

HB187 INTRODUCED



1 HB187
2 A4UWQ77-1
3 By Representative Faulkner
4 RFD: Commerce and Small Business
5 First Read: 15-Feb-24



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SYNOPSIS:

Under current law, an Alabama pass-through entity may elect to be taxed as an Alabama electing pass-through entity by submitting the appropriate form to the Department of Revenue anytime during the year or on or before the fifteenth day of the third month following the close of that tax year for which the entity elects to be taxed as an electing pass-through entity.

This bill will extend the due date for an Alabama electing pass-through entity to make the election for tax years beginning January 1, 2024. The due date for the election shall be the due date of the corresponding Alabama annual return, including extensions.

A BILL
TO BE ENTITLED
AN ACT

Relating to income taxes; to amend Section 40-18-24.4, Code of Alabama 1975, to extend the due date for an Alabama electing pass-through entity to make the election to be taxed as an electing pass-through entity.



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29 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

30 Section 1. Section 40-18-24.4, Code of Alabama 1975, is
31 amended to read as follows:

32 "§40-18-24.4

33 (a) This section shall be known and may be cited as
34 the, "Alabama Electing Pass-Through Entity Tax Act."

35 (b) For the purposes of this section, "electing
36 pass-through entity" means any Alabama S corporation, as is
37 defined by Section 40-18-160, and any subchapter K entity, as
38 is defined by Section 40-18-1, that has made an election
39 pursuant to subsection (d) to pay Alabama income tax at the
40 rate prescribed in subsection (e).

41 (c) For tax years beginning on or after January 1,
42 2021, any Alabama S corporation, as defined in Section
43 40-18-160, and any subchapter K entity, as defined in Section
44 40-18-1, may elect to be taxed as an electing pass-through
45 entity.

46 (d) (1) For tax years beginning on or after January 1,
47 2021, through December 31, 2023, an~~An~~ electing pass-through
48 entity shall submit the appropriate form to the Department of
49 Revenue at any time during the tax year or on or before the
50 fifteenth day of the third month following the close of that
51 tax year for which the entity elects to be taxed as an
52 electing pass-through entity. For tax years beginning on or
53 after January 1, 2024, an electing pass-through entity shall
54 submit the appropriate form to the Department of Revenue on or
55 before the due date for filing the applicable income tax
56 return, including any extensions which have been granted



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57 following the close of that tax year for which the entity
58 elects to be taxed as an electing pass-through entity.

59 (2) This election shall be binding for that year and
60 all subsequent tax years and shall not be revoked unless the
61 electing pass-through entity submits the appropriate form to
62 the Department of Revenue at any time during a subsequent tax
63 year or on or before ~~the fifteenth day of the third month~~the
64 due dates provided in this subsection following the close of
65 that tax year for which the entity elects to no longer be
66 taxed as an electing pass-through entity. Both the election to
67 become an electing pass-through entity and the revocation of
68 that election shall be accomplished by a vote by or written
69 consent of the members of the governing body of the entity as
70 well as a vote by or written consent of the owners, members,
71 partners, or shareholders holding greater than 50 percent of
72 the voting control of the entity, within the time prescribed
73 above.

74 (3) For tax years beginning on or after January 1,
75 2025, the election or revocation shall be made on the timely
76 filed return, including any extensions which have been
77 granted.

78 (e) An electing pass-through entity shall pay a tax at
79 the highest marginal rate provided in Section 40-18-5,
80 calculated in accordance with Section 40-18-24 or Section
81 40-18-161 and Section 40-18-162, as appropriate, and
82 apportioned in accordance with Chapter 27 of this title. An
83 electing pass-through entity shall be subject to Section
84 40-18-80.1 (estimated tax for corporations). In calculating



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85 taxable income for the purposes of this subsection, Alabama
86 tax paid under this subsection shall not be deducted in
87 calculating Alabama taxable income.

88 (f) The owners, members, partners, or shareholders
89 shall not be liable for the tax otherwise imposed by Chapter
90 16 and this chapter of this title on their pro rata or
91 distributive shares of the electing pass-through entity's
92 income.

93 (g) The adjusted basis of the owners, members,
94 partners, or shareholders of an electing pass-through entity
95 in their stock or other ownership interests in the entity
96 shall be calculated without regard to the election under this
97 section.

98 (h) Notwithstanding anything in this chapter to the
99 contrary, neither the election by an electing pass-through
100 entity under this section nor its revocation of the election
101 shall be considered a liquidation or termination of the entity
102 or an otherwise taxable event.

103 (i) No refunds shall be granted or paid for tax years
104 ending before January 1, 2020, related to Act 2021-1.

105 (j) The Department of Revenue may adopt rules for the
106 implementation and administration of ~~Act 2021-1~~this section."

107 Section 2. This act shall become effective immediately
108 upon its passage and approval by the Governor, or its
109 otherwise becoming law.