

BILL SUMMARY
1st Session of the 57th Legislature

Bill No.:	HB 2665
Version:	FULLPCS1
Request Number:	8259
Author:	Rep. Wallace
Date:	2/27/2019
Impact:	Tax Commission: Current Impact Unknown

Research Analysis

The proposed committee substitute for HB2665 creates the Pass-Through Entity Tax Equity Act of 2019 to allow any entity required to file an Oklahoma partnership income tax return or Oklahoma S corporation income tax return to make an election to pay state income tax attributable to its equity owners on behalf of its equity owners, whether the owner is a natural person, a corporation or another pass-through entity. The amount of tax due by an electing pass-through entity is the sum of the total tax attributable to each equity owner, which is computed by multiplying the following three factors:

- each owner's distributive share of the electing pass-through entity;
- the pass-through entity's Oklahoma net entity income for the tax year; and
- the highest state marginal individual income tax rate (currently 5%) if the owner is an individual, trust or estate or 6 percent if the member is a corporation, pass-through entity or financial institution.

Any pass-through entity can make the optional election to pay the pass-through tax beginning tax year 2019. Beginning tax year 2020, an electing pass-through entity must make estimated pay tax payments. Furthermore, if the pass-through entity election results in a net entity loss for Oklahoma income tax purpose for any tax year, the net entity loss may be carried back and carried forward by the electing pass-through entity for state income tax purposes. State income tax can only be levied once on pass-through income, whether it occurs at the business level to be paid by an electing pass-through entity, or at the ownership level to be paid by the equity owner(s). The measure outlines procedures and deadlines for the Oklahoma Tax Commission to structure the process for election and provides for the adjustment of Oklahoma taxable income for any gain or loss attributable to pass-through income if no election is made.

The legislative intent of the measure is to establish a revenue-neutral mechanism to provide a more fair and simplified taxation of pass through entities and their members in the state.

Prepared By: Quyen Do

Fiscal Analysis

Preliminary analysis by the Tax Commission:

The Proposed Committee Substitute (FULLPCS1) for HB 2665 proposes to enact the *Pass-Through Entity Tax Equity Act of 2019*. This measure would allow certain pass-through entities (those required to file either an Oklahoma partnership income tax return or an Oklahoma S corporation income tax return) to irrevocably elect to be subject to tax on the entity level. This measure further allows income or losses for those pass-through entities that have made the election to not be considered when computing the Oklahoma taxable income of the partner, member or shareholder of the electing entity. The tax rate for the electing entity will be the highest marginal individual income tax rate¹ if the entity is taxed on income that is distributed to individuals, trusts or estates or six percent (6%) if the income is distributed to a corporation.

68 O.S. §§ 2358, 2365, 2368, 2370.2 and 2372 have been amended to conform with the *Pass-Through Entity Tax Equity Act of 2019*.

Under current law, generally, entities that are required to file partnership returns or an Oklahoma S corporation return do not pay tax at the entity level², rather income or losses are passed to the partner, member or shareholder and are taxed on those returns.

The revenue impact of this proposal is unknown at this time. Unknown administrative costs are likely as a result of this measure.

¹ Currently five percent (5%) - 68 O.S. § 2355

² Oklahoma Partnership returns and Oklahoma S Corporation returns allow non-resident partners or shareholders to elect to pay the tax at the entity level in lieu of filing an Oklahoma individual income tax return.

Prepared By: Mark Tygret

Other Considerations

None.