~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 31, 2021

**S. 677**

Introduced by Senators Davis, Goldfinch, Jackson, Shealy, Grooms, Gambrell, Matthews, Turner, Alexander, Hutto, Talley, Kimpson, McElveen, Stephens, M. Johnson and Williams

S. Printed 3/31/21--S.

Read the first time March 16, 2021.

**THE COMMITTEE ON FINANCE**

To whom was referred a Bill (S. 677) 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, 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, SECTION 1, by striking 12-2-100(B) and inserting:

/ (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.” /

Renumber sections to conform.

Amend title to conform.

HUGH K. LEATHERMAN, SR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**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.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**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.

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 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.”

SECTION 2. This act takes effect upon approval by the Governor and applies to a qualified project in service after January 1, 2020 but before December 31, 2030 if the project is issued an eligibility statement after May 14, 2020.

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