

House Bill 149

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 elect, on its timely filed return under Code
12 Section 48-7-51, to pay tax under this title at the entity level for the taxable period
13 covered by such return.

14 (ii) Notwithstanding the provisions of subparagraph (B) of this paragraph, an electing
15 Subchapter 'S' corporation, with respect to a taxable period, shall pay an income tax
16 equivalent to 5.75 percent of its gross income and deductions that would otherwise

17 be recognized by its shareholders for Georgia purposes for such taxable period, and
18 such shareholders shall not recognize such gross income and deductions for Georgia
19 purposes.

20 (iii) An electing Subchapter 'S' corporation, with respect to a taxable period, may
21 deduct from the tax due under this subparagraph the tax paid by such corporation and
22 its shareholders upon its taxable income when the business, investment, or
23 employment of such corporation is in a state that levies a tax upon such corporation
24 or its shareholders with respect to such taxable income, and such shareholders shall
25 not be entitled to any deduction under Code Section 48-7-28 with respect to such tax
26 so paid. In no case shall the credit permitted under the foregoing provision exceed the
27 tax which would be payable to this state upon a like amount of taxable income.

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) As used in this subparagraph, the term:

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

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

SECTION 2.

41
42 Said chapter is further amended by revising Code Section 48-7-23, relating to taxation of
43 partnerships, as follows:

44 "48-7-23.

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

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

58 (2) A partnership may elect, on its timely filed return under Code Section 48-7-53, to pay
59 the tax levied by this chapter at the entity level for the taxable period covered by such
60 return.

61 (3) Notwithstanding subsection (a) of this Code Section, an electing partnership with
62 respect to a taxable period shall pay an income tax equivalent to 5.75 percent of its gross
63 income and deductions that would otherwise be recognized by its partners for Georgia
64 purposes for such taxable period, and such partners shall not recognize such gross income
65 and deductions for Georgia purposes.

66 (4) An electing partnership, with respect to a taxable period, may deduct from the tax due
67 under this subsection the tax paid by such partnership and its partners upon its taxable

68 income when the business, investment, or employment of such partnership is in a state
69 that levies a tax upon such partnership or its partners with respect to such taxable income,
70 and such partners shall not be entitled to any deduction under Code Section 48-7-28 with
71 respect to such tax so paid. In no case shall the credit permitted under the foregoing
72 provision exceed the tax which would be payable to this state upon a like amount of
73 taxable income.

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

79 **SECTION 3.**

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

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

85 **SECTION 4.**

86 Said chapter is further amended by revising paragraph (2) of subsection (d) of Code Section
87 48-7-27, relating to computation of taxable net income, as follows:

88 "(2) Nonresident shareholders of a Georgia Subchapter 'S' corporation shall execute a
89 consent agreement to pay Georgia income tax on their portion of the corporate income
90 in order for such Subchapter 'S' corporation to be recognized for Georgia purposes. A
91 consent agreement for each shareholder shall be filed by the corporation with its
92 corporate tax return in the year in which the Subchapter 'S' corporation is first required

93 to file a Georgia income tax return. For a Subchapter 'S' corporation in existence prior
94 to January 1, 2008, the consent agreement shall be filed for each shareholder in the first
95 Georgia tax return filed for a year beginning on or after January 1, 2008. A consent
96 agreement shall also be filed in any subsequent year for any additional nonresident who
97 first becomes a shareholder of the Subchapter 'S' corporation in that year. Shareholders
98 of a federal Subchapter 'S' corporation which is not recognized for Georgia purposes may
99 make an adjustment to federal adjusted gross income in order to avoid double taxation
100 on this type of income. Adjustments shall not be allowed unless tax was actually paid by
101 such corporation. The provisions of this paragraph shall not apply to an electing
102 Subchapter 'S' corporation as defined in paragraph (7) of subsection (b) of Code Section
103 48-7-21.

104 **SECTION 5.**

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

107 "(1.1) 'Corporation' shall have the same meaning as provided in Code Section 48-7-1, and
108 shall also include electing Subchapter 'S' corporations as defined in paragraph (7) of
109 subsection (b) of Code Section 48-7-21 and electing partnerships as defined in paragraph
110 (1) of subsection (b) of Code Section 48-7-23."

111 **SECTION 6.**

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

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

118 **SECTION 7.**

119 This Act shall become effective upon its approval by the Governor or upon its becoming law
120 without such approval. This Act shall be applicable to all taxable years beginning on or after
121 January 1, 2021.

122 **SECTION 8.**

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