



MULTISTATE INCOME/FRANCHISE TAX

## Idaho enacts a pass-through entity-level tax election Tax Alert

### Overview

On April 15, 2021, Idaho Governor Brad Little signed House Bill 317 (“H.B. 317”) into law instituting an elective pass-through entity-level tax.<sup>1</sup> As a response to the \$10,000 cap on the federal individual income tax deduction for state and local taxes that was enacted as part of the Tax Cuts and Jobs Act, H.B. 317 permits certain pass-through entities (PTEs) to elect to pay Idaho income tax at the entity level. This bill is effective retroactively to January 1, 2021. Under the new law, such an election may be made for any taxable year by filing the election with a timely filed original return for that taxable year.

### Entity-level income tax election for pass-through entities

H.B. 317 allows PTEs to make an election to file and pay Idaho income tax at the PTE entity level. The election is available under the new Idaho Code Ann. section 63-3026B titled “Affected Business Entities – State and Local Tax Treatment”. The election is made on a timely-filed original return for the taxable year and must be signed by each owner of the entity at the time the election is filed or by an officer, manager, or owner of the entity authorized to make such an election on behalf of the PTE.<sup>2</sup>

PTEs that meet the definition of a partnership or S corporation under Idaho laws and treated as such under the Internal Revenue Code are permitted to make this election.<sup>3</sup>

Once an election is made, the PTE computes its Idaho net entity income or loss. If the PTE has Idaho net income, the PTE owes tax to the state, calculated at the corporate rate of 6.925%.<sup>4</sup> If the PTE calculates a Idaho net loss, the loss may be carried forward for the years the PTE elects to be subject to the entity-level tax until fully utilized.

If the PTE making the election is a direct or indirect owner of another PTE electing to pay the entity-level tax, then the owner-PTE may adjust its Idaho net income or loss to exclude its share of income or loss, derived from or connected to Idaho sources, distributed from the owned-PTE.<sup>5</sup> Additionally, a non-resident individual owner is not required to file an Idaho income tax return

if the owner's only income allocable or apportionable to Idaho is from one or more electing PTEs that file and pay the PTE tax under these provisions.<sup>6</sup>

The PTE tax is due by April 15 following the end of the applicable tax year.<sup>7</sup> H.B. 317 applies the penalty and interest provisions under the state's income tax laws to this PTE tax.<sup>8</sup>

## Credit for tax paid by PTE for members

H.B. 317 also provides a refundable tax credit for owners of an electing PTE who are subject to Idaho income tax (e.g., an Idaho resident or part-year resident individual) that is equal to the owner's direct and indirect pro rata share of the PTE tax paid for that period by the PTE of which the taxpayer is an owner.<sup>9</sup>

## Considerations

Eligible PTEs should consult with their tax advisors regarding this new election to pay Idaho income tax at the PTE level. Clients considering making the PTE election should determine financial statement implications related to the election. Additionally, taxpayers should consider the impact of the election on tax-exempt partners or partners not subject to Idaho income tax, use of depletion deductions, credit utilization, and sales of interests in a publicly traded partnership.

## Get in touch

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## Footnotes

<sup>1</sup> Idaho Code Ann. § 63-3026B, as added by H.B. 317, Laws 2021; a copy of H.B. 317 is available [here](#).

<sup>2</sup> Idaho Code Ann. § 63-3026B(2).

<sup>3</sup> Idaho Code Ann. § 63-3026B(1)(e)-(f); see also Idaho Code Ann. §§ 63-3006A; 63-3006B.

<sup>4</sup> Idaho Code Ann. §§ 63-3026B(3)-(4).

<sup>5</sup> Idaho Code Ann. § 63-3026B(5).

<sup>6</sup> Idaho Code Ann. § 63-3026B(6).

<sup>7</sup> Idaho Code Ann. § 63-3026B(3).

<sup>8</sup> Idaho Code Ann. § 63-3026B(10).

<sup>9</sup> Idaho Code Ann. §§ 63-3026B(8)-(9).

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