

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 3559

By: Kendrix

COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; amending 68 O.S. 2021, Section 2355.1P-4, which relates to computation of the pass-through entity tax and elections; modifying permissible methods for making election; authorizing election pursuant to timely filed income tax return; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 2021, Section 2355.1P-4, is amended to read as follows:

Section 2355.1 A. For tax years beginning on or after January 1, 2022, there is hereby levied on each electing pass-through entity the pass-through entity tax which shall be calculated as follows:

1. With regard to each member of an electing pass-through entity, the electing pass-through entity shall multiply such member's Oklahoma distributive share of the electing pass-through entity's Oklahoma net entity income for the tax year by:

- 1 a. the highest Oklahoma marginal income tax rate levied
2 on the taxable income of natural persons pursuant to
3 Section 2355 of this title if the member is an
4 individual, trust, or estate,
- 5 b. four percent (4%) if the member is classified as a
6 corporation pursuant to the Internal Revenue Code, and
7 is not classified as an S corporation,
- 8 c. four percent (4%) if the member is a pass-through
9 entity,
- 10 d. four percent (4%) if the member is a financial
11 institution subject to tax imposed pursuant to the
12 provisions of Section 2370 of this title, and
- 13 e. the highest Oklahoma marginal income tax rate that
14 would be applicable to any item of the electing pass-
15 through entity's income or gain without the election
16 made pursuant to subsection F of this section, if the
17 member is an organization described in Section 2359 of
18 this title; and

19 2. The electing pass-through entity shall aggregate the amounts
20 determined with respect to all members pursuant to paragraph 1 of
21 this subsection and the pass-through entity tax for the applicable
22 tax year shall be equal to such aggregated tax amount for the tax
23 year with respect to which the election has been made.

1 B. Sections 2385.29, 2385.30 and 2385.31 of this title shall
2 not be applicable to an electing pass-through entity.

3 C. The pass-through entity tax shall be due and payable on the
4 same date as provided for the filing of the electing pass-through
5 entity's Oklahoma income tax return, and for tax years beginning on
6 or after January 1, 2020, estimated tax payments shall be required
7 as provided in Section 2385.9 of this title.

8 D. If the pass-through entity election results in a net entity
9 loss for Oklahoma income tax purposes in any tax year, the net
10 entity loss may be carried back and carried forward by the electing
11 pass-through entity for Oklahoma income tax purposes as set forth in
12 subparagraph b of paragraph 3 of subsection A of Section 2358 of
13 this title.

14 E. Notwithstanding paragraph 2 of subsection C of Section 2368
15 of this title, a nonresident individual who is a member of an
16 electing pass-through entity is not required to file an Oklahoma
17 income tax return, if, for the taxable year, the only source of
18 income allocable or apportionable to this state for the member, or,
19 if a joint income tax return is filed, the member and his or her
20 spouse, is from one or more electing pass-through entities, and each
21 electing pass-through entity files and pays the taxes due under this
22 section.

23 F. Any entity required to file an Oklahoma partnership income
24 tax return or an Oklahoma S corporation income tax return may elect

1 to become an electing pass-through entity. The election shall be
2 made on such form and in such manner as the Oklahoma Tax Commission
3 may prescribe, and any election under this subsection shall have
4 priority over and revoke any election to file a composite Oklahoma
5 partnership return or requirement of a Subchapter S corporation to
6 report and pay tax on behalf of a nonresident shareholder for the
7 same tax year. An election may also be made by filing an income tax
8 return prior to but not later than the due date of the applicable
9 income tax return, including any extension.

10 G. Pursuant to procedures prescribed by the Tax Commission, if
11 the amount of tax required to be paid by a pass-through entity
12 pursuant to the provisions of this section is not paid when due, the
13 Oklahoma Tax Commission may revoke the pass-through entity's
14 election under subsection F of this section effective for the first
15 year for which the tax is not paid.

16 H. The election authorized by the provisions of this section
17 shall be made pursuant to procedures prescribed by the Tax
18 Commission and shall be filed (i) within sixty (60) days of
19 enactment and pursuant to procedures prescribed by the Oklahoma Tax
20 Commission for any income tax year beginning on or after January 1,
21 2019, and prior to January 1, 2020, or (ii) for any income tax year
22 beginning on or after January 1, 2020, at any time during the
23 preceding tax year or two (2) months and fifteen (15) days after the
24 beginning of the tax year or by filing a timely income tax return as

1 authorized pursuant to subsection F of this section. Any such
2 election shall be binding until revoked pursuant to procedures
3 prescribed by the Tax Commission. The effective date of a
4 revocation (i) made within two (2) months and fifteen (15) days of
5 the electing pass-through entity's taxable year shall be the first
6 day of such taxable year and (ii) made during the electing pass-
7 through entity's taxable year but after such fifteenth day shall be
8 effective on the first day of the following taxable year. No
9 election made by a pass-through entity with respect to income tax to
10 be paid by such entity using the calculations prescribed by this
11 section shall be binding on any other pass-through entity, and each
12 pass-through entity shall be able to make an election under the
13 provisions of this act independently.

14 SECTION 2. It being immediately necessary for the preservation
15 of the public peace, health or safety, an emergency is hereby
16 declared to exist, by reason whereof this act shall take effect and
17 be in full force from and after its passage and approval.

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