



MULTISTATE INCOME/FRANCHISE TAX

Georgia enacts a pass-through entity-level tax election

Tax Alert

Overview

On May 4, 2021, Georgia enacted [House Bill 149](#) (H.B. 149), which provides an entity-level tax election for S-corporations and partnerships. This annual election must be made on or before the due date for filing the applicable income tax return, including extensions. The election will be available for tax years beginning on or after January 1, 2022.

H.B. 149 – Entity-level tax election

H.B. 149 permits S-corporations and partnerships (collectively “PTEs”) to annually make an irrevocable election on their timely-filed returns to pay Georgia income tax at the entity level for the taxable period. Electing PTEs will pay income tax at a 5.75% rate on their Georgia-source net income (i.e., under the corporate allocation and/or apportionment rules of O.C.G.A. § 48-7-31).

The computation of net income for electing S-corporations will generally be computed under O.C.G.A. § 48-7-21, and the computation of net income for electing partnerships will generally be computed under O.C.G.A. § 48-7-23. One exception included in H.B. 149 is that, in computing its net income, the electing PTE will “not be allowed any deduction for taxes that are based on or measured by gross or net income or any variant thereof.”

PTE election effect on shareholder/partner income

H.B. 149 provides that shareholders and partners of electing PTEs will not recognize their respective share of the portion of income on which tax was actually paid at the entity level. Accordingly, it further provides that O.C.G.A. § 48-7-24, relating to income of non-resident members of resident partnerships and of resident members of non-resident partnerships, does not apply to electing partnerships.

Such electing PTEs and their resident shareholders or partners will be required to forego both: (1) deductions under O.C.G.A. § 48-7-27(d) (which include, among other items, an adjustment to federal adjusted gross income for the entity's income taxed in another state which imposes an entity-level income tax); and (2) credits under O.C.G.A. § 48-7-28 (which provides a credit to residents for income taxes paid to other states, limited by the amount of tax that would be payable to Georgia on the same amount of taxable income).

Considerations

Eligible PTEs should consult with their tax advisors prior to making this new election to pay Georgia income tax at the PTE level. In particular, resident shareholders/partners considering this election should weigh the benefits of shifting the incidence of Georgia income tax to the PTE against any loss of deductions for the PTE's income taxed in another state and any loss of credits for income taxes paid to other states. The results could vary significantly on a case-by-case basis, depending on the PTE's Georgia apportionment factor and the extent to which it pays income taxes to other states.

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