

An Act

ENROLLED HOUSE
BILL NO. 2963

By: Wallace and Hilbert of the
House

and

Thompson and Hall of the
Senate

An Act relating to revenue and taxation; amending Section 4, Chapter 201, O.S.L. 2019 (68 O.S. Supp. 2020, Section 2355.1P-4), which relates to pass-through entity taxation; modifying certain rates; and providing an effective date.

SUBJECT: Revenue and taxation

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

SECTION 1. AMENDATORY Section 4, Chapter 201, O.S.L. 2019 (68 O.S. Supp. 2020, Section 2355.1P-4), is amended to read as follows:

Section 2355.1P-4 A. For tax years beginning on or after January 1, ~~2019~~ 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:

- a. the highest Oklahoma marginal income tax rate levied on the taxable income of natural persons pursuant to Section 2355 of ~~Title 68 of the Oklahoma Statutes~~ this

title if the member is an individual, trust, or estate,

- b. ~~six percent (6%)~~ four percent (4%) if the member is classified as a corporation pursuant to the Internal Revenue Code, and is not classified as an S corporation,
- c. ~~six percent (6%)~~ four percent (4%) if the member is a pass-through entity,
- d. ~~six percent (6%)~~ four percent (4%) if the member is a financial institution subject to tax imposed pursuant to the provisions of Section 2370 of ~~Title 68 of the Oklahoma Statutes~~ this title, and
- e. the highest Oklahoma marginal income tax rate that would be applicable to any item of the electing pass-through entity's income or gain without the election made pursuant to subsection F of this section, if the member is an organization described in Section 2359 of ~~Title 68 of the Oklahoma Statutes~~ this title; and

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

B. Sections 2385.29, 2385.30 and 2385.31 of ~~Title 68 of the Oklahoma Statutes~~ this title shall not be applicable to an electing pass-through entity.

C. The pass-through entity tax shall be due and payable on the same date as provided for the filing of the electing pass-through entity's Oklahoma income tax return, and for tax years beginning on or after January 1, 2020, estimated tax payments shall be required as provided in Section 2385.9 of ~~Title 68 of the Oklahoma Statutes~~ this title.

D. If the pass-through entity election results in a net entity loss for Oklahoma income tax purposes in any tax year, the net entity loss may be carried back and carried forward by the electing pass-through entity for Oklahoma income tax purposes as set forth in

subparagraph b of paragraph 3 of subsection A of Section 2358 of this title.

E. Notwithstanding paragraph 2 of subsection C of Section 2368 of ~~Title 68 of the Oklahoma Statutes~~ this title, a nonresident individual who is a member of an electing pass-through entity is not required to file an Oklahoma income tax return, if, for the taxable year, the only source of income allocable or apportionable to this state for the member, or, if a joint income tax return is filed, the member and his or her spouse, is from one or more electing pass-through entities, and each electing pass-through entity files and pays the taxes due under this section.

F. Any entity required to file an Oklahoma partnership income tax return or an Oklahoma S corporation income tax return may elect to become an electing pass-through entity. The election shall be made on such form and in such manner as the Oklahoma Tax Commission may prescribe, and any election under this subsection shall have priority over and revoke any election to file a composite Oklahoma partnership return or requirement of a Subchapter S corporation to report and pay tax on behalf of a nonresident shareholder for the same tax year.

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

H. The election authorized by the provisions of this section shall be made pursuant to procedures prescribed by the Tax Commission and shall be filed (i) within sixty (60) days of enactment and pursuant to procedures prescribed by the Oklahoma Tax Commission for any income tax year beginning on or after January 1, 2019, and prior to January 1, 2020, or (ii) for any income tax year beginning on or after January 1, 2020, at any time during the preceding tax year or two (2) months and fifteen (15) days after the beginning of the tax year. Any such election shall be binding until revoked pursuant to procedures prescribed by the Tax Commission. The effective date of a revocation (i) made within two (2) months and fifteen (15) days of the electing pass-through entity's taxable year shall be the first day of such taxable year and (ii) made during the electing pass-through entity's taxable year but after such fifteenth day shall be effective on the first day of the

following taxable year. No election made by a pass-through entity with respect to income tax to be paid by such entity using the calculations prescribed by this section shall be binding on any other pass-through entity, and each pass-through entity shall be able to make an election under the provisions of this act independently.

SECTION 2. This act shall become effective January 1, 2022.

Passed the House of Representatives the 18th day of May, 2021.

Presiding Officer of the House
of Representatives

Passed the Senate the 20th day of May, 2021.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____