



**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>	S. 0298	Introduced on January 10, 2023
<b>Author:</b>	Bennett	
<b>Subject:</b>	Allocation and Apportionment	
<b>Requestor:</b>	Senate Finance	
<b>RFA Analyst(s):</b>	Jolliff	
<b>Impact Date:</b>	March 9, 2023	

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### **Fiscal Impact Summary**

This bill amends the current statutes in Section 12-6-2320 dealing with apportionment of income for income tax purposes and combined reporting.

This bill is expected to reduce General Fund revenue from corporate income taxes. The Department of Revenue (DOR) reports that approximately \$138,000,000 has been generated by enforced compliance in the last 3 to 4 years from 53 audits of companies under the current provisions regarding allocation and apportionment of income. Data on voluntary compliance are not available. Current law allows DOR to require companies to employ an alternative method to allocate and apportion income if the department determines that the methods used by the company do not fairly represent the extent of the taxpayer's business activity in the state. The bill provides new requirements that establish a significantly higher burden of proof for DOR than the current standard. DOR believes that the requirements will significantly impair the agency's ability to administer apportionment for multi-state companies. The agency anticipates that this bill will reduce General Fund income tax revenue in upcoming years by more than the amounts recently observed as this amount only represents a portion of all activity. Further, the burden of proof for the agency established by the bill is likely to reduce voluntary compliance as well. Assuming voluntary compliance is reduced by amounts similar to enforced compliance, the bill would reduce General Fund corporate income tax revenue on average by more than \$80,000,000 annually beginning in FY 2023-24.

We anticipate that the bill may reduce the number of cases heard by the Administrative Law Court (ALC) or the potential burden on the ALC based on the increased burden of proof and findings of fact required by DOR. However, we do not anticipate the change will significantly impact the overall caseload or expenditures.

### **Explanation of Fiscal Impact**

#### **Introduced on January 10, 2023**

#### **State Expenditure**

This bill amends the current statutes in Section 12-6-2320 dealing with apportionment of income for income tax purposes and combined reporting. The bill will not impact expenditures for DOR to implement the required changes.

We anticipate that the bill may reduce the number of cases heard by the ALC or the potential burden on court based on the increased burden of proof and findings of fact required by DOR. However, we do not anticipate the change will significantly impact the overall caseload or expenditures. If the ALC provides a different response, we will update this impact statement.

### **State Revenue**

This bill amends the current statutes in Section 12-6-2320 dealing with apportionment of income for income tax purposes and combined reporting.

The Department of Revenue (DOR) reports that approximately \$138,000,000 has been generated in the last 3 to 4 years from 53 audits of companies under the current provisions regarding allocation and apportionment of income. Current law allows DOR to require companies to employ an alternative method to allocate and apportion income if the department determines that the methods used by the company do not fairly represent the extent of the taxpayer's business activity in the state.

DOR believes that the bill will significantly reduce the agency's ability to affect apportionment of income for multi-state companies. The bill provides specific new requirements for determining another method to effectuate an equitable allocation and apportionment of the taxpayer's income. These specifics include a burden of proof and a finding of fact that is typically reserved for litigation. The requirements establish a significantly higher bar than the current audit standard. The agency anticipates that this burden of proof will largely hinder the agency's ability to require a company to accurately calculate the activity and taxable income in South Carolina.

The agency anticipates that this bill will reduce General Fund income tax revenue in upcoming years by more than the amounts recently observed as this amount only represents a portion of all activity. Further, the burden of proof for the agency established by the bill is likely to reduce voluntary compliance as well. Assuming that voluntary compliance is reduced by amounts similar to enforced compliance, the bill would reduce General Fund revenue on average by more than \$80,000,000 annually beginning in FY 2023-24.

### **Local Expenditure**

N/A

### **Local Revenue**

N/A



Frank A. Rainwater, Executive Director