



MULTISTATE INCOME/FRANCHISE TAX

Colorado enacts changes to pass-through entity tax

Tax Alert

Overview

On May 16, 2022, Colorado's Governor signed [Senate Bill 124](#) (S.B. 124) into law, which includes certain changes to Colorado's recently enacted elective pass-through entity tax. See our previously issued [Tax Alert](#) for more details about this tax, as originally enacted.

This Tax Alert summarizes some of the relevant provisions of S.B. 124 effective for tax years beginning on or after January 1, 2018.

Pass-through entity tax election

- S.B. 124 amends the pass-through entity tax election to be effective for tax years beginning on or after January 1, 2018 in which there is a limitation on individual income tax deductions under Internal Revenue Code section 164. Previously, a pass-through entity was not able to make the election until tax years beginning on or after January 1, 2022.
- For tax years beginning on or after January 1, 2018, but prior to January 1, 2022, the election shall be made on or after September 1, 2023, but before July 1, 2024, in a composite amended tax return. The composite amended tax returns shall not include any changes unrelated to the election.
- An entity making the pass-through entity tax election for tax years beginning on or after January 1, 2018, but prior to January 1, 2022 will not incur any penalties for filing late nor owe interest on such amounts.

Calculation of pass-through entity tax

- The tax rate for the pass-through entity tax is amended to equal the corporate tax rate for the applicable tax year. For tax years beginning on or after January 1, 2018 but before January 1, 2020, the tax rate is 4.63%. For tax years beginning on or after January 1, 2020 but before January 1, 2021, the tax rate is 4.55%. For tax years beginning on or after January 1, 2021 but before January 1, 2022, the tax rate is 4.5%.

- The requirement to make estimated tax payments does not apply for tax years beginning prior to January 1, 2023.
- S.B. 124 amends the usage of income tax credits such that any credits allowed under Colorado law that are attributable to the electing pass-through entity are passed through to and must be claimed by the electing pass-through entity owner.
- S.B. 124 removes the provision allowing an electing pass-through entity to carry forward any excess income tax credit, net operating loss, or other modification.

Pass-through entity tax credit

- This bill replaces the electing pass-through entity owner income deduction with a refundable tax credit equal to the electing pass-through entity owner's share of the Colorado pass-through entity tax imposed on the electing pass-through entity with respect to the electing pass-through entity owner's income.

Credit for taxes paid to other states

- S.B. 124 removes the provision that electing pass-through entities are entitled to a credit for taxes paid to other states whether the tax is paid by the entity itself or the electing pass-through entity owners.
- Resident owners of pass-through entities should calculate the credit for taxes paid to other states without regard to the Colorado pass-through entity tax credit.
- Resident shareholders of a S corporation may claim a credit for taxes paid to another state imposed on the S corporation's income. There is no similar credit available to resident partners of a partnership for income taxes imposed on the partnership.

Other considerations

- Electing pass-through entities are not required to remit tax payments on behalf of nonresident owners.

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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