



SOUTH CAROLINA’S GUIDE TO INTERNAL REVENUE CODE CONFORMITY FROM 2021 - 2023:

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

August 2023 Edition
(Updated Through the 2023 General Assembly Session)

SOUTH CAROLINA DEPARTMENT OF REVENUE
TAX POLICY SERVICES

PURPOSE

For South Carolina income tax purposes, federal taxable income is the starting point for determining South Carolina taxable income. South Carolina's substantial conformity to the Internal Revenue Code (IRC) simplifies the filing of returns. Nevertheless, recent changes to the IRC have necessitated guidance for taxpayers and tax professionals.

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

This guide is divided into five sections:

- I. Overview - South Carolina IRC Conformity Process and Legislation
- II. Federal Tax Legislation Enacted in 2021 and 2022
- III. South Carolina Conformity
- IV. IRC Sections and Federal Act Provisions Not Adopted
- V. Resources - Advisory Opinions and Other References

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 did not issue an IRC Conformity Guide in 2022, so this Guide addresses both 2022 and 2023 conformity to the IRC, as well as conformity for the year 2021 as discussed in the previous guide. Conformity for 2019 and 2020 plus part of 2021 is addressed in the 2021 Conformity Guide.

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

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

TABLE OF CONTENTS

	Page #
I. Overview – South Carolina IRC Conformity Process and Legislation.....	1
II. Federal Tax Legislation Enacted in 2021 and 2022.....	1
A. 2021 Federal Tax Legislation	1
B. 2022 Federal Tax Legislation	1
III. South Carolina Conformity.....	2
A. Conformity Enacted in the 2021 Legislative Session (Act No. 87)	2
B. Provisions Specifically not Adopted in the 2021 Legislative Session (Act No. 87).....	3
C. Conformity Enacted in the 2022 Legislative Session (Act No. 201).....	3
D. Conformity Enacted in the 2023 Legislative Session (Act No. 46).....	4
E. Federal Expiring Provisions and “Tax Extenders”	4
F. South Carolina Conformity Enacted in 2023, 2022, and 2021 General Assembly Legislative Sessions	5
G. Expiring Provisions of the Federal Tax Cut and Jobs Act of 2017 – Report to General Assembly in 2025.....	5
IV. IRC Sections and Federal Act Provisions Not Adopted	5
A. IRC Sections Not Adopted – S.C. Code § 12-6-50.....	5
B. Provisions of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116-136) (enacted March 27, 2020) Not Adopted	7
C. Provisions of the Consolidated Appropriations Act of 2021 (Pub. L. No.116-260) (enacted on December 27, 2020) Not Adopted.....	7
V. Resources – Advisory Opinions and Other References.....	8
A. Advisory Opinions.....	8
B. South Carolina Annual Legislative Updates.....	9
C. South Carolina Income Tax Conformity Acts – 2021 Through 2023 General Assembly Legislative Sessions	9
D. Additional Information	9

I. OVERVIEW - SOUTH CAROLINA IRC CONFORMITY PROCESS AND LEGISLATION

South Carolina's adoption of the IRC is neither automatic nor all inclusive; the South Carolina Code authorizes inclusion of federal tax law changes only upon some affirmative action by the General Assembly. Each year, the General Assembly reviews changes to the IRC and adopts many of the changes to the IRC sections as of a specific, fixed date, usually December 31 of the preceding year. Conversely, South Carolina decouples from other specified IRC sections by act of the legislature. This type of conformity is often referred to as "static conformity."

IRC 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.

II. FEDERAL TAX LEGISLATION ENACTED IN 2021 AND 2022

A number of federal tax acts were enacted in 2021 and 2022. These federal acts (and 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.

A. 2021 Federal Tax Legislation

- American Rescue Plan Act of 2021 (ARPA), Pub. L. No. 117-2 (enacted on March 11, 2021). ARPA 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), the child and dependent care credit, and pension plans.
- Infrastructure Investment and Jobs Act (IIJA), Pub. L. No. 117-58 (enacted on November 15, 2021). Among other tax items, IIJA provided that for most businesses, the federal employee retention credit terminated as of October 1, 2021. IIJA also expanded the types of projects that were eligible for tax exempt bond financing.

B. 2022 Federal Tax Legislation

- Inflation Reduction Act (IR Act), Pub. L. No. 117-169 (enacted on August 16, 2022). While primarily aimed at creating a number of alternative energy credits, the IR Act also made other tax changes, such as extending the limitation on excess business losses of noncorporate taxpayers for the 2027 and 2028 tax years.
- Creating Helpful Incentives to Produce Semiconductors and Science Act of 2022 (CHIPS Act), Pub. L. No. 117-167 (enacted on August 9, 2022). The CHIPS Act created I.R.C. § 48D to provide for the advanced manufacturing investment credit.

- Setting Every Community Up for Retirement Enhancement Act (SECURE 2.0), enacted as Division T of the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328 (enacted on December 29, 2022). SECURE 2.0 enacts changes to retirement provisions in an effort to increase retirement savings, facilitate access to retirement savings, and to encourage employees to save for retirement, including raising the minimum age for required distributions and increasing the annual catch-up amount.

III. SOUTH CAROLINA CONFORMITY

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 IRC, usually as of the preceding year.

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

Act No. 87 amended S.C. Code § 12-6-40(A)(1)(a) to read:

- (a) 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.

Act 87 also amended S.C. Code § 12-6-40(A)(1)(c) to read:

- (c) If Internal Revenue Code sections adopted by this State which expired or portions thereof expired on December 31, 2020, are extended, but otherwise not amended, by congressional enactment during 2021, these sections or portions thereof also are extended for South Carolina income tax purposes in the same manner that they are extended for federal income tax purposes.

Act 87 also added two subitems to S.C. Code § 12-6-40(A)(1), which were codified as (d) and (e):

- (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.

This subitem specifically conforms South Carolina income tax law to certain favorable PPP provisions in the federal CA:

- (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).

The General Assembly also adopted favorable tax treatment for unemployment compensation provided by ARPA. In an uncodified provision, Act No. 87 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.

B. Provisions Specifically Not Adopted by 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 (Section 2.A) and the Consolidated Appropriations Act. For a list of these provisions that were not adopted, see Section IV. B. and C. of this guide.

C. Conformity Enacted in the 2022 Legislative Session (Act No. 201)

During the 2022 Legislative Session, Act No. 201 amended S.C. Code § 12-6-40(A)(1)(a) to update South Carolina's income tax laws to conform to the IRC through the end of 2021:

(a) Except as otherwise provided, "IRC" means the IRC of 1986, as amended through December 31, 2021, and includes the effective date provisions contained in it.

Act No. 201 also amended S.C. Code § 12-6-40(A)(1)(c) to read:

(c) If IRC sections adopted by this State which expired or portions thereof expired on December 31, 2021, are extended, but otherwise not amended, by congressional enactment during 2022, these sections or portions thereof also are extended for South Carolina income tax purposes in the same manner that they are extended for federal income tax purposes.

Act No. 201 also contained an uncodified provision:

For tax year 2021, South Carolina adopts the federal exclusion from gross income for targeted Economic Injury Disaster Loan advances received from the Small Business Administration (SBA) and the federal exclusion from gross income for restaurant revitalization grant amounts received from the SBA as provided in Sections 9672 and 9673 of the American Rescue Plan Act.

Accordingly, South Carolina retroactively adopted the federal treatment of loan advances and grants from the Small Business Administration. Thus, these loan advances and grants were not included in gross income for tax year 2021.

D. Conformity Enacted in the 2023 Legislative Session (Act No. 46)

During the 2023 Legislative Session, Act No. 46 amended S.C. Code § 12-6-40(A)(1)(a) to update South Carolina’s income tax laws to conform to the IRC through the end of 2022:

Except as otherwise provided, “IRC” means the IRC of 1986, as amended through December 31, 2022, and includes the effective date provisions contained in it.

Act No. 46 also amended S.C. Code § 12-6-40(A)(1)(c) to read:

If Internal Revenue Code sections adopted by this State which expired or portions thereof expired on December 31, 2022, are extended, but otherwise not amended, by congressional enactment during 2023, these sections or portions thereof also are extended for South Carolina income tax purposes in the same manner that they are extended for federal income tax purposes.

E. Federal Expiring Provisions and “Tax Extenders”

Overview. The tax code contains dozens of temporary tax provisions that expire on a specified date. Each year, the federal government considers extension for expiring tax provisions.¹ Collectively, temporary tax provisions that are regularly extended as a group by Congress rather than being allowed to expire as scheduled are often referred to as “tax extenders.” 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.

Most recently, tax extenders were included in the Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted as Division II of the Consolidated Appropriations Act of 2021 (P.L. 116-260). In the Consolidated Appropriations Act of 2021, some of the temporary expiring provisions became permanent law. For example, the 7.5% medical expense deduction floor for individuals who claim an itemized deduction for unreimbursed medical expenses became permanent.

However, Congress did not include key tax extenders in the Consolidated Appropriations Act of 2023, which was enacted on December 29, 2022. Consequently, significant tax law changes contained in the Tax Cuts and Jobs Act (TCJA) were not extended beyond December 31, 2021, which may affect a taxpayer’s 2022 tax year.

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 IRC sections adopted by South Carolina that expired on December 31, but were 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.

¹ The Joint Committee on Taxation provides a list of expiring provisions for a 10-year period. See jct.gov.

F. South Carolina Conformity Enacted in 2023, 2022, and 2021 General Assembly Legislative Sessions

South Carolina’s conformity provisions enacted in the 2021 through 2023 Legislative Sessions are listed below. The Acts are also available on the General Assembly’s website at scstatehouse.gov.

- 2023 Session [Act No. 46 – IRC conformity through December 31, 2022](#)
- 2022 Session [Act No. 201 – IRC conformity through December 31, 2021](#)
- 2021 Session [Act No. 87 – IRC conformity through December 31, 2020](#)

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.

IV. IRC SECTIONS AND FEDERAL ACT PROVISIONS NOT ADOPTED BY SOUTH CAROLINA

A. IRC Sections Not Adopted – S.C. Code § 12-6-50

The General Assembly also enacts a list of IRC provisions which do not apply to the South Carolina Income Tax Act in S.C. Code § 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 IRC sections listed in S.C. Code § 12-6-50 that are specifically **not** adopted by South Carolina at the time of publication of this guide, except as otherwise specifically provided.

IRC 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 ²
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)	unemployment compensation

² 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.

IRC Section	Brief Section Description
Note: This IRC subsection was repealed effective December 19, 2014. See SC IL #20-15 for additional information.	
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
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)	

IRC Section	Brief Section Description
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 Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116-136) (enacted March 27, 2020) Not Adopted

The following chart lists amendments in the CARES Act that are specifically **not** adopted by South Carolina during the 2021 Session of the General Assembly.

IRC or CARES Act Section Number	Brief Section Description
I.R.C. § 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
I.R.C. § 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
I.R.C. § 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 Consolidated Appropriations Act of 2021 (Pub. L. No.116-260) (enacted on December 27, 2020) Not Adopted

The following chart lists amendments in the Consolidated Appropriations Act of 2021 that are specifically **not** adopted by South Carolina in the 2021 Session of the General Assembly.

IRC 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 I.R.C. § 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
I.R.C. § 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
I.R.C. § 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 questions about South Carolina’s treatment of issues created by recent federal law changes.

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

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

Document #	Subject
IL #22-14	Federal Student Loan Debt Forgiveness – SC Tax Consequences
RR #22-4	Federal Employee Retention Credit – Modification for Qualified Wages for Tax Years 2020 and 2021

South Carolina Tax Relief:

Document #	Subject
IL #22-19	Hurricane Ian Tax Relief for Persons and Business in South Carolina
IL #21-7	Individual Income Tax Relief – Tax Year 2020 and South Carolina IRC Tax Conformity Update

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, which are listed below. A copy of these summaries can be found on the Department’s Law and Policy page at dor.sc.gov/policy.

SC Annual Legislative Updates	
Document #	Subject
IL #23-11	Tax Legislative Update for 2023
IL #22-15	Tax Legislative Update for 2022
IL #21-24	Tax Legislative Update for 2021

C. South Carolina Income Tax Conformity Acts – 2020 Through 2023 General Assembly Legislative Sessions

South Carolina’s conformity provisions enacted in the 2023 General Assembly Legislative Session and in prior sessions for the years discussed in this guide are listed below. All Acts can also be found on the General Assembly’s website at scstatehouse.gov.

SC IRC Conformity Acts	
Year	Act No.
2023	Act No. 46 – IRC conformity through December 31, 2022
2022	Act No. 201 – IRC conformity through December 31, 2021
2021	Act No. 87 – IRC conformity through December 31, 2020

D. Additional Information

Updates and Advisory Opinions by E-Mail. To receive notice of future South Carolina 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.

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.