



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

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SC REVENUE RULING #22- DRAFT – May 19

SUBJECT: Income Taxes Paid by a Pass-Through Entity to Other States on Personal Service Income and Other Business Income and the Credit for Taxes Paid to Other States
(Income Tax)

EFFECTIVE DATE: All periods open under the statute.

MODIFIES: SC Revenue Ruling #21-15, Questions 25 and 26
SC Revenue Ruling #97-7

REFERENCES: S.C. Code Ann. Section 12-6-3400
S.C. Code Ann. Section 12-6-2220(6)
S.C. Code Ann. Section 12-6-545(A) through (F) (2014)
S.C. Code Ann. Section 12-6-545(G) (Supp. 2021)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (2005)
S.C. Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

PURPOSE

The purpose of this advisory opinion is to supplement the guidance published in SC Revenue Ruling #21-15, "Active Trade or Business Income – Annual Election by Pass-Through Entity to Pay Tax at Entity Level" and SC Revenue Ruling #97-7, "Personal Service Income of Resident Partners" with respect to the credit for resident individuals for income taxes paid to other states on personal service income provided in Code Section 12-6-3400 and with respect to the taxation of other business income when a pass-through entity is operating in more than one state.

Questions from resident and nonresident owners of pass-through entities have arisen during this filing season regarding the availability of a South Carolina credit for income taxes paid to other states on either their personal service income or other business income in light of many

states now permitting an income tax to be imposed on, and paid by, a pass-through entity to work around the individual partner's or shareholder's federal limit of \$10,000 for the itemized deduction of state and local taxes on their federal income tax return.¹

A pass-through entity may continue to pass income through to its owners in the traditional manner, or if it meets South Carolina's definition of a "qualified" pass-through entity, it may elect to tax only its' South Carolina "active trade or business income" at the entity level, and if it is a multi-state business, it may make an entity level tax election in other states that allow it. **Note:** Other states' pass-through entity taxes have a different base. South Carolina's pass-through entity election is strictly limited to "active trade or business income" as defined in Code Section 12-6-545 and is only available to certain pass-through entities as provided in Code Section 12-6-545(G).

This advisory opinion discusses the following areas of pass-through entity taxation in South Carolina, whether or not an entity level tax election is made in South Carolina, and whether or not a South Carolina credit for taxes paid to other states is applicable.

1. A non-personal service partnership or S corporation (e.g., a manufacturer) operating:
 - solely in South Carolina;
 - in multiple states, including South Carolina, where some of the other states may have a pass-through entity level tax statute; or
 - in one or more states, excluding South Carolina, where a South Carolina resident is a partner or shareholder in the out-of-state entity.
2. A personal service partnership or S corporation (e.g., performing legal or accounting services) operating:
 - solely in South Carolina;
 - operating in multiple states, including South Carolina, where some of the other states have a pass-through entity level tax statute; or
 - in one or more states, excluding South Carolina, where a South Carolina resident is a partner or shareholder in the out-of-state entity.

South Carolina Revenue Ruling #21-15, Questions 25 and 26 addressed the issue of a credit for entity level taxes paid on active trade or business income of an entity making a South Carolina entity election under Code Section 12-6-545(G). This ruling will address the issue of a credit under Code Section 12-6-3400 when an entity makes an election in another state and where the entity pays tax on the personal service income of the individual owner of the entity.

Code Section 12-6-3400 provides a credit for a resident individual for income tax paid to another state in certain situations, and reads, in part:

(A)(1) Resident individuals are allowed a credit against the taxes imposed by this chapter for income taxes paid to another state on income from sources within that state which is taxed under both this chapter and the laws of that state regardless of the taxpayer's residence.

¹ Note: South Carolina's recent Code Section 12-6-545(G), providing for the entity level active trade or business income tax, does not have a sunset provision, however, the federal individual itemized tax deduction limitation of \$10,000 enacted in the Tax Cuts and Jobs Act of 2017 (Public Law 115-97) contained a sunset provision for tax years beginning on or after January 1, 2026.

QUESTIONS AND ANSWERS

ENTITY TAXATION and ENTITY LEVEL TAXATION ELECTION - AN OVERVIEW

1. Q. In general, how does South Carolina tax pass-through entity income?

A. Generally, an entity treated as a partnership for federal income tax purposes is not subject to South Carolina income tax. Each partner includes its share of South Carolina partnership income on the partner's income tax return.² An S corporation having a valid "S" election under IRC Subchapter S is not subject to South Carolina income tax to the extent it is exempt from federal corporate income tax. Each shareholder includes its share of the South Carolina S corporation's income on the shareholder's income tax return.³

The starting point of South Carolina taxation for S corporations and partnerships is federal taxable income. South Carolina law provides for modifications to be made from federal taxable income in determining South Carolina taxable income. South Carolina businesses are only taxed on income directly allocated to South Carolina and on the South Carolina apportioned share of income. South Carolina has a single sales (gross receipts) formula. See Code Sections 12-6-590, 12-6-600, and 12-6-2210 through 12-6-2295. Investment income (e.g., interest, dividends, capital gains, etc.) is allocated to the state of domicile of the partner or shareholder.

Effective for tax years beginning 2021, Act No. 61 of 2021 added Code Section 12-6-545(G) to provide an optional election for certain pass-through entities to report "active trade or business income" (as defined in Code Section 12-6-545(A)(1)) directly on the entity's tax return and pay a 3% entity level income tax on it.

2. Q. What is South Carolina's recent entity level tax election on "active trade or business income" and how does it impact the entity and the owner?

A. Effective for tax years beginning 2021, Code Section 12-6-545(G) provides an optional election for certain "qualified" pass-through entities to report "active trade or business income" (as defined in Code Section 12-6-545(A)(1)) apportioned to South Carolina directly on the entity's South Carolina tax return and pay a South Carolina entity level income tax on it at 3%.

Income listed in Code Section 12-6-545(A)(1) that is not active trade or business income includes: amounts reasonably related to personal services; capital gains and losses (including IRC Section 1231 gains); and passive investment income⁴ and expenses related to passive investments.⁵ Amounts related to personal services include, but are not

² SC Code Section 12-6-600. See IRC Section 701.

³ SC Code Section 12-6-590. See IRC Section 1363(b).

⁴ IRC Section 1362(d) defines passive investment income and provides exceptions. The regulations under IRC Section 1362, and other guidance such as federal rulings and cases, should be considered in determining whether income is "passive investment income." See SC Revenue Ruling #08-2 for examples of passive investment income, including royalties, rents, dividends, and interest, and exceptions of when these items may not be passive investment income.

⁵ Whether an activity is an "active trade or business" or a "passive investment" is determined at the entity level for

limited to, all amounts paid as compensation (e.g., wages, salaries, bonuses, etc.) including guaranteed payments for services.⁶

For entities making an entity election under Code Section 12-6-545(G), income that is not active trade or business income, including amounts related to personal services, and separately stated items (e.g., charitable contributions, retirement contributions, certain royalty income,⁷ etc.) not considered part of the “active trade or business income” calculation are passed through to the partner or shareholder.

Note: South Carolina’s pass-through entity election is limited to South Carolina active trade or business income. A partnership whose ordinary business income is derived entirely from personal services, is not permitted to make a South Carolina active trade or business election to pay tax at the entity level under Code Section 12-6-545(G). See Example 1, page 24, SC Revenue Ruling #21-15.⁸

NOTE: Each state’s law should be reviewed to determine the income and deductions eligible to be included in the entity level tax computation.

For owners of electing entities, to the extent such an election is made by a qualified entity, and South Carolina tax is paid on the active trade or business income at the entity level, that income is excluded from the entity owners’ South Carolina taxable income.

RESIDENT INDIVIDUAL PARTNERS AND SHAREHOLDERS – GENERAL OVERVIEW

3. Q. What is South Carolina’s method for taxing resident individual partners and shareholders?
 - A. South Carolina has an unusual method for computing the income of resident partners and shareholders. Unlike most states, South Carolina does not tax residents on all of their worldwide income. South Carolina residents are taxed on their worldwide personal service income and their other income allocated or apportioned to South Carolina. South Carolina residents are not taxed on their out-of-state, non-personal service business income.

Code Section 12-6-2220 addresses the taxation of personal service income of residents. Code Section 12-6-2220(6) provides that all income from personal services received by a resident individual is allocated to South Carolina. A resident individual partner receiving personal service income reported on a Schedule K-1 or a resident individual shareholder

purposes of the 3% rate. See Code Section 12-6-545 and SC Revenue Ruling #08-2.

⁶ Guaranteed payments for capital are not considered amounts reasonably related to personal service income.

⁷ For example, royalties from mineral, oil, and gas are generally passive investment income, however royalty income derived in the ordinary course of business of franchising or licensing property is active trade or business income.

⁸ Since tax year 2006, Code Section 12-6-545(A) through (F) has allowed, and continues to allow, individuals, estates, or trusts to use an “optional” income tax rate (currently 3%) to compute the tax on “active trade or business income or loss” received from a pass-through business in lieu of the “standard” income tax rate (currently the highest marginal rate is 7%) under Code Section 12-6-510.

receiving personal service income from South Carolina and one or more other states must report all personal service income to South Carolina pursuant to Code Section 12-6-2220(6) for individual income tax purposes. The statute does not allow an individual to report only his apportioned share of South Carolina personal service income to South Carolina.

Note: The answer is the same whether or not a Code Section 12-6-545(G) election is made for South Carolina income tax purposes, and whether or not a pass-through entity tax election is made in another state under that state's tax law.

A. EXAMPLE - TAXATION OF PERSONAL SERVICE INCOME

Example – Resident Earns Personal Service Income in Another State. A South Carolina resident is a partner in a North Carolina law firm that solely provides personal services in North Carolina. The resident receives \$200,000 of compensation from the partnership. The \$200,000 personal service income is included in South Carolina taxable income. The South Carolina partner is allowed a tax credit for taxes paid to North Carolina on the personal service income taxed in both South Carolina and North Carolina. See Questions 4 through 6 below and Code Sections 12-6-560, 12-6-2220, and 12-6-3400. See also SC Revenue Ruling #97-7 for additional guidance.

B. EXAMPLES - TAXATION OF OTHER BUSINESS INCOME

The following examples illustrate the taxation of non-personal service business income:

Example 1 - Resident Shareholder Receiving Non-personal Service Business Income from Outside South Carolina. A South Carolina resident receives business income from an S corporation for which he performs no personal services. The S corporation operates a manufacturing business only in Florida and Alabama. The resident receives \$100,000 of out-of-state business income from the S corporation (i.e., the \$100,000 is not apportioned to South Carolina). The \$100,000 is not included in the individual resident's South Carolina taxable income.

Example 2 - Resident Shareholder Receiving Non-personal Service Business Income from Another State and South Carolina. A South Carolina resident individual receives business income from his S corporation for which he performs no personal services. The S corporation operates a manufacturing business only in South Carolina and Georgia. The resident receives \$100,000 of business income from the S corporation. The South Carolina allocation and apportionment statutes apportion 30% of the S corporation's income to South Carolina. The South Carolina resident is taxed on \$30,000 (30% of his S corporation income is apportioned to South Carolina). The \$70,000 of business income not apportioned to South Carolina is not included in his South Carolina taxable income.

Example 3 - Resident Shareholder Receiving Non-personal Service Business Income Only from South Carolina. A South Carolina resident receives business income from his S corporation for which he performs no personal services that operates a manufacturing business only in

South Carolina. The resident receives \$100,000 South Carolina business income from the S corporation. The entire \$100,000 is included in the individual resident's South Carolina taxable income.

4. Q. Does South Carolina have a statute allowing a credit for taxes paid to other states?

A. Code Section 12-6-3400 provides a resident individual a credit for taxes paid to other states and, reads in part:

(A)(1) Resident individuals are allowed a credit against the taxes imposed by this chapter for income taxes paid to another state on income from sources within that state which is taxed under both this chapter and the laws of that state regardless of the taxpayer's residence.

Note: For reference, Code Section 12-6-3400 is reproduced in its entirety in the Appendix.

5. Q. Does South Carolina allow a resident partner or shareholder a credit for entity level income tax paid directly by the entity on the entity's tax return of another state for their personal service income taxed in the other state?

A. Yes. Since South Carolina taxes residents on worldwide personal service income, Code Section 12-6-3400 provides resident individuals an income tax credit for taxes paid to another state on their personal service income. This credit alleviates double taxation of personal service income taxed by South Carolina and another state.

With respect to partnerships or S corporations making an election in another state to directly pay income tax by the entity on the entity's tax return of another state on its income (which includes personal service income), a South Carolina resident can take credit for the partnership or S corporation level taxes paid for, and only for, their personal service income that would have been taxed to the individual in the other state if the partnership or S corporation did not pay income taxes at the entity level. Code Sections 12-6-2220(6) and 12-6-3400. Note: This modifies Revenue Ruling #21-15, Question 26.

The result is the same for a resident partner or shareholder whose partnership or S corporation makes an election to pay tax at the entity level as it is for a resident partner or shareholder whose partnership or S corporation does not make an entity election to pay tax at the entity level. In either case, double taxation of personal service income does not result.

6. Q. Does South Carolina allow a resident partner or shareholder a credit for entity level income tax paid directly by the entity on the entity's tax return of another state for the entity's non-personal service business income?

A. No. Since South Carolina does not tax residents on out-of-state business (non-personal service) income (this income is subtracted from federal taxable income on SC 1040 in arriving at South Carolina taxable income), the credit for entity level income taxes paid directly on the entity's tax return to other states on non-personal service business income

for South Carolina residents is not applicable. The credit in Code Section 12-6-3400 is only available to South Carolina residents for taxes paid on income taxed in both South Carolina and another state (e.g., personal service income).

Example. A South Carolina resident receives business income from his S corporation for which he performs no personal services. The S corporation operates a manufacturing business only in South Carolina and North Carolina. The resident receives \$100,000 of business income from the S corporation. The entity's business income is apportioned 10% to South Carolina (\$10,000 to the resident). South Carolina only taxes residents on their South Carolina apportioned share of business income. Since the other \$90,000 of business income is not included in the individual resident's South Carolina taxable income, the credit for taxes paid on income taxed in two states is not applicable.-Note: This modifies Revenue Ruling #21-15, Question 25 and Code Section 12-6-3400.

NONRESIDENT INDIVIDUAL PARTNERS AND SHAREHOLDERS – GENERAL OVERVIEW

7. Q. What is South Carolina's method for taxing nonresident individual partners or shareholders?

A. Nonresident partners and shareholders are responsible for reporting their apportioned share of South Carolina partnership or S corporation income to South Carolina.

Code Section 12-6-2220(6) provides that all income from personal services received by a nonresident individual for services rendered in South Carolina is allocated to South Carolina. A nonresident individual receiving personal service income from South Carolina and one or more other states reports only his South Carolina personal service income to South Carolina for individual income tax purposes.

South Carolina reporting of income by nonresident partners and shareholders may be done by each owner filing a nonresident individual income tax return or by the partnership filing a composite return computing and reporting the income tax of its nonresident individual partners or shareholders. See Code Section 12-6-5030.

8. Q. Does Code Section 12-6-3400 allow a nonresident individual a credit for taxes paid to other states for pass-through income tax paid by a partnership or S corporation electing to pay tax on its ordinary business income (which may include personal service income) at the entity level under the laws of another state?

A. No. Code Section 12-6-3400 does not apply to nonresidents, whether or not the entity pays taxes on its income at the entity level. Generally, the partner's or shareholder's state of residence will allow a credit for South Carolina taxes paid on his personal service income earned in and taxed by South Carolina to prevent double taxation.

CREDIT FOR TAXES PAID TO OTHER STATES – COMPUTATION

9. Q. How is the credit for taxes paid to another state computed on the resident individual's personal service income taxed in another state at the entity level?

A. Code Section 12-6-3400(A)(2) provides for the computation of credit for taxes paid and reads:

The credit allowed is the lesser of:

(a) the product of the fraction in which the numerator is total South Carolina income which is subject to income tax in another state and the denominator is total federal income adjusted by the modifications provided in Article 9 of this chapter and subject to allocation and apportionment as provided in Article 17 of this chapter, multiplied by South Carolina income tax before the credit allowed by this section; or

(b) the income tax actually paid to the other state on income taxed under this chapter.

Note: To correctly compute South Carolina income tax credit allowed to the resident partner or shareholder, the resident individual taxpayer will need to make this adjustment manually to their SC Form 1040, Schedule TC. The computation for the credit for taxes paid only for the personal service income should be included with the SC Form 1040.

EXAMPLES – SC CREDIT FOR TAXES PAID BY ENTITY TO ANOTHER STATE

EXAMPLE 1 – Pass-through entity that only has income from personal services.

- Entity makes an out-of-state election to pay tax at entity level in State X.
- Entity cannot make a valid SC election to pay SC tax at the entity level since it has no “active trade or business income” as defined in Code Section 12-6-545.
- SC credit for taxes paid to other states is allowed only to resident partner A.

Facts: The taxpayer, a Delaware partnership, is owned by 50 individuals who are engaged in providing accounting services regionally. South Carolina resident Partner A owns a 1% share and SC nonresident Partner B owns a 2% share. The partnership compensates the partners through an allocation of partnership income, and not by guaranteed payments. The partnership has a 5% SC apportionment factor. The partnership made a pass-thru entity tax election (PET) in State X with a 15% apportionment factor and a 10% state tax rate. Unlike South Carolina, State X permits personal service pass-through entities to pay tax at the entity level on all income. The partnership has non-partner employees and pays wages. The partnership's ordinary business income is \$20,000,000 (after PET deductions for State X of \$300,000) and is entirely from personal services. The partnership has no other separately stated items of income, deduction, or credit. Neither individual is an owner of any other pass-through entities. For South Carolina income tax purposes, the entity has no “active trade or business income,” and whether or not it has made an election at the entity level, no tax will be paid to South Carolina at the entity level, see Code Section 12-6-545(G) regarding valid entity elections.

Below is information prepared by the entity to determine federal taxable income, South Carolina taxable income, and income and taxes paid in State X for Partner A, a SC resident partner, and Partner B, a SC nonresident partner. The entity made a pass-through entity election in State X to pay tax on its business income at the entity level in State X. (The same information prepared for other partners is not shown in this example.)

Partnership Items of Income and Deduction	Federal Sch. K Information of Partnership (As listed on the federal Schedules K and K-1)	Adjusted SC Amounts from Federal K-1 (after apportionment)	SC “Active Trade or Business Income” and Related Deductions of Electing Partnership	Total SC Non-Active Trade or Business Income and Related Deductions
Ordinary Business Income	\$20,000,000 ⁹	\$1,015,000 ¹⁰	\$0 (all personal service income)	\$1,015,000
SC Active Trade or Business Income				
SC Tax Paid Directly by Electing Partnership				
SC Amount Passed Through to All Resident and Nonresident Partners				\$1,015,000

	Partner A – 1% Ownership SC Resident	Partner B – 2% Ownership SC Nonresident
Federal Sch. K	\$200,000 (1% x \$20 million)	\$400,000 (2% x \$20 million)
Adjusted SC Amounts	\$10,150 (1% x \$1,015,000)	\$20,300 (2% x \$1,015,000)
State X Apportioned Income	\$30,450 (15% x \$20.3 million x 1%)	\$60,900 (15% x \$20.3 million x 2%)
State X Pass through entity tax – 10% tax rate (after adjustments) ¹¹	\$3,000	\$6,000

Entity Level Income and Tax Computation. The partnership has no South Carolina active trade or business income as all income is related to personal services. In this example, the partnership’s ordinary business income computed for federal income tax purposes (\$20,000,000) is not the same as South Carolina active trade or business income (\$0) as defined in Code Section 12-6-545. Therefore, the qualified entity cannot pay any South Carolina entity level tax since all income is related to personal services.

Information Reported to the Partners on their Schedule SC K-1, Line 1. The entity reports to each partner their share of the entity’s total net federal taxable income of \$20,000,000 so that each individual can complete his SC Form 1040 and other state income tax returns. The entity reports \$200,000 to SC resident Partner A and \$400,000 to SC nonresident Partner B. Neither partner qualifies to use the safe harbor provision or file Form I-335. See Code Section 12-6-545(E), SC Revenue Ruling #21-15, and SC Revenue Ruling #08-2.

⁹ All compensation paid to the partners is income related to personal services.

¹⁰ \$20,000,000 + \$300,000 PET in State X times 5% SC apportionment factor.

¹¹ Assume State X does not allow the deduction of state taxes.

Below is information prepared by Partners A and B to determine their SC Individual Income Tax and SC Tax Credit Calculation for Pass-Through Entity Taxes Paid on Personal Service Income

SC Income Tax Calculation Partner A (SC Resident)		Partner B (SC Nonresident)		
		Explanation		Explanation
1. Federal Taxable Income	\$200,000		\$400,000	
2. SC Addback PET Tax Paid in State X	\$3,000	(1% x \$300,000)		
3.a. SC Resident Taxable Income	\$203,000	Lines 1 + 2		
3.b. SC Nonresident Taxable Income			\$20,300	(2% x \$1,015,000) see above
4. SC I-335 ATBI Adjustment	n/a		n/a	
5. SC Income Taxable at 7%	\$203,000		\$20,300	
6. SC Income Tax Before Credits	\$14,210	Line 5 x 7% ¹²	\$1,421	
7. SC Credit for Taxes Paid in State X	(\$2,132)	See Line 15 below	NONE – Nonresident individual taxpayer	
8. SC Tax Due – after credit for taxes paid in State X. (The credit computation was not shown for taxes paid in states other than X.)	\$12,078	Line 6 less Line 7	\$1,421	

SC Credit Calculation for Taxes Paid to State X – See Code Section 12-6-3400		
See Form SC 1040 TC – Worksheet for Taxes Paid	Partner A – State X	Partner B – State X*
9. SC Gross Income of Individual	\$203,000	
10. Portion of Line 9 taxed by State X (see above)	\$30,450	
11. Line 10 divided by Line 9 (percentage of SC income taxed by another state)	15%	
12. Amount of SC tax from Line 6 above	\$14,210	
13. Tentative SC Credit (Line 11 x Line 12)	\$2,132	
14. PET Paid in State X on Line 2 above	\$3,000	
15. Allowable Credit (Lesser of Line 13 or Line 14)	\$2,132	

*Nonresident individuals do not receive a credit against South Carolina income for taxes paid to another state under Code Section 12-6-3400.

EXAMPLE 2 – Pass-through entity only has income from a manufacturing business for which the taxpayer performs no personal services.

- Entity makes out-of-state election to pay tax at entity level in State X.
- Entity chooses not to make a SC election to pay tax at entity level this year under Code Section 12-6-545(G).
- Resident shareholder A, however, chooses to make an individual election to treat his shareholder income as “active trade or business income” as allowed under Code Section 12-6-545(A) – (F) subject to the 3% SC tax rate.

¹²For simplicity, this assumes the current 7% tax rate, although SC has a graduated tax rate. See Code Section 12-6-510 for the rates.

- No SC credit for taxes paid to other states is allowed to resident shareholder A who has no income taxed in SC and another state or to nonresident shareholder B. See explanation at end of this example.

Facts: The taxpayer, a Delaware S corporation, is a manufacturer owned by 50 individuals engaged in a multi-state business. South Carolina resident shareholder A owns a 1% share and SC nonresident shareholder B owns a 2% share. Shareholders A and B perform no personal services and receive no other income from any other source. The S corporation has a 5% SC apportionment factor. The S corporation did not make an election to pay its tax at the entity level in South Carolina, but did make a pass-through entity tax election (PET) in State X with a 15% apportionment factor and a 10% state tax rate. Its remaining income was earned in Texas and Florida. The S corporation has non-shareholder employees and pays wages. The S corporation’s ordinary business income is \$20,000,000 (after deductions including a PET deduction for State X of \$300,000) and its’ income is entirely from nonpersonal services. The S corporation has no other separately stated items of income, deduction, or credit. Neither individual is an owner of any other pass-through entities. **For South Carolina income tax purposes, the entity chooses not to elect under Code Section 12-6-545(G) to pay tax at the entity level** this year, however, each shareholder chooses to make an individual election to treat their shareholder income as “active trade or business income” as defined in Code Section 12-6-545 subject to the 3% SC tax rate.

Below is information prepared by the entity to determine federal taxable income, South Carolina taxable income, and income and taxes paid in State X for Shareholder A, a SC resident, and Shareholder B, a SC nonresident. The entity made a pass-through entity election in State X to pay tax on its business income at the entity level in State X. The entity did NOT make a pass-through entity election to pay tax on its business income at the entity level in South Carolina.

S corporation Items of Income and Deduction	Federal Sch. K Information of S corporation (as listed on the federal Schedules K and K-1)	Adjusted SC Amounts from Federal K-1 (after apportionment)	SC “Active Trade or Business Income” and Related Deductions of Electing S corporation	SC Active Trade or Business Income and Related Deductions
Ordinary Business Income	\$20,000,000	\$1,015,000 ¹³	\$0	\$1,015,000
Active Trade or Business Income			\$0	
SC Tax Paid Directly by Electing S corporation			\$0	
Total Amount of SC Income Passed Through to All Resident and Nonresident Shareholders				\$1,015,000

¹³ \$20,000,000 + \$300,000 PET in State X times 5% SC apportionment factor.

	Shareholder A – 1% Ownership SC Resident	Shareholder B – 2% Ownership SC Nonresident
Federal Sch. K	\$200,000 (1% x \$20 million)	\$400,000 (2% x \$20 million)
Adjusted SC Amounts	\$10,150 (1% x \$1,015,000)	\$20,300 (2% x \$1,015,000)
Out of State Income – amount calculated by S corporation	\$192,850	\$385,700
State X Apportioned Income	\$30,450 (15% x \$20.3 million x 1%)	\$60,900 (15% x \$20.3 million x 2%)
State X Pass through entity tax – 10% tax rate	\$3,000	\$6,000

Information Reported to each Shareholder on their Schedule SC K-1, Line 1. The entity reports to each shareholder their share of the entity’s total net federal taxable income of \$20,000,000 so that each individual can complete states’ income tax returns. The entity reports \$200,000 to SC resident owner A and \$400,000 to SC nonresident owner B. Neither owner qualifies to use the safe harbor provision. See Code Section 12-6-545(E), SC Revenue Ruling #21-15, and SC Revenue Ruling #08-2.

Below is information prepared by shareholders A and B to determine their SC Individual Income Tax and SC Tax Credit Calculation, if any, for Pass-Through Entity Taxes Paid on NonPersonal Service Income

SC Income Tax Computation:	Shareholder A (SC Resident)		Shareholder B (SC Nonresident)	
		Explanation		Explanation
1. Federal Taxable Income	\$200,000		\$400,000	
2. Addback PET Tax Paid in State X	\$3,000	(1% x \$300,000)		
3. Out of State Income	(\$192,850)	See above		
4. SC Nonresident Apportioned Income			\$20,300	(2% x \$1,015,000) see above
5. SC I-335 ATBI Adjustment – Election made by shareholder under Section 12-6-545(A) – (F)	(\$10,150)	See above	(\$20,300)	
6. Non-ATBI SC Taxable Income (Lines 1 through 5)	\$0		\$0	
7.a SC ATBI Tax at 3%	\$305	3% x \$10,150	\$609	3% x \$20,300
7.b SC Income Tax at 7% on Non-ATBI	\$0	All ATBI income	\$0	
8. SC Income Tax Before Credits	\$305	Lines 7.a + 7.b	\$609	Lines 7.a + 7.b
9. Credit for Taxes Paid in State X	NONE* – No personal service income		NONE* – The credit in 12-6-3400 applies only to SC residents	
10. SC Tax Due	\$305	Line 8 less Line 9	\$609	Line 8 less Line 9

***No credit for taxes paid to other states is allowed to resident shareholder A or nonresident shareholder B. In this example, resident shareholder A has no income taxed in SC and another state. Nonresident shareholder B is not eligible for a credit against South Carolina income for taxes paid by a resident to another state under Code Section 12-6-3400. This is consistent with South Carolina’s taxation of nonresidents, regardless of whether or not a pass-through entity election is made to pay tax at the entity level.**

APPENDIX

Code Section 12-6-3400

(A)(1) Resident individuals are allowed a credit against the taxes imposed by this chapter for income taxes paid to another state on income from sources within that state which is taxed under both this chapter and the laws of that state regardless of the taxpayer's residence.

(2) The credit allowed is the lesser of:

(a) the product of the fraction in which the numerator is total South Carolina income which is subject to income tax in another state and the denominator is total federal income adjusted by the modifications provided in Article 9 of this chapter and subject to allocation and apportionment as provided in Article 17 of this chapter, multiplied by South Carolina income tax before the credit allowed by this section; or

(b) the income tax actually paid to the other state on income taxed under this chapter.

(3) A copy of the income tax return filed with the other state must be filed with the South Carolina tax return at the time credit is claimed. If the credit is claimed because of a deficiency assessment notice, a copy of the notice and a receipt showing the payment must be filed.

(B) If a taxpayer is refunded or credited taxes paid to another state for which a credit has been allowed under this section, then a tax equal to that portion of the credit allowed is due and payable from the taxpayer within sixty days from the date the refund or the notice of the credit is received. If the amount of the tax is not paid within sixty days of receipt or notice, the taxpayer is subject to penalties and interest for failure to pay provided in Chapter 54 of this title.

(C) When a taxpayer is considered a resident of this State and is also considered a resident of another state under the laws of the other state, the department may, at its discretion, allow a credit against South Carolina income taxes for those taxes paid to the other state on income taxed under this chapter.