



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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Bill Number: S.0428 Amended by the Senate Sales and Income Tax Subcommittee on March 8, 2017

Author: Reese

Subject: Sales and gross receipts

Requestor: Senate Finance

RFA Analyst(s): Martin

Impact Date: March 13, 2017

Estimate of Fiscal Impact

	FY 2017-18	FY 2018-19
State Expenditure		
General Fund	\$0	\$0
Other and Federal	\$0	\$0
Full-Time Equivalent Position(s)	0.00	0.00
State Revenue		
General Fund	\$0	\$0
Other and Federal	\$0	\$0
Local Expenditure	\$0	\$0
Local Revenue	\$0	\$0

Fiscal Impact Summary

This bill would not affect state General Fund corporate income tax revenue in FY2017-18.

Explanation of Fiscal Impact

Amended by the Senate Sales and Income Tax Subcommittee on March 8, 2017

State Expenditure

The Department of Revenue indicates that there will be no expenditure impact to the General Fund, Federal Funds, or Other Funds from this bill. The Department can administer the legislative changes with existing resources.

State Revenue

Section 1. This section was amended to provide a definition of “service provider” to mean an owner operator of a satellite receiver and related hardware refurbishment and repair facility in this State with an annual payroll of at least twenty-five million dollars and which directly employs at least eight hundred employees. Dish DBS Corp. currently leases a pay-tv and broadband service and remanufacturing center in Spartanburg, South Carolina. This facility meets the above criteria. DirecTV, which was acquired by AT&T in July 2015, does not operate a refurbishment and repair facility in South Carolina. This amendment specifically clarifies that the satellite service provider, Dish DBS, Corp., must apportion gross receipts among the state they conduct business using a gross receipts formula pursuant to Section 12-6-2295. This amended section is prospective and excludes assessments under judicial review. This amended

section is not expected to affect state General Fund corporate income tax revenue in FY 2017-18, and each fiscal year thereafter.

When a corporate taxpayer conducts business in more than one state they are statutorily required to account for the amount of business attributable to each state. Generally, income is apportioned among the states on a formula basis. The apportionment method becomes clouded when the taxpayer is a service provider rather than a manufacturer.

Pursuant to Sections 12-6-2290 and 12-6-2295, taxpayers whose principal business is not manufacturing or dealing in tangible personal property must apportion income using a gross receipts factor. The gross receipts factor is defined as “a fraction in which the numerator is gross receipts from within this State during the taxable year and the denominator is total gross receipts from everywhere during the taxable year.”

Two prominent satellite subscription television service providers, DirecTV, Inc. and Dish DBS Corp., filed amended corporate income tax returns seeking large corporate income tax refunds based upon their reinterpretation of the apportionment of corporate income tax attributable to South Carolina. Both companies are multistate taxpayers that offer direct broadcast satellite video services through subscription fees and leases of equipment for access to hundreds of television programming channels throughout the United States. The satellite providers argued that little or no subscription revenue from South Carolina should be included in the numerator of the gross receipts ratio because the majority of the income-producing activity occurs outside of South Carolina.

DirecTV, Inc. and Dish DBS Corp. filed suit against the Department of Revenue and the case was heard by an administrative law court judge. At issue was the interpretation and delineation of the phrases “income-producing activity” and “costs of performing the service”. The satellite providers argued that the costs of performing the service should be sourced to their headquarters that are not in South Carolina thereby reducing their tax liability sourced to South Carolina. The Department of Revenue argued that the income-producing activity of charging subscription fees to South Carolina subscribers was the appropriate measure to assess the satellite provider’s corporate tax liability.

This bill would clarify the apportionment language in Section 12-6-2295 for satellite companies with regard to their assessment of corporate income tax revenue. This bill would amend Section 12-6-2295(A) to amend the items to include in the terms “sales” and “gross receipts” the receipts from the provision of direct broadcast satellite service attributable to this State in pro rata proportion of the costs of performing the service. This bill further defines the term “direct broadcast satellite service” to mean the distribution of broadcasting or programming or services by satellite directly to the subscriber’s premises without the use of ground receiving or distribution equipment, except at the subscriber’s premises or in the uplink process to the satellite.

The administrative law court case was decided in the favor of the defendant, the South Carolina Department of Revenue. A table summarizing the judgements in each case is provided below.

South Carolina Administrative Law Court Petitioner's Order

Category	DIRECTV, Inc.	Dish DBC, Inc.		
Tax & license fees	\$6,646,168	\$544,286	\$90,551	\$634,837
Interest	\$653,425	\$399,496	\$32,196	\$431,692
Penalties	<u>\$1,661,541</u>	<u>\$276,307</u>	<u>\$21,846</u>	<u>\$298,153</u>
Total	<u>\$8,961,134</u> a:/	<u>\$1,220,089</u> b:/	<u>\$144,593</u> c:/	<u>\$1,364,682</u>

Notes: a:/ Income tax returns for 2009, 2010, and 2011.
b:/ Income tax returns for 2004 through 2010.
c:/ Income tax returns for 2006 through 2011.

The judgement ordered DirecTV to pay \$8,961,134 in taxes, license fees, interest, and penalties for the tax years 2009 through 2011 to the Department of Revenue. Dish DBC Corp. was ordered to pay \$1,364,682 in taxes, license fees, interest, and penalties for tax years 2004 through 2011. Although a decision was reached at the administrative law court level, the case may still be appealed with the outcome of that decision being uncertain. It has been the long-standing policy of the Revenue and Fiscal Affairs Office and the Board of Economic Advisors to not comment on impending litigation until a final decision is reached. As such, even though the state has not received a portion of the corporate income tax revenue for satellite services provided, the appropriate amount of tax revenue will be collected in accordance with existing statutes upon settlement of the legal action. The state did not lose any corporate income tax revenue, it is delayed. The state will receive the corporate income tax revenue owed, but in a time period other than the period in which the tax revenue was earned. After such time, the state will receive the proper corporate income tax revenue amounts from satellite subscription television service providers going forward. This bill, therefore, will not affect state corporate income tax revenue in FY2017-18 and later fiscal years.

Section 2. This amended section would amend Section 12-14-60(G) to limit the total dollar amount of an investment tax credit allowed by a taxpayer to no more than \$5,000,000 “annually” for a single taxpayer subject to the corporate license tax. This clarifying amendment does not alter any current practices by the Department of Revenue, and therefore, would not affect state General Fund income tax revenue in FY 2017-18.

Section 3. This act takes effect upon approval by the Governor and shall apply to all open tax excluding assessments under judicial review as of the date of the Governor’s approval. periods and in tax assessments under administrative or judicial review.

Local Expenditure

N/A

Local Revenue

N/A

Introduced on February 16, 2017

State Expenditure

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State Revenue

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Local Expenditure

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Local Revenue

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Frank A. Rainwater, Executive Director