



MULTISTATE INCOME/FRANCHISE

## West Virginia enacts pass-through entity tax election Tax Alert

### Overview

On March 28, 2023, West Virginia [Senate Bill 151](#) (S.B. 151) was signed into law. Under the legislation, pass-through entities may make an annual election to pay an entity level state tax for taxable years beginning on and after January 1, 2022.

This Tax Alert summarizes some of the provisions of S.B. 151.

### West Virginia pass-through entity tax election

- Effective for taxable years beginning on and after January 1, 2022.
- Eligible pass-through entities include any partnership or other business entity that is not subject to the West Virginia corporate income tax and excludes entities that are disregarded for federal income tax purposes.
- The election is an annual election that must be made on a form prescribed by the commissioner.
- The election is only applicable to the tax year for which the election is made, and once made, is irrevocable for that year.
- The election must be made on or before the due date for filing the applicable tax return, including any extensions granted.

### Pass-through entity tax calculation

- The pass-through entity tax is imposed on the West Virginia taxable income of an electing pass-through entity.
- Although there is some ambiguity in the law, West Virginia taxable income for West Virginia residents may include income sourced to other states.
- The tax rate for the pass-through entity tax is the highest marginal individual tax rate, which is currently 6.5%.

- An electing pass-through entity may be eligible for applicable credits, deductions, or other adjustments to taxable income provided under West Virginia law, provided that the pass-through entity's taxable income must be adjusted to eliminate any federal deduction for state and local income taxes.
- The pass-through entity tax is calculated without regard to any deductions or credits otherwise permitted to be claimed by an owner or member in computing the owner's tax liability and not utilized by the pass-through entity in determining its taxable income.
- In the case of an overpayment of tax, only the pass-through entity may request a refund of the overpayment.
- Shareholders, owners, and partners are jointly and severally liable for any underpayment of tax not paid by or collected from the pass-through entity.

### Pass-through entity tax credit

- Owners of an electing pass-through entity may claim a credit against their West Virginia income tax liability equal to their share of pass-through entity tax paid.
- If the credit exceeds the owner's tax due, the excess may be carried forward by the owner for up to five taxable years.

### Credit for residents who pay income tax to another state

- Effective for taxable years beginning on and after January 1, 2022, residents may claim a credit against their West Virginia individual income tax for their share of pass-through entity taxes paid to another state if the income tax imposed by the other state on a pass-through entity is substantially similar to West Virginia's pass-through entity tax.

### 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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