) for South Carolina purposes.”

SECTION 7. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑