**South Carolina General Assembly**

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**H. 3393**

**STATUS INFORMATION**

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Sponsors: Reps. Pope, McGarry, Taylor, Oremus and Blackwell

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Introduced in the House on January 12, 2021

Currently residing in the House Committee on **Ways and Means**

Summary: SC Income Tax Act for individuals, trusts and estates

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/9/2020 House Prefiled

12/9/2020 House Referred to Committee on **Ways and Means**

1/12/2021 House Introduced and read first time ([House Journal‑page 181](file:///h:\hj\20210112.docx))

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1/26/2021 Scrivener's error corrected

1/26/2022 House Member(s) request name added as sponsor: Blackwell

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**VERSIONS OF THIS BILL**

[12/9/2020](file:///p:\pprever\2021-22\3393_20201209.docx)

[1/26/2021](file:///p:\pprever\2021-22\3393_20210126.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 5 TO TITLE 12 SO AS TO ENACT THE “SOUTH CAROLINA INCOME TAX ACT FOR INDIVIDUALS, TRUSTS, AND ESTATES”, TO PROVIDE, BEGINNING WITH TAXABLE YEAR 2022, A SINGLE OR “FLAT” INCOME TAX RATE OF 4.85 PERCENT, PHASING DOWN OVER FIVE YEARS TO A RATE OF 4.5 PERCENT, TO CHANGE THE STATE’S INDIVIDUAL INCOME TAX BASE FROM FEDERAL TAXABLE INCOME TO FEDERAL ADJUSTED GROSS INCOME, TO PROVIDE FOR MODIFICATIONS TO FEDERAL ADJUSTED GROSS INCOME TO ARRIVE AT SOUTH CAROLINA TAXABLE INCOME, TO PROVIDE THAT THESE MODIFICATIONS INCLUDE A SOUTH CAROLINA STANDARD DEDUCTION, SOUTH CAROLINA PERSONAL EXEMPTION, SOUTH CAROLINA DEPENDENT EXEMPTION, AND OTHER ADJUSTMENTS TO FEDERAL ADJUSTED GROSS INCOME, BOTH INCREASES AND DECREASES, TO ALLOW A CREDIT AGAINST A TAXPAYER’S INCOME TAX LIABILITY UNDER THIS NEW CHAPTER TO OFFSET DOUBLE TAXATION WHEN THE TAXPAYER’S INCOME IS SUBJECT TO INCOME TAX IN THIS STATE AND ANOTHER STATE OR JURISDICTION, AND TO ALLOW OTHER TRANSITIONAL CREDITS FOR CREDITS ACCRUED AND ALLOWED UNDER FORMER LAW THAT ARE IN CARRYFORWARD STATUS AFTER 2021.

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

SECTION 1. Title 12 of the 1976 Code is amended by adding:

“CHAPTER 5

South Carolina Income Tax Act for Individuals, Trusts, and Estates

Article 1

Citation, Purpose, and Affected Taxable Years

Section 12‑5‑10. This chapter may be cited as the ‘South Carolina Income Tax Act for Individuals, Trusts, and Estates’.

Section 12‑5‑20. The general purpose of this chapter is to impose a tax collected annually on the South Carolina taxable income of resident and nonresident individuals, trusts, and estates, the revenue of which must be used for the purposes of state government.

Section 12‑5‑30. Notwithstanding any other provision of law, for taxable years beginning after 2021:

(1)(a) the tax imposed pursuant to Section 12‑6‑510 and the special tax rate provided pursuant to Section 12‑6‑545 on the incomes of individuals, trusts, estates, and beneficiaries no longer applies and the provisions of Chapter 6, Title 12 or in any other title of the Code of Laws of South Carolina, 1976, providing for the calculation of the tax imposed pursuant to Sections 12‑6‑510 and 12‑6‑545, including, but not limited to, exemptions, deductions, modifications, and credits, no longer apply except when specifically provided in this chapter;

(b) the provisions of Section 12‑6‑40 specifically adopting the provisions of the Internal Revenue Code and the provisions of Section 12‑6‑50 not adopting specific sections for the Internal Revenue Code as they relate to South Carolina individual income tax, and South Carolina income tax of estates and trusts no longer apply for taxable years beginning after 2021;

(2) for taxable years beginning after 2021, a tax at the rate provided in Section 12‑5‑650 is imposed on the income of individuals, trusts, estates, and beneficiaries. The tax is calculated in the manner provided in this chapter;

(3) to the extent that provisions of the Code of Laws of South Carolina, 1976, refer specifically or by inference to the individual income tax imposed pursuant to Section 12‑6‑510 or the special rate of that tax imposed pursuant to Section 12‑6‑545, these references, except where the context dictates otherwise, must be construed as applying to the taxes imposed pursuant to this chapter.

Article 3

Definitions and Applicable Law

Section 12‑5‑310. The following definitions apply in this chapter:

(1) ‘Adjusted gross income’ as defined in Internal Revenue Code Section 62, except where specifically modified pursuant to this chapter.

(2) ‘Business’ includes a trade, profession, occupation, or an employment.

(3) ‘Department’ means the South Carolina Department of Revenue.

(4) ‘Director’ means the director of the department.

(5) ‘Fiscal year’ as defined in IRC Section 441(e).

(6) ‘Gross income’ as defined in IRC Section 61.

(7) ‘Head of household’ as defined in IRC Section 2(b).

(8) ‘Individual’ as defined in Section 12‑2‑20(2).

(9) ‘Intangible property’ means all property other than tangible property.

(10) ‘Dependent exemption’ means the exemption allowed for a taxpayer’s dependents pursuant to IRC Sections 151 and 152 enacted as of the reference date and as subsequently adjusted for inflation, but without regard to IRC Section 151(d)(5).

(11)(a) ‘Internal Revenue Code’ or ‘IRC’ means the Internal Revenue Code enacted as of the reference date including any such provisions enacted as of that date that take effect either before or after that date.

(b) If IRC sections adopted by this State expire in whole or in part after the reference date, and these sections are extended, but not otherwise amended by congressional enactment after the reference date, these sections or portions of these sections are adopted as extended for the purposes of this chapter.

(12) ‘Limited liability company’ means either a domestic limited liability company organized pursuant to Chapter 44, Title 33, or a foreign limited liability company authorized by that chapter to transact business in this State that is classified for federal income tax purposes as a partnership. As applied to a limited liability company that is taxed as a partnership for purposes of this chapter, the term ‘partner’ means a member of the limited liability company. A single‑member limited liability company not taxed as a corporation for South Carolina income tax purposes is not regarded as an entity separate from its owner.

(13) ‘Married individual’ means an individual who is married and is considered married as provided in IRC Section 7703.

(14) ‘Nonresident individual’ means an individual who is not a resident of this State.

(15) ‘Partnership’ means a domestic partnership, a foreign partnership, or a limited liability company taxed as a partnership for purposes of this chapter.

(16) ‘Part‑year resident’ means an individual who is a resident individual for only a portion of the tax year.

(17) ‘Pass‑through entity’ means an entity or business, including a limited partnership, a general partnership, a joint venture, a Subchapter ‘S’ Corporation, or a limited liability company, all of which are treated as owned by individuals or other entities under the Internal Revenue Code, in which the owners report their share of the income, losses, and credits from the entity or business on their income tax returns filed with this State. For the purpose of this section, an owner of a pass‑through entity is an individual or entity who is treated as an owner under the Internal Revenue Code.

(18) ‘Person’ as defined in Section 12‑2‑20(1).

(19) ‘Personal exemption’ means the exemption allowed for the taxpayer and the spouse of a taxpayer pursuant to IRC Section 151 enacted as of the reference date and as subsequently adjusted for inflation, without regard to IRS Section 151(d)(5), but at the exemption amount equal to 48.25 percent of the dependent exemption amount allowed pursuant to item (10) rounded to the nearest ten dollar increment.

(20) ‘Principal place of business’ with respect to a Subchapter ‘S’ corporation means the domicile of the corporation. However, when none of the business of the Subchapter ‘S’ corporation is conducted in the state of domicile, the department shall determine the principal place of business of the corporation based upon the available evidence.

(21) ‘Resident’ means an individual who is domiciled in this State at any time during the taxable year or who resides in this State during the taxable year for other than a temporary or transitory purpose. In the absence of convincing proof to the contrary, an individual who is present within the State for more than 183 days during the taxable year is presumed to be a resident, but the absence of an individual from the State for more than one hundred eighty three days raises no presumption that the individual is not a resident. A resident who removes from the State during a taxable year is considered a resident until that individual has both established a definite domicile elsewhere and abandoned any domicile in this State. The fact of marriage does not raise any presumption as to domicile or residence.

(22) ‘Reference date’ means January 1, 2020, and any cite to a particular section, sections, or parts of sections of the Internal Revenue Code in this chapter means such sections or parts of sections enacted as of the reference date.

(23) ‘Resident corporation’ with respect to a Subchapter ‘S’ corporation means a corporation whose principal place of business, as defined in item (20), is located within this State. ‘Nonresident corporation’ means such a corporation other than a resident corporation.

(24) ‘Resident partner’ means a partner who is a resident individual, resident estate, resident trust, resident corporation, or resident partnership during the taxable year. ‘Nonresident partner’ means a partner other than a resident partner.

(25) ‘Resident partnership’ means a partnership whose principal place of business is located in this State. ‘Nonresident partnership’ means a partnership other than a resident partnership.

(26) ‘South Carolina taxable income’ as defined in Section 12‑5‑620.

(27) ‘Standard deduction’ or ‘standard deduction amount’ means the deduction allowed pursuant to IRC Section 63 enacted as of the reference date and as those deduction amounts are subsequently adjusted for inflation.

(28) ‘Surviving spouse’ as defined in IRC Section 2(1).

(29) ‘Tangible property’ includes real property and corporeal personal property but does not include money, bank deposits, shares of stock, bonds, credits, evidences of debt, choses in action, or evidences of an interest in property.

(30) ‘Tax’ means a tax imposed pursuant to this chapter.

(31) ‘Taxable year’ as defined in IRC Section 441(b).

(32) ‘Taxpayer’ means a person subject to the tax or reporting requirements of this chapter.

(33) ‘This State’ means the State of South Carolina.

Section 12‑5‑320. The department shall administer and enforce the taxes imposed by this chapter. The department may make and prescribe rules and promulgate regulations, not inconsistent with this chapter, necessary to enforce its provisions. Regulations so promulgated have the force of law. The director may provide guidance, written policy documents, and opinions as necessary to aid taxpayers in complying with the provisions of this chapter.

Section 12‑5‑330. (A) The provisions of Chapter 8 of this title relating to persons required to withhold and remit income taxes of individuals apply to the taxes imposed pursuant to this chapter, mutatis mutandis. In Chapter 8 of this title, a reference to a specific withholding percentage, or calculation of a withholding percentage of the taxes imposed by this chapter must be construed to mean withholding at the rate provided pursuant to Section 12‑5‑650 or a calculation based on the rate provided by Section 12‑5‑650.

(B) The department shall prescribe withholding tables consistent with the rates of tax and calculations of income subject to tax provided in this chapter.

Section 12‑5‑340. (A) The provisions of Chapters 54 and 60 of this title apply with respect to taxes imposed pursuant to this chapter, mutatis mutandis.

(B) The voluntary contributions allowed to be made pursuant to Section 12‑6‑5060 apply with respect to the taxes imposed pursuant to this chapter.

Article 5

Income Tax

Subarticle 1

The South Carolina Individual Income Tax Act

Section 12‑5‑610. This subarticle may be cited as ‘The South Carolina Individual Income Tax Act’.

Section 12‑5‑620. ‘South Carolina taxable income’ means:

(A) For an individual who is a resident of this State, the term ‘South Carolina taxable income’ means the taxpayer’s adjusted gross income as modified in Section 12‑5‑630.

(B) For a nonresident individual, the term ‘South Carolina taxable income’ means the taxpayer’s adjusted gross income as modified in Section 12‑5‑630(B):

(1) multiplied by a fraction, the denominator of which is the taxpayer’s gross income as modified in Section 12‑5‑630(B), and the numerator of which is the amount of that gross income, as modified, that is derived from South Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State, is derived from a business, trade, profession, or occupation carried on in this State, or is derived from lottery or bingo winnings in this State;

(2) less the total of the deduction and exemptions allowed pursuant to Section 12‑5‑630(A), but only in the proportions determined attributable to this State by the fractions calculated pursuant to item (1).

(C) An individual who is a part‑year resident, having moved into or removed from this State during the taxable year, may:

(1) report and compute the tax due pursuant to this subarticle as if the individual was a resident for the entire taxable year and claim the credit allowed pursuant to Section 12‑5‑660; or

(2) report and compute the tax due pursuant to this subarticle as a nonresident individual as provided in subsection (B), except that for purposes of this computation, South Carolina taxable income for that period during which the individual was a resident includes all income that a resident individual would be required to report pursuant to subsection (A).

(D) In order to calculate the numerator of the fraction provided in subsection (B), the amount of a shareholder’s pro rata share of ‘S’ Corporation income, as modified in Section 12‑5‑630, that is includable in the numerator is the shareholder’s pro rata share of the ‘S’ Corporation’s income attributable to the State, as defined in Section 12‑5‑1220(A)(2). In order to calculate the numerator of the fraction provided in subsection (B) for a member of a partnership or other unincorporated business that has one or more nonresident members and operated in one or more other states, the amount of the member’s distributive share of the total net income of the business, as modified in Section 12‑5‑630, that is includable in the numerator is determined in accordance with the provisions of Article 17, Chapter 6 of this title, in conformity with the requirements of this chapter. As used in this subsection, total net income means the entire gross income of the business less all expenses, taxes, interest, and other deductions allowable under the Internal Revenue Code that were incurred in the operation of the business.

(E) A taxpayer shall compute South Carolina taxable income on the basis of the taxable year used in computing the taxpayer’s income tax liability under the Internal Revenue Code.

Section 12‑5‑630. (A) In calculating South Carolina taxable income, a taxpayer may deduct from adjusted gross income the following:

(1) the standard deduction amount as defined in Section 12‑5‑310(27);

(2) the personal exemption amount as defined in Section 12‑5‑310(19);

(3) the dependent exemption amount as defined in Section 12‑5‑310(10).

(B) Other adjustments ‑ deductions ‑‑ In calculating South Carolina taxable income, a taxpayer may deduct from the taxpayer’s adjusted gross income any of the following items that are included in the taxpayer’s adjusted gross income:

(1) repayment in the current taxable year of an amount included in adjusted gross income for an earlier taxable year because it appeared that the taxpayer had an unrestricted right to such item, to the extent the repayment is not deducted in arriving at adjusted gross income in the current taxable year. The deduction is the amount of repayment. A deduction is not allowed if the taxpayer calculates the federal income tax for the year of repayment under IRC Section 1341(a)(5);

(2) interest upon the obligations exempt from South Carolina income tax pursuant to Section 12‑2‑50;

(3) refunds of state, local, and foreign income taxes included in the taxpayer’s gross income;

(4) income attributable to earnings on the balance as of December 31, 2021, of a catastrophe savings account established pursuant to Article 11, Chapter 6, of this title.

(C) Other adjustments ‑ additions ‑‑ In calculating South Carolina taxable income, a taxpayer shall add to the taxpayer’s adjusted gross income any of the following items that are not included in the taxpayer’s adjusted gross income:

(1) interest upon the obligations of states other than this State, political subdivisions of those states, and agencies of those states and political subdivisions;

(2) bonus depreciation allowed pursuant to IRC Section 168(k);

(3) the amount by which a shareholder’s share of ‘S’ Corporation income is reduced under IRC Section 1366(f)(2) for the taxable year by the amount of built‑in gains tax imposed on the ‘S’ Corporation under IRC Section 1374;

(4) the amount of net operating loss carried to and deducted on the federal return but not absorbed in that year and carried forward to a subsequent year. A net operating loss may not be carried back to prior taxable years;

(5) ‘S’ Corporations, partnerships, estates, and trusts subject to the provisions of this chapter shall add any amount deducted under IRC Section 164 as state, local, or foreign income tax.

(D) ‘S’ Corporations ‑‑ Each shareholder’s pro rata share of an ‘S’ Corporation’s income is subject to the adjustments provided in this section.

Section 12‑5‑640. Beginning December 15, 2021, for taxable years beginning in 2022 and each December fifteenth thereafter for succeeding taxable years the department shall calculate the personal exemption amount for the applicable taxable year provided pursuant to Section 12‑5‑630(A).

Section 12‑5‑650. (A) For taxable years beginning after 2021, a tax is imposed on the South Carolina taxable income of every individual at the following rates:

Taxable year Percentage Tax Rate

beginning in

2022 4.85

2023 4.8

2024 4.7

2025 4.6

after 2025 4.5

(B) This tax is imposed, collected, and paid annually in the manner provided by law.

(C) The Board of Economic Advisors, beginning with its April 10, 2022, economic forecast and in any adjustment to that forecast made before June 30, 2022, and for each succeeding fiscal year during which a tax rate reduction is scheduled pursuant to this section shall make a specific forecast for recurring individual income tax revenues in the succeeding fiscal year. If that forecast of individual income tax revenue is insufficient to replace such revenue not collected as a result of the scheduled tax rate reduction provided in subsection (A), then the remaining scheduled rate reductions are postponed for one year. The board shall certify its forecast requiring a postponement to the appointing authority of each member of the Board of Economic Advisors and the postponement is effective as of that date.

Section 12‑5‑660. An individual who is resident of this State is allowed a credit against the taxes imposed by this subarticle for income taxes imposed by and paid to another state or country on income taxed under this subarticle subject to the following conditions:

(1) The credit is allowed only for taxes paid to another state or country on income that is derived from sources within that state or country and is taxed under its laws irrespective of the residence or domicile of the recipient, except that whenever a taxpayer who is considered a resident of this State under this subarticle is considered a resident of another state or country under the laws of that state or country, the director may allow a credit against the taxes imposed by this subarticle for taxes imposed by and paid to the other state or country on income taxed under this subarticle.

(2) The fraction of the gross income, as modified pursuant to Section 12‑5‑630 that is subject to income tax in another state or country must be ascertained, and the South Carolina net income tax before credit under this section must be multiplied by that fraction. The credit allowed is either the product thus calculated or the income tax actually paid the other state or country, whichever is smaller.

(3) Receipts showing the payment of income taxes to another state or country and a true copy of a return or returns upon the basis of which the taxes are assessed must be filed with the director when the credit is claimed. If credit is claimed on account of a deficiency assessment, a true copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, must be filed.

(4) If any taxes paid to another state or country for which a taxpayer has been allowed a credit under this section are at any time credited or refunded to the taxpayer, a tax equal to that portion of the credit allowed for the taxes so credited or refunded is due and payable from the taxpayer and is subject to the penalties and interest provided pursuant to this title.

Section 12‑5‑670. Individual income tax credits earned before 2022 and corporate and other tax credits earned before 2022 by a pass‑through entity and allowed to be claimed as provided by the law then in effect against the individual income tax liability of the owners of the pass‑through entity, may be claimed against the taxes imposed pursuant to this chapter for any remaining carry forward years allowed by the terms of the specific credit.

Section 12‑5‑680. Except for credits allowed pursuant to Section 12‑5‑670, after taxable year 2021, the only credits allowed against a tax liability arising pursuant to this chapter are the credits provided in this chapter.

Section 12‑5‑690. (A)(1) The following individuals shall file with the department an income tax return under affirmation:

(a) every resident required to file an income tax return for the taxable year under the Internal Revenue Code;

(b) every nonresident individual who meets the following requirements:

(i) receives during the taxable year gross income that is derived from South Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State, is derived from a business, trade profession, or occupation carried on in this State, or is derived from lottery and bingo winnings in this State; and

(ii) is required to file an income tax return for the taxable year under the Internal Revenue Code;

(c) any individual whom the director believes to be liable for a tax under this subarticle, when so notified by the director and requested to file a return.

(2) The director may adjust federal gross income filing requirement thresholds to reflect the South Carolina standard deductions and personal and dependent exemptions allowed pursuant to Section 12‑5‑630(A).

(3) If a taxpayer is unable to file an income tax return, a duly authorized agent of the taxpayer or a guardian or other person charged with the care of the person or property of the taxpayer shall file the return. If an individual who was required to file an income tax return for the taxable year while living has died before making the return, the personal representative of the taxpayer’s estate shall file the return in the decedent’s name and behalf, and the tax is payable by the estate.

(4) The income tax return must show the adjusted gross income and modifications allowed by this subarticle and any other information the director requires. The director may require some or all individuals required to file an income tax return to attach to the return a copy of their federal income tax return for the taxable year. The director may require a taxpayer to provide the department with copies of any other return the taxpayer has filed with the Internal Revenue Service and to verify any information in the return.

(5) When the director has reason to believe that a taxpayer conducts a trade or business in a way that directly or indirectly distorts the taxpayer’s adjusted gross income or South Carolina taxable income, the director may require any additional information for the proper computation of the taxpayer’s adjusted gross income and South Carolina taxable income. In computing the taxpayer’s adjusted gross income and South Carolina taxable income, the director shall consider the fair profit that would normally arise from the conduct of the trade or business.

(6) Spouses whose adjusted gross income is determined on a joint federal return shall file a single income tax return jointly if each spouse either is a resident of this Sate or has South Carolina taxable income and may file a single income tax return jointly if one spouse is not a resident and has no South Carolina taxable income. Except as otherwise provided in this subarticle, spouses filing jointly are treated as one taxpayer for the purpose of determining the tax imposed by this subarticle. Spouses filing jointly are jointly and severally liable for the tax imposed by this subarticle reduced by the sum of all credits allowable including tax payments made by or on behalf of the spouses. However, if a spouse qualifies for relief of liability for federal tax attributable to a substantial understatement by the other spouse pursuant to IRC section 6015, that spouse is not liable for the corresponding tax imposed by this subarticle attributable to the same substantial understatement by the other spouse. Spouses filing jointly have expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses jointly or if either is deceased, to the survivor alone.

(B) An income tax return must be filed at the place and in the form prescribed by the department. The income tax return of every taxpayer reporting on a calendar year basis is due on or before the fifteenth day of April in each year. The income tax return of every taxpayer reporting on a fiscal year basis is due on or before the fifteenth day of the fourth month following the close of the fiscal year. These dates do not apply to a nonresident alien whose federal income tax return is due at a later date under IRC section 6072(c). The return of a nonresident alien affected by that IRC section is due on or before the fifteenth day of the sixth month following the close of the taxable year.

(C)(1) An information return must be filed with the department as prescribed by the director and must contain that information determined necessary for the administration and enforcement of this chapter. Information returns must be filed on or before March fifteenth of each year.

(2) Providing the department with information required to be provided to the Internal Revenue Service or participating in the department agreement with the Internal Revenue Service to allow combined federal and state reporting of information returns constitutes compliance with this section.

(3) The provisions of this section do not apply to personal service compensation paid to individuals on which withholding taxes are required and reported as provided in Article 13, Chapter 8 of this title.

(D) A taxpayer may ask the department for an extension of time to file a return pursuant to Section 12‑5‑1820.

(E) Except as otherwise provided in this section, the full amount of the tax payable as shown on the return must be paid to the department within the time allowed for filing the return without regard to any extension. Dollar amounts entered in these returns and any accompanying schedules must be rounded up or down to the nearest whole dollar as the department directs.

Section 12‑5‑700. (A) A person who is a resident of this State, has a place of business in this State, or has an employee, an agent, or another representative in any capacity in this State shall file an information return as required by the director if the person directly or indirectly pays or controls the payment of any income to any taxpayer. The return must contain all information required by the department. The filing of any return in compliance with this section by a foreign corporation is not evidence that the corporation is doing business in this State.

(B) A partnership doing business in this State and required to file a return under the Internal Revenue Code shall file an information return with the department. A partnership that the department believes is doing business in this State and is required to file a return under the IRC shall file an information return when requested to do so by the department. The information return shall contain all information required by the department. It must state specifically the items of the partnership’s gross income, the deductions allowed under the IRC, and the adjustments required by this chapter. The information return also must include the name and address of each person who would be entitled to share in the partnership’s net income, if distributable, and the amount each person’s distributive share would be. The information return must specify the part of each person’s distributive share of the net income that represents corporation dividends. The information return must be signed by one of the partners under affirmation in the form required by the department.

A partnership that files an information return under this subsection shall furnish to each person who would be entitled to share in the partnership’s net income, if distributable, any information necessary for that person to file a state income tax return. The information must be in the form prescribed by the department and must be furnished on or before the due date of the information return.

(C) If a business conducted in this State is owned by a nonresident individual or by a partnership having one or more nonresident members, the manager of the business shall report the earnings of the business in this State, the distributive share of the income of each nonresident owner or partner, and any other information required by the department. The manager of the business shall pay with the return the tax on each nonresident owner or partner’s share of the income computed at the rate imposed on individuals pursuant to Section 12‑5‑650. The business may deduct the payment for each nonresident owner or partner from the owner or partner’s distributive share of the profits of the business in this State. If the nonresident partner is not an individual and the partner has executed an affirmation that the partner will pay the tax with its corporate, partnership, trust, or estate income tax return, the manager of the business is not required to pay the tax on the partner’s share. In this case, the manager shall include a copy of the affirmation with the report required by this subsection.

(D) The information return and payment requirements under this section are modified as follows for a publicly traded partnership that is described in IRC Section 7704(c):

(1) the information return under subsection (B) is limited to partners whose distributive share of the partnership’s net income during the tax year was more than five hundred dollars;

(2) the payment requirements under subsection (C) do not apply.

Subarticle 3

South Carolina Income Tax Act for Trusts, Estates, and Beneficiaries

Section 12‑5‑910. This subarticle may be cited as the ‘South Carolina Income Tax Act for Trusts, Estates, and Beneficiaries’.

Section 12‑5‑920. (A) The definitions provided in Section 12‑5‑310 and subsection (B) apply in this subarticle except where the context clearly indicates a different meaning. However, as used in this subarticle, ‘taxable income’ as defined in Subchapter J, Sections 641 through 692 of the Internal Revenue Code.

(B) In addition to the definitions made by reference in subsection (A) the following definitions apply for purposes of this subarticle:

(1) ‘Resident beneficiary’ means a beneficiary of an estate or trust who is a resident individual, resident estate, resident trust, resident partnership, or resident corporation. ‘Nonresident beneficiary’ means a beneficiary other than a resident beneficiary.

(2) ‘Resident estate’ means the estate of a decedent who was domiciled in this State at death. ‘Nonresident estate’ means an estate other than a resident estate.

(3) ‘Resident trust’ means a trust administered in this State as described in Section 62‑7‑108 as that section applied on January 1, 2018. ‘Nonresident trust’ means a trust other than a resident trust.

Section 12‑5‑930. The tax imposed by this subarticle applies to taxable income of estates and trusts as determined under the provisions of the Internal Revenue Code except as otherwise provided in this subarticle. The taxable income of an estate or trust is the same as taxable income for such an estate or trust under the provisions of the Internal Revenue Code, adjusted as provided in Section 12‑5‑630(B), except that the adjustments provided in Section 12‑5‑630(B) are apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year. The tax is computed on the amount of the taxable income of the estate or trust that is for the benefit of a resident of this State, or for the benefit of a nonresident to the extent that the income: (1) is derived from South Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State; or (2) is derived from a business, trade profession, or occupation carried on in this State. For purposes of the preceding sentence, taxable income and gross income are computed subject to the adjustments provided in Section 12‑5‑630(B). The tax on the amount computed above is at the rate imposed in Section 12‑5‑650. The fiduciary responsible for administering the estate or trust shall pay the tax computed under the provisions of this subarticle and withhold and remit South Carolina income tax on distributions to nonresident beneficiaries as provided in Section 12‑8‑570 as modified pursuant to Section 12‑5‑330.

Section 12‑5‑940. (A) If a fiduciary is required to pay income tax to this State for an estate or a trust, the fiduciary is allowed a credit against the tax imposed by this subarticle for income taxes imposed by and paid to another state or country on income derived from sources within that other state or country in accordance with the formula contained in subsection (B) and the requirements of subsection (C).

(B) The fraction of the gross income for South Carolina income tax purposes that is derived from sources within and subject to income tax in another state or country must be ascertained and the South Carolina income tax before credit under this section must be multiplied by that fraction. The credit allowed is either the product thus calculated or the income tax actually paid the other state or country, whichever is smaller.

(C) Receipts showing the payment of income taxes to another state or country and a true copy of the return upon the basis of which the taxes are assessed must be filed with the department at or before the time credit is claimed. If credit is claimed on account of an assessment, a true copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, must be filed with the director.

(D) If any taxes paid to another state or country for which a fiduciary has been allowed a credit under this section are at any time credited or refunded to the fiduciary, a tax equal to that portion of the credit allowed for the taxes so credited or refunded is due and payable from the fiduciary and is subject to the penalties and interest on delinquent payments provided in Chapter 54 of this title.

(E) A resident beneficiary of an estate or trust who is taxed under the provisions of this subarticle on income from an estate or trust determined to be includable in the resident’s gross income is allowed a credit against the tax imposed for income taxes paid by the fiduciary to another state or country on the income in accordance with the formula contained in subsection (B) and the requirements of subsection (C). If any taxes paid to another state or country for which a beneficiary has been allowed credit under this section are at any time credited or refunded to the beneficiary, a tax equal to that portion of the credit allowed for the taxes so credited or refunded is due and payable from the beneficiary and is subject to the penalties and interest on delinquent payments provided in Chapter 54 of this title.

(F) The credits allowed pursuant to Sections 12‑5‑660 and 12‑5‑670(A) may not by claimed by an estate or trust.

Section 12‑5‑950. The department using the appropriate means provided pursuant to Section 12‑5‑320 shall provide guidance for charitable reminder trusts consistent with IRC Section 664 after taking into account the applicable adjustments.

Section 12‑5‑960. (A) The fiduciary of an estate or trust described in this subsection shall file an income tax return under affirmation, showing specifically the taxable income and the adjustments required by this subarticle and other facts the department requires for the purpose of making any computation required by this subarticle:

(1) every estate or trust which has taxable income under this subarticle during the taxable year and which is required to file an income tax return for the taxable year under the Internal Revenue Code;

(2) every estate or trust which the department believes to be liable for a tax under this subarticle, when so notified by the department and requested to file a return.

(B) An income tax return of an estate or a trust must be filed as prescribed by the department at the place prescribed by the director. The return of every fiduciary reporting on a calendar year basis must be filed on or before the fifteenth day of April in each year, and the return or every fiduciary reporting on a fiscal year basis must be filed on or before the fifteenth day of the fourth month following the close of the fiscal year. A fiduciary may ask the department for an extension of time to file a return under Section 12‑5‑1820.

(C) The full amount of the tax payable as shown on the return must be paid to the department within the time allowed for filing the return without regard to any extension. Dollar amounts entered on these returns and accompanying schedules must be rounded up or down to the nearest whole dollar as the department directs.

Subarticle 5

‘S’ Corporation Income Tax Act

Section 12‑5‑1210. This subarticle may be cited as the ‘South Carolina ‘S’ Corporation Tax Act’.

Section 12‑5‑1220. (A) For purposes of this chapter, unless otherwise required by the context:

(1) ‘C’ Corporation’ means a corporation that is not an ‘S’ Corporation and is subject to the tax imposed pursuant to Section 12‑6‑530, as applicable.

(2) ‘Income attributable to the State’ means items of income, loss, deduction, or credit of the ‘S’ Corporation apportioned and allocated to this State pursuant to Article 17, Chapter 6 of this title, mutatis mutandis.

(3) ‘Income not attributable to the State’ means all items of income, loss, deduction, or credit of the ‘S’ Corporation other than income attributable to the State.

(4) ‘Post‑termination transition period’ means that period defined in IRC Section 1377(b)(1).

(5) ‘Pro rata share’ means the share determined with respect to an ‘S’ Corporation shareholder for a taxable period in the manner provided in IRC Section 1377(a).

(6) ‘S’ Corporation’ means a corporation for which a valid election under IRC Section 1362(a) is in effect.

(7) ‘Taxable period’ means any taxable year or portion of a taxable year during which a corporation is an ‘S’ Corporation.

(B) Except as otherwise expressly provided or clearly appearing from the context, any term used in this chapter has the same meaning as when used in a comparable context in the Internal Revenue Code, or in any statute relating to federal income taxes, in effect during the taxable period. Due consideration must be given in the interpretation of this chapter if applicable sections of the IRC in effect and to federal rulings and regulations interpreting those sections, except where the IRC, ruling, or regulation conflicts with the provisions of this chapter.

Section 12‑5‑1230. (A) An ‘S’ Corporation is not subject to the tax imposed pursuant to Section 12‑6‑530.

(B) Each shareholder’s pro rata share of an ‘S’ Corporation’s income attributable to the State, must be taken into account by the shareholder in the manner and subject to the adjustments provided in Section 12‑5‑630 and IRC Section 1366 and are subject to the tax imposed pursuant to Subarticles 1 and 3, as applicable.

Section 12‑5‑1240. (A) Each shareholder’s pro rata share of an ‘S’ Corporation’s income is subject to the adjustments provided in Section 12‑5‑630.

(B) ‘S’ Corporation items of income, loss, deduction, and credit taken into account by a shareholder pursuant to Section 12‑5‑1230(B) are characterized as though received or incurred by the ‘S’ Corporation and not its shareholder.

Section 12‑5‑1250. (A) The initial basis of a resident shareholder in the stock of an ‘S’ Corporation and in any indebtedness of the corporation owed to that shareholder must be determined, as of the later of the date the stock is acquired, the effective date of the ‘S’ Corporation election, or the date the shareholder became a resident of this State, as provided under the IRC.

(B) The basis of a resident shareholder in the stock and indebtedness of an ‘S’ Corporation must be adjusted in the manner and to the extent required by IRC Section 1011 except that:

(1) any adjustments made, other than for income exempt from federal or state income taxes, pursuant to Section 12‑5‑1240 must be taken into account; and

(2) any adjustments made pursuant to IRC Section 1367 for a taxable period during which this State did not measure ‘S’ Corporation shareholder income by reference to the corporation’s income must be disregarded.

(C) The initial basis of a nonresident shareholder in the stock of an ‘S’ Corporation and in any indebtedness of the corporation to that shareholder is zero.

(D) The basis of a nonresident shareholder in the stock and indebtedness of an ‘S’ Corporation must be adjusted as provided in IRC Section 1367, except that adjustments to the basis are limited to the income taken into account by the shareholder pursuant to Section 12‑5‑1230(B).

(E) The basis of a shareholder in the stock of an ‘S’ Corporation must be reduced by the amount allowed as a loss or deduction pursuant to Section 12‑5‑1260(C).

(F) The basis of a resident shareholder in the stock of an ‘S’ Corporation must be reduced by the amount of any cash distribution that is not taxable to the shareholder as a result of the application of Section 12‑5‑1280.

(G) For purposes of this section, a shareholder is considered to have acquired stock or indebtedness received by gift at the time the donor acquired the stock or indebtedness, if the donor was a resident of this State at the time of the gift.

Section 12‑5‑1260. (A) Carryforwards and carrybacks to and from an ‘S’ Corporation are restricted in the manner provided in IRC Section 1371(b).

(B) The aggregate amount of losses or deductions of an ‘S’ Corporation taken into account by a shareholder pursuant to Section 12‑5‑1230(B) may not exceed the combined adjusted bases, determined in accordance with Section 12‑5‑1250, of the shareholder in the stock and indebtedness of the ‘S’ Corporation.

(C) Any loss or deduction that is disallowed for a taxable period pursuant to subsection (B) must be treated as incurred by the corporation in the succeeding taxable period with respect to that shareholder.

(D)(1) Any loss or deduction that is disallowed pursuant to subsection (B) for the corporation’s last taxable period as an ‘S’ Corporation must be treated as incurred by the shareholder on the last day of any post‑termination transition period.

(2) The aggregate amount of losses and deductions taken into account by a shareholder pursuant to item (1) may not exceed the adjusted basis of the shareholder in the stock of the corporation, determined in accordance with Section 12‑5‑1250 at the close of the last day of any post‑termination transition period and without regard to this subsection.

Section 12‑5‑1270. If a shareholder of an ‘S’ Corporation is both a resident and nonresident of this State during any taxable period, the shareholder’s pro rata share of the ‘S’ Corporation’s income attributable to the State and income not attributable to the State for the taxable period must report the taxpayer’s pro rata share and compute the tax thereon as provided in Section 12‑5‑620(C).

Section 12‑5‑1280. (A) Subject to the provisions of subsection (C), a distribution made by an ‘S’ Corporation with respect to its stock to a resident shareholder is taxable to the shareholder as provided in Subarticle 1, Article 5 of this chapter to the extent that the distribution is characterized as a dividend or as gain from the sale or exchange of property pursuant to IRC Section 1368.

(B) Subject to the provisions of subsection (C), any distribution of money made by a corporation with respect to its stock to a resident shareholder during a post‑termination transition period is not taxable to the shareholder as provided in Subarticle 1, Article 5 of this chapter to the extent the distribution is applied against and reduces the adjusted basis of the stock of the shareholder in accordance with IRC Section 1371(e).

(C) In applying IRC Sections 1368 and 1371(e) to any distribution referred to in this section:

(1) The term ‘adjusted basis of the stock’ means the adjusted basis of the shareholder’s stock as determined pursuant to Section 12‑5‑1250.

(2) The accumulated adjustments account maintained for each resident shareholder must be equal to, and adjusted in the same manner as, the corporation’s accumulated adjustments account defined in IRC Section 1368(e)(1)(A), except that:

(a) the accumulated adjustments account must be modified in the manner provided in Section 12‑5‑1250(B)(1);

(b) the amount of the corporation’s federal accumulated adjustments account that existed on the day this State began to measure the ‘S’ Corporation shareholders income by reference to the income of the ‘S’ Corporation is ignored and is treated for purposes of this chapter as additional accumulated earnings and profits of the corporation.

Section 12‑5‑1290. (A) An ‘S’ Corporation incorporated or doing business in the State shall file with the department an annual return, on a form prescribed by the department, on or before the due date prescribed for the filing of ‘C’ Corporation returns in Section 12‑6‑530. The return shall show the name, address, and social security or federal identification number of each shareholder, income attributable to the State and the income not attributable to the State with respect to each shareholder as defined in Sections 12‑5‑1260 and 12‑5‑1270, and other information the director may require.

(B) The department shall permit ‘S’ Corporations to file composite returns and to make composite payments of tax on behalf of some or all nonresident shareholders. The department may permit ‘S’ Corporations to file composite returns and make composite payments of tax on behalf of some or all resident shareholders.

(C) An ‘S’ Corporation shall file with the department, on a form prescribed by the department, the agreement of each nonresident shareholder of the corporation: (a) to file a return and make timely payment of all taxes imposed by this State on the shareholder with respect to the income of the ‘S’ Corporation; and (b) to be subject to personal jurisdiction in this State for purposes of the collection of any unpaid income tax, together with related interest and penalties, owed by the nonresident shareholder. If the corporation fails to timely file an agreement required by this subsection on behalf of any of its nonresident shareholders, then the corporation shall at the time specified in subsection (D) pay to the department on behalf of each nonresident shareholder with respect to whom an agreement has not been timely filed an estimated amount of the tax due the State. The estimated amount of tax due the State must be computed at the rate imposed pursuant to Section 12‑5‑640 on the shareholder’s pro rata share of the ‘S’ Corporation’s income attributable to the State reflected on the corporation’s return for the taxable period. An ‘S’ Corporation may recover a payment made pursuant to the preceding sentence from the shareholder on whose behalf the payment was made.

(D) The agreements filed pursuant to subsection (C) must be filed at the following times:

(1) At the time the annual return is required to be filed for the first taxable period for which the ‘S’ Corporation becomes subject to the provisions of this chapter.

(2) At the time the annual return must be filed for any taxable period in which the corporation has a nonresident shareholder on whose behalf the agreement has not been previously filed.

(E) Amounts paid to the department on account of the corporation’s shareholders under subsections (B) and (C) constitute payments on their behalf of the income tax imposed on them under this chapter for the taxable period.

Article 7

Estimated Taxes

Section 12‑5‑1510. (A) South Carolina estimated tax payments of the taxes imposed pursuant to this chapter must be made in a form prescribed by the department in accordance with Internal Revenue Code Sections 6654 and 6655 except that:

(1) the small amount provisions in IRC Sections 6654(e)(1) and 6655(f) are one hundred dollars;

(2) the due dates of the installment payments for calendar year taxpayers are:

First quarter April 15

Second quarter June 15

Third quarter September 15

Fourth quarter January 15 of the following taxable year.

(3) In applying the estimated tax payment provisions to a taxable year beginning on a date other than January first, the month that corresponds to the months specified above must be substituted.

(B) Payments required by this section are considered payments on account of income taxes imposed by this chapter for the taxable year designated.

(C) To the extent that estimated tax payments and withholdings are in excess of the taxpayer’s income tax as shown on the income tax return, the taxpayer may claim a:

(1) refund; or

(2) credit for estimated tax for the succeeding taxable year.

Section 12‑5‑1520. (A) In the case of sickness, absence, or other disability or good cause, the department may in its discretion allow further time for filing and paying estimated taxes.

(B) Penalties and interest otherwise required to be imposed for underpayment of estimated taxes that are attributable to a postponement of a tax rate reduction as provided in Section 12‑5‑650(C) are waived in the manner the department directs.

Article 9

General Provisions

Section 12‑5‑1810. (A) If a taxpayer’s adjusted gross income or federal tax credit that affects the amount of state tax payable is corrected or otherwise determined by the federal government, the taxpayer, within six months after being notified of the correction or final determination by the federal government, shall file an income tax return with the department reflecting the corrected or determined adjusted gross income or federal tax credit that affects the amount of State tax payable. The department shall propose an assessment for any additional tax due from the taxpayer as provide in Chapter 54 of this title. The department shall refund any overpayment of tax as provided in Chapter 54 of this title. A taxpayer who fails to comply with this section is subject to the penalties in Chapter 54 and forfeits the right to any refund due by reason of the determination.

(B) For purposes of this chapter, the provisions of subsection (A) requiring an individual to report the correction or determination of taxable income by the federal government apply to fiduciaries required to file returns for estates and trusts.

Section 12‑5‑1820. (A) The department may allow an extension of time not to exceed six months for filing returns under this chapter. A taxpayer requesting an extension of time for filing, on or before the date the return or report is due, shall submit a tentative return and pay the full amount of the tax due.

(B) When a taxpayer is not required to make a payment of tax at the time of the extension, and the taxpayer has been granted an extension of time to file a federal income tax return, the taxpayer is not required to apply to the department for an extension of time to file the South Carolina return. The department shall accept a copy, if applicable, of a properly filed federal extension attached to the South Carolina return when filed including returns filed electronically. Taxes shown to be due on a return required pursuant to this chapter must be paid at the time the return is due to be filed, without regard to an extension of time granted for filing the return.

(C) An extension must not be granted to a taxpayer who has been granted an extension for a previous period and has not fulfilled the requirements of the previous period.

Section 12‑5‑1830. A person who is an income tax preparer as defined in Internal Revenue Code Section 7701(a)(36) and who performs the same services with respect to South Carolina income tax returns or claims for refund shall include with his signature on the South Carolina return or claim for refund his taxpayer identification number as prescribed by Internal Revenue Code Section 6109 and applicable regulations.

Failure to comply with the provisions of this section results in a penalty as provided in Section 12‑54‑47.”

SECTION 2. Except where otherwise stated, this act takes effect upon approval by the Governor and applies for taxable years beginning after 2021.

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