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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

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A N A C T

RELATING TO TAXATION – BUSINESS CORPORATION TAX

Introduced By: Representatives Morales, Kislak, Alzate, Ranglin-Vassell, J Lombardi,
Potter, Henries, McGaw, Felix, and Williams

Date Introduced: March 02, 2022

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 44-11-2 and 44-11-2.2 of the General Laws in Chapter 44-11 entitled
2 "Business Corporation Tax" are hereby amended to read as follows:

3 **44-11-2. Imposition of tax.**

4 (a) Each corporation shall annually pay to the state a tax equal to nine percent (9%) of net
5 income, as defined in § 44-11-11, qualified in § 44-11-12, and apportioned to this state as provided
6 in §§ 44-11-13 -- 44-11-15, for the taxable year. For tax years beginning on or after January 1,
7 2015, each corporation shall annually pay to the state a tax equal to seven percent (7.0%) of net
8 income, as defined in § 44-11-13 -- 44-11-15, for the taxable year.

9 (b) A corporation shall pay the amount of any tax as computed in accordance with
10 subsection (a) after deducting from "net income," as used in this section, fifty percent (50%) of the
11 excess of capital gains over capital losses realized during the taxable year, if for the taxable year:

12 (1) The corporation is engaged in buying, selling, dealing in, or holding securities on its
13 own behalf and not as a broker, underwriter, or distributor;

14 (2) Its gross receipts derived from these activities during the taxable year amounted to at
15 least ninety percent (90%) of its total gross receipts derived from all of its activities during the year.
16 "Gross receipts" means all receipts, whether in the form of money, credits, or other valuable
17 consideration, received during the taxable year in connection with the conduct of the taxpayer's
18 activities.

19 (c) A corporation shall not pay the amount of the tax computed on the basis of its net

1 income under subsection (a), but shall annually pay to the state a tax equal to ten cents (\$.10) for
2 each one hundred dollars (\$100) of gross income for the taxable year or a tax of one hundred dollars
3 (\$100), whichever tax shall be the greater, if for the taxable year the corporation is either a "personal
4 holding company" registered under the federal Investment Company Act of 1940, 15 U.S.C. § 80a-
5 1 et seq., "regulated investment company," or a "real estate investment trust" as defined in the
6 federal income tax law applicable to the taxable year. "Gross income" means gross income as
7 defined in the federal income tax law applicable to the taxable year, plus:

- 8 (1) Any interest not included in the federal gross income; minus
9 (2) Interest on obligations of the United States or its possessions, and other interest exempt
10 from taxation by this state; and minus
11 (3) Fifty percent (50%) of the excess of capital gains over capital losses realized during the
12 taxable year.

13 (d)(1) A small business corporation having an election in effect under subchapter S, 26
14 U.S.C. § 1361 et seq., shall not be subject to the Rhode Island income tax on corporations, except
15 that the corporation shall be subject to the provisions of subsection (a), to the extent of the income
16 that is subjected to federal tax under subchapter S. Effective for tax years beginning on or after
17 January 1, 2015, a small business corporation having an election in effect under subchapter S, 26
18 U.S.C. § 1361 et seq., shall be subject to the minimum tax under § 44-11-2(e).

19 (2) The shareholders of the corporation who are residents of Rhode Island shall include in
20 their income their proportionate share of the corporation's federal taxable income.

21 (3) [Deleted by P.L. 2004, ch. 595, art. 29, § 1.]

22 (4) [Deleted by P.L. 2004, ch. 595, art. 29, § 1.]

23 (e) Minimum tax. The tax imposed upon any corporation under this section, including a
24 small business corporation having an election in effect under subchapter S, 26 U.S.C. § 1361 et
25 seq., shall not be less than four hundred fifty dollars (\$450). For tax years beginning on or after
26 January 1, 2017, the tax imposed shall not be less than four hundred dollars (\$400).

27 (f) Additional tax.

28 (1) There is imposed an additional tax on a corporation's net income, as defined in § 44-
29 11-2.3, at a rate equal to the difference between:

30 (i) The rate of tax imposed by section 11(1)(b) of the Internal Revenue Code (26 U.S. Code
31 § 11(1)(b)), in effect for the year 2016; and

32 (ii) The current rate of tax imposed by section 11(1)(b) of the Internal Revenue Code (26
33 U.S. Code § 11(1)(b)).

34 (2) The additional tax under this section shall be administered, and penalties shall be

1 [imposed, under the same provisions of this title as the tax imposed under § 44-11-2\(a\).](#)

2 **44-11-2.2. Pass-through entities -- Definitions -- Withholding -- Returns.**

3 (a) Definitions.

4 (1) "Administrative adjustment request" means an administrative adjustment request filed
5 by a partnership under IRC section 6227.

6 (2) "Audited partnership" means a partnership or an entity taxed as a partnership federally
7 subject to a partnership level audit resulting in a federal adjustment.

8 (3) "Direct partner" means a partner that holds an interest directly in a partnership or pass-
9 through entity.

10 (4) "Federal adjustment" means a change to an item or amount determined under the
11 Internal Revenue Code (IRC) that is used by a taxpayer to compute Rhode Island tax owed whether
12 that change results from action by the IRS, including a partnership level audit, or the filing of an
13 amended federal return, federal refund claim, or an administrative adjustment request by the
14 taxpayer. A federal adjustment is positive to the extent that it increases state taxable income as
15 determined under Rhode Island state laws and is negative to the extent that it decreases state taxable
16 income as determined under Rhode Island state laws.

17 (5) "Final determination date" means if the federal adjustment arises from an IRS audit or
18 other action by the IRS, the final determination date is the first day on which no federal adjustments
19 arising from that audit or other action remain to be finally determined, whether by IRS decision
20 with respect to which all rights of appeal have been waived or exhausted, by agreement, or, if
21 appealed or contested, by a final decision with respect to which all rights of appeal have been
22 waived or exhausted. For agreements required to be signed by the IRS and the taxpayer, the final
23 determination date is the date on which the last party signed the agreement.

24 (6) "Final federal adjustment" means a federal adjustment after the final determination date
25 for that federal adjustment has passed.

26 (7) "Indirect partner" means a partner in a partnership or pass-through entity that itself
27 holds an interest directly, or through another indirect partner, in a partnership or pass-through
28 entity.

29 (8) "Member" means an individual who is a shareholder of an S corporation; a partner in a
30 general partnership, a limited partnership, or a limited liability partnership; a member of a limited
31 liability company; or a beneficiary of a trust;

32 (9) "Nonresident" means an individual who is not a resident of or domiciled in the state, a
33 business entity that does not have its commercial domicile in the state, and a trust not organized in
34 the state.

1 (10) "Partner" means a person that holds an interest directly or indirectly in a partnership
2 or other pass-through entity.

3 (11) "Partnership" means an entity subject to taxation under Subchapter K of the IRC.

4 (12) "Partnership level audit" means an examination by the IRS at the partnership level
5 pursuant to Subchapter C of Title 26, Subtitle F, Chapter 63 of the IRC, as enacted by the Bipartisan
6 Budget Act of 2015, Public Law 114-74, which results in Federal Adjustments.

7 (13) "Pass-through entity" means a corporation that for the applicable tax year is treated as
8 an S Corporation under IRC § 1362(a) [26 U.S.C. § 1362(a)], and a general partnership, limited
9 partnership, limited liability partnership, trust, or limited liability company that for the applicable
10 tax year is not taxed as a corporation for federal tax purposes under the state's check-the-box
11 regulation.

12 (14) "Tiered partner" means any partner that is a partnership or pass-through entity.

13 (b) Withholding.

14 (1) A pass-through entity shall withhold income tax at the highest Rhode Island
15 withholding tax rate provided for individuals or seven percent (7%) for corporations on the
16 member's share of income of the entity that is derived from or attributable to sources within this
17 state distributed to each nonresident member and pay the withheld amount in the manner prescribed
18 by the tax administrator. The pass-through entity shall be liable for the payment of the tax required
19 to be withheld under this section and shall not be liable to the member for the amount withheld and
20 paid over in compliance with this section. A member of a pass-through entity that is itself a pass-
21 through entity (a "lower-tier pass-through entity") shall be subject to this same requirement to
22 withhold and pay over income tax on the share of income distributed by the lower-tier pass-through
23 entity to each of its nonresident members. The tax administrator shall apply tax withheld and paid
24 over by a pass-through entity on distributions to a lower-tier pass-through entity to the withholding
25 required of that lower-tier pass-through entity.

26 (2) A pass-through entity shall, at the time of payment made pursuant to this section, deliver
27 to the tax administrator a return upon a form prescribed by the tax administrator showing the total
28 amounts paid or credited to its nonresident members, the amount withheld in accordance with this
29 section, and any other information the tax administrator may require. A pass-through entity shall
30 furnish to its nonresident member annually, but not later than the fifteenth day of the third month
31 after the end of its taxable year, a record of the amount of tax withheld on behalf of the member on
32 a form prescribed by the tax administrator.

33 (c) Notwithstanding subsection (b), a pass-through entity is not required to withhold tax
34 for a nonresident member if:

1 (1) The member has a pro rata or distributive share of income of the pass-through entity
2 from doing business in, or deriving income from sources within, this state of less than \$ 1,000 per
3 annual accounting period;

4 (2) The tax administrator has determined by regulation, ruling, or instruction that the
5 member's income is not subject to withholding;

6 (3) The member elects to have the tax due paid as part of a composite return filed by the
7 pass-through entity under subsection (d); or

8 (4) The entity is a publicly traded partnership as defined by 26 U.S.C. § 7704(b) that is
9 treated as a partnership for the purposes of the Internal Revenue Code and that has agreed to file
10 an annual information return reporting the name, address, taxpayer identification number, and other
11 information requested by the tax administrator of each unitholder with an income in the state in
12 excess of \$ 500.

13 (d) Composite return.

14 (1) A pass-through entity may file a composite income tax return on behalf of electing
15 nonresident members reporting and paying income tax at the state's highest marginal rate on the
16 members' pro rata or distributive shares of income of the pass-through entity from doing business
17 in, or deriving income from sources within, this State.

18 (2) A nonresident member whose only source of income within a state is from one or more
19 pass-through entities may elect to be included in a composite return filed pursuant to this section.

20 (3) A nonresident member that has been included in a composite return may file an
21 individual income tax return and shall receive credit for tax paid on the member's behalf by the
22 pass-through entity.

23 (e) Partnership level audit.

24 (1) A partnership shall report final federal adjustments pursuant to IRC section 6225(a)(2)
25 arising from a partnership level audit or an administrative adjustment request and make payments
26 by filing the applicable supplemental return as prescribed under § 44-11-2.2(e)(1)(ii), and as
27 required under § 44-11-19(b), in lieu of taxes owed by its direct and indirect partners.

28 (i) Failure of the audited partnership or tiered partner to report final federal adjustments
29 pursuant to IRC section 6225(a) and 6225(c) or pay does not prevent the tax administrator from
30 assessing the audited partnership, direct partners, or indirect partners for taxes they owe, using the
31 best information available, in the event that a partnership or tiered partner fails to timely make any
32 report or payment required by § 44-11-19(b) for any reason.

33 (ii) The tax administrator may promulgate rules and regulations, not inconsistent with law,
34 to carry into effect the provisions of this chapter.

1 (f) Additional tax.

2 (1) There is imposed an additional tax upon the amount of a taxpayer's Rhode Island taxable
3 income that corresponds to any deduction taken pursuant to section 199A of the Internal Revenue
4 Code (26 U.S. Code § 199A), or any successor provision thereto. This section shall not apply to
5 a taxpayer with a federal taxable income below the threshold amount, as defined in section 199A(e)
6 of the Internal Revenue Code (26 U.S. Code 199A(e)), plus fifty thousand dollars (\$50,000) for
7 taxpayers who are unmarried filing singly or one hundred thousand dollars (\$100,000) for taxpayers
8 who are married filing jointly.

9 (2) The rate of such additional tax shall be equal to the highest federal income tax rates in
10 effect for the taxable year that would apply to the amount deducted under section 199A of the
11 Internal Revenue Code (26 U.S. Code § 199A), or any successor provision thereto, but for the
12 application of such section.

13 (3) The amount of an taxpayer's Rhode Island taxable income that corresponds to the
14 amount of any deduction taken pursuant to section 199A of the Internal Revenue Code (26 U.S.
15 Code § 199A) is the amount that bears the same relationship to the taxpayer's total Rhode Island
16 taxable income as the amount deducted under section 199A of the Internal Revenue Code (26 U.S.
17 Code § 199A) bears to the taxpayer's total federal taxable income as determined without regard to
18 such deduction.

19 (4) The additional tax under this section shall be administered, and penalties shall be
20 imposed, under the same provisions of this title as the tax imposed under this section.

21 SECTION 2. This act shall take effect on January 1, 2024.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO TAXATION – BUSINESS CORPORATION TAX

1 This act would impose an additional tax on corporations equal to the tax cut created by the
2 2017 Tax Cuts and Jobs Act. This act would also eliminate the qualified business income deduction
3 created by the 2017 Tax Cuts and Jobs Act available to pass-through entities.

4 This act would take effect on January 1, 2024.

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