



MISSISSIPPI DEPARTMENT OF REVENUE

Income Tax

Notice 80-23-002

April 13, 2023

Updated Guidance on Pass-Through Entity Election

House Bill 1668 of the 2023 Legislative Session was signed into law on March 27, 2023. This bill amended Miss. Code Ann. Section 27-7-26 by revising the method by which a partnership, S corporation or other similar pass-through entity may elect to become an “electing pass-through entity” for state income tax purposes, and provided that any additional income tax credits generated by the electing pass-through entity shall be passed through to the owners on a pro rata basis and that any excess credit may be carried forward as an overpayment or refunded. Limitations applicable to credits generated by the electing pass-through entity shall apply at the owner, member, partner or shareholder level. This bill is effective from and after January 1, 2023 and applies to any income tax return with an original due date on or after January 1, 2023.

Eligibility for the Pass-Through Entity Election

For calendar year 2022 and each calendar year thereafter, any partnership, S corporation or similar pass-through entity desiring to be taxed as an electing pass-through entity (“electing PTE”) must have a vote satisfying the threshold required for taking official actions as specified within the entity’s governing documents. If the entity’s governing documents do not contain any such provisions for the approval of official actions, the election shall then be accomplished by a vote or written consent of the owners, members, partners or shareholders holding greater than fifty percent (50%) of the voting control of the entity, and also if the entity has a governing body, by vote or written consent of the members of the governing body of the entity. Fiduciaries are not eligible to make a pass-through entity election.

Making or Revoking the Pass-Through Entity Election

Both the election to become an electing PTE and the revocation of that election is made by submitting the Pass-Through Entity Election Form, form 84-381, to the Department of Revenue at any time during the tax year for which the entity elects to be taxed as an electing PTE, or for which the entity elects to no longer be taxed as an electing PTE, or by the due date or the extended due date of the Pass-Through Entity Tax Return for that year, or by the date such return is filed, whichever is latest. The election shall be binding for the taxable year and all subsequent taxable years unless the election is revoked by the electing PTE. Both the election and revocation of the election shall be accomplished by vote or written consent as mentioned in the “Eligibility for Pass-Through Entity Election” section above.

Filing an Electing Pass-Through Entity Return

An electing PTE will file the Pass-Through Entity Tax Return, form 84-105, and check the “Electing Pass-Through Entity” check box in order to be taxed at the entity level. A copy of the Pass-Through Entity Election Form, form 84-381, should also be attached to the return. The Mississippi Schedule K-1s, form 84-132, for each owner, member, partner or shareholder of the electing PTE are also required to be attached to the return. The K-1s should



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have the "Electing Pass-Through Entity" check box checked with the amount of tax paid by the electing PTE for each partner provided on the K-1s. Because the effective date of the legislation is for returns due after January 1, 2023, there are many software development changes that must be implemented for both the Department of Revenue and software companies. As a result, Electing Pass-Through Entity Tax Returns cannot be filed at this time. We will provide an update when we have a better timeline on a date that these returns will be available to file.

Estimated Tax Payments

Electing PTEs that have an annual income tax liability in excess of \$200 will be required to make estimated tax payments. Estimates are due on or before the fifteenth day of the fourth month, sixth month, ninth month and twelfth month of the income year. Payments should be submitted using the Pass-Through Entity Income Tax Voucher, form 84-300. Estimated tax payments must not be less than ninety percent (90%) of the annual income tax liability. Any taxpayer that fails to file a return and pay the tax by the due date of the return or that underestimates the required amount shall be liable for a penalty of ten percent (10%) plus interest of one half of one percent ($\frac{1}{2}$ of 1%) per month on underpayment of tax from the payment due date until paid or until the next payment due date, whichever is earlier. Any electing PTE that receives a penalty notice for underestimate on their 2022 first and second quarter estimated payments should contact our office to receive abatement.

Composite Returns

A pass-through entity can elect to file the Pass-Through Entity Tax Return as an electing PTE or as a composite pass-through entity. An entity cannot file as both. Composite returns can only be filed on behalf of non-resident partners with no other activity in Mississippi other than that from the pass-through entity. Once an entity begins to file a composite return, it must continue to file in that manner unless permission to change has been granted by the Department or until an election to file as an electing PTE has been made.

Pass-Through Entity Credits

Each owner, member, partner or shareholder of an electing PTE shall report their pro rata or distributive share of the income of the electing PTE on their separate income tax returns. Each owner, member, partner or shareholder of an electing PTE may claim a credit equal to their pro rata or distributive share of the tax paid by the electing PTE. Any additional income tax credits generated by the electing PTE shall pass through to the owners, members, partners, or shareholders on a pro rata basis and may be claimed on their separate income tax returns. In the event an owner's, member's, partner's or shareholder's aggregate credits exceed his or her income tax liability, such excess credit shall be carried forward as an overpayment or refunded at the election of that person. Limitations applicable to the credits generated by the electing PTE, other than the credit for income taxes paid by the electing PTE, shall also apply at the owner, member, partner or shareholder level. The amount and type(s) of income tax



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credits should be provided on the Mississippi K-1(s). A copy of the K-1(s) received from the electing PTE must be attached to the owner's, member's, partner's or shareholder's separate return.

Individuals

Individuals will be allowed to take a tax credit for taxes paid to other states and/or the tax credit for taxes paid on the electing PTE return. Mississippi residents that are required to report income from other states to Mississippi will be allowed a tax credit for taxes paid to other states by filing the Tax Credit for Income Tax Paid to One Or More Other States, form 80-160, with a copy of the other state's tax return(s) and/or K-1(s) attached to the Mississippi Individual Income Tax Return. For those states where the owners, members, partners or shareholders do not file a return, documentation of the amount of tax paid to another state on the taxpayer's behalf by another entity, such as a K-1, must be attached to the Mississippi return.

For the credit for taxes paid on the electing PTE return, a copy of the K-1(s) received from the electing PTE must be attached to the owner's, member's, partner's or shareholder's return with the Tax Credit for Income Tax Paid by Electing Pass-Through Entity, form 80-161.

Businesses

Partnerships, S corporations or similar pass-through entities that are owners, members, partners or shareholders of an electing PTE can also take a tax credit for taxes paid on the electing PTE return on their separate Mississippi Pass-Through Entity Tax Returns, form 84-105. A copy of the K-1(s) received from the electing PTE must be attached to the owner's, member's, partner's or shareholder's separate Pass-Through Entity Tax Return with the Tax Credit for Income Tax Paid by Electing Pass-Through Entity, form 84-161.

Fiduciaries

Fiduciaries are not eligible to make a pass-through entity election. However, a fiduciary that is an owner, member, partner or shareholder of an electing PTE is allowed to take a tax credit in an amount equal to the pro rata or distributive share of income tax paid by the electing PTE for the corresponding taxable year. A copy of the K-1(s) received from the electing PTE should be attached to the fiduciary return with the Tax Credit for Income Tax Paid by Electing Pass-Through Entity, form 80-161.