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Income Tax

Changes to the Pass-Through Entity Election
Act 450 of the 2023 Regular Session

Act 450 of the 2023 Regular Session of the Louisiana Legislature (Act 450) adds a second termination procedure for the Pass-Through Entity ("PTE") Election[1]. Act 450 also grants an income exclusion for trusts or estates that are a shareholder, member, or partner in an entity that made a PTE election. The purpose of this bulletin is to provide guidance relative to the new provisions governing the PTE election, which are effective for taxable periods beginning on or after January 1, 2023.

Termination

Prior to Act 450, an entity seeking to terminate a PTE election could only do so by obtaining written approval of at least 50% of the ownership interest of the entity[2] and submitting a written request for termination to the Department of Revenue (LDR). The request must show a material change in circumstance and approval must be granted by LDR before the termination is effective. Act 450 did not change this process but did create an additional option for an automatic prospective termination of the PTE election.

The automatic termination requires written approval of at least 50% of the ownership interest of the entity but, approval is automatic, provided all requirements are timely satisfied. To request an automatic termination, the entity must apply by filing Form R-6983, *Termination of the Pass-Through Entity Tax Election* available here.

The entity must submit the application and all required documentation no later than November 1 prior to the close of the calendar year, or 60 days prior to the close of the taxable year for fiscal year filers. The termination of a PTE election is effective for the next taxable year and prohibits the entity or its successor from making another PTE election for the next five taxable years.

[1] *See* La. R.S. 47:287.732.2, which allows an S corporation or entity taxed as a partnership to elect to be taxed as if the entity had been required to file as a C corporation.
[2] Ownership interest is based upon capital account balances. For an S corporation or other pass-through entity where shareholders do not have capital account balances, the determination of ownership interest is made by examining ownership percentages. Ownership can be evidenced by shares of stock, membership shares, or partnership shares.

Exclusion of Income Taxed at Entity Level

Louisiana Revised Statute 47:297.14 grants a PTE exclusion for individual shareholders, members, or partners. The exclusion applies to income that is taxed at the entity level. It does not apply to any income that does not bear tax at the entity level under the election. For resident individuals, the modification is made on Schedule E of Form IT-540*, Louisiana Resident Income Tax Return*. For non-resident individuals, the modification is made on the Nonresident and Part-Year Resident (NPR) Worksheet of Form IT-540B, *Louisiana Nonresident and Part-Year Resident Income Tax Return*.

Act 450 extends the PTE exclusion to estates and trusts that are shareholders, partners, or members in an entity that made a PTE election. The exclusions are provided in La. R.S. 47:300.6 and 300.7 for resident and nonresident estates and trusts, respectively. Similar to individuals, the exclusion is for all income or loss that was included in the estate's or trust's federal taxable income, but which is being taxed at the entity level for Louisiana income tax purposes after the election is made. For resident and nonresident estates and trusts, the modification is made on Lines 2D and 3D and Schedule A, Lines 4 and 5D, of the IT-541, *Fiduciary Income Tax Return,* respectively.

If excludable income earned by an estate or trust participating as a shareholder, partner, or member of an electing entity is distributed to an individual beneficiary, the individual may exclude that income through the procedures applicable to individuals. The beneficiary must file an individual income tax return in Louisiana for the taxable year in which the income is earned to claim the exclusion.

Income earned by a corporation participating as a shareholder, partner or member of an electing entity is taxable to the corporation and ineligible for the exclusion.

Questions concerning this publication may be submitted by email to Policy.Publications@La.gov.

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