~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE AMENDMENT ADOPTED

March 23, 2021

**S. 627**

Introduced by Senators Bennett, Adams, Kimbrell, M. Johnson, Davis, Turner, Campsen, Hembree, Alexander, Williams, Cromer, McElveen, Loftis, Climer, Talley, Rice, Garrett, Rankin and Leatherman

S. Printed 3/23/21--S.

Read the first time March 2, 2021.

**A** **BILL**

TO AMEND SECTION 12‑6‑545, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO INCOME TAX RATES FOR PASS‑THROUGH TRADE AND BUSINESS INCOME, SO AS TO CREATE AN ELECTION TO TAX PARTNERSHIPS AND “S” CORPORATIONS AT THE ENTITY LEVEL; AND TO AMEND SECTION 12‑6‑3400, RELATING TO CREDIT FOR INCOME TAX PAID BY SOUTH CAROLINA RESIDENTS TO ANOTHER STATE, SO AS TO PROVIDE THAT AN ELECTING PASS‑THROUGH BUSINESS ENTITY IS ELIGIBLE FOR THE CREDIT.

Amend Title To Conform

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

SECTION 1. Section 12‑6‑545 of the 1976 Code is amended by adding a new subsection at the end to read:

“(G)(1) Notwithstanding Section 12‑6‑510 and any other provision of this section, a partnership or ‘S’ corporation, including a limited liability company taxed as a partnership or ‘S’ corporation, may elect annually under this subsection to have income tax on its active trade or business income at the rate provided in subsection (B)(2) imposed on the pass‑through business entity itself. Such elections must be made no later than the due date for filing the applicable income tax return, including any extensions.

(2) Also notwithstanding Section 12‑6‑510, in computing South Carolina taxable income, an individual shall exclude net income or losses from an electing entity of which the individual is a shareholder, partner, or member provided that the entity properly filed an income tax return and paid the taxes pursuant to this subsection that included the net income or loss.

(3) A pass‑through business entity making an election under this subsection shall report to each of its owners the owner’s pro rata or distributive share of the trade or business income on which the pass‑through business entity paid tax under this subsection. To the extent of the share, the net active trade or business losses of the owner from other pass‑through entities that are reported directly by such owner may not reduce tax at a rate higher than the rate provided in subsection (B)(2).

(4) An owner of a pass‑through business entity making an election under this subsection is not allowed a credit under Section 12‑6‑3400 for taxes paid to another state on the entity’s active trade or business income taxed to the entity pursuant to the election, but the entity itself is allowed a credit under Section 12‑6‑3400 for the taxes that would otherwise be creditable to its owners under the section in the absence of such election, subject to the limitation contained in that section applied at the entity level.

(5) Section 12‑8‑590, dealing with tax withholding on distributions to nonresident shareholders of ‘S’ corporations and nonresident partners, does not apply to electing entities regarding their active trade or business income.

(6) For tax years beginning after 2021, an electing entity shall submit estimated tax payments pursuant to Section 12‑6‑3910.

(7) If the electing entity fails to pay the amount owed to the department with respect to income as a result of the election, the department may collect the amount from the electing entity or the shareholders, partners, or members based upon their proportionate share of the income, or both.”

SECTION 2. Section 12‑6‑3400(A)(2)(b) of the 1976 Code is amended to read:

“(b) the income tax actually paid to the other state, either directly by the individual or by a pass‑through business entity and passed through by the entity to the individual, on income taxed under this chapter.”

SECTION 3. This act takes effect upon approval by the Governor and first applies to tax years beginning after 2020.

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