**South Carolina General Assembly**

119th Session, 2011-2012

**S. 142**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Campsen and Rose

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Introduced in the Senate on January 11, 2011

Currently residing in the Senate Committee on **Finance**

Summary: S.C. Business Tax Elimination Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/1/2010 Senate Prefiled

12/1/2010 Senate Referred to Committee on **Finance**

1/11/2011 Senate Introduced and read first time ([Senate Journal‑page 70](file:///h:\sj%20archive\2011\01-11-11.docx))

1/11/2011 Senate Referred to Committee on **Finance** ([Senate Journal‑page 70](file:///h:\sj%20archive\2011\01-11-11.docx))

**VERSIONS OF THIS BILL**

[12/1/2010](file:///p:\pprever\2011-12\142_20101201.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “SOUTH CAROLINA BUSINESS TAX ELIMINATION ACT” BY ADDING SECTION 12‑6‑547 SO AS TO ALLOW THE OWNER OF A PASS‑THROUGH BUSINESS ELIGIBLE FOR THE REDUCED FIVE PERCENT TAX RATE ON ACTIVE TRADE OR BUSINESS INCOME TO DEFER TAXES OTHERWISE DUE ON RETAINED ACTIVE TRADE OR BUSINESS INCOME UNTIL THE RETAINED INCOME IS DISTRIBUTED AT WHICH TIME THE TAX RATE APPLIED IS SEVEN PERCENT, TO PROVIDE THAT THE AMOUNT OF THE DEFERRAL IS THE DIFFERENCE BETWEEN THE CORPORATE INCOME TAX RATE FOR THE YEAR AND SEVEN PERCENT WITH THE CURRENT TAX PAID ALLOWED AS A CREDIT AGAINST THE TAX DUE AT DISTRIBUTION AND PROVIDE DEFINITIONS AND LIMITATIONS; AND TO AMEND SECTION 12‑6‑530, RELATING TO THE IMPOSITION OF THE CORPORATE INCOME TAX, SO AS TO REDUCE THE FIVE PERCENT RATE IN ANNUAL INCREMENTS OF ONE‑HALF OF ONE PERCENT UNTIL THE TAX IS PHASED OUT AFTER TAXABLE YEAR 2021.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. A. This section may be cited as the “South Carolina Business Tax Elimination Act”.

B. Article 5, Chapter 6, Title 12 of the 1976 Code is amended by adding:

“Section 12‑6‑547. (A)(1) A taxpayer eligible pursuant to Section 12‑6‑545 for the income tax rate reduction for pass through active trade or business income may elect to have his South Carolina active trade or business retained income and subsequent distributions of such income taxed using the method and rates provided by this section rather than as provided in Section 12‑6‑545. However, the active trade or business income of an electing taxpayer which is not retained is subject to tax at the rate provided pursuant to Section 12‑6‑545. A taxpayer made eligible for the provisions of Section 12‑6‑545 pursuant to Section 12‑6‑590(B) is ineligible for the election allowed pursuant to this section. Except as otherwise provided in this section, the provisions and rate of Section 12‑6‑545 are incorporated into this section. However, Section 12‑6‑545(E)(1), providing a safe harbor rule to determine amounts reasonably related to personal services, does not apply to this section.

(2) For purposes of this section, a ‘taxpayer’ means the owner of a pass‑through business.

(B) Notwithstanding other tax rates imposed pursuant to this chapter and for a pass‑through business, there is imposed a tax on the South Carolina active trade or business retained income at the end of the applicable taxable year in an amount equal to the lesser of five percent or the rate for the corporate income tax imposed pursuant to Section 12‑6‑530 for the applicable taxable year.

(C) A tax at the rate of seven percent is imposed on South Carolina active trade or business income retained in the pass‑through business in the year of its distribution. A taxpayer is allowed credit for taxes paid on the income retained in taxable years beginning after 2012, but not distributed until a subsequent taxable year. For purposes of this section, distributions are deemed to offset income earned in the current tax year and distributions remaining are deemed to be made on a first in first out basis. Amounts of distributions by the owner of the pass‑through business are subject to tax under this section at the lesser of (a) the taxpayer’s remaining active trade or business income retained in taxable years beginning in 2013, and thereafter, or (b) the sum of the cash and the fair market value of the property received by the taxpayer. Upon the sale of an interest by the owner of a pass‑through business, any of the owner’s remaining income retained is deemed a cash distribution on the date of the sale of the interest.

(D)(1) For purposes of this section, the term South Carolina active trade or business income retained from a pass‑through business is the taxpayer’s ownership percentage of income earned in taxable year 2013 and thereafter that has not been distributed if the taxpayer has made the election for the business as provided pursuant to subsection (E) of this section. It does not include contributions of cash or property.

(2) A sole proprietor electing to use the provisions of this section must first place income retained from the pass‑through business in a separate business bank account. If the income retained is removed from that account and not used directly for business purposes, then it is deemed distributed at that time.

(E) The election by an owner of a pass‑through business to use this section is made separately by the taxpayer for each pass‑through business owned. The election may be made at any time by the sole proprietor, partner, shareholder, or member during his ownership on his original and timely tax return for the taxable year and it is effective for the year for which the return was filed and subsequent taxable years. The election to use the provisions of this section is irrevocable once the taxpayer’s return is filed. Except in the case of a sole proprietorship, the taxpayer shall provide written notice to the pass‑through business of the taxpayer’s election.

(F)(1) The department may require from the taxpayer and the pass‑through entity any information it considers appropriate to support the calculation of South Carolina active trade or business income, South Carolina active trade or business retained income, and associated distributions. The pass‑through business shall maintain separate accounts for each owner to document the amount of each owner’s retained income, and the pass‑through entity’s use of the income retained, including purchases of business assets, payments for services, and subsequent distributions.

(2) If the books and records do not adequately support the amount of active trade or business income or active trade or business income retained in the pass‑through business, then the department may apply the provisions of Section 12‑6‑545, notwithstanding the taxpayer’s election to use the provisions of this section.”

C. (A) Section 12‑6‑530 of the 1976 Code is amended to read:

“Section 12‑6‑530. (A) An income tax is imposed annually at the rate of five percent on the South Carolina taxable income of every corporation, other than those described in Sections 12‑6‑540 and 12‑6‑550, and any other entity taxed using the rates of a corporation for federal income tax purposes, transacting, conducting, or doing business within this State or having income within this State, regardless of whether these activities are carried on in intrastate, interstate, or foreign commerce. The terms ‘transacting’, ‘conducting’, and ‘doing business’ include transacting or engaging in any activity for the purpose of financial profit or gain.

(B) For the taxable year beginning in 2013, the corporate income tax rate of five percent annually imposed pursuant to this section is reduced by one half of one percent each taxable year until the rate reaches zero for taxable years beginning after 2021.”

SECTION 2. This act takes effect upon approval by the Governor and applies for taxable years beginning after 2012.

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