

HOUSE SUMMARY OF SENATE AMENDMENTS

HB 428

2023 Regular Session

Pressly

TAX/INCOME TAX: Extends to estates, trusts, and partnerships the flow-through entity income exclusion allowed to individuals

Synopsis of Senate Amendments

1. Revises present law relative to elections by which S corporations and other flow-through entities may be taxed in the same manner as C corporations to allow for prospective termination of such elections.
2. Provides with respect to applications for prospective termination of such elections.
3. Establishes conditions which must be satisfied in order for such applications to become effective.
4. Stipulates that upon the effectiveness of the termination of an entity's election, no election otherwise allowed by present law shall apply for the succeeding five taxable years of the entity or its successor.

Digest of Bill as Finally Passed by Senate

Present law provides for all of the following:

- (1) An election that authorizes Subchapter S corporations and other flow-through entities to file income tax returns and pay tax on their La. income as if they were Subchapter C corporations (R.S. 47:287.732.2).
- (2) An exclusion from taxable income for individual taxpayers for net income or losses received from a flow-through entity which properly filed a La. corporation income tax return that included the net income or loss (R.S. 47:297.14(A)).
- (3) A requirement that any individual taxpayer who utilizes the flow-through entity exclusion described in paragraph (2) above shall notify the Dept. of Revenue if changes are made to his federal income tax return due to adjustments to an S corporation's income or losses (R.S. 47:297.14(B)).

Proposed law makes available to estates, trusts, and partnerships the flow-through entity income exclusion described in paragraph (2) above. Proposed law also requires estates, trusts, and partnerships to notify the Dept. of Revenue if changes are made to their federal income tax returns due to adjustments to an S corporation's income or losses in the same manner as required by present law for individual taxpayers as described in paragraph (3) above.

Present law provides that an election by a Subchapter S corporation or other flow-through entity to be taxed in the same manner as a Subchapter C corporation shall be effective for the taxable year for which it is made and for all succeeding taxable years until the election is terminated by the secretary of the Dept. of Revenue. Proposed law retains present law and provides that an election may also be terminated when an application for prospective termination of the election is effective.

Proposed law establishes that an application for prospective termination of the election shall be effective automatically for the subsequent taxable year upon completion of the following:

- (1) The shareholders, partners, or members holding more than one-half of the ownership interest in the entity consent in writing to the application for prospective termination.
- (2) The entity timely submits the application to the secretary of the Dept. of Revenue no later than Nov. first prior to the close of the taxable year for calendar year filers or 60 days prior to the close of the taxable year for fiscal year filers.

Proposed law stipulates that upon the effectiveness of the termination of an entity's election, no election otherwise allowed by present law shall apply for the succeeding five taxable years of the entity or its successor.

Proposed law applies to taxable periods beginning on or after Jan. 1, 2023.

(Amends R.S. 47:287.732.2(A)(3); Adds R.S. 47:203(C), 287.732.2(A)(4)(c) and (d) and (G), 300.6(B)(2)(e), and 300.7(C)(2)(d))