



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

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.

Bill Number:	S. 0298	Amended by House Ways and Means on January 24, 2024
Author:	Bennett	
Subject:	Allocation and Apportionment	
Requestor:	House Ways and Means	
RFA Analyst(s):	Jolliff	
Impact Date:	January 30, 2024	

Fiscal Impact Summary

This bill amends the current statutes in Section 12-6-2320 dealing with apportionment of income and combined reporting for corporate income tax purposes. The bill as amended specifies that the act does not apply to any assessments under judicial review by the South Carolina Administrative Law Court, Court of Appeals, or Supreme Court as of the date of the Governor's approval.

The bill outlines a new process for the Department of Revenue (DOR) to follow in determining taxable income for taxpayers that apportion income or have intercompany transactions. Although the bill may require additional training for staff and potentially hiring expert consultants, DOR expects to implement the changes with existing resources. Therefore, the bill will not impact expenditures for DOR.

Further, 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 standards outlined in the bill for DOR. However, we do not anticipate the change will significantly impact the overall caseload or expenditures.

This bill is expected to impact General Fund revenue from corporate income taxes. Based on further review of the bill, DOR has updated its analysis of the potential impact and determined that the changes will have a smaller impact than originally expected. The agency anticipates that this bill may extend the process of analyzing corporate income tax filings for combined returns and delay the timing of collections and is likely to affect revenue by between \$10,000,000 to \$20,000,000 annually. Further, DOR noted that additional impacts could occur over time, but is not able to quantify an amount at this time. Therefore, General Fund corporate income taxes may be reduced by approximately \$15,000,000 in FY 2024-25 as a result of the changes.

Explanation of Fiscal Impact

Amended by House Ways and Means on January 24, 2024

State Expenditure

This bill amends the current statutes in Section 12-6-2320 dealing with apportionment of income and combined reporting for corporate income taxes. The bill outlines a new process for the

department to follow in determining taxable income for taxpayers that apportion income or have intercompany transactions. Although the bill may require additional training for staff and potentially hiring expert consultants, DOR expects to implement the changes with existing resources. Therefore, the bill will not impact expenditures for DOR.

Further, we anticipate that the bill may reduce the number of cases heard by the ALC or the potential burden on court based on the new standards outlined in the bill for DOR. However, we do not anticipate the change will significantly impact the overall caseload or expenditures.

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 bill as amended specifies that the act does not apply to any assessments under judicial review by the South Carolina Administrative Law Court, Court of Appeals, or Supreme Court as of the date of the Governor's approval.

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.

Based on further review of the bill, DOR has updated its analysis of the potential impact. The agency anticipates that this bill may extend the process of analyzing corporate income tax filings for combined returns and delay the timing of collections and is likely to affect revenue by between \$10,000,000 to \$20,000,000 annually. Further, DOR noted that additional impacts could occur over time, but is not able to quantify an amount at this time. Therefore, General Fund corporate income taxes may be reduced by approximately \$15,000,000 in FY 2024-25 as a result of the changes.

Local Expenditure and Local Revenue

N/A

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 and Local Revenue

N/A



Frank A. Rainwater, Executive Director