

State of South Carolina
Department of Revenue



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VIA EMAIL AND REGULAR MAIL

Representative William M. "Bill" Hixon
Subcommittee Chair, Legislative Oversight Committee

RE: Legislative Oversight Study

Dear Chairman Hixon:

Thank you for your letter dated March 11, 2022. Please find below the answers to your questions. If you need further information or clarification, do not hesitate to contact me.

Implementation of LAC Recommendations

1. Please provide a chart listing the recommendations directed to DOR from the Legislative Audit Council Audit of the Department of Commerce and, for each¹:
 - a. whether the agency plans to implement the recommendation
 - i. If no, why not?
 - ii. If yes, actions taken by the agency thus far to implement the recommendation

<u>Recommendations directed to DOR from the Legislative Audit Council</u>	<u>Whether the agency plans to implement the recommendation</u>	<u>If no, why not? If yes, actions taken by the agency thus far to implement the recommendation.</u>
Recommendation - " The S.C. Department of Revenue should allocate resources so that the job development credit audit program is able to fulfill its statutorily-required duty to audit each	YES	The Department has hired three additional FTE Auditors to bring the total staff to five auditors. The Department will be in compliance with the

¹ For example, on page 52, Recommendation 20. The S.C. Department of Revenue should allocate resources so that the job development credit audit program is able to fulfill its statutorily required duty to audit each company claiming job development credits in excess of \$10,000 in a calendar year, at least once every three years.

<p>company claiming job development credits in excess of \$10,000 in a calendar year, at least once every three years.”</p>		<p>statute for the three year period ending December 31, 2023.</p>
<p>Recommendation - “The S.C. General Assembly should amend S.C. Code of Laws 2-15-61 to give the Legislative Audit Council the authority to review reports and returns of the S.C. Department of Revenue when necessary to conduct audits.”</p>	<p>N/A</p>	<p>This is a decision for the General Assembly.</p>
<p>Recommendation - “The Coordinating Council for Economic Development and the S.C. Department of Revenue should have better communication to ensure that a company’s claimed investment is verified for compliance with the revitalization agreement.”</p>	<p>YES</p>	<p>Better communication has been established between the two agencies. The capital investment is verified by the Coordinating Council. The Coordinating Council then notifies the Department that a company has met this requirement and may begin collecting quarterly refunds, beginning with the calendar quarter after certification.</p>

Data about companies and employees

2. Please provide a list of the data fields the agency maintains on each business in the state and, for each, any limitations in how that information can be shared (e.g., cannot be shared without the business' permission).

The SCDOR Tax Processing System maintains data fields for most of the information submitted on tax returns and reports filed with the Department. However, data fields are not maintained for many supporting schedules and documents filed by taxpayers.

SCDOR is prohibited from providing the requested information because of the secrecy provisions contained in Code Section 12-54-240 which provides criminal penalties for any person who discloses information contained in a return or report filed pursuant to Chapter 6 (income tax credits), Chapter 8 (withholding tax credits) and Chapter 36 (sales tax exemptions) of Title 12. Since most of the business credits are income tax credits or withholding tax credits filed with the income or withholding tax return, SCDOR could not provide this information.

3. Please explain Business One Stop, including, but not limited to, other state agencies involved.

South Carolina's Business One Stop (SCBOS) serves as a one-stop information source for starting and managing a business in South Carolina. From registering a business to professional licensing to withholding taxes, SCBOS simplifies and streamlines the processes and requirements for doing business in South Carolina and helps connect employers and entrepreneurs directly to the sites and services they need. The SCBOS website serves as a comprehensive, step-by-step guide for starting and running a business, and customer service specialists provide individual assistance via phone and live chat.

State agency partners include:

- SC Department of Commerce
- SC Department of Consumer Affairs
- SC Department of Employment & Workforce
- SC Department of Health & Environmental Control
- SC Department of Labor, Licensing & Regulation
- SC Department of Revenue
- SC Secretary of State

Incentives and Audits

4. Please provide any ideas for terms that, if included in a performance agreement between the Department of Commerce and a company receiving an incentive, may make it easier for DOR to collect any money owed via the GEAR program.

To assist SCDOR in collecting money owed via the GEAR program, Commerce should request the FEIN or SSN of the company and include a provision in the performance agreement that allows SCDOR to offset any incentive due to the company by any debts owed an agency participating in the GEAR program. For example, S.C. Code Section 12-10-80(A)(2) provides that if a JDC company is not current with respect to

all taxes due and owing the state, SCDOR would offset the amount of the JDC rebate by the amount of the taxes due.

5. Please list the types of audits the agency is required to perform on companies receiving incentives or grants and, for each, the number of companies on which it is to be performed, the number that have been performed, and if it is not 100%, the reason why.²

In accordance with S.C. Code Section 12-10-80(A)(11), SCDOR is required to conduct audits on companies with Job Development Credit (JDC) claims in excess of \$10,000 in a calendar year. There are currently 161 companies subject to the audit requirements. The Department has completed 109 audits during the current statutory period ending December 31, 2023.

In accordance with S.C. Code Section 12-10-95(I)(2), SCDOR is also required to conduct audits on companies with Job Retraining Credits (JRT) claims. There are currently 19 companies subject to the audit requirements. Four audits have been completed during the current statutory period ending December 31, 2023.

6. Please list the information the agency tracks related to statutory and discretionary incentives for businesses and, for each, the name of the document in which it is reported and location online?³

The SCDOR tracks the total number of corporate and individual income tax credits claimed for each year as well as the total dollar amount of credits claimed for each credit. Not all credits tracked relate to business incentives. The SCDOR's Annual Report provides the tax form number for reporting a credit, the aggregate number of credits claimed for that credit and the aggregate dollars claimed for that credit. The Annual Report also includes the total amount of Job Development Credits claimed against withholding for the year as well as the total amount of job retraining credits claimed for the year.

Additionally, SCDOR tracks the number of taxpayers that have qualified for the angel investor tax credit under Chapter 44, Title 11. SCDOR also issues a license tax infrastructure report which provides information on the number of entities that claimed the utility license tax credit allowed under Code Section 12-20-105 and the type of infrastructure that was funded through the credit.

Tax Credit Usage Reports
SCDOR Annual Report
[2020-2021 Annual Report](#)
[2019-2020 Annual Report](#)
[2018-2019 Annual Report](#)
[2017-2018 Annual Report](#)
[2016-2017 Annual Report](#)

² For example, S.C. Code §12-10-80(A)(11) requires DOR to audit each qualifying business with Job Development Credit claims in excess of \$10,000 in a calendar year "at least once every three years to verify proper sources and uses of the funds." DOR reports that its auditors have completed 15 to 29 audits per year over the past three calendar years, but there have been an average of 138 to 184 companies claiming JDCs over the past four years

³ Department of Commerce, Incentives Presentation, slide 7, available here
[https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/Commerce/Incentives%20-%20\(5.21.21\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/Commerce/Incentives%20-%20(5.21.21).pdf)

[2015-2016 Annual Report](#)
[2014-2015 Annual Report](#)
[2013-2014 Annual Report](#)
[2012-2013 Annual Report](#)
[2011-2012 Annual Report](#)
[2010-2011 Annual Report](#)

Angel Investor Credit Report
[2021 Angel Investor Credit Report](#)
[Angel Investor Tax Credit Report for Tax Year 2020](#)
[2019 Angel Investor Credit Report](#)

Preceptor Tax Credit Report
[2021 Preceptor Tax Credit Report](#)

Consumer Protection Report
[Consumer Protection Report 2020](#)
[Consumer Protection Tax Deduction Report for Tax Year 2019](#)
[Consumer Protection Tax Deduction Report for Tax Year 2018](#)

License Tax Infrastructure Credit Report
[2021 License Tax Infrastructure Credit Report](#)
[2020 License Tax Infrastructure Credit Report](#)

7. Please list any statutory incentives of which the agency has no record of an entity utilizing in the last 20 years or since creation of the incentive.

The following statutory credits have not been utilized in the last few years:

- Palmetto Seed Capital (TC7) Section 12-6-3430
- Commercials Credit (TC24) Section 12-6-3560
- Ethanol or Biodiesel Production Credit (TC-40) Section 12-6-3600
- Clean Energy Credit (TC54) Section 12-6-3588

8. For companies that received job tax credits in the last ten years, please provide the following:
- a. Number of companies receiving job tax credits;

Fiscal Year	New Job Credit (TC-4)	Accelerated Small Business Jobs Tax Credit (TC-4SA)	Small Business Jobs Credit (TC-4SB)
FY21	411	79	8
FY20	349	49	8
FY19	376	46	8
FY18	341	42	6
FY17	280	38	2
FY16	89		
FY15	92		
FY14	66		

FY13	103
FY12	80

Individuals (Individuals would generally claim credits earned by a pass through entity such as a partnership, limited liability corporation taxed as a partnership or an S Corporation.)

Tax Year	New Job Credit (TC-4)	Accelerated Small Business Jobs Tax Credit (TC-4SA)	Small Business Jobs Credit (TC-4SB)
TY20	517	143	99
TY19	542	159	111
TY18	638	122	114
TY17	610	123	102
TY16	518	122	96
TY15	501	105	86
TY14	514	97	75
TY13	484	96	84
TY12	465	57	109

- b. Of those companies, number the agency audited to verify the number of jobs listed by the company; and

SCDOR does not specifically track this information. The job tax credit is audited in association with the comprehensive examination of income tax returns. For tax years 2018 – 2020, we conducted 2,187 comprehensive adjustments and 19,996 limited reviews on income tax returns.

- c. If the agency has not audited all the companies, please explain why and what would be needed to audit all of them.

Our audit selection process utilizes a statistical sampling model; therefore, we do not audit every return claiming the credit. To audit every corporation, pass through entity and individual claiming the three different jobs tax credits allowed by law would require a significant increase in the number of auditors dedicated to auditing the job tax credit as well as specialized training in the requirements of the JTC. This is the reason SCDOR utilizes a statistical sampling model for audit selection.

9. What information can you provide about companies that have claimed statutory tax credits, abatements, etc. (e.g., name, year, amount, etc.)?
- a. If DOR was provided a list of company names, could it state which statutory tax credits, abatements, etc. were claimed and received?

This information is maintained through our tax processing system. Accessing this information is possible, but would require a reprogramming of our system. SCDOR is prohibited from providing this information because of the secrecy provisions contained in Code Section 12-54-240 which provides criminal penalties for any person who discloses information contained in a return or report filed pursuant to Chapter 6 (income tax credits), Chapter 8 (withholding tax credits) and Chapter 36

(sales tax exemptions) of Title 12. Since most of the business credits are income tax credits or withholding tax credits filed with the income or withholding tax return, SCDOR could not provide this information.

- b. For any information that must remain confidential, please cite the applicable laws requiring it remain confidential.

S.C. Code Section 12-54-240 provides that it is unlawful to divulge in any manner any particulars set forth or disclosed in any report or return. See answer to Question 9(a) above.

10. What information can DOR provide about statutory tax credits, abatements, etc. in an aggregated format (e.g., number of companies who received each type, by year, etc.)?

See answer to Question 6 above.

11. Please explain DOR's process for auditing the information companies provide to receive tax credits.

There is a distinction between credits that are statutorily required to be audited under S.C. Code Section 12-10-80(A)(11) (JTCs) and S.C. Code Section 12-10-95(I)(2)(JRTs) and the verification of other credits such as Job Tax Credits. The process to audit is the same; however, verification of the Job Tax Credit is conducted as part of the audit selection process which utilizes a statistical sampling model. After a return is identified for audit, SCDOR verifies the credits a taxpayer claims through a variety of techniques to include the review of supporting documentation and third-party records.

12. How many times, if ever, has DOR found a company to have claimed an inaccurate number of new jobs for purposes of obtaining job tax credits?

SCDOR does not track this information. As previously stated, the job tax credit is audited in association with the comprehensive examination of income tax returns.

What action is taken when this occurs?

When inaccuracies are identified on a return and the taxpayer is unable to provide supporting documentation, the return is adjusted to the audit findings. The South Carolina Taxpayers' Bill of Rights (Chapter 58, Title 12) and the South Carolina Revenue Procedures Act (Chapter 60, Title 12) allows the taxpayer to resolve the dispute civilly without the expense of a formal hearing or court appearance by filing a written protest. See [SC Revenue Procedure #20-1](#). When fraud is detected, the audit is referred to criminal investigation.

13. Please explain the timing for the different events involved in the job tax credits (e.g., when taxes are paid and to whom -is it annual and is it to DOR or DEW, when documents are provided showing new jobs created, when credit/return is applied/provided, when audit may occur, etc.)

Taxpayer files an income tax return each year claiming the job tax credit for each year they are eligible for the credit.⁴ The income tax return is an annual return. For the job tax credit, the taxpayer files one of three schedules with the income tax return depending on the type of job tax credit the taxpayer is claiming. The schedules include information about the company as well as the number of jobs created each year, and whether jobs created in prior years have been maintained. These forms may be located on the SCDOR website and are the SC SCH TC-4, SC SCH TC-4SA and SC SCH TC-4SB. There is also a special form for sports teams – the SC SCH TC-4P. Any tax due is generally paid at the same time the return is filed and is paid to the DOR.

14. How many employees would be needed to complete audits of companies that receive Job Development Credits and claim more than \$10,000 in a calendar year, if you utilize the average number of companies that fall within this category in each of the last five years?

Five employees are needed to complete the number of audits required to be in compliance with the statute.

15. How many employees do you currently have assigned full time to this task?

Currently the Department has a total of five full time employees assigned to Job Development Credit audits.
a. Is this number sufficient or are more needed?

This number is sufficient to meet the statutory requirement for the current number of companies claiming credits in excess of \$10,000 in a calendar year.

16. How many companies should have had an audit pursuant to S.C. Code Section 12-10-80?

There are currently 161 companies required per S.C. Code Section 12-10-80, to be audited.

- a. How many of those companies have had audits?
109 audits have been completed during the statutory period ending December 31, 2023.
- b. Are the audits to check if the company is currently maintaining what is required or whether the company was maintaining what was required when Coordinating Council on Economic Development (CCED) initially certified the company?
The audits are to check if the company is claiming the credits correctly per the agreement between the company and the Department of Commerce, during the audit period.
- c. How many of those audited have determined the information provided by the company was not accurate and, for each, please provide the jobs and investment the company claimed and the jobs and investment SCDOR found.
Of the 109 Audits completed; 19 (17%) were 100% in compliance, 57 (53%) were issued a Proposed Notice of Assessment, and 33 (31%) were issued a refund. SCDOR cannot provide specific information concerning jobs and investment for an individual company pursuant to S. C. Code Section 12-54-240.

⁴ The job tax credit may also be claimed against bank tax and insurance premium taxes. SCDOR administers bank taxes but the South Carolina Department of Insurance administers insurance premium taxes.

17. Would DOR oppose conducting a random audit immediately after a company is first certified (e.g., not every company will be audited, but some will be)?

The audits performed by the SCDOR are to determine compliance with credits claimed on the return according to the agreement and statute. A preliminary audit would not allow SCDOR the ability to determine compliance.

Admissions Tax

18. Please explain from whom admissions tax is collected?

Admissions tax is collected by all places of amusement when an admission fee has been charged. Please refer to S.C. Code Section 12-21-2420 for the details on admissions tax.

19. Does an entity that is registered as a South Carolina Non-Profit with the Secretary of State's Office qualify for the admissions tax exemption, if they are not registered as a federal non-profit with the IRS? If not, please explain why.

Various admissions tax exemptions in S.C. Code Section 12-21-2420(4), (5), (8), (10), (11) and (12) can only be claimed by an eleemosynary organization, a nonprofit organization, or a charitable organization operating with a charitable purpose. Each of these types of organizations must register with the South Carolina Secretary of State's Office to meet the requirements under Title 33, Chapters 31 and 56. Only one admissions tax exemption requires that the promoter be a tax-exempt entity. S.C. Code Section 12-21-2420 concludes with:

The tax imposed by this section does not apply to:

- (a) any amount separately stated on the ticket of admission for the repayment of money borrowed for the purpose of constructing an athletic stadium or field by any accredited college or university;
- (b) any amount of the charge for admission, whether or not separately stated, that is a fee or tax imposed by a political subdivision of the State. The revenue derived from the provisions of this section from fishing piers along the coast of South Carolina is allocated for use of the Commercial Fisheries Division of the Department of Natural Resources; or
- (c) any amount that an accredited college or university requires a season ticket holder to pay to a nonprofit athletic booster organization that is exempt from federal income taxation in order to receive the right to purchase athletic event tickets.

For the requirement in item (c) and in no other instance, the Department of Revenue has a duty to ensure that the organization (a "nonprofit athletic booster organization") has received an IRS tax exemption.

20. How are funds collected from admissions tax utilized?

Admissions Tax (S.C. Code Section 12-21-2410 thru 12-21-2575)

- a) All Admissions Tax collections are credited to the General Fund of the State.
- b) 26% of the previous Fiscal Year Admissions Tax collection totals are transferred out of the General Fund to the SC Film Commission (SC Dept. of Parks, Recreation, and Tourism) in accordance with S.C. Code Section 12-62-60 (A)(1). Transfer is made annually.
- c) Fishing Pier Admissions collections are transferred out of the General Fund to DNR in accordance with S.C. Code Section 12-21-2420(16)(b). Transfers are made monthly.
- d) $\frac{1}{4}$ of Admissions Tax collections from Major Tourism Facilities are refunded from the General Fund to Counties/Municipalities in accordance with S.C. Code Section 12-21-6520 thru 12-21-6530. Refunds are issued quarterly.
- e) $\frac{1}{4}$ of Admissions Tax collections from Major Tourism Facilities are transferred from the General Fund to the Department of Commerce in accordance with S.C. Code Section 12-21-6520 & 12-21-6540. Transfers are issued quarterly.

FY21-22 Proviso 118.7. (SR: Admissions Tax) For the current fiscal year, up to one hundred fourteen thousand dollars in admissions tax revenue collected annually from all events held at a NASCAR sanctioned motor speedway or racetrack that hosts at least one race each year featuring the preeminent NASCAR cup series must be rebated to the motorsports entertainment complex facility in the current fiscal year to keep a NASCAR race at the motorsports entertainment complex facility. In addition, any sports facility that hosts at least one preeminent Women's Tennis Association-sanctioned tournament or any sports facility that operates as the home venue for a professional soccer team that participates in the United Soccer Leagues, second division or higher, must be rebated to the facility half of its admissions tax revenue for the fiscal year and used by that facility for marketing the events held at the facility.

Sincerely,



W. Hartley Powell
Director

cc: The Honorable Wm. Weston J. Newton
Economic Development, Transportation, and Natural Resources Subcommittee
Mr. Meredith Cleland, SCDOR