



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.

Bill Number: S. 0677 Amended by Senate Finance Sales & Income Tax
Subcommittee on March 25, 2021

Author: Davis

Subject: Tax Credits

Requestor: Senate Finance

RFA Analyst(s): Jolliff

Impact Date: March 25, 2021

Fiscal Impact Summary

This bill amends Section 12-2-100 regarding allocations of the S.C. Housing Tax Credit earned by a partnership or limited liability company (LLC) taxed as a partnership to partners or members of the LLC. 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.

In our analysis of the fiscal impact for Act 137 of 2020 (H. 3998), which enacted the credit, 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 on the implementation of the credit. Therefore, this clarification does not impact the General Fund revenue estimate.

Explanation of Fiscal Impact

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