~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 4, 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, Leatherman, Young and Gustafson

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Read the first time April 6, 2021.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Bill (S. 627) 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, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

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

“(G)(1)(a) ‘Qualified entity’ means a partnership or ‘S’ corporation including a limited liability company taxed as a partnership or ‘S’ corporation, where all of its owners are qualified owners or partnerships, and, where those partnerships are owned directly or through other partnerships by qualified owners.

(b) ‘Qualified owner’ means a partner or shareholder of a qualified entity that is an individual, estate, trust, or any other entity except those taxed or exempted from tax pursuant to Sections 12‑6‑530 through 12‑6‑540 and 12‑6‑550 and except for any other entity exempt from South Carolina income tax.

(2) A qualified entity may elect annually under this subsection to have its income taxed on its active trade or business income at the rate provided in subsection (B)(2) imposed on the qualified entity itself. Such elections must be made no later than the due date for filing the applicable income tax return, including any extensions.

(3) In computing South Carolina taxable income, a qualified owner shall exclude active trade or business income from an electing qualified entity provided that the qualified entity properly filed an income tax return and paid the taxes pursuant to this subsection that included the active trade or business income or loss.

(4) Active trade or business losses of the qualified 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).

(5) Active trade or business income for which this subsection is elected shall be apportioned by the pass‑through entity pursuant to 12‑6‑2240, and none of it shall be treated as income from personal services that is allocated pursuant to 12‑6‑2220(6).

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

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

(8) 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 its direct or indirect owners based upon their proportionate share of the income, or both.

(9) The basis of both resident and nonresident shareholders of a qualified S Corporation in their stock of the qualified S Corporation shall be determined as if the election under subsection (G)(2) had not been made and each of the shareholders of the qualified S Corporation had properly taken into account each shareholder’s pro rata share of the qualified S Corporation’s items of income, loss, and deduction in the manner required with respect to an S Corporation for which no such election is in effect. The basis of a qualified partnership, including a limited liability company taxed as a partnership shall be determined in the same manner.”

SECTION 2. This act takes effect upon approval by the Governor and first applies to tax years beginning after 2020./

Renumber sections to conform.

Amend title to conform.

G. MURRELL SMITH, JR. for Committee.

**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.

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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