

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   2nd Session of the 59th Legislature (2024)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 3559

By: Kendrix of the House

and

**Howard** of the Senate

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10                                   COMMITTEE SUBSTITUTE

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

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

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

21                   Section 2355.1 A. For tax years beginning on or after January  
22                   1, 2022, there is hereby levied on each electing pass-through entity  
23                   the pass-through entity tax which shall be calculated as follows:

24                   1. With regard to each member of an electing pass-through  
entity, the electing pass-through entity shall multiply such

1 member's Oklahoma distributive share of the electing pass-through  
2 entity's Oklahoma net entity income for the tax year by:

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

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

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

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

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

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

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

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

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

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

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

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21 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated  
22 02/26/2024 - DO PASS, As Amended and Coauthored.

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