Bill Number:	H. 4087 Signed by Governor on July 2, 2024
Author:	G.M. Smith
Subject:	Income Tax Credits
Requestor:	House of Representatives
RFA Analyst(s):	Jolliff
Impact Date:	July 25, 2024 - Updated to Correct a Typographical Error

Fiscal Impact Summary

This bill amends several code sections dealing with the current corporate headquarters tax credit, tax credits for recycling facilities, job development credits (JDC), and job retraining credits, and creates an income tax exemption for certain broadband infrastructure grant funds.

The Department of Revenue (DOR) and the Department of Commerce (Commerce) will manage the changes to these tax credits and the tax exemption with existing staff and resources.

The bill allows a business to contract with the State Board for Technical and Comprehensive Education (Tech Board) or a technical college to assist with program administration of job retraining credits for a quarterly fee. The Tech Board responded that the number of companies that may contract for these services is currently unknown. The provision would only have an impact on expenditures and revenues for the Tech Board if businesses choose to obtain these services. The Tech Board would charge fees to cover the additional costs.

Section 1 expands the corporate headquarters tax credit to apply to pass-through businesses and makes changes to the job and investment requirements. These changes would reduce total General Fund corporate income tax revenue by approximately $2,885,000 and individual income tax revenue by $4,662,000, for a total of $7,547,000 beginning in FY 2024-25. Given the limited data available to estimate these changes and the significant differences in real and personal property costs depending on industry, the impact may vary by year. These credits may be carried forward for ten years, and the timing of the impact may vary depending on an individual company's tax liability and ability to use these credits.

Section 2 amends the recycling facilities credit by lowering the investment threshold from $300 million to $150 million and expanding the credit to include manufacture and fabrication of products from qualifying post-consumer waste materials and to include used batteries, solar panels, and turbines in addition to the current list of scrap metal and iron and used plastics, paper, glass, and rubber. The credit is for 30 percent of the investment in the recycling property including the total cost of acquisition, construction, and installation of all real and personal property, and may be claimed against corporate income tax, sales or use tax, or corporate license tax, or any similar taxes. At 30 percent of $150 million, the minimum credit level would be $45 million over the course of the investment period, which must be completed by the fifth year.

Since the credit does not expire, companies may carry forward unused credit indefinitely. We estimate the changes will reduce General Fund corporate income or license taxes by $735,000 per year and sales tax by $907,000, for a total reduction of $1,642,000 beginning in FY 2024-25.

Section 3 makes changes to the JDC requirements to allow remote employees to count for JDC purposes at the Coordinating Council for Economic Development's discretion. This change to allow the Council to approve JDCs for remote employees working in South Carolina conforms to the changes in practice in response to the pandemic and will not impact total JDCs. The section also makes changes to the timing of credits for companies claiming operating leases as qualifying expenditures. Additionally, the Department of Commerce indicates that although the changes are effective in tax year 2021, other statutory requirements would prevent retroactively applying these credits. For example, only expenses incurred within 60 days of application are eligible for reimbursement through JDCs. As such, although the changes are effective in tax year 2021, credits would not be retroactive. Therefore, the bill will reduce General Fund income tax withholdings revenue by approximately $640,000 beginning in FY 2024-25.

Section 4 makes changes to job retraining credits by expanding qualifying industries to include warehousing and distribution and expanding qualifying retraining programs to include upskilling, management development, or recertification in production-related competencies. The changes in total would decrease General Fund withholdings tax revenue by approximately $1,512,000 beginning in FY 2024-25.

Section 5 specifies that any broadband infrastructure grant or subgrant pursuant to the Broadband Equity, Access, and Deployment Program (BEAD) or the American Rescue Plan Act of 2021 (ARPA) may be excluded from a corporation's state taxable income for tax year 2023 through 2028. This provision would reduce General Fund corporate income tax revenue by an estimated $2,072,000 beginning in FY 2024-25. This amount is expected to vary annually through FY 2028-29 depending on the timing of grants distributed.

In total, the bill would reduce General Fund revenue by approximately $13,413,000 beginning in FY 2024-25. As noted above, the amounts may vary by year.

FY 2024-25 General Fund Revenue Impact

Section	Amount
Section 1 – Corporate Headquarters	($7,547,000)
Section 2 – Recycling Facility	($1,642,000)
Section 3 – Job Development Credits	($640,000)
Section 4 – Job Retraining Credits	($1,512,000)
Section 5 – Broadband Grant Income Tax Exemption	($2,072,000)
Total	**($13,413,000)**

Explanation of Fiscal Impact

Signed by Governor on July 2, 2024
State Expenditure
This bill amends several code sections dealing with the current corporate headquarters tax credit, tax credits for recycling facilities, job development and retraining credits, and creates an income tax exemption for certain broadband infrastructure grant funds.

Department of Revenue. The bill will require DOR to update forms and systems for the changes to tax credits and the new exemption. The agency may incur some additional staff time for auditing job retraining credits given the expected expansion in the number of qualifying companies. However, the agency expects to manage the additional responsibilities with existing staff and resources.

Department of Commerce. The Department of Commerce anticipates that they will be able to administer the changes to job development credits with existing staff and resources. Therefore, there is no impact to the agency.

State Board for Technical and Comprehensive Education. The bill allows a business to contract with the Tech Board or a technical college to assist with program administration of job retraining credits for a quarterly fee. The Tech Board responded that the number of companies that may contract for these services is currently unknown. The provision would only have an impact on expenditures and revenues for the Tech Board if businesses choose to obtain these services. The Tech Board would charge fees to cover the additional costs.

State Revenue
<u>Section 1</u>
This section amends Section 12-6-3410, the corporate headquarters tax credit. The credit currently is for a corporation establishing or expanding a headquarters in this state or a research and development facility. The bill eliminates the reference to corporation and replaces it with taxpayer or business unit and expands the credit to apply to individual income tax in addition to corporate income tax, bank tax, and corporate license fees, allowing pass-through businesses to also claim the credit. The bill also specifies that a taxpayer or business doing business solely in South Carolina does not meet the definition of a headquarters.

Currently, the corporation must have qualifying real property costs of $50,000 for the establishment or expansion of the headquarters. Additionally, it must create at least 40 new full-time jobs performing headquarters related functions or research and development functions. The credit amount is 20 percent of the qualifying real property costs. The bill requires that the 40 jobs have gross wages equal to or greater than twice the per capita income of the state based on the most recent per capita income data available as of the end of the tax year in which the jobs are filled, and the employees must be provided a benefits package including health care.
The bill also eliminates research and development jobs from qualifying jobs for the credit.

Further, a headquarters that meets the real property qualifications and job requirements may also qualify for an additional credit of 20 percent of the cost of tangible personal property currently. To qualify for the personal property component, the headquarters or research and development establishment must create at least 75 new, full-time jobs with an average compensation of more than twice the South Carolina per capita income. The bill removes the 75 new jobs requirement and eliminates research and development jobs. For 2023, state per capita income was $56,123. We anticipate that many headquarters will meet the new requirement that gross wages must be equal to or greater than twice per capita income in the aggregate when considering all new employees including executives.

The table below provides the history of corporate headquarters tax credits reported for corporate income taxpayers. Credits increased significantly in FY 2021-22 and FY 2022-23, even when considering the increase in total corporate income tax collections. The figures below estimate total credits for FY 2023-24 and FY 2024-25 based on historical credits and the forecast for total corporation income tax by the Board of Economic Advisors as of November 15, 2023. These figures reflect earned credits. Taxpayers may not have sufficient tax liability to use the full amounts listed and may carry forward unused credits.

Corporate Headquarters Tax Credits – History and Estimates

Year	Returns	Amount	Average per Return	Total Corporate Income Tax	Percentage of Total Corporate Income Tax
2017-18	26	$422,791	$16,261	$375,189,587	0.11%
2018-19	23	$212,690	$9,247	$494,214,442	0.04%
2019-20	18	$2,492,653	$138,481	$423,052,193	0.59%
2020-21	26	$1,783,479	$68,595	$669,221,114	0.27%
2021-22	23	$20,681,966	$899,216	$1,129,375,124	1.83%
2022-23(p)	26	$17,561,708	$675,450	$1,262,221,843	1.39%
2023-24(e)	*26*	*$10,881,000*	*$418,500*	*$782,083,000*	*1.39%*
2024-25(e)	*26*	*$10,603,000*	*$407,808*	*$762,083,000*	*1.39%*

Source: Department of Revenue Annual Report
(p) preliminary
(e) estimates by SC Revenue and Fiscal Affairs

In order to estimate the potential increase in credits by expanding the credits to apply to pass-through businesses, we reviewed total taxable income of C-corporations compared to income reported for partnerships and S-corporations. For 2021, the latest detailed tax year available, South Carolina partnership and S-corporation taxable income was 22 percent of taxable income for C-corporations in South Carolina. Based on this relationship, we estimate that adding pass-through businesses would increase total credits by approximately $2,331,000 for FY 2024-25.

Removing research and development jobs may reduce the total credits over time depending on the mix of industries locating in South Carolina. However, reducing the requirements to qualify for the tangible personal property credit is likely to expand the credits. Depending on the business, the cost of personal property can be greater than real property costs. In recent years, personal property values for manufacturing industries exceeded real property, although this will vary by industry. Assuming an equal split between real and personal property on average, the change would then double total credits. Corporate income tax credits would increase by another $10,603,000 and individual income tax credits for pass-through entities would increase by another $2,331,000.

Corporations are typically unable to use all tax credits earned. For FY 2021-22, corporations used approximately 27.2 percent of the credits earned in the year. Based on this percentage, we estimate that the actual impact in FY 2024-25 of doubling the corporate headquarters tax credit would be approximately 27.2 percent of $10,603,000, or $2,885,000. Combining these new credits and the estimated impact of $2,331,000 for pass-through businesses, we estimate the total credits used in FY 2024-25 would increase by $5,216,000 for the change to include personal property.

In total, these changes would reduce total General Fund corporate income tax revenue by approximately $2,885,000 and individual income tax revenue by $4,662,000, for a total of $7,547,000 beginning in FY 2024-25. Given the limited data available to estimate these changes and the significant differences in real and personal property costs depending on industry, the impact may vary by year. These credits may be carried forward for ten years, and the timing of the impact may vary depending on an individual company's tax liability and ability to use these credits.

Section 2

This section amends the recycling facility credit in Section 12-6-3460. The current credit is for 30 percent of the investment in a recycling property, which includes the total cost of acquisition, construction, and installation of all real and personal property. In order to qualify, the business must be located within South Carolina, and the property must be used by the taxpayer to manufacture products for sale composed of at least 50 percent post-consumer waste material by weight or volume. Currently, the minimum level of investment must be at least $300 million incurred by the fifth year after the year in which the taxpayer begins construction or operation of the facility. The credit may be used to reduce corporate income tax, sales or use tax, or corporate license tax, or any similar taxes.

The bill lowers the investment required from $300 million to $150 million and expands the credit to apply to fabrication of products in addition to manufacturing. It also expands the definition of post-consumer waste material to include used batteries, solar panels, and turbines in addition to the current list of scrap metal and iron and used plastics, paper, glass, and rubber.

At 30 percent of $150 million, the minimum credit level would be $45 million over the course of the investment period, which must be completed by the fifth year. Since the credit does not expire, companies may carry forward unused credit indefinitely.

The Department of Commerce indicates that based on the last 5 years an additional 1-2 projects per year are likely to qualify for the revised credit. Based on this experience, we would anticipate that this provision will increase earned tax credits for qualifying facilities by at least $45 million per year. The tax credit may be claimed against corporate income tax, sales or use tax, or corporate license tax, or any similar taxes. However, very few corporations have a sufficient tax liability to claim this level of credit. Based on the latest available data, we estimate that a company with an investment of approximately $150 million would claim approximately $735,000 per year against corporate income or license taxes. Further, based on available data and the required investment threshold, we estimate that a facility may claim approximately $907,000 against sales tax per tax year. In total, we estimate that the credit expansion will reduce General Fund revenue by approximately $1,642,000 in FY 2024-25. This amount would continue to grow as companies claim new credits and existing companies continue to claim credit carryforward amounts until the total amounts reach the credits earned. Based on total credits per company of approximately $45 million, it will take approximately 27 years for a company to exhaust these credits. The timing and amount of the impact may vary if companies have higher or lower tax liabilities, or the investment exceeds $150 million.

Section 3
This section amends several code sections of the Enterprise Zone Act in Chapter 10, Title 12. The section makes changes to JDC requirements to allow remote employees to count for JDC purposes at the Coordinating Council for Economic Development's discretion. Based on information provided by Commerce, the Council allowed remote employees to qualify for JDCs during the pandemic. The bill provides that remote employees must be subject to South Carolina income tax withholdings. This section is effective beginning in tax year 2021. This change to allow the Council to approve JDCs for remote employees working in South Carolina conforms to the changes in practice in response to the pandemic and will not impact total JDCs.

The changes also allow a company to get reimbursed for lease expenditures before meeting the minimum job requirement and minimum capital requirement in the revitalization agreement (RVA). The bill provides that if the Council approves an operating lease as an eligible expenditure for a qualifying service-related facility that will create at least 25 jobs for a project with a compensation level of more than 2.5 times the per capita income in the county where the project is located, the business may be reimbursed on an annual basis for lease payments before certification to the Council that the business has met the minimum job requirement and capital investment provided for in the RVA. The change does not impact total credits but would accelerate the company's ability to claim the credits. Commerce anticipates that this would be an infrequent occurrence for possibly 2 or 3 projects. Based on 2 or 3 projects and average claims, we estimate that this may accelerate credit usage and reduce General Fund withholdings tax revenue by approximately $640,000.

Additionally, the Department of Commerce indicated that although the changes are effective in tax year 2021, other statutory requirements would prevent retroactively applying these credits. For example, only expenses incurred within 60 days of application are eligible for reimbursement through JDCs. As such, although the changes are effective in tax year 2021, credits would not be retroactive. Therefore, the bill will reduce General Fund income tax withholdings revenue by approximately $640,000 beginning in FY 2024-25.

Section 4

This section makes changes to job retraining credits in Section 12-10-95. Job retraining credits are for businesses engaged in specific industries. Taxpayers are allowed to claim a $1,000 credit against withholdings for the retraining of an employee. The bill expands qualifying industries to include warehousing and distribution. Further, it expands retraining programs to include upskilling, management development, or recertification in production-related competencies.

The bill also makes changes to the determination of qualifying employees. Currently, the credit may not apply to employees who are subject to an RVA. The bill changes this requirement to specify that a taxpayer may not claim retraining credits for employees for whom they are claiming JDCs. This change clarifies that employees included in an RVA qualify for retraining credits so long as the company is no longer claiming JDCs for that employee. This change is needed for long-standing companies that continue to expand operations to be able to claim retraining credits on employees under an original RVA for whom the business is no longer claiming JDCs.

The bill also specifies that a qualifying business may contract with the Tech Board to assist with program administration beyond a typical retraining agreement for a quarterly fee not to exceed 20 percent of the retraining credit amount claimed. It is unclear how many companies will elect to receive assistance. The amount of fees that will be generated will depend on further decisions by each company and is undetermined.

Job Retraining Credits – History and Estimates

Fiscal Year	**Amount**
FY 2016-17	$1,623,955
FY 2017-18	$2,021,614
FY 2018-19	$1,651,178
FY 2019-20	$1,426,313
FY 2020-21	$905,244
FY 2021-22	$792,426
FY 2022-23 (p)	$1,104,762
FY *2023-24 (e)*	*$1,430,000*
FY *2024-25 (e)*	*$1,766,000*

Source: Department of Revenue Annual Report
(p) preliminary
(e) estimates by S.C. Revenue and Fiscal Affairs

Based on employment data from the Bureau of Labor Statistics, expanding qualifying industries to include warehousing and storage will increase eligible employment by approximately 20 percent. Assuming similar utilization of the credits, this change would expand credits by an additional $353,000 in FY 2024-25.

Additionally, expanding qualifying training will also likely impact credit utilization. The Bureau of Labor Statistics reported in a 1995 study that 28.4 percent of employees received management training while 30.9 percent received training for professional and technical skills and 21.0 percent received training that was production and construction related.[1] If a similar pattern of employee training still holds, expanding training could increase total training eligible for credits by as much as 54.7 percent.

Including the increase due to the expansion of qualifying industries, we estimate that credits under the current qualifying trainings would likely total approximately $2,119,000. Increasing that amount by 54.7 percent for the expanded trainings included would result in approximately $1,159,000 in additional credits. Under these assumptions, the changes in total would decrease General Fund withholdings tax revenue by approximately $1,512,000 beginning in FY 2024-25.

Section 5

This section adds Section 12-6-1120(11) to specify that any grant or subgrant awarded for broadband infrastructure investment pursuant to the BEAD program or ARPA may be excluded from a corporation's state taxable income for tax year 2023 through 2028. Under the federal Tax Cuts and Jobs Act of 2017, grants are taxable as income. Therefore, the BEAD program and ARPA grants awarded to companies are included in federal taxable income, which is the starting point for determining state taxable income, and these amounts are potentially subject to state income taxes. The change will allow companies to deduct these grant awards from taxable income for state income tax purposes for tax years 2023 through 2028.

Based on information provided by the Office of Regulatory Staff (ORS), they anticipate that distributions of ARPA funds for broadband infrastructure will total as follows:

ARPA Broadband Grant Funds - Projected Distribution by Year

Program	2023 - Actual	2024 - Estimated	2025 - Estimated	2026 - Estimated
ADGP	$14,750,502	$9,323,065		
SLFRF 1.0	$72,670	$83,070,305	$65,037,754	
CPF 1.0			$82,993,738	$102,127,923
SLFRF 3.0			$18,809,680	$23,146,247
Total	**$14,823,172**	**$92,393,370**	**$166,841,172**	**$125,274,170**

Source: Office of Regulatory Staff estimates, May 1, 2024, subject to change.
ADGP – Accelerated Deployment Grant Program
SLFRF – State and Local Fiscal Recovery Funds
CPF – Capital Projects Fund

ORS provided the following list of the twenty telecommunications companies that will receive these funds and the adopted budget for each.

[1] Bureau of Labor Statistics, *1995 Survey of Employer Provided Training* https://www.bls.gov/news.release/sept.t01.htm; Retrieved March 28, 2024.

ARPA Broadband Grant Funds – Projected Amount by Company

Company	Adopted Budget
AT&T (Bellsouth)	$24,220,199
Brightspeed	$939,774
Carolina Connect Cooperative	$5,124,857
Comcast Cable Communications, LLC	$21,728,699
Comporium	$62,369,392
Farmers FTC Diversified Services, LLC	$3,774,800
Farmers Telephone Cooperative, Inc.	$28,967,427
Home Telephone Company, Inc. d/b/a Home Telecom	$12,809,066
Horry Telephone Cooperative, Inc.	$4,975,164
Lumos Fiber	$1,217,821
Lynches River Electric Cooperative	$2,554,599
NTINet, Inc.	$78,133
Open Broadband, LLC	$6,869,723
Palmetto Telephone Communications, LLC	$20,321,728
Sandhill Telephone Cooperative, Inc.	$6,500,765
Spectrum Southeast, LLC and Affiliates	$16,452,613
TriCoLink, Inc.	$9,632,052
TruVista Communications, Inc.	$34,439,827
WC Fiber, LLC	$91,392,453
ZiTEL, LLC	$3,006,865
Total	**$357,375,958**

Source: Office of Regulatory Staff, May 1, 2024

For corporations, these funds will be included in taxable income. DOR anticipates that these grant funds will be subject to allocation of income for corporate income tax purposes for multi-state companies. The allocation will reduce the amount of these grants that are taxable in South Carolina. Additionally, some of the companies receiving the grants are organized as electric and telephone cooperatives. Electric and telephone cooperatives that meet the requirements are exempt from paying taxes under Section 501(c)(12) of the Internal Revenue Code.[2] We assume that the cooperatives receiving these funds are exempt based on a search of filings with the Secretary of State that list these entities as nonprofits. Based on the amounts that are expected to go to cooperatives, this would reduce the amount of taxable distributions by approximately 13 percent.

Of the projected distribution of funds for 2023-2026, the amounts distributed in 2023 would be included in income for current tax filings during FY 2023-24. These companies would be eligible for a refund of any amount paid, which would impact FY 2024-25. Therefore, the impact

[2] General Survey of I.R.C. 501(C)(12) Cooperatives and Examination of Current Issues https://www.irs.gov/pub/irs-tege/eotopice02.pdf Retrieved May 2, 2024

for FY 2024-25 includes the amounts for 2023 and 2024. Based on overall taxability of corporate income tax filings for multi-state companies and in-state companies, we have developed the following estimates of the potential impact on General Fund corporate income tax revenue by fiscal year.

	FY 2024-25	**FY 2025-26**	**FY 2026-27**
Grant Distributions Eligible for Exclusion	$107,216,542	$166,841,172	$125,274,170
Estimated Taxable Portion of Distributions (excluding cooperatives)	$92,779,193	$144,375,009	$108,405,253
Estimated General Fund Corporate Income Tax Impact	**($2,072,000)**	**($3,224,000)**	**($2,421,000)**

Please note, the amounts above may vary depending on the actual tax situation of these companies and the final timing of the distributions.

In addition to the distributions above, ORS estimates that approximately $550 million in BEAD program grants will be distributed beginning in 2027. The timing and companies that will receive these funds is unknown at this time. If the distribution of these funds follows a similar pattern as the ARPA grants, exempting these BEAD program funds would reduce General Fund corporate income taxes by a total of approximately $10,634,000 between FY 2027-28 and FY 2028-29.

State Revenue Summary

In total, the bill would reduce General Fund revenue by approximately $13,413,000 beginning in FY 2024-25. As noted above, the amounts may vary by year.

FY 2024-25 General Fund Revenue Impact

Section	**Amount**
Section 1 – Corporate Headquarters	($7,547,000)
Section 2 – Recycling Facility	($1,642,000)
Section 3 – Job Development Credits	($640,000)
Section 4 – Job Retraining Credits	($1,512,000)
Section 5 – Broadband Grant Income Tax Exemption	($2,072,000)
Total	**($13,413,000)**

Local Expenditure

N/A

Local Revenue

N/A

Frank A. Rainwater, Executive Director