



MULTISTATE INCOME/FRANCHISE TAX

Oregon enacts temporary elective pass-through entity business alternative income tax Tax Alert

Overview

[Oregon Senate Bill 727](#) ("SB 727"), signed into law on July 19, 2021, establishes an elective pass-through entity level business alternative income tax based on the amount of the entity's distributive proceeds. SB 727 is effective on the 91st day after the legislature adjourned sine die on June 27, 2021 and applicable to tax years beginning on or after January 1, 2022 and before January 1, 2024.

This Tax Alert summarizes some of the provisions in SB 727.

Oregon bill creates a temporary elective pass-through entity level business alternative income tax.

SB 727 creates an entity level business alternative income tax for pass-through entities (PTEs).

- A PTE, defined as a partnership, S corporation, or limited liability company (LLC) electing to be treated as a partnership or S corporation, may elect to pay a business alternative income tax.
- To be eligible for the election, all members of the PTE are either individuals subject to Oregon's personal income tax or are other PTEs wholly owned by individuals who are subject to Oregon's personal income tax. Members are owners of the PTEs defined as shareholders of an S corporation, a partner in a general, limited, or limited liability partnership or members of an LLC.
- The election requires consent of all members of the PTE who are members at the time of an election, or the election can be made by an officer, manager, or authorized member of the PTE. The election is an annual election to be made by the due date of the PTE's return (including extensions).
 - Retroactive elections are not allowed. An election may only be revoked by consent of all members (who are members at the

time of the revocation) and the revocation must be made before the due date of the PTE return.

- A PTE electing the business alternative income tax is subject to a tax at a rate 9% on the first \$250,000 of distributive proceeds and a rate of 9.1% on distributive proceeds in excess of \$250,000. Distributive proceeds consist of the PTE's net income, dividends, royalties, interest, rents, guaranteed payments, and gains derived from or connected to Oregon sources.
- The electing PTE is required to provide each of its members an annual report of their share of distributive proceeds and tax paid. Individual members of electing PTEs will receive a refundable Oregon personal income tax credit for the member's pro-rata share of the PTE tax paid.
- PTEs are required to file an annual entity return reporting the business alternative income tax. The return and related tax liability payment are due on the same date as the corresponding federal income tax return. The Oregon Department of Revenue (Department) may develop and implement an e-filing system for this new return.
- The Department will apply the administrative procedures regarding audits, examinations, periods of limitation, assessments, collection, liens, delinquencies, claims for refund, refunds, and other related procedures as applicable to personal income tax. The Department may enact rules and procedures necessary for the implementation, administration, and enforcement of this business alternative income tax.
- This business alternative income tax election is available for tax years beginning on or after January 1, 2022 and before January 1, 2024. Additionally, this elective PTE business income tax is set to automatically repeal if the the federal state and local tax deduction limit under IRC section 164(b)(6) is repealed.

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