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LC 43 1908S/AP

House Bill 149 (AS PASSED HOUSE AND SENATE)

By: Representatives Williamson of the 115th, Carson of the 46th, Knight of the 130th, Blackmon of the 146th, and Petrea of the 166th

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
2 income taxes, so as to allow for certain elections to be made by Subchapter "S" corporations
3 and partnerships for the filing of tax returns and imposition of taxes; to provide for
4 definitions; to provide for an effective date and applicability; to provide for related matters;
5 to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes,
9 is amended by adding a new subparagraph to paragraph (7) of subsection (b) of Code Section
10 48-7-21, relating to taxation of corporations, to read as follows:

11 “(C)(i) A Subchapter 'S' corporation may annually make an irrevocable election, on
12 its timely filed return under Code Section 48-7-51, to pay the tax levied by this
13 chapter at the entity level for the taxable period covered by such return. Such
14 election must be made on or before the due date for filing the applicable income tax
15 return, including any extensions which have been granted.

16 (ii) Notwithstanding the provisions of subparagraph (B) of this paragraph, an electing
17 Subchapter 'S' corporation, with respect to a taxable period, shall pay an income tax
18 equivalent to 5.75 percent of its net income as computed pursuant to Code Section
19 48-7-21, and allocated and apportioned pursuant to Code Section 48-7-31, for such
20 taxable period, and such shareholders shall not recognize their respective share of the
21 portion of income on which tax was actually paid pursuant to this subparagraph.

22 (iii) No electing Subchapter 'S' corporation nor any of its shareholders shall be
23 entitled to any credit under Code Section 48-7-28 with respect to such tax so paid or
24 any deduction for such income under subsection (d) of Code Section 48-7-27;
25 provided, however, such electing Subchapter 'S' corporation shall otherwise be
26 eligible for credits provided by this chapter and shall be considered an 'other entity'
27 for purposes of Code Sections 48-7-29.16, 48-7-29.20, and 48-7-29.21.

28 (iv) The election under this subparagraph shall have no impact on the determination
29 of the basis of the shareholders of an electing Subchapter 'S' corporation in such
30 shareholders' stock and indebtedness of such electing Subchapter 'S' corporation,
31 except that such shareholders' pro rata share of the tax paid or accrued by such
32 electing Subchapter 'S' corporation pursuant to such election shall be taken into
33 account in determining such basis.

34 (v) In computing the net income that is subject to taxation, the electing Subchapter
35 'S' corporation shall not be allowed any deduction for taxes that are based on or
36 measured by gross or net income or any other variant thereof.

37 (vi) This subsection shall only apply to a Subchapter 'S' corporation that is 100
38 percent directly owned and controlled by persons eligible to be shareholders of an 'S'
39 corporation under Section 1361 of the Internal Revenue Code of 1986, as amended.

40 (vii) As used in this subparagraph, the term:

41 (I) 'Electing Subchapter 'S' corporation' means, with respect to a taxable period, a
42 Subchapter 'S' corporation that has made the election under this subparagraph with
43 respect to such taxable period.

44 (II) 'Subchapter 'S' corporation' means an entity subject to taxation under
45 Subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986 and
46 the regulations thereunder."

47 **SECTION 2.**

48 Said chapter is further amended by revising Code Section 48-7-23, relating to taxation of
49 partnerships, as follows:

50 "48-7-23.

51 (a) The net income of a partnership shall be computed in the same manner and on the same
52 basis as in the case of an individual except that the deduction of contributions for charitable
53 purposes allowed by the Internal Revenue Code of 1986 shall not be allowed. Individuals
54 carrying on business in partnership shall be liable for income tax only in their individual
55 capacity; and each partner shall include in his or her individual return his or her distributive
56 shares, whether distributed or not, of the net income of the partnership for the taxable year
57 except as provided in subsection (c) of Code Section 48-7-24. If the taxable year of a
58 partner is different from that of the partnership, the amount included in a partner's
59 individual return shall be based upon the income of the partnership for the taxable year of
60 the partnership ending with or within the partner's taxable year.

61 (b)(1) As used in this subsection, the term 'electing partnership' means, with respect to
62 a taxable period, a partnership that has made the election pursuant to paragraph (2) of this
63 subsection with respect to such taxable period.

64 (2) A partnership may annually make an irrevocable election, on its timely filed return
65 under Code Section 48-7-53, to pay the tax levied by this chapter at the entity level for
66 the taxable period covered by such return. Such election must be made on or before the

67 due date for filing the applicable income tax return, including any extensions which have
68 been granted.

69 (3) Notwithstanding subsection (a) of this Code Section, an electing partnership with
70 respect to a taxable period shall pay an income tax equivalent to 5.75 percent of its net
71 income as computed pursuant to Code Section 48-7-23, and allocated and apportioned
72 pursuant to Code Section 48-7-31, for such taxable period, and such partners shall not
73 recognize their respective share of the portion of income on which tax was actually paid
74 pursuant to this subsection.

75 (4) No electing partnership nor any of its partners shall be entitled to any credit under
76 Code Section 48-7-28 with respect to such tax so paid or any deduction for such income
77 under subsection (d) of Code Section 48-7-27; provided, however, such electing
78 partnership shall otherwise be eligible for credits provided by this chapter and shall be
79 considered an 'other entity' for purposes of Code Sections 48-7-29.16, 48-7-29.20, and
80 48-7-29.21.

81 (5) The election under this subsection shall have no impact on the determination of the
82 basis of the partners of an electing partnership in their interests of such electing
83 partnership, except that such partners' distributive share of the tax paid or accrued by such
84 partnership pursuant to such election shall be taken into account in determining such
85 basis.

86 (6) In computing the net income that is subject to taxation, the electing partnership shall
87 not be allowed any deduction for taxes that are based on or measured by gross or net
88 income or any other variant thereof.

89 (7) This subsection shall only apply to a partnership that is 100 percent directly owned
90 and controlled by persons eligible to be shareholders of an "S" corporation under Section
91 1361 of the Internal Revenue Code of 1986, as amended."

92 **SECTION 3.**

93 Said chapter is further amended by adding a new subsection to Code Section 48-7-24,
94 relating to nonresident members of resident partnerships and resident members of
95 nonresident partnerships, to read as follows:

96 "(d) This Code Section shall not apply to the partners of an electing partnership as defined
97 in paragraph (1) of subsection (b) of Code Section 48-7-23."

98 **SECTION 4.**

99 Said chapter is further amended by adding a new paragraph (16) to subsection (b) and
100 revising paragraph (2) of subsection (d) of Code Section 48-7-27, relating to computation of
101 taxable net income, as follows:

102 "(16) Georgia taxable net income shall be adjusted as provided in subparagraph (b)(7)(C)
103 of Code Section 48-7-21 and subsection (b) of Code Section 48-7-23."

104 "(2) Nonresident shareholders of a Georgia Subchapter 'S' corporation shall execute a
105 consent agreement to pay Georgia income tax on their portion of the corporate income
106 in order for such Subchapter 'S' corporation to be recognized for Georgia purposes. A
107 consent agreement for each shareholder shall be filed by the corporation with its
108 corporate tax return in the year in which the Subchapter 'S' corporation is first required
109 to file a Georgia income tax return. For a Subchapter 'S' corporation in existence prior
110 to January 1, 2008, the consent agreement shall be filed for each shareholder in the first
111 Georgia tax return filed for a year beginning on or after January 1, 2008. A consent
112 agreement shall also be filed in any subsequent year for any additional nonresident who
113 first becomes a shareholder of the Subchapter 'S' corporation in that year. Shareholders
114 of a federal Subchapter 'S' corporation which is not recognized for Georgia purposes may
115 make an adjustment to federal adjusted gross income in order to avoid double taxation
116 on this type of income. Adjustments shall not be allowed unless tax was actually paid by
117 such corporation. The provisions of this paragraph shall not apply to an electing

118 Subchapter 'S' corporation as defined in paragraph (7) of subsection (b) of Code Section
119 48-7-21.

120 **SECTION 5.**

121 Said chapter is further amended by adding a new paragraph (1.1) to Code Section 48-7-100,
122 relating to definitions, to read as follows:

123 "(1.1) 'Corporation' shall have the same meaning as provided in Code Section 48-7-1, and
124 shall also include electing Subchapter 'S' corporations as defined in paragraph (7) of
125 subsection (b) of Code Section 48-7-21 and electing partnerships as defined in paragraph
126 (1) of subsection (b) of Code Section 48-7-23 and for purposes of Code Section 48-7-117
127 for such electing partnerships, Code Section 48-7-23 shall be substituted for Code
128 Section 48-7-21."

129 **SECTION 6.**

130 Said chapter is further amended by adding a new subsection to Code Section 48-7-129,
131 relating to withholding tax on distributions to nonresident members of partnerships,
132 Subchapter "S" corporations, and limited liability companies, to read as follows:

133 "(e.1) This Code section shall not apply to electing Subchapter 'S' corporations as defined
134 in paragraph (7) of subsection (b) of Code Section 48-7-21 and electing partnerships as
135 defined in paragraph (1) of subsection (b) of Code Section 48-7-23."

136 **SECTION 7.**

137 This Act shall become effective upon its approval by the Governor or upon its becoming law
138 without such approval. This Act shall be applicable to all taxable years beginning on or after
139 January 1, 2022.

140

SECTION 8.

141 All laws and parts of laws in conflict with this Act are repealed.