South Carolina Revenue and Fiscal Affairs Office
Statement of Estimated Fiscal Impact
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Bill Number:	S. 1043 Veto Overridden on October 3, 2018
Author:	Turner
Subject:	SC Abandoned Building and Revitalization Act
Requestor:	Senate
RFA Analyst(s):	Gable, R. Martin, Jolliff, Wren, and Mitchell
Impact Date:	November 1, 2018

Estimate of Fiscal Impact

	FY 2018-19	FY 2019-20
State Expenditure		
General Fund	$0	$0
Other and Federal	$0	$0
Full-Time Equivalent Position(s)	0.00	0.00
State Revenue		
General Fund	See Table Below	See Table Below
Other and Federal	$25,000	$0
Local Expenditure	$0	$0
Local Revenue	$0	$0

GENERAL FUND REVENUE
Individual and Corporate Income Tax, Bank Tax, Savings and Loan Tax, Corporate License Fees, Insurance Premium Tax (Including Retaliatory Tax), or Any Combination Thereof

	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	NOTES
Section 1	$0	$0	($1,540,000)	($1,540,000)	Sunset provision FY 2021-22
Section 2	($1,000,000)	($1,000,000)	($1,000,000)	$0	Sunset provision FY 2020-21
Section 3	($88,962)	$0	$0	$0	Recurring
Section 4	($2,000,000)	$0	$0	$0	Recurring
Section 5	$0	$0	$0	$0	
Section 6A	($500,000)	($1,000,000)	($1,500,000)	($2,000,000)	Capped at ($2,000,000) Sunset provision FY 2027-28
Section 6B	$0	$0	$0	$0	
Section 7	$0	$0	$0	$0	
Section 8	$0	$0	$0	$0	
Section 9	$0	$0	$0	$0	
Total	($3,588,962)	($2,000,000)	($4,040,000)	($3,540,000)	

Fiscal Impact Summary
This bill will increase Other Fund revenue of the Coordination Council for Economic Development (CCED) by an estimated $25,000 in tax credit application fees for the duration of the tax credit for the certified SC grown agricultural purchases, from FY 2018-19 to FY 2028-29.

Additionally, RFA anticipates this bill will reduce the General Fund revenue for individual and corporate income tax, bank tax, savings and loan tax, corporate license fees, insurance premium tax (including retaliatory tax), or any combination thereof. The estimated reduction in the General Fund revenue is $3,588,962 in FY 2018-19, $2,000,000 in FY 2019-20, $4,040,000 in FY 2020-21, and $3,540,000 in FY 2021-22.

Explanation of Fiscal Impact

Veto Overridden on October 3, 2018
State Expenditure
Department of Revenue (DOR). Sections 1, 2, 6, 7, and 8 expand certain tax credits, tax exemptions, and update certain procedures associated with DOR. These sections of this bill will require DOR to make some changes in order to meet the new requirements. However, we anticipate DOR will be able to manage any modification required by this bill within existing appropriations as the administration of tax credits, existing exemptions, and tax procedures is within DOR's normal scope of business. Therefore, this bill is not expected to have an expenditure impact on the General Fund, Other Funds, or Federal Funds for DOR.

Department of Commerce. Section 6 requires the Coordinating Council of Economic Development (CCED) to administer certain tax credits. The Department of Commerce indicates that any additional workload related to the CCED in administering these tax credits is not expected to require additional staffing or incur additional costs, and will have no expenditure impact on the General Fund, Federal Funds, or Other Funds for the Department of Commerce.

Administrative Law Court. Section 8 specifies that the Administrative Law Court (ALC) has jurisdiction to approve a refund due for any tax year before the three years immediately preceding the final determination of an appealed property tax assessment adjustment if the appeal does not conclude by December 31 of the tax year. This section amends the current ALC jurisdiction over local property tax matters, and therefore, is not anticipated to have an expenditure impact on the General Funds, Federal Funds, or Other Funds for the ALC.

State Revenue
Section 1. This section extends the sunset provision of the South Carolina Abandoned Buildings Revitalization Act which required the tax credit to terminate on December 31, 2019. Now the South Carolina Abandonment Buildings Revitalization Act is scheduled to expire on December 31, 2021. Since the abandoned buildings revitalization tax credit is scheduled to be repealed on December 31, 2019, the Board of Economic Advisors (BEA) was not expecting any additional revenue reductions in the General Fund revenue beginning in FY 2020-21 from this tax credit.

The South Carolina Abandoned Buildings Revitalization Act was enacted in Act 57 of 2013 and has been amended since that time. Under this Act, a taxpayer may claim a nonrefundable state income tax credit equal to twenty-five percent of actual rehabilitation expenses of an abandoned building. The tax credit may be applied against individual and corporate income taxes, bank taxes, savings and loan taxes, corporate license fees, insurance premium taxes (including retaliatory taxes), or any combination thereof. The tax credit may also be applied against real property taxes as levied by local taxing entities. The tax credit must be taken in equal installments over a three-year period and may not exceed $500,000 for any taxpayer in a tax year. The credit is earned in the tax year in which the applicable phase or portion of the building site is placed in service. Unused tax credits may be carried forward for five years. The South Carolina Abandoned Buildings Revitalization Act was to be repealed on December 31, 2019. Any credit carryforward would continue to be allowed until the five-year time period is completed.

The table below describes a summary of the abandoned building tax credit showing the number of taxpayers claiming the nonrefundable tax credit and the value of the tax credits claimed over the first four years of actual data filed by taxpayers. Through FY 2016-17, the latest year for which there is data, a total of 288 taxpayers have claimed $11,038,274 in nonrefundable tax credits.

HISTORY OF THE ABANDONED BUILDING TAX CREDIT				
Fiscal Year	Tax Year	Tax Payers	Credit Claims	Avg. Credits Claimed Per Taxpayer
FY 2013-14	TY 2013	19	$390,155	$20,533
FY 2014-15	TY 2014	27	$1,127,443	$41,757
FY 2015-16	TY 2015	79	$2,253,044	$28,520
FY 2016-17	TY 2016	163	$7,267,652	$44,587
TOTAL		288	$11,038,274	$38,327

Source: Board of Economic Advisors from data provided by SC Department of Revenue

Based on the collection pattern of actual nonrefundable tax credits claimed and adjusting for any eligible tax credit carryforwards that taxpayers are entitled and may claim in future tax years, the abandoned building revitalization tax credits increase by an average of $1,540,000 per tax year for all taxpayers. The following table is an estimate of the future revitalization tax credit:

ESTIMATE OF THE ABANDONED BUILDING TAX CREDIT			
Fiscal Year	Tax Year	Credit Claims	Annual Increase
FY 2017-18	TY 2017	$8,807,652	
FY 2018-19	TY 2018	$10,347,652	$1,540,000
FY 2019-20	TY 2019	$11,887,652	$1,540,000

(Continued on next page)

ESTIMATE OF THE ABANDONED BUILDING TAX CREDIT			
Tax Years Added by Section 1 of S. 1043			
Fiscal Year	Tax Year	Credit Claims	Estimated Annual Increase
FY 2020-21	TY 2020	$13,427,652	$1,540,000
FY 2021-22	TY 2021	$14,967,652	$1,540,000

The extension of the tax credit for the South Carolina Abandoned Buildings Revitalization Act for two additional years, would result in a reduction in General Fund individual and corporate income taxes, bank taxes, savings and loan taxes, corporate license fees, insurance premium taxes (including retaliatory taxes) revenue, or any combination thereof, by an additional $1,540,000 in FY 2020-21 and $1,540,000 in FY 2021-22, for a total of $3,080,000 in the two fiscal years. Beginning in FY 2022-23, the General Fund individual and corporate income tax revenue will increase by the estimated total tax credit minus any carryforward. Carryforward of the tax credit will continue as the tax payer may claim any unused credit for five years after a building is placed in service.

Section 2. Section 2 amends Section 12-67-140 to include language that makes several significant changes to the abandoned building revitalization tax credit:

- This section only applies to building sites which have had no portion thereof placed in service before July 1, 2018, and upon which is a redeveloped multi-floor structure that is listed on the National Register of Historic Places.

- An abandoned unit may be subdivided into separate parcels or units, and up to seven separate floors may be considered seven separate subdivided units if a floor is redeveloped for the exclusive use as an apartment or apartments.

- A "Notice of Intent to R ehabilitate" is not required, but the Department of Revenue must be notified in writing prior to the date the building will be placed in service.

Each of the items noted above poses a significant change to the abandoned building revitalization tax credit statute. These changes include the following:

- This section will limit only those multi-floor abandoned buildings which have not been placed in service before July 1, 2018, and are listed on the National Register of Historic Places to qualify for the tax credit. These provisions may limit the availability of renovated abandoned buildings that qualify for the tax credit.

- Previously, according to the Department of Revenue, an abandoned building unit could be subdivided into separate units and qualify for a tax credit if those units are income producing. An individual residential apartment building would qualify as only one unit and would not count as separate individual units based on the number of apartments. This bill changes the application of prior law and may consider up to seven separate

floors as seven separate subdivided units even if the floors are redeveloped as a residential apartment or apartments.
- Previously, a taxpayer had to file a "Notice of Intent to Rehabilitate" with the Department of Revenue if the taxpayer intends to claim an abandoned building tax credit. In the "Notice of Intent to Rehabilitate" there must have been a stated total amount of the estimated cost to rehabilitate an abandoned building project. The actual costs of the qualified rehabilitation expenditures could come within as low as 80 percent of the actual expenditure amount and as high as 125 percent of the actual expenditure amount. Any amounts outside of these expenditure limits would not be included as qualified rehabilitative expenditures in order to claim the tax credit. The suspension of the requirement to file a "Notice of Intent to Rehabilitate" allows for cost overruns associated with an abandoned building project to be included as qualified rehabilitation expenses to be used in the calculation of the tax credits to be claimed by the taxpayer.

- Also, previously a taxpayer may claim a tax credit as phases of an abandoned building project were completed and placed in service in accordance with the "Notice of Intent to Rehabilitate" filed with the Department of Revenue. This bill will only apply to building sites entirely placed in service after June 30, 2018.

This section will limit only those multi-floor abandoned buildings which have not been placed in service before July 1, 2018, and are listed on the National Register of Historic Places to qualify for the tax credit. According to the national park services of the U.S. Department of the Interior, there are currently 1,556 properties registered or waiting to be registered on the National Register of Historic Places in South Carolina. We currently know of one property that meets this criterion. Additionally, because only those abandoned buildings placed in service between July 1, 2018, and December 31, 2021, will qualify for the tax credit, it is reasonable to believe that sometime in the three-year period that another or several other abandoned buildings will be redeveloped and qualify for the tax credit.

According to the Department of Revenue's Revenue Ruling #15-7, each abandoned building site could contain multiple units and each unit could qualify for the credit. A redeveloped apartment building with multiple units would qualify for only one tax credit, regardless of the number of units in the apartment building. This bill changes the calculation of the tax credit for abandoned buildings redeveloped for use as apartments. Under this bill, up to seven separate floors may qualify for the tax credit as seven separate subdivided units even if the floors are redeveloped as apartments. Each unit is still limited to a nonrefundable tax credit of up to $500,000 per unit.

Under prior law, one redeveloped floor of apartments would qualify for the tax credit up to $500,000 per unit, or $166,667 each tax year over the three-year period. The remaining six floors would not be eligible for the tax credit. This bill will allow the remaining six floors of apartments to qualify for a tax credit under the provisions of this bill. Therefore, the additional six floors of apartments multiplied by a tax credit limitation of $500,000 per unit yields a reduction of General Fund revenue by an additional estimated $3,000,000 to be taken in three equal installments of $1,000,000 in each tax year in FY 2018-19, FY 2019-20, and FY 2020-21. Additionally, in FY 2021-22, General Fund revenue will increase by the full amount of the tax credit that will expire in December 2021.

Section 3. This section updates the definition of an economically distressed parcel of property as listed by the Appalachian Regional Commission and amends the definitions of a qualified textile mill site and qualified textile mill rehabilitation expense for tax credit purposes.

The Textile Communities Revitalization Act was first enacted in 2005. Previously, pursuant to Section 12-65-30, a taxpayer is allowed a tax credit against income taxes, corporate license tax, insurance premium taxes, or any combination thereof, or a property tax credit for the renovation, improvement, and redevelopment of abandoned textile mills in South Carolina. The income, license, and/or premium tax credit is equal to twenty-five percent of the qualified rehabilitation expenses. The credit is claimed in equal installments over a five-year period beginning with the year the property is placed in service. Any unused credit may be carried forward for five years. The tax credit is limited in use to fifty percent of a taxpayer's income tax liability, fifty percent of a taxpayer's corporate license fees, and/or fifty percent of a taxpayer's insurance premium license taxes in a taxable year. A taxpayer may claim this credit in addition to the credit for rehabilitation of a certified historic structure allowed pursuant to Section 12-6-3535. The "real property tax credit" is equal to twenty-five percent of the qualified rehabilitation expenses made to the eligible site, up to seventy-five percent of the real property taxes due on the site, each year. The municipality or the county must determine the eligibility of the site and the proposed project. The ordinance shall allow the property tax credit to be taken against up to seventy-five percent of the real property taxes due on the site each year not to exceed eight years. The credit vests in the taxpayer in the year in which the eligible site is placed in service. The credit may be carried forward up to eight years. According to the latest data from the Department of Revenue, 676 taxpayers have claimed a total of $28,045,882 of nonrefundable tax credits since passage of the Textiles Communities Revitalization Act in 2005.

Section 3 makes several changes to the Textiles Communities Revitalization Act to include:

- a definition of an economically distressed parcel of property as listed by the Appalachian Regional Commission,
- amends the definition of a qualified textile mill site, and
- amends the definition of a qualified textile mill rehabilitation expense.

First, this section will amend Section 12-65-20(4) to include a definition of an economically distressed parcel of property as listed by the Appalachian Regional Commission. The Commission uses an index-based county economic classification system to identify and monitor the economic status of Appalachian counties. The system compares each county's average of three economic indicators – the three-year unemployment rate, per capita market income, and poverty rate – with national averages. The resulting values are summed and averaged to create a composite index value for each county. Each county in the nation is then ranked, based on its composite index value. Counties are designated as distressed, at-risk, transitional, competitive, or attainment, based on their ranking in the index. Designations are revised annually using the most current data available. Based on the current county economic status classification system, Anderson County, Greenville County, Oconee County, Pickens County, and Spartanburg County are considered “transitional” Appalachian counties. Cherokee County is the only “at-risk” Appalachian county in South Carolina.

This section introduces another classification system for awarding a state textile revitalization tax credit. Local economic development officials may be able to attract federal grants or outside investment for disadvantaged communities if a project is undertaken in one of the six counties listed above. This economic classification system may be of consideration if the taxpayer is deciding on the property tax credit selection of the textile rehabilitation credit. The county or municipality must make the determination of whether the site qualifies as an abandoned textile mill site and whether to grant a property tax credit for the project. The ordinance shall allow the property tax credit to be taken against up to seventy-five percent of the real property taxes due on the site each year not to exceed eight years.

Second, this section will also update Section 12-65-20(4) to amend the definition of a qualified textile mill site to include all land used for textile manufacturing operations or ancillary uses along a “contiguous parcel” of land. The term “contiguous parcel” is further defined as any separate tax parcel sharing a common boundary with an adjacent parcel or separated only by a private or public road. This amendment would allow separate tax parcels to be treated as one qualified textile mill site for purposes of the tax credit. This combined textile mill site would be eligible for the property tax credit and may include land that was never originally used for textile manufacturing purposes. The 1,000-foot limitation may still be applicable even if the parcels are deemed contiguous. This issue requires further research and we defer this issue to the appropriate officials of the South Carolina Department of Revenue or the local tax assessors and auditors.

Lastly, this section will update Section 12-65-20(8) to amend the definition of qualified rehabilitation expenses associated with new or rehabilitated buildings on a textile mill site that increases the amount of square footage of the buildings that existed on the site as of the date of the filing of the “Notice of Intent to Rehabilitate” by more than two hundred percent shall not be considered a rehabilitation expense for the purposes of calculating the credit. Current legislation restricts the use of qualified textile rehabilitation expenses to the original footprint of the original textile mill building. The amendment does allow a qualified site to be at least two hundred percent larger than the original footprint of the abandoned textile mill, but no more than two hundred percent.

Based on the latest data from the South Carolina Department of Revenue, a total of 676 taxpayers have filed claims for $28,045,882 in nonrefundable tax credits. The average taxpayer has received a nonrefundable tax credit of $29,654 per project per taxable year. Increasing the footprint of the abandoned textile mill building by at least two hundred percent is expected to increase the nonrefundable tax credit by three times or by $88,962 for a project meeting these qualifications. Therefore, this section is expected to reduce General Fund corporate and individual income taxes, corporate license fees, and insurance premium taxes, or any combination thereof, by an estimated $88,962 annually beginning in FY 2018-19.

Section 4. This section amends South Carolina income tax code to conform to the Internal Revenue Code alternative tonnage tax on qualifying international shipping activities beginning with tax year 2018. Previously, South Carolina does not conform to Internal Revenue Code Sections 1352 through 1359. These sections permit an international shipping company to elect to calculate its income tax based upon vessel tonnage and the number of days the vessel is operated as opposed to the normal corporate income tax. The provisions do not apply to vessels engaged only in domestic shipping. Companies may elect the alternative taxation method, but it applies only to their qualified shipping activities. All other income remains subject to the standard corporate income tax. Adopting this provision is expected to lower the tax due for these companies.

DOR reviewed income tax filings and recent audits for shipping companies expected to qualify to use the alternative tonnage tax on international shipping. In total, DOR estimates that approximately twenty companies may be eligible for the alternative tax. Based upon the review, DOR estimates that adopting these provisions will reduce General Fund corporate income tax revenue for these companies by between $1,500,000 and $2,000,000, annually, beginning in FY 2018-19.

Section 5. Section 5 amends the manner in which income tax credits under the SC Abandonment Revitalization Act may transfer from one taxpayer to another taxpayer. These tax credits apply to qualified investments in the revitalization of an abandoned building and for making qualified rehabilitation expenditures in a certified historic structure. This section takes effect upon approval by the Governor and first applies to projects placed in service after June 30, 2018.

This section makes two changes to the SC Abandoned Building Revitalization Act:

- Any unused portion of the tax credit may be carried forward for the succeeding five years at the individual, partnership, or limited liability company level.

- If the taxpayer is a partnership or limited liability company taxed as a partnership, the credit, including any unused credit amount carried forward, may be passed through to “any” partner or member who was a member or partner at any time in the year in which the credit or unused carryforward is allocated.

This section amends Section 12-67-140(B)(3)(a) to allow any unused portion of the tax credit may be carried forward for the succeeding five years at the individual, partnership, or limited liability company level. This section would also amend Section 12-67-140(B)(6) to allow any unused credit amount carried forward may be passed through to any partner or member who was a member or partner at any time in the year in which the credit or unused carryforward is allocated instead of just one member or partner at any time during the year. These changes would not affect state General Fund revenue.

The income tax credit for making qualified rehabilitation expenditures for a certified historic structure was enacted in Act 229 of 2002. A taxpayer is allowed an income tax or license tax credit equal to ten percent of the qualified rehabilitation expenditures for a certified historic structure located in South Carolina that qualifies for the federal rehabilitation credit provided in IRS Code Section 47. A taxpayer may elect a twenty-five percent tax credit in lieu of the ten percent tax credit, not to exceed $1,000,000 for each certified historic structure. If a taxpayer is not eligible for the federal tax credit he may take an income tax credit equal to twenty-five percent of the rehabilitation expenses. The credit is claimed in equal amounts over a three-year period beginning with the year that the property is placed in service. Any unused credit may be carried forward for the succeeding five years. Through FY 2015-16, the latest year for which there is data, a total of 843 taxpayers have claimed $17,407,204 in nonrefundable tax credits.

Section 6A. This section will add Section 12-6-3378 to allow an agribusiness operation or an agricultural packaging operation to claim a nonrefundable income tax credit or a tax credit against employee withholding tax. This income tax credit will begin in tax year 2018 and end before tax year 2028. The CCED of the Department of Commerce will administer the tax credit.

The taxpayer will be required to increase its purchases of agricultural products certified as South Carolina grown by the South Carolina Department of Agriculture by a minimum of fifteen percent over its base year in a single calendar year. The "base year" is defined as the total dollar purchases of agricultural products certified as South Carolina grown in the immediately preceding calendar year. The base year total dollar purchases, however, must exceed $100,000 for a taxpayer to be eligible for the tax credits. If a taxpayer does not meet the $100,000 purchases requirement in the year ending December 31st of the previous year, including a taxpayer who locates to the state prior to December 31st of the previous year, the base year must be measured by the initial January 1st through December 31st calendar year in which the taxpayer meets the purchasing requirement. The $100,000 threshold should be easily met by a number of agricultural operations within the state. If the income tax credit exceeds the taxpayer's income tax liability for the taxable year, the excess amount may be carried forward in the next five succeeding taxable years. If the credit against withholding taxes exceeds the taxpayer's withholding tax liability for the taxable quarter, the excess amount may be carried forward in the next twenty succeeding taxable quarters.

The CCED has the sole discretion in allocating the tax credits and must consider the amount of base year purchases of certified agricultural products, the total and percentage increase in purchases, and factors related to the economic benefit of the State or other factors. The taxpayer must submit an application to the Coordinating Council every year in which the taxpayer wishes to claim a tax credit. The CCED believes the agency could receive an estimated $25,000 in application fees annually, thereby, increasing Other Funds revenue by $25,000 beginning in FY 2018-19 and ending in FY 2027-28.

This section specifies the maximum amount of tax credits that may be allocated to all taxpayers in a calendar year. These maximum amounts are summarized in the table below.

Tax Allocation Schedule		
Fiscal Year	Calendar Year/ Tax Year	Maximum Tax Credit Amount
FY 2018-19	2018	$500,000
FY 2019-20	2019	$1,000,000

(Continued on next page)

Tax Allocation Schedule		
Fiscal Year	Calendar Year/ Tax Year	Maximum Tax Credit Amount
FY 2020-21	2020	$1,500,000
FY 2021-22 through FY 2027-28	2021 through 2027	$2,000,000

The maximum tax credits are expected to be exhausted and fully allocated each year. Therefore this section would reduce General Fund tax revenue by a total of $500,000 in FY 2018-19, $1,000,000 in FY 2019-20, $1,500,000 in FY 2020-21, and $2,000,000 beginning in FY 2021-22 and ending in FY 2027-28.

The amount of the tax credits allocated to each applicant would be determined by the CCED within the Department of Commerce. This bill, however, contains no compliance or enforcement mechanisms or audit measures in the legislation to ensure that taxpayers have met the purchase requirement. The awarding of the tax credits is discretionary and subjective based upon the submission of unaudited applications by the taxpayers.

Section 6B. This section would amend Section 12-10-80 to amend the definition of a “qualifying service-related facility” in order for a company to qualify under the job development credit statute. This language adds subitem (K) to Section 12-10-80 to allow a job development credit to a business, other than a business engaged in legal, accounting, banking, or investment services or retail sales, operating at a single location if the single facility would otherwise qualify as a service-related facility. A job development credit is a credit against employee income withholding based on a sliding scale of hourly wage rates. The job development credits range from one percent to five percent of employee withholding. The bill also includes those establishments at a single facility of a business generally engaged in retail sales if that single facility would otherwise qualify as a service-related facility.

Based upon discussions with representatives with the South Carolina Department of Commerce, CCED, this language may allow a “back office” operation, such as administrative support services, accounting, and inventory control of a major retail establishment. Although we do not know of any prospective establishment, this language would make it easier for this type of investment to occur. Without this language, this investment would be ineligible for job development credits as it seeks approval for applying job development credits from the CCED for each new full-time employee hired.

The bill also adds permissive language to give the CCED discretion in the approval of job development credits to qualifying businesses based upon the following criteria:

- At least seventy-five percent of service or other income producing activity must be derived from gross receipts of customers outside of South Carolina,

- the nature of the new jobs to be created at the project,

- the wages of the new jobs to be created at the project,
- the capital investment of the project, and
- the potential for expansion or growth of the business or industry.

This section will not affect state General Fund income revenue in FY 2018-19.

Section 7A. This section would clarify the apportionment language in Section 12-6-2295 for satellite companies with regard to their assessment of corporate income tax revenue. 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 section 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" to mean 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 section 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 judgments in each case is provided below.

SOUTH CAROLINA ADMINISTRATIVE LAW COURT PETITIONER'S ORDER				
Category	DIRECTV, Inc.	DISH DBC, Inc.		
Tax & License Fee	$6,646,168	$544,286	$90,551	$634,837
Interest	$653,425	$399,496	$32,196	$431,692
Penalties	$1,661,541	$276,307	$21,846	$298,153
Total	$8,961,134 a:/	$1,220,089 b:/	$144,593 c:/	$1,364,682

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 judgment 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.

Section 7B. This section states that the act takes effect upon approval by the Governor and applies to all open tax periods excluding assessments under judicial review as of the date of the Governor's approval. Based on the structure of the bill, we assume that the reference to act is a scrivener's error and this effective date applies only to Section 7 of this bill.

Local Expenditure
N/A

Local Revenue
N/A

Frank A. Rainwater, Executive Director