

1 **SENATE FLOOR VERSION**

2 March 25, 2024

3 ENGROSSED HOUSE  
4 BILL NO. 3559

By: Kendrix and May of the  
House

5 and

6 Howard of the Senate

7  
8  
9 An Act relating to revenue and taxation; amending 68  
10 O.S. 2021, Section 2355.1P-4, which relates to  
11 computation of the pass-through entity tax and  
12 elections; modifying permissible methods for making  
13 election; and authorizing election pursuant to timely  
14 filed income tax return.

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

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

18 Section 2355.1P-4 A. For tax years beginning on or after  
19 January 1, 2022, there is hereby levied on each electing pass-  
20 through entity the pass-through entity tax which shall be calculated  
21 as follows:

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

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 COMMITTEE REPORT BY: COMMITTEE ON FINANCE  
15 March 25, 2024 - DO PASS  
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