**South Carolina General Assembly**

124th Session, 2021-2022

**H. 3978**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. West, Pope, Crawford, McCravy, W. Cox, Herbkersman, Jordan, Lowe, G.M. Smith and Thayer

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Companion/Similar bill(s): 627

Introduced in the House on February 24, 2021

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

Summary: Pass through trade and business income

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/24/2021 House Introduced and read first time ([House Journal‑page 43](file:///h:\hj\20210224.docx))

2/24/2021 House Referred to Committee on **Ways and Means** ([House Journal‑page 43](file:///h:\hj\20210224.docx))

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**VERSIONS OF THIS BILL**

[2/24/2021](file:///p:\pprever\2021-22\3978_20210224.docx)

**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 received 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) Elections under this subsection have no impact on the determination of the basis of pass‑through business entity owners in their ownership interests and indebtedness of entities making the elections for purposes of determining their South Carolina gross income, except that their pro rata or distributive share of the tax paid or accrued by the entities pursuant to such elections must be taken into account in determining such basis.

(5) 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.

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

(7) The provisions of Article 25 apply to electing entities, such that an ‘S’ corporation or limited liability company, taxed as a partnership or partnership that qualifies for a credit pursuant to Article 25, may pass‑through the credit earned to each shareholder of the ‘S’ corporation, member of the limited liability company, or partner of the partnership.

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

(9) 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 shareholders, partners, or members based upon their proportionate share of the income.”

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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