Bill Number:	H. 4017 Introduced on February 23, 2023
Author:	Ballentine
Subject:	Internal Revenue Code Conformity
Requestor:	House Ways and Means
RFA Analyst(s):	Jolliff
Impact Date:	March 27, 2023

Fiscal Impact Summary

This bill updates South Carolina's conformity to the Internal Revenue Code (IRC) through December 31, 2022, including any expired provisions of the federal code that are extended, but not otherwise amended, by congressional enactment during 2023. The Department of Revenue (DOR) will administer the changes to income tax provisions with existing staff and resources. Therefore, the bill is not expected to impact expenditures for the agency.

This bill will reduce General Fund individual income tax by $162,000 for FY 2023-24 as outlined in Table 1 of the State Revenue section. One provision related to cost recovery for qualified facilities, qualified property, and energy storage technology on Line 6 of Table 1 will have an impact of $217,000 in tax year 2027, which will be accounted for by the Board of Economic Advisors in the revenue forecast at that time.

Further, DOR identified other provisions that will impact South Carolina regardless of conformity because federal law determines how these provisions are implemented, and the impact cannot be avoided. Essentially, federal law will dictate taxpayer behavior, and the change in revenue resulting from these provisions will occur regardless of whether South Carolina adopts this bill to extend conformity. These provisions are provided in Table 2 for reference, and will be accounted for by the Board of Economic Advisors in the revenue forecast.

Explanation of Fiscal Impact

Introduced on February 23, 2023
State Expenditure
This bill updates South Carolina's conformity to the IRC through December 31, 2022. DOR will administer the changes to income tax provisions with existing staff and resources. Therefore, the bill is not expected to impact expenditures for the agency.

State Revenue
This bill updates South Carolina's conformity to the IRC through December 31, 2022, including any expired provisions of the federal code that are extended, but not otherwise amended, by congressional enactment during 2023. Research by the Department of Revenue (DOR) identified

three federal tax laws enacted by Congress that impact South Carolina's conformity through December 31, 2022:

- CHIPS Act of 2022 (Pub. Law 117-167, Div. A; enacted Aug. 9, 2022)
- Inflation Reduction Act (Pub. Law 117-169; enacted Aug. 16, 2022)
- Consolidate Appropriations Act of 2023 (Pub. Law 117-328; enacted Dec. 29, 2022)

DOR did not identify any expired provisions for 2022 that would impact 2023 if extended.

To estimate the impact of conforming to the IRC changes, Revenue and Fiscal Affairs (RFA) utilized U.S. estimates by the Joint Committee on Taxation and the Congressional Budget Office and adjusted those estimates to project the impact of adopting these federal provisions on South Carolina. Further, based upon research by RFA and discussions with DOR and the South Carolina Association of CPAs, RFA made additional adjustments to refine these estimates with respect to South Carolina.
The provisions affecting South Carolina in these federal law changes are listed in Table 1. Based on our analysis, we anticipate that conforming through 2022 will reduce General Fund individual income tax by $162,000 for FY 2023-24. One provision related to cost recovery for qualified facilities, qualified property, and energy storage technology on Line 6 of Table 1 will have an impact of $217,000 in tax year 2027, which will be accounted for by the Board of Economic Advisors in the revenue forecast at that time.

Of note on Line 7 of Table 1, the Inflation Reduction Act includes a provision that extends the limitation on excess business losses of non-corporate taxpayers from tax years 2026 to 2027 and 2028. In the American Rescue Plan Act of 2021, the federal code was amended to specifically disallow these losses for tax years through 2026, and SC conformed to this provision. Adopting the provision would extend the state's current treatment disallowing these excess losses for tax years 2027 and 2028. As this is an extension of the existing treatment, the impact is already reflected in the forecast. However, the effect of non-conforming would be to decrease tax liabilities by approximately $46 million per year for tax years 2027 and 2028.

Table 1: Provisions Affecting South Carolina

Line	Provision	IRC Section	FY 2023-24	Note
1	Safe harbor for absence of deductible for insulin	IRC §223; §223 (c)(2)(G)	No Impact (See Note)	1
2	Extension of incentives for biodiesel, renewable diesel, and alternative fuels	IRC §40A, §6426, §6427, and §87(2)	No Impact (See Note)	2
3	Extension of second-generation biofuel incentives	IRC §40 and IRC §87(1)	No Impact (See Note)	2
4	Sustainable aviation fuel credit	IRC §40B, §6426(k) and §6427(e), §87(3)	No Impact (See Note)	2
5	Energy efficient commercial buildings deduction	IRC §179D	($162,000)	
6	Cost recovery for qualified facilities, qualified property, and energy storage technology	IRC §168(e)(3)(B)	N/A (See Note)	3
7	Limitation on excess business losses of non-corporate taxpayers extended for two years.	IRC §461(l)	No Impact (See Note)	4
8	Total		**($162,000)**	

Notes:

1 Deductions for federal HSA account currently in forecast; no significant impact anticipated.

2 SC does not adopt IRC §87. See §12-6-50(4). However, any credit amounts included in federal gross income will be a subtraction modification in computing SC gross income.

3 Estimated Impact in Tax Year 2027: ($217,000)

4 Extension of current treatment; $46 million decrease in TY 2027 if not adopted.

Further, DOR identified other provisions that will impact South Carolina regardless of conformity because federal law determines how these provisions are implemented, and the impact cannot be avoided. Essentially, federal law will dictate taxpayer behavior, and the change in revenue resulting from these provisions will occur regardless of whether South Carolina adopts this bill to extend conformity. These provisions are provided in Table 2 for reference, and will be accounted for by the Board of Economic Advisors in the revenue forecast.

Please be advised, DOR informed us of the following additional comments for reference:

- Many of the new federal credits require certain basis adjustments to assets, so there may be basis differentials between federal income tax basis and SC income tax basis as well as recapture if South Carolina does not conform.

- Also, for a number of the federal tax credits, if a taxpayer transfers the credit (generally through selling the credit to a third party), the taxpayer is not required to include in federal gross income any amount the taxpayer may receive from the transfer of the tax credit. Additionally, a number of the credits allow a "direct payment" to the qualifying taxpayer or for certain vehicle credits, a taxpayer may use the credit as a down payment for a vehicle, a reduction in purchase price, or receive cash back for the credit. It is unclear what, if any, effects a transfer (e.g., sale) of an applicable credit or any of the other above-mentioned transactions may have on SC taxable income in the future. Based on the timing of the implementation of these tax credits and pending further information on implementation, these issues may require attention in upcoming years but will not have an impact in FY 2023-24.

Table 2: For Reference - Provisions Affecting South Carolina Regardless of Conformity

Line	Provision	IRC Section	FY 2023-24	FY 2024-25	Note
1	Expanding automatic enrollment in retirement plans	IRC § 414	$0	($1,053,000)	
2	Multiple employer 403(b) plans	IRC § 403	($21,000)	($29,000)	
3	Increase in age for required beginning date for mandatory distributions	IRC § 401	($1,905,000)	($1,811,000)	
4	Indexing IRA catch-up limit	IRC § 219	($31,000)	($42,000)	
5	Higher catch-up limit to apply at age 60, 61, 62, and 63	IRC § 414	$0	($29,000)	
6	Treatment of student loan payments as elective deferrals for purposes of matching contributions	IRC § 401	N/A (See Note)	N/A (See Note)	1
7	Deferral of tax for certain sales of employer stock to employee stock ownership plan sponsored by S corporation	IRC § 1042	N/A (See Note)	N/A (See Note)	2
8	Allow additional nonelective contributions to SIMPLE plans	IRC § 408	($133,000)	($186,000)	
9	Contribution limit for SIMPLE plans	IRC § 408	($154,000)	($214,000)	
10	Application of section 415 limit for certain employees of rural electric cooperatives	IRC § 415	($8,000)	($13,000)	
11	Starter 401(k) plans for employers with no retirement plan	IRC § 401	($16,000)	($34,000)	
12	Certain securities treated as publicly traded in case of employee stock ownership plans	IRC § 401	$0	($8,000)	
13	Modification of age requirement for qualified ABLE programs	IRC § 529	N/A (See Note)	N/A (See Note)	3
14	Improving coverage for part-time workers	IRC § 202	($39,000)	($47,000)	
15	Special rules for certain distributions from long-term qualified tuition programs to Roth IRAs	IRC § 529	N/A (See Note)	N/A (See Note)	4
16	Emergency savings accounts linked to individual account plans	IRC § 402	$941,000	$1,651,000	
17	Remove required minimum distribution barriers for life annuities	IRC § 401	($311,000)	($413,000)	
18	Qualifying longevity annuity contracts	IRC § 408	($157,000)	($152,000)	

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Line	Provision	IRC Section	FY 2023-24	FY 2024-25	Note
19	Eliminating a penalty on partial annuitization	IRC § 401	$55,000	$84,000	
20	Recovery of retirement plan overpayments	IRC § 206	$261,000	$105,000	
21	Retirement savings lost and found	IRC § 523	$0	$3,000	
22	Expansion of Employee Plans Compliance Resolution System	IRC § 401	($13,000)	($13,000)	
23	One-time election for qualified charitable distribution to split-interest entity; increase in qualified charitable distribution limitation	IRC § 408	($2,344,000)	($1,636,000)	
24	Exclusion of certain disability-related first responder retirement payments	IRC § 139	N/A (See Note)	N/A (See Note)	5
25	Application of top-heavy rules to defined contribution plans covering excludable employees	IRC § 416	$52,000	$91,000	
26	Employer may rely on employee certifying that deemed hardship distribution conditions are met	IRC § 401	N/A (See Note)	N/A (See Note)	6
27	Individual retirement plan statute of limitations for excise tax on excess contributions and certain	IRC § 6501	($3,000)	($3,000)	
28	Reform of family attribution rule	IRC § 414	($115,000)	($193,000)	
29	Roth plan distribution rules	IRC § 402	($34,000)	($47,000)	
30	Surviving spouse election to be treated as employee	IRC § 401	($63,000)	($110,000)	
31	Repeal of direct payment requirement on exclusion from gross income of distributions from governmental plans for health and long-term care insurance	IRC § 402	($57,000)	($68,000)	
32	Long-term care contracts purchased with retirement plan distributions	IRC § 401	N/A (See Note)	N/A (See Note)	7
33	Termination of variable rate premium indexing	IRC § 4006	$5,000	($13,000)	
34	Safe harbor for corrections of employee elective deferral failures	IRC §	$97,000	$162,000	
35	SIMPLE and SEP Roth IRAs	IRC § 402	$102,000	$133,000	

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Line	Provision	IRC Section	FY 2023-24	FY 2024-25	Note
36	Hardship withdrawal rules for 403(b) plans	IRC § 403	N/A (See Note)	N/A (See Note)	8
37	Elective deferrals generally limited to regular contribution limit	IRC § 414	$4,638,000	$5,924,000	
38	Optional treatment of employer matching or nonelective contributions as Roth contributions	IRC § 402	$2,182,000	$2,660,000	
39	Charitable conservation easements	IRC § 170	$1,717,000	$1,267,000	
40	Enhancing retiree health benefits in pension	IRC § 420	$99,000	$105,000	
41	**Total**		**$4,745,000**	**$6,071,000**	

Note:

1	Impact is expected to be immaterial, as this is anticipated to be largely unused.	
2	Impact occurs in TY 2028	($805,000)
3	Impact occurs in TY 2026	($157,000)
4	Impact is expected to be immaterial, as taxpayers are likely to avoid an impact through rollovers or other means.	
5	Impact occurs in TY 2027	($1,338,000)
6	Provision is not expected to impact collections.	
7	Impact occurs in TY 2026	$26,000
8	Provision is not expected to impact collections.	

Local Expenditure
N/A

Local Revenue
N/A

Frank A. Rainwater, Executive Director