



SOUTH CAROLINA’S GUIDE TO IRC CONFORMITY FROM 2018 - 2020:

- **SC CONFORMITY STATUTES**
- **FILING CONSEQUENCES**
- **HELPFUL POLICY DOCUMENTS**

September 2021 Edition (Through the 2021 General Assembly Session)

SOUTH CAROLINA DEPARTMENT OF REVENUE
POLICY DIVISION
SEPTEMBER 2021

PURPOSE

For South Carolina income tax purposes, federal taxable income is the starting point on returns. South Carolina's substantial conformity to the Internal Revenue Code (or "IRC") simplifies the filing of returns. However, the sweeping scope of federal tax reform made by the Tax Cuts and Jobs Act of 2017 (generally effective January 1, 2018), and tax law changes due to the COVID-19 pandemic in 2019 and 2020, have presented filing challenges to taxpayers and tax professionals.

The purpose of this guide is to provide a concise and understandable income tax law resource to assist South Carolinians in preparing their current year income tax returns and in preparing amended returns for a prior year. The guide's purpose is to assist taxpayers in understanding which federal income tax laws South Carolina currently conforms to, and the South Carolina tax consequences when South Carolina specifically does not adopt certain federal income tax laws and provisions.

To accomplish this purpose, this guide is divided into the following sections:

1. Overview - South Carolina Internal Revenue Code Conformity Process and Legislation
2. Federal Tax Legislation Enacted in 2019, 2020, and 2021, and the Tax Cuts and Jobs Act of 2017
3. South Carolina Conformity Overview – Legislative Sessions 2018 - 2021
4. Internal Revenue Code Sections Not Adopted
5. Quick References - Advisory Opinions Providing South Carolina Guidance to Specific Internal Revenue Code Provisions, including South Carolina Tax Legislative Updates

DISCLAIMER

This guide is written in general terms for widest possible use and may not contain all the specific requirements or provisions of authority. It is intended as a guide only, and the application of its contents to specific situations will depend on the particular circumstances involved. This guide does not constitute tax, legal, or other advice and may not be relied on as a substitute for obtaining professional advice or for researching up to date original sources of authority. Nothing in this guide supersedes, alters, or otherwise changes provisions of South Carolina code, regulations, or Department advisory opinions. This guide does not represent official Department policy.

The Department would appreciate any comments or notification of any errors. Such comments should be sent to:

South Carolina Department of Revenue
Policy Division
Policy@dor.sc.gov

TABLE OF CONTENTS

	Page #
I. Overview – South Carolina Internal Revenue Code Conformity Process and Legislation.....	1
II. Federal Tax Legislation Enacted in 2019, 2020, and 2021, and the Tax Cuts and Jobs Act of 2017	1
III. South Carolina Conformity Overview	
A. Conformity Enacted in the 2021 Legislative Session (Act No. 87).....	2
B. Conformity to Federal Payroll Protection Program Provisions and Special Treatment for Certain Loan and Grant Provisions	2
C. Conformity to Federal Tax Year 2020 Special Treatment of Unemployment Compensation	3
D. Provisions Specifically Not Adopted in the 2021 Legislative Session (Act No. 87).....	3
E. Federal Expiring Provisions.....	3
F. South Carolina Conformity Enacted in 2021, 2020, 2019, and 2018 General Assembly Legislative Sessions	4
G. Expiring Provisions of the Federal Tax Cut and Jobs Act of 2017 – Report to General Assembly in 2025.....	4
IV. Internal Revenue Code Sections and Federal Act Provisions Not Adopted by South Carolina	
A. Internal Revenue Code Sections Not Adopted – Code Section 12-6-50	5
B. Provisions of the Federal CARES Act Not Adopted – Uncodified Provision in SC Act No. 87 of 2021	6
C. Provisions of the Federal Consolidated Appropriations Act of 2021 Not Adopted – Uncodified Provision in SC Act No. 87 of 2021	7
V. Resources – Advisory Opinions and Other References	
A. Advisory Opinions.....	8
B. South Carolina Annual Legislative Updates.....	9
C. South Carolina Income Tax Conformity Acts – 2018 Through 2021 General Assembly Legislative Sessions	9
D. Additional Information	10
VI. Appendix.....	10

I. OVERVIEW - SOUTH CAROLINA INTERNAL REVENUE CODE CONFORMITY PROCESS AND LEGISLATION

South Carolina’s adoption of the Internal Revenue Code is not automatic and not all inclusive. Each year, the General Assembly reviews the changes to the Internal Revenue Code and adopts, by statute, many of the changes to the Internal Revenue Code sections as of a specific, fixed date, usually December 31st of the prior year, and decouples from other specified Internal Revenue Code sections. This type of conformity is often referred to as “static conformity.”

Internal Revenue Code conformity is typically accomplished by amending Code Section 12-6-40, “Application of federal Internal Revenue Code to State tax laws” and Code Section 12-6-50, “Internal Revenue Code sections specifically not adopted by State.” On occasion, uncodified provisions are also enacted by the General Assembly to address particular income tax provisions; uncodified provisions will not be added to Code Section 12-6-40 or 12-6-50.

II. FEDERAL TAX LEGISLATION ENACTED IN 2019, 2020, AND 2021, AND THE TAX CUTS AND JOBS ACT OF 2017

A number of Federal tax acts were enacted in late 2019, 2020, and early 2021. These Federal Acts (and Act subparts with tax implications) are listed below. Each was considered by the General Assembly in determining which provisions to adopt and specifically not adopt for South Carolina income tax purposes.

2019 Federal Tax Legislation

- The Consolidated Appropriations Act of 2020 (enacted on December 20, 2019). This Act contains federal tax provisions in the following subparts of the Act:
 - Bipartisan American Miners Act of 2019
 - Setting Every Community Up for Retirement Act of 2019 (SECURE Act)
 - Taxpayer Certainty and Disaster Relief Act of 2019 (contains tax extenders and disaster relief provisions). Note: Much of this Act was adopted in conformity in the extended 2020 Legislative Session of the South Carolina General Assembly that ended in September 2020.

2020 Federal Tax Legislation

- Families First Coronavirus Response Act (enacted on March 18, 2020).
- Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (enacted on March 27, 2020). This Act was the most comprehensive piece of tax legislation enacted in response to COVID-19. The Paycheck Protection Program (“PPP”) was enacted as part of the CARES Act.
- Paycheck Protection Program Flexibility Act of 2020 (enacted on June 5, 2020). This Act clarified aspects of the PPP loan program.

- Consolidated Appropriations Act of 2021 (enacted on December 27, 2020). This Act has two large sections that contain tax provisions that deal with the paycheck protection program and subsequent PPP loans; emergency financial aid grants, and clarification of tax treatment of certain loan forgiveness and other business financial assistance:
 - Division N – Additional Coronavirus Response and Relief
 - Division EE – Taxpayer Certainty and Disaster Relief Act of 2020

2021 Federal Tax Legislation

- American Rescue Plan Act of 2021 (enacted on March 11, 2021). This Act contains provisions affecting individuals and businesses, including income exclusion for unemployment benefits, student loan forgiveness, earned income credit, stimulus checks, excess business losses, tax treatment of non-tax relief (EIDL Loans – Economic Injury Disaster Loan advances), and pension plans. Note: This Act was not adopted in conformity in the extended 2021 Legislative Session of the South Carolina General Assembly that ended in June 2021. If the General Assembly conforms to this Federal Act in the 2022 Legislative Session, South Carolina would retroactively conform.

III. SOUTH CAROLINA CONFORMITY OVERVIEW

South Carolina income tax laws conform substantially to the federal income tax laws. This conformity is generally provided for each year in Code Section 12-6-40 when South Carolina adopts the Internal Revenue Code, usually as of the prior year.

A. Conformity Enacted in the 2021 Legislative Session (Act No. 87)

During the 2021 Legislative Session, Act No. 87 amended Code Section 12-6-40(A)(1)(a) to read:

“Except as otherwise provided, ‘Internal Revenue Code’ means the Internal Revenue Code of 1986, as amended through December 31, 2020, and includes the effective date provisions contained in it.”

B. Conformity to Federal Payroll Protection Program Provisions and Special Treatment for Certain Loan and Grant Provisions

Code Section 12-6-40(A)(1) was further amended in 2021 by Act No. 87 to add the following subitems (d) and (e) to specifically conform to certain favorable payroll protection program provisions in the federal CARES Act and to conform to other special loan and grant treatment provisions in the Consolidated Appropriations Act of 2021.

Payroll Protection Program Provisions – New Code Section 12-6-40(A)(1)(d):

“To the extent loans are forgiven and excluded from gross income for federal income tax purposes under the paycheck protection program in Section 1102 of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136), or from any extension of the paycheck protection program, those loans are

excluded for South Carolina income tax purposes. Further, to the extent the federal government allows the deduction of expenses associated with the forgiven paycheck protection program loans, these expenses will be allowed as a deduction for South Carolina income tax purposes.”

Special Treatment for Certain Loans and Grants – New Code Section 12-6-40(A)(1)(e):

“South Carolina adopts the federal tax treatment for any exclusion from federal taxable income or allowance of expenses as provided in the federal Consolidated Appropriations Act of 2021 in Sections 276 (Clarification of Tax Treatment of Forgiveness of Covered Loans), 277 (Emergency Financial Aid Grants), and 278 (Clarification of Tax Treatment of Certain Loan Forgiveness and Other Business Financial Assistance).”

C. Conformity to Federal Tax Year 2020 Special Treatment of Unemployment Compensation

Although South Carolina did not adopt the American Rescue Plan of 2021 in conformity legislation in 2021, the General Assembly specifically addressed the favorable tax treatment of unemployment compensation provided in the federal American Rescue Plan of 2021. In an uncodified provision, South Carolina Act No. 87 of 2021 states:

“For tax year 2020, the amendment in the American Rescue Plan of 2021, P.L. 117-2 (March 11, 2021) relating to the exclusion from taxable income for tax year 2020 of \$10,200 of unemployment compensation for a taxpayer with less than \$150,000 in federal adjusted gross income is specifically adopted by South Carolina.”

D. Provisions Specifically Not Adopted in the 2021 Legislative Session (Act No. 87)

In an uncodified provision, the General Assembly in the 2021 Legislative Session did not adopt certain specific provisions of the CARES Act and the Consolidated Appropriations Act of 2021. For a list of these provisions that were not adopted, see Section IV. B. and C. of this guide.

E. Federal Expiring Provisions

Overview. Each year, the federal government “extends” certain temporary income tax provisions that have expired or are due to expire at the end of the year (often referred to as “expiring extenders”). These “extender provisions” are not in permanent federal law; they are temporary provisions in an annual cycle of “expire and extend” designed to sunset the provisions in order to reduce the budget effect. Often, these temporary extenders are contained in a specific tax act or the annual federal “Consolidated Appropriations Act” that funds many operations of the federal government.

Note: The Joint Committee on Taxation provides a list of expiring provisions for a 10-year period. See jct.gov.

Examples of common expiring extenders are:

1. An income exclusion from gross income of discharge of qualified principal residence indebtedness (often, foreclosure-related debt forgiveness), claimed on Form 982.
2. Mortgage insurance premiums treated as qualified residence interest, generally claimed by low and middle income filers on Schedule A.

In the Consolidated Appropriations Act of 2021, some of the temporary expiring provisions became permanent law. One example is the 7.5% medical expense deduction floor for individuals who claim an itemized deduction for unreimbursed medical expenses. South Carolina’s adoption of federal extender provisions is not accomplished automatically.

South Carolina Treatment. In South Carolina, the General Assembly has included many federal “extender” provisions in its income tax conformity legislation. The General Assembly has amended Code Section 12-6-40 each year to provide that Internal Revenue Code sections adopted by South Carolina that expired on December 31, but extended by congressional enactment after December 31, are extended for South Carolina income tax purposes in the same manner that they are extended for federal income tax purposes.

Note: If an Internal Revenue Code provision that South Carolina adopts expires for federal income tax purposes, that provision will also expire for South Carolina income tax purposes in the same manner, unless the General Assembly provides otherwise.

F. South Carolina Conformity Enacted in 2021, 2020, 2019, and 2018 General Assembly Legislative Sessions

South Carolina’s conformity provisions enacted in the 2018 through 2021 Legislative Sessions are listed below. For reference purposes, a copy of each of these Acts is contained in the appendix of this guide. The Acts are also available on the General Assembly’s website at scstatehouse.gov/.

2021 Session	Act No. 87 – IRC conformity through December 31, 2020
2020 Session	Act No. 147 – IRC conformity through December 31, 2019
2019 Session	Act No. 16 – IRC conformity through December 31, 2018
2018 Session	Act No. 266 – IRC conformity through February 9, 2018

G. Expiring Provisions of the Federal Tax Cuts and Jobs Act of 2017 – Report to General Assembly in 2025

South Carolina’s General Assembly directed the Department, in coordination with the Revenue and Fiscal Affairs Office, to provide a report to the General Assembly by January 15, 2025, that specifies the many provisions of the Tax Cuts and Jobs Act of 2017 that expire after tax year 2025. (See Act No. 266, Section 8, South Carolina Taxpayer Protection and Relief Act enacted in 2018.)

IV. INTERNAL REVENUE CODE SECTIONS AND FEDERAL ACT PROVISIONS NOT ADOPTED BY SOUTH CAROLINA

A. Internal Revenue Code Sections Not Adopted – Code Section 12-6-50

South Carolina income tax laws conform substantially to the federal income tax laws. While this conformity is generally provided for in Code Section 12-6-40, a list of Internal Revenue Code provisions which do not apply is provided for in Code Section 12-6-50, “Internal Revenue Code sections specifically not adopted by State.”

The following chart provides a list, in code section numeric order, of the Internal Revenue Code sections listed in Code Section 12-6-50 that are specifically **not** adopted by South Carolina at the time of publication of this guide, except as otherwise specifically provided.

Internal Revenue Code Section	Brief Section Description
Sections 1(a) through 1(e), 3, and 11	relating to federal tax rates
Sections 22 through 54	relating to tax credits
Sections 55 through 59A	relating to minimum taxes
Sections 68 and 151(d)(3)	relating to the reduction on itemized deductions and reduction on the personal exemption ¹
Sections 72(m)(5)(B), 72(f), 72(o), 72(q), and 72(t)	relating to penalty taxes on certain retirement plan distributions
Sections 78	relating to dividends received from certain foreign corporations by domestic corporations
Section 85(c) Note: This IRC subsection was repealed effective December 19, 2014. See SC IL #20-15 for further information.	unemployment compensation
Section 86	taxation of social security and certain railroad retirement benefits
Section 87	the alcohol fuels and biodiesel credit
Section 108(i)	relating to the deferral and ratable inclusion of income arising from business indebtedness discharged by the reacquisition of a debt instrument
Section 118(b)(2)	relating to any contribution by any governmental entity or civic group, other than a contribution made by a shareholder as such
Section 162(r)	relating to FDIC premiums
Section 163(e)(5)(F)	relating to original issue discount on certain high yield obligations
Section 163(j)	relating to limitation on business interest expense
Sections 168(k), 168(l), 168(m), 168(n)	bonus depreciation
Section 172(b)(1)	relating to net operating loss carrybacks

¹ South Carolina has conformed to the suspension of personal exemptions by the Tax Cuts and Jobs Act of 2017 and does not allow a personal exemption for the taxpayer or the taxpayer’s spouse.

Internal Revenue Code Section	Brief Section Description
Section 196	relating to deduction for certain unused business credits
Section 199A	relating to the qualified business income deduction
Sections 250 and 267A	relating to taxation of foreign income (including GILTI)
Section 280C	certain expenses for which credits are allowable
Sections 381(c)(20) and 382(d)(3)	relating to carryover of limited business interest in Code Section 163(j)(2)
Section 515	relating to tax credits
Sections 531 through 564	relating to certain special taxes on corporations
Sections 581, 582, and 585 through 596	relating to the taxation of banking institutions
Sections 665 through 668	relating to taxation of certain accumulation distributions from trusts
Sections 801 through 848	relating to taxation of insurance companies
Sections 853, 901 through 908, and 960	relating to tax credits
Sections 861 through 909, 912, 931 through 940, and 944 through 989	relating to the taxation of foreign income
Section 1201	relating to federal tax rates
Sections 1400 through 1494 (except 1400Z)	
Sections 1501 through 1505	relating to consolidated tax returns
Sections 2001 through 7655, except for Sections 6015 and 6701, and except for Sections 6654 and 6655 which are adopted as provided in Sections 12-6-3910 and 12-54-55. However, Section 6654(d)(1)(D) relating to estimated tax payments for qualified individuals as defined in that item is not adopted.	
Sections 7801 through 7871, and Sections 8001 through 9602	

B. Provisions of the Federal CARES Act Not Adopted – Uncodified Provision in SC Act No. 87 of 2021

The following chart lists amendments in the Coronavirus Aid, Relief, and Economic Security Act (CARES) of 2020, P.L. 116-136 (March 27, 2020) that were specifically **not** adopted by South Carolina in the 2021 Legislation Session of the General Assembly.

Internal Revenue Code or CARES Act Section Number	Brief Section Description
IRC Section 62(a)(22)	relating to the \$300 charitable deduction allowed in 2020 for persons who claim the standard deduction
CARES Act Section 2205(a), (b), and (c)	relating to the modification of limitations on individual and corporate cash charitable contributions for 2020 and relating to the increase in limits on charitable contributions of food inventory for 2020
IRC Section 172(a)	relating to the modification of the income limitations allowed for the use of net operating losses in tax years 2018, 2019, and 2020
IRC Section 461(l)	relating to the modification of the limitation on losses allowed for non-corporate taxpayers in tax years 2018, 2019, and 2020

C. Provisions of the Federal Consolidated Appropriations Act of 2021 Not Adopted – Uncodified Provision in SC Act No. 87 of 2021

The following chart lists amendments in the Consolidated Appropriations Act of 2021, P.L. 116-260 (December 27, 2020) that are specifically **not** adopted by South Carolina in the 2021 Legislation Session of the General Assembly.

Internal Revenue Code or Consolidated Appropriations Act of 2021 Section Number	Brief Section Description
Division N Section 275	relating to the allowance of personal protective equipment expenses for the educator expense deduction under IRC Section 62(a)(2)(D)(ii)
Amendments to the Taxpayer Certainty and Disaster Tax Relief Act of 2020, P.L. 116-260 Division EE Section 304	relating to the special rules for qualified disaster relief for charitable contributions and special rules for qualified disaster related personal casualty losses
IRC Section 170(p)	relating to the \$300 or \$600 charitable deduction allowed in 2021 for persons taking the standard deduction
Amendment to CARES Act Section 2205	relating to the temporary extension of the modification of limitations on individual and corporate cash charitable contributions and the increase in limits on charitable contributions of food inventory to tax year 2021
IRC Section 274(n)	relating to the temporary allowance of the full business deduction for business meals that are paid or incurred after December 30, 2020, and before January 1, 2023

V. RESOURCES - ADVISORY OPINIONS AND OTHER REFERENCES

A. Advisory Opinions

South Carolina advisory opinions provide guidance to the public useful in complying with the laws administered by the Department. Below are advisory opinions addressing common questions about South Carolina’s treatment of certain issues impacted by the recent federal law changes. For reference purposes, a copy of the listed advisory opinions are provided in the Appendix.

Note: To view all advisory opinions issued by the Department, by tax type, see the Department’s Law and Policy page at dor.sc.gov/policy.

SC Guidance Relating to Provisions in the federal Tax Cuts and Jobs Act of 2017:

Document #	Subject
IL #19-7	Summary of South Carolina Individual Income Tax Conformity to the Internal Revenue Code through February 9, 2018 Note: On October 3, 2018, the General Assembly enacted the “SC Taxpayer Protection and Relief Act.” The Act adopted many of the federal tax changes and new tax provisions enacted in the Tax Cuts and Jobs Act of 2017, as well as relevant extenders.
RR #19-1	State Tax Deduction for Individuals who Itemize Deductions – State tax addback calculation
IL #20-14	Future Scholar, South Carolina’s 529 College Savings Plan – Qualifying Expenses for Tuition in Kindergarten through Grade 12 Public, Private, or Religious Schools – SC Income Tax Implications
RR #21-2	Internal Revenue Code Section 163(j) – SC Limitation and Carryforward Treatment
RR #21-4	Impact of Treasury Regulations on Charitable Contribution Deduction and State Tax Credits

SC Guidance Relating to Provisions in the Federal CARES Act of 2020, Consolidated Appropriations Act of 2021, and American Rescue Plan of 2021:

Document #	Subject
RR #21-12	Retirement Income Deduction – Applicability to COVID-Related Distributions from Retirement Plans under the Federal CARES Act of 2020
IL #21-15	COVID-Related Distributions from Retirement Plans under the Federal CARES Act of 2020 – SC Tax Relief
IL #21-7	Individual Income Tax Relief – Tax Year 2020 and South Carolina Internal Revenue Code Tax Conformity Update
IL #21-4	Earned Income Credit Computation for 2020
IL #20-34	Charitable Deduction for Individuals Claiming the Standard Deduction for Tax Year 2020 as Provided in the Federal CARES Act – Not adopted by SC
IL #20-15	Unemployment Compensation – SC Overview (Income Tax and Voluntary Withholding)
IL #21-14	Unemployment Compensation – Partial Exclusion for 2020
IL #20-13	Federal COVID-19 Economic Stimulus Payments – Not taxable for SC

South Carolina Tax Relief:

Document #	Subject
IL #21-7	Individual Income Tax Relief – Tax Year 2020 and South Carolina Internal Revenue Code Tax Conformity Update
IL #20-8	Additional Tax Relief in Response to IRS Update for Persons and Businesses Affected by COVID-19
IL #20-4	Extended Tax Relief Restated and Updated – Persons and Businesses Affected by COVID-19

B. South Carolina Annual Legislative Updates

Each year, the Policy Division issues a summary of most of the significant changes in tax and regulatory law and regulation enacted during the past legislative session. The summaries by the General Assembly Legislative Sessions for 2018 through 2021 are provided below. A copy of these summaries can be found on the Department’s Law and Policy page at dor.sc.gov/policy. In addition, since several years summaries were in two parts due to an extended legislative session, a combined summary, “Tax Legislative Publication,” can be found on the Law and Policy page under publications.

SC Annual Legislative Updates	
Document #	Subject
IL #21-24	Tax Legislative Update for 2021
IL #20-19 and IL #20-31	Tax Legislative Updates for 2020
IL #19-23	Tax Legislative Update for 2019
IL #18-12 and IL #18-15	Tax Legislative Updates for 2018

C. South Carolina Income Tax Conformity Acts – 2018 Through 2021 General Assembly Legislative Sessions

South Carolina’s conformity provisions enacted in the 2021 General Assembly Legislative Session and in prior sessions for the years discussed in this guide are listed below. For reference purposes, a copy of these Acts is contained in the appendix of this guide. All Acts can also be found on the General Assembly’s website at <https://www.scstatehouse.gov/>.

SC Internal Revenue Code Conformity Acts	
Year	Act No.
2021	Act No. 87 – IRC conformity through December 31, 2020
2020	Act No. 147 – IRC conformity through December 31, 2019
2019	Act No. 16 – IRC conformity through December 31, 2018
2018	Act No. 266 – IRC conformity through February 9, 2018

D. Additional Information

Updates and Advisory Opinions by E-Mail. To receive notice of future South Carolina IRC conformity updates or to receive new or draft advisory opinions and Policy emails, sign up on the Policy Division's web page at dor.sc.gov/policy/index.

Advisory Opinion Index. Advisory opinions issued by the Department are available on the Policy Division's Law and Policy web page and are indexed by tax type and by calendar year.

Other Sites. Helpful links, including links to the South Carolina Code of Laws and Regulations, current year legislation, and the South Carolina General Assembly website, are also available on the Law and Policy web page.

VI. APPENDIX

- ❖ Advisory opinions (See section 5.A. above for links)
 - SC Guidance Relating to Provisions in the Federal Tax Cuts and Jobs Act of 2017
 - SC Guidance Relating to Provisions in the Federal CARES Act of 2020, Consolidated Appropriations Act of 2021, and American Rescue Plan of 2021
 - SC Tax Relief

- ❖ South Carolina Annual Legislative Updates (See Section 5.B. above for links)

- ❖ South Carolina Income Tax Conformity Acts – 2018 Through 2021
(See Section 5.C. above for links)