



**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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**Bill Number:** S. 0677 Amended by House Ways and Means Economic Development  
Legislative Subcommittee on April 27, 2021

**Author:** Davis

**Subject:** Tax Credits

**Requestor:** House Ways and Means

**RFA Analyst(s):** Jolliff

**Impact Date:** May 3, 2021

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### **Fiscal Impact Summary**

This bill amends Section 12-2-100 regarding allocations of the Certified Historic Structure Credits, S.C. Housing Tax Credit, and Textiles Rehabilitation Credit. This bill is not expected to impact expenditures for the Department of Revenue (DOR). The agency will manage the changes with existing staff and resources.

This bill clarifies a potential issue by allowing an allocation of these credits to partners and also requires that the allocation must be allowed for those transactions that may be categorized by the Internal Revenue Code (IRC) as a disguised sale. Based upon discussions with DOR, this bill may affect the timing of when credits are used. We do not anticipate a change in total tax credits earned for these tax credits because we expect that the number of projects undertaken will not be affected by this bill.

This bill may shift the timing forward for the usage of the credits by clearly specifying how credits may be allocated. The S.C. Housing Tax Credit was enacted by Act 137 of 2020 (H. 3998). We have not received data on actual claims for this tax credits currently. Claims for the Certified Historic Structures Credits and the Textiles Rehabilitation Credit are expected to total \$58,597,000 in FY 2021-22. We do not know how much is earned for these tax credits but not claimed due to a taxpayer not having a sufficient tax liability to claim the full amount. Further, data are unavailable to determine how this bill's clarification may affect timing of usage for these tax credits. This bill may allow taxpayers to use more of the credits in earlier tax years by allocating them to other taxpayers. The potential amount that may be shifted is unknown, and therefore, the potential change in General Fund revenue is undetermined.

### **Explanation of Fiscal Impact**

**Amended by House Ways and Means Economic Development Legislative Subcommittee on April 27, 2021**

#### **State Expenditure**

This bill clarifies how a tax credit earned pursuant to §12-6-3535 (Certified Historic Structure Credit and Certified Historic Residential Structure Credit), §12-6-3795, (S.C. Housing Tax Credit), or §12-65-10 (Textiles Rehabilitation 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 §12-6-3535 (Certified Historic Structure Credit and Certified Historic Residential Structure Credit), §12-6-3795, (S.C. Housing Tax Credit), or §12-65-10 (Textiles Rehabilitation 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 bill 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 IRC that may be interpreted as contrary to the allocation, including the treatment of the allocation as a disguised sale. The bill applies to projects placed in service after January 1, 2020, and before December 31, 2030, if the project is issued an eligibility statement after May 14, 2020.

The tables below show the total credits claimed in recent years for the Certified Historic Structures Credits and the Textiles Rehabilitation Credit.

**Certified Historic Structure and Certified Historic Residential Structure Credits  
Actual and Estimates, Select Years**

<b>Fiscal Year</b>	<b>Amount</b>
FY 2017-18	\$14,019,352
FY 2018-19	\$18,097,531
FY 2019-20 (estimate*)	\$24,751,000
FY 2020-21 (estimate)	\$25,165,000
FY 2021-22 (estimate)	\$25,350,000

**Textiles Rehabilitation Credit  
Actual and Estimates, Select Years**

<b>Fiscal Year</b>	<b>Amount</b>
FY 2017-18	\$30,190,222
FY 2018-19	\$30,808,169
FY 2019-20 (estimate*)	\$26,007,490
FY 2020-21 (estimate)	\$31,116,000
FY 2021-22 (estimate)	\$33,247,000

\*estimate for Bank Tax only

Data Source: S.C. Department of Revenue, S.C. Department of Insurance; Estimates by Revenue and Fiscal Affairs

The S.C. Housing Tax Credit was enacted by Act 137 of 2020 (H. 3998). We have not received data on actual claims for this tax credit currently.

In guidance issued by DOR for the new Housing 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, DOR determined that it is specifically not allowed for the S.C. Housing Tax Credit. DOR has not issued any guidance related to disguised sales for the Certified Historic Structures Credits or the Textiles Rehabilitation Credit.

Based upon discussions with DOR, this bill may affect the timing of when credits are used. We do not anticipate a change in total tax credits earned because we expect that the number of projects undertaken will not be affected by this bill. This bill may shift the timing forward for the usage of the credits by clearly specifying provisions for allocation of the credits. Based upon our estimates above, claims for the Certified Historic Structures Credits and the Textiles Rehabilitation Credit are expected to total \$58,597,000 in FY 2021-22. However, we do not know how much is earned for these tax credits but not claimed due to a taxpayer not having a sufficient tax liability to claim the full amount. Further, data are unavailable to determine how this bill's clarification may affect timing of usage for these tax credits. This bill may allow taxpayers to use more of the credits in earlier tax years by allocating them to other taxpayers. The potential amount that may be shifted is unknown, and therefore, the potential change in General Fund revenue is undetermined.

#### **Local Expenditure**

N/A

#### **Local Revenue**

N/A

#### **Amended by Senate Finance Sales & Income Tax Subcommittee on March 25, 2021**

##### **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.

**Local Expenditure**

N/A

**Local Revenue**

N/A



Frank A. Rainwater, Executive Director