Electing Pass-Through Entity FAQs

September 11, 2023

What entity types can elect to be treated as an electing pass-through entity?

For calendar year 2022 and each calendar year thereafter, any partnership, S Corporation or similar pass-through entity can elect to be treated as an electing pass-through entity. Fiduciaries are not eligible for this election.

How does a pass-through entity make an election to be treated as an electing pass-through entity?

The election to become an electing pass-through entity is made by submitting form 84-381, the Pass-Through Entity Election Form, to the Department of Revenue at any time during the tax year for which the entity elects to be taxed as an electing pass-through entity, or for which the entity elects to no longer be taxed as an electing pass-through entity. The entity must have a vote satisfying the threshold required for taking official actions as specified within the entity's governing documents. If the entity's governing documents do not contain any such provisions for the approval of official actions, the election shall then be accomplished by a vote or written consent of the owners, members, partners or shareholders holding greater than fifty percent (50%) of the voting control of the entity, and also if the entity has a governing body, by vote or written consent of the members of the governing body of the entity. Form 84-381 may be submitted to the Department via paper or online at Taxpayer Access Point (TAP).

Steps to make the election on TAP:

- Log into Taxpayer Access Point
- Go to your Pass-Through Entity account
- Click on "Submit Pass-Through Election Form"
- Follow the instructions to complete and submit the Election Form

Can a pass-through entity make the election to be treated as an electing pass-through entity by simply filing the tax return?

No, the election must be made by filing the Pass-Through Entity Election Form, 84-381, at any time during the tax year for which the entity elects to be taxed as an electing pass-through entity, or by the due date , or by the date such return is filed, whichever is latest.

When is a pass-through entity required to make the election?

The election must be made by filing Form 84-381 at any time during the tax year for which the entity elects to be taxed as an electing pass-through entity, or by the due date or by the date such return is filed, whichever is latest.

If the entity has already filed a Pass-Through Entity Return, can the return be amended to make an election to file as an electing pass-through entity?

No, the election must be made by filing the Pass-Through Entity Election Form, 84-381, at any time during the tax year for which the entity elects to be taxed as an electing pass-through entity, or by the due date or by the date such return is filed, whichever is latest. Once the Pass-Through Entity Return is filed, it cannot be amended to make a pass-through entity election.

Does an electing pass-through entity need to make an annual election each year?

Once the pass-through entity election is made, the election shall be binding for the taxable year and all subsequent taxable years unless it is revoked by the pass-through entity. Annual filings of the election form are not required.

When can a pass-through entity revoke its election as an electing pass-through entity?

The revocation of an existing pass-through entity election can be made by submitting form 84-381 to the Department at any time during the tax year for which the entity elects to be taxed as an electing pass-through entity, or by the due date or by the date such return is filed, whichever is latest. The entity must have a vote satisfying the threshold required for taking official actions as specified within the entity's governing documents. If the entity's governing documents do not contain any such provisions for the approval of official actions, the election shall then be accomplished by a vote or written consent of the owners, members, partners or shareholders holding greater than fifty percent (50%) of the voting control of the entity, and also if the entity has a governing body, by vote or written consent of the members of the governing body of the entity.

For entities that have multiple layers of ownership, is the entity that owns an electing pass-through entity required to also make a pass-through entity election in order to utilize the credit received for taxes paid by the electing pass-through entity?

No, a partnership, S Corporation or other similar pass-through entity that owns an electing pass-through entity does not need to make an election to be able to claim or utilize the credit for taxes paid on the Electing Pass-Through Entity Return. The credit from the electing pass-through entity would continue to be passed through by each entity on K-1s to their partners until it can be taken on the tax return(s) where the income of the pass-through entity is filed and paid.

For entities that have multiple layers of ownership, does each level have the option to elect to be taxed as an electing pass-through entity?

Yes, each level has the option to elect to be taxed as an electing pass-through entity.

Are electing pass-through entities required to make estimated tax payments?

Yes, electing pass-through entities that have an annual income tax liability in excess of $200 will be required to make estimated tax payments. Estimates are submitted using the Pass-Through Entity Income Tax Voucher, form 84-300, and are due on or before the fifteenth day of the fourth month, sixth month, ninth month and twelfth month of the income year. Estimated tax payments must not be less than ninety percent (90%) of the annual income tax liability. Any pass-through entity that underestimates the required amount or that fails to pay the tax by the due date of the return shall be liable for a penalty of ten percent (10%) plus interest of one half of one percent (1/2 if 1%) per month on the amount of underpayment from the payment due date until paid or until the next payment due date, whichever is earlier.

Can the prior year tax exception for estimated tax payments be used for electing pass-through entities?

Yes, the prior year tax exception and other underestimate tax exceptions provided in the law would apply to partnerships, S corporations and other similar pass-through entities that have made the pass-through entity election and will be filing an Electing Pass-Through Entity Return. However, the entity may not use more than one exception. See the "Corporate Estimated Tax Payments" section in Mississippi Title 35, Part III, Subpart 11, Chapter 21, Section 101 for the estimated tax provisions and exceptions that would apply to electing pass-through entities.

Can the prior year income tax for the first year of an electing pass-through entity be zero when determining the amount of estimated tax payments?

For the initial year of the Electing Pass-Through Entity Return, the prior year income tax liability would be based on the amount of income calculated on the Pass-Through Entity Return before it was passed through to the partners in the prior year. Just because the election was made to file the income and pay the tax on the Pass-Through Entity Return in the current year, does not mean that the pass-through entity did not have a tax liability in the prior year.

Will the entity be penalized if estimated tax payments are not made?

Yes, any pass-through entity that underestimates the required amount or that fails to pay the tax by the due date of the return shall be liable for a penalty of ten percent (10%) plus interest of one half of one percent (1/2 if 1%) per month on the amount of underpayment from the payment due date until paid or until the next payment due date, whichever is earlier. Underestimate interest and penalty for partnerships and S corporations or other similar pass-through entities should be calculated using Form 83-305, Underestimate of Corporate Income Tax Worksheet.

If the pass-through entity election is made, can the estimated tax payments that were already paid by partners on an individual basis be transferred or refunded?

In the initial year of making the pass-through entity election, estimated tax payments can be transferred from the individual partner account to the electing pass-through entity account or can be refunded to the individual partner. To request a refund or to transfer payments, the taxpayer would need to send in a letter requesting the specific payments and amounts they want to be refunded or transferred.

How does an electing pass-through entity file an Electing Pass-Through Entity Tax Return?

An electing pass-through entity will file the Pass-Through Entity Tax Return, form 84-105, and check the "Electing Pass-Through Entity" check box. A copy of the Pass-Through Entity Election Form, form 84-381, should also be attached to the return. The Mississippi Schedule K-1s, form 84-132s, for each owner, member, partner or shareholder of the electing pass-through entity are also required to be attached to the return. The K-1s should have the "Electing Pass-Through Entity" check box checked with the amount of tax paid by the electing pass-through entity for each partner provided on the K-1s.

How is the tax credit for taxes paid on the Electing Pass-Through Entity Return calculated?

The amount of credit for taxes paid on the Electing Pass-Through Entity Return is equal to the partner's pro rata or distributive share of the tax paid (form 84-105, line 9) by the electing pass-through entity for the corresponding taxable year. The partner's amount of credit for taxes paid by the electing pass-through entity on their behalf is provided to each partner on the Mississippi K-1, form 84-132. The partner must then file the Tax Credit For Income Tax Paid By Electing Pass-Through Entity, form 80-161 (individuals) or Form 84-161 (businesses), with their separate income tax return to determine the amount of credit for taxes paid on their behalf by electing pass-through entities. The K-1(s) received from electing pass-through entities must be attached to the return.

Can any excess credit for taxes paid on the Electing Pass-Through Entity Return be refunded or carried forward?

Yes, in the event a partner's credit for taxes paid on the Electing Pass-Through Entity Return exceeds his or her income tax liability, such excess credit can be carried forward or refunded at the election of the partner. The Tax Credit For Income Tax Paid By Electing Pass-Through Entity, form 80-161 (Individuals) or Form 84-161 (Businesses), must be filed with the partner's return to determine the amount of excess credit for taxes paid on your behalf by electing pass-through entities.

Can the incentive credits earned by the electing pass-through entity be passed through to the partners of the electing pass-through entity?

Yes, any additional income tax credits generated by the electing pass-through entity can be passed through to the partners on a pro rata basis and may be claimed on the returns of those partners. In the event the partner's aggregate income tax credits exceed his or her income tax liability, such excess credit can be carried forward or refunded at the election of the partner. Limitations applicable to the credits generated by the electing pass-through entity shall apply at the owner, member, partner or shareholder level. If the incentive credits are claimed by the electing pass-through entity, then the incentive credits cannot flow through to the partners. The incentive credits can only be taken on one return.

Can a partner choose to claim the credit for taxes paid on the Electing Pass-Through Entity Return after any other credits earned?

Yes, the partner can choose to take incentive credits before claiming the credit for taxes paid on the Electing Pass-Through Entity Return. The partner must file the Tax Credit For Income Tax Paid By Electing Pass-Through Entity, form 80-161 (individuals) or Form 84-161 (businesses), with their separate income tax return and provide the amount of credit they are claiming for taxes paid on their behalf by electing pass-through entities. If no credit is being claimed, then the partner would enter zero on line 7 of form 80-161 (individuals) or line 5 on form 84-161 (businesses).

Can an individual partner take the credit for taxes paid to another state and the tax credit for taxes paid on the Electing Pass-Through Entity Return?

Yes, individuals will be allowed to take a tax credit for taxes paid to other states and/or the tax credit for taxes paid on the Electing Pass-Through Entity Tax Return. Individuals must file the Tax Credit for Income Tax Paid to One Or More Other States, form 80-160, with a copy of the other state's tax return(s) and/or K-1(s) attached to the Mississippi Individual Income Tax Return in order to receive the credit for taxes paid to another state. For the credit for taxes paid on the Electing Pass-Through Entity Return, a copy of the K-1(s) received from the electing pass-through entity must be attached to the partner's return with the Tax Credit for Income Tax Paid by Electing Pass-Through Entity, form 80-161.

Can the individual partner's credit for taxes paid to other states be taken on the Electing Pass-Through Entity Return?

No, the credit for taxes paid to other states cannot be taken at the entity level. The credit for taxes paid to other states can only be taken by individual resident taxpayers.

Does a non-resident partner have to file a Mississippi Non-Resident Individual Income Tax Return if his or her only income in Mississippi is from the electing pass-through entity?

No, non-residents that have no other income in Mississippi apart from the income earned and paid by the electing pass-through entity, do not have to file a Mississippi Non-Resident Individual Income Tax Return.