



MULTISTATE INCOME/FRANCHISE TAX

Montana enacts pass-through entity tax election Tax Alert

Overview

On May 19, 2023, Montana [Senate Bill 554](#) (S.B. 554) was enacted into law. Under the legislation, pass-through entities may make an annual election to pay state tax at the entity level for taxable years beginning after December 31, 2022.

This Tax Alert summarizes some of the provisions of S.B. 554.

Montana pass-through entity tax election

- Effective for taxable years beginning after December 31, 2022, pass-through entities, including partnerships and S corporations, may annually elect to pay Montana tax at the entity level.
- The pass-through entity must designate a Montana pass-through entity representative who is authorized to make the election and has the sole authority to act on behalf of the pass-through entity, and the direct owners and indirect owners are bound by those actions.
- The election must be made no later than the due date, including extensions, for filing the pass-through entity's Montana tax return.
- The election, once made, is irrevocable for that taxable year.

Pass-through entity tax calculation

- The pass-through entity tax is imposed on the distributive share of Montana source income for all owners subject to the individual income tax, including individuals, estates and trusts, and pass-through entities.
- Electing entities may substitute the distributive share of Montana source income allocated to owners who are residents for the distributive share of Montana source income for all resident owners for computing the pass-through entity tax. Resident owners include individuals, estates, or trust owners that are resident of Montana.

- The tax rate for the pass-through entity tax is equal to the highest marginal individual income tax rate in effect under Montana Code § 15-30-2103, which is 6.9% for taxable year 2023 and 5.9% for taxable year 2024.

Pass-through entity tax credit

- An owner that is not a pass-through entity may claim a refundable credit against their individual income taxes equal to their distributive share of tax paid by the electing pass-through entity.
- An owner that is an electing pass-through entity may claim a refundable credit against their composite tax, withholding, or pass-through entity tax equal to their distributive share of tax paid by the electing pass-through entity.
- An owner that is a pass-through entity not making the pass-through entity tax election must allocate its distributive share of the entity tax paid by the electing pass-through entity and any amount of estimated tax paid to owners subject to individual income tax based on the owner's share of profit and loss. The owner that is a pass-through entity not making the pass-through entity election may claim the remainder as an overpayment or refund.
- The above provisions do not prevent a Montana resident owner from claiming an individual income tax credit for taxes paid to another state.

Other considerations

- The pass-through entity tax is in lieu of composite tax and withholding requirements.
- A nonresident owner is not required to file a Montana income tax return if, for that tax year, all of the nonresident owner's Montana source income is subject to the pass-through entity tax.
- Electing pass-through entities are required to make quarterly estimated payments and are subject to underpayment interest under Montana Code § 15-30-2512(5)(a).
- Electing pass-through entities are subject to the penalties and interest under Montana Code § 15-1-216.

Get in touch

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Have a question relating to this or any other pass-through entity tax regime? Reach out to one of our national multistate pass-through entity tax specialists.

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