S.C. Code, Section 12-6-545(G)
Income tax rates for pass through trade and business income; determination of income related to personal services.

(A) As used in this section:
   (1) "Active trade or business income or loss" means income or loss of an individual, estate, trust, or any other entity except those taxed or exempted from tax pursuant to Sections 12-6-530 through 12-6-550 resulting from the ownership of an interest in a pass-through business. Active trade or business income or loss does not include:
      (a)(i) passive investment income as defined in Internal Revenue Code Section 1362(d) generated by a pass-through business and income of the same type regardless of the type of pass-through business generating it; and
      (ii) expenses related to passive investment;
      (b) capital gains and losses;
      (c) payments for services referred to in Internal Revenue Code Section 707(c);
      (d) amounts reasonably related to personal services. All amounts paid as compensation and all guaranteed payments for services, but not for the use of capital, as defined in Internal Revenue Code Section 707(c) are deemed to be reasonably related to personal services. In addition, if an owner of a pass-through entity who performs personal services for the entity is not paid a reasonable amount for those personal services as compensation or payments referred to in Internal Revenue Code Section 707(c), all of the owner's income from the entity is presumed to be amounts reasonably related to personal services. For purposes of this section, amounts reasonably related to personal services include amounts reasonably related to the personal services of the owner, the owner's spouse, and any person claimed as a dependent on the owner's income tax return.
   (2) "Pass-through businesses" means sole proprietorships, partnerships, and "S" corporations, including limited liability companies taxed as sole proprietorships, partnerships, or "S" corporations.

(B)(1) Notwithstanding Section 12-6-510, a taxpayer may elect annually to have the income tax at the rate provided in item (2) of this subsection imposed annually on the active trade or business income received by the owner of a pass-through business. For joint returns, the election is effective for both spouses. The amount subject to tax pursuant to this section is not subject to tax pursuant to Section 12-6-510.

(2) The rate of the income tax imposed pursuant to this subsection is:

<table>
<thead>
<tr>
<th>Taxable Year Beginning in</th>
<th>Rate of Tax</th>
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<tbody>
<tr>
<td>2006</td>
<td>6.5 percent</td>
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<tr>
<td>2007</td>
<td>6 percent</td>
</tr>
<tr>
<td>2008</td>
<td>5.5 percent</td>
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<tr>
<td>2008 through 2011</td>
<td>5 percent</td>
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<tr>
<td>2012</td>
<td>4.33 percent</td>
</tr>
<tr>
<td>2013</td>
<td>3.67 percent</td>
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<tr>
<td>after 2013</td>
<td>3 percent</td>
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(C) Notwithstanding any other provision of this chapter, active trade or business loss must first be deducted, dollar for dollar against active trade or business income. Any remaining active trade or business loss is deductible from income taxed under Section 12-6-510 if otherwise allowable.

(D) The department may issue guidance as to what expenses reduce active trade or business income.

(E)(1) Notwithstanding item (A)(1)(d) of this section, if a taxpayer owns an interest in one or more pass-through businesses and his total South Carolina taxable income from pass-through entities for which he performs personal services is one hundred thousand dollars or less, excluding capital gains and losses, then the taxpayer may elect, instead of determining the actual amount of active trade or business income related to his personal services, to treat fifty percent of his active trade or business income as not related to his personal services. For purposes of this item, the term "taxpayer" includes both taxpayers who file a joint return.

(2) The department may provide other methods that may be used to determine an amount that is considered to be unrelated to the owner's personal services if it determines that the benefits to the State of taxing income from personal services at a higher rate are insufficient to justify the burdens imposed on the taxpayer.

(F) An income tax credit available to offset taxes due pursuant to Section 12-6-510 also apply against taxes imposed by this section.

(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 Section 12-6-2240, and none of it shall be treated as income from personal services that is allocated pursuant to Section 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.


Editor's Note
2021 Act No. 61, Section 2, provides as follows:
"SECTION 2. This act takes effect upon approval by the Governor and first applies to tax years beginning after 2020."

Effect of Amendment
2021 Act No. 61, Section 1, added (G).