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Client Alert: South Carolina Enacts SALT Cap Workaround

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South Carolina recently joined the growing number of states to enact legislation that provides a state workaround to the \$10,000 State and Local Tax (SALT) federal income tax deduction cap imposed on individual taxpayers by the 2017 Tax Cuts and Jobs Act. Senate Bill 627 allows qualifying entities, such as partnerships, S corporations, and limited liability companies who have made either the partnership tax election or S corporation tax election to pay an optional, entity-level South Carolina income tax on active trade or business income. Note that the statute does not address entities taxed as C corporations or disregarded, single-member Limited Liability Companies (LLCs). This allows qualified owners to circumvent the \$10,000 deduction cap by excluding this income, so long as the entity elected to pay (and does pay) the tax at the entity level. In general, a qualified owner means a partner or shareholder of a qualified entity that is an individual, estate, trust, or any other entity except C corporations, banking and insurance companies, or tax-exempt entities (e.g., nonprofits).

This is an annual election available to qualified entities and qualified owners starting in 2021. The election must be made on or before the due date, including extensions, for filing the attendant income tax return. We anticipate the South Carolina Department of Revenue will soon issue guidance on electing and complying with this new legislation.