

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   1st Session of the 58th Legislature (2021)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 2963

By: Wallace and Hilbert of the  
House

and

Thompson and Hall of the  
Senate

11                                   COMMITTEE SUBSTITUTE

12                   An Act relating to revenue and taxation; amending  
13                   Section 4, Chapter 201, O.S.L. 2019 (68 O.S. Supp.  
14                   2020, Section 2355.1P-4), which relates to pass-  
15                   through entity taxation; modifying certain rates; and  
16                   providing an effective date.

17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18                   SECTION 1.            AMENDATORY            Section 4, Chapter 201, O.S.L.  
19                   2019 (68 O.S. Supp. 2020, Section 2355.1P-4), is amended to read as  
20                   follows:

21                   Section 2355.1P-4 A. For tax years beginning on or after  
22                   January 1, ~~2019~~ 2022, there is hereby levied on each electing pass-  
23                   through entity the pass-through entity tax which shall be calculated  
24                   as follows:

1           1. With regard to each member of an electing pass-through  
2 entity, the electing pass-through entity shall multiply such  
3 member's Oklahoma distributive share of the electing pass-through  
4 entity's Oklahoma net entity income for the tax year by:

5           a. the highest Oklahoma marginal income tax rate levied  
6           on the taxable income of natural persons pursuant to  
7           Section 2355 of ~~Title 68 of the Oklahoma Statutes~~ this  
8           title if the member is an individual, trust, or  
9           estate,

10          b. ~~six percent (6%)~~ four percent (4%) if the member is  
11          classified as a corporation pursuant to the Internal  
12          Revenue Code, and is not classified as an S  
13          corporation,

14          c. ~~six percent (6%)~~ four percent (4%) if the member is a  
15          pass-through entity,

16          d. ~~six percent (6%)~~ four percent (4%) if the member is a  
17          financial institution subject to tax imposed pursuant  
18          to the provisions of Section 2370 of ~~Title 68 of the~~  
19          ~~Oklahoma Statutes~~ this title, and

20          e. the highest Oklahoma marginal income tax rate that  
21          would be applicable to any item of the electing pass-  
22          through entity's income or gain without the election  
23          made pursuant to subsection F of this section, if the  
24

1 member is an organization described in Section 2359 of  
2 ~~Title 68 of the Oklahoma Statutes~~ this title; and

3 2. The electing pass-through entity shall aggregate the amounts  
4 determined with respect to all members pursuant to paragraph 1 of  
5 this subsection and the pass-through entity tax for the applicable  
6 tax year shall be equal to such aggregated tax amount for the tax  
7 year with respect to which the election has been made.

8 B. Sections 2385.29, 2385.30 and 2385.31 of ~~Title 68 of the~~  
9 ~~Oklahoma Statutes~~ this title shall not be applicable to an electing  
10 pass-through entity.

11 C. The pass-through entity tax shall be due and payable on the  
12 same date as provided for the filing of the electing pass-through  
13 entity's Oklahoma income tax return, and for tax years beginning on  
14 or after January 1, 2020, estimated tax payments shall be required  
15 as provided in Section 2385.9 of ~~Title 68 of the Oklahoma Statutes~~  
16 this title.

17 D. If the pass-through entity election results in a net entity  
18 loss for Oklahoma income tax purposes in any tax year, the net  
19 entity loss may be carried back and carried forward by the electing  
20 pass-through entity for Oklahoma income tax purposes as set forth in  
21 subparagraph b of paragraph 3 of subsection A of Section 2358 of  
22 this title.

23 E. Notwithstanding paragraph 2 of subsection C of Section 2368  
24 of ~~Title 68 of the Oklahoma Statutes~~ this title, a nonresident

1 individual who is a member of an electing pass-through entity is not  
2 required to file an Oklahoma income tax return, if, for the taxable  
3 year, the only source of income allocable or apportionable to this  
4 state for the member, or, if a joint income tax return is filed, the  
5 member and his or her spouse, is from one or more electing pass-  
6 through entities, and each electing pass-through entity files and  
7 pays the taxes due under this section.

8 F. Any entity required to file an Oklahoma partnership income  
9 tax return or an Oklahoma S corporation income tax return may elect  
10 to become an electing pass-through entity. The election shall be  
11 made on such form and in such manner as the Oklahoma Tax Commission  
12 may prescribe, and any election under this subsection shall have  
13 priority over and revoke any election to file a composite Oklahoma  
14 partnership return or requirement of a Subchapter S corporation to  
15 report and pay tax on behalf of a nonresident shareholder for the  
16 same tax year.

17 G. Pursuant to procedures prescribed by the Tax Commission, if  
18 the amount of tax required to be paid by a pass-through entity  
19 pursuant to the provisions of this section is not paid when due, the  
20 Oklahoma Tax Commission may revoke the pass-through entity's  
21 election under subsection F of this section effective for the first  
22 year for which the tax is not paid.

23 H. The election authorized by the provisions of this section  
24 shall be made pursuant to procedures prescribed by the Tax

1 Commission and shall be filed (i) within sixty (60) days of  
2 enactment and pursuant to procedures prescribed by the Oklahoma Tax  
3 Commission for any income tax year beginning on or after January 1,  
4 2019, and prior to January 1, 2020, or (ii) for any income tax year  
5 beginning on or after January 1, 2020, at any time during the  
6 preceding tax year or two (2) months and fifteen (15) days after the  
7 beginning of the tax year. Any such election shall be binding until  
8 revoked pursuant to procedures prescribed by the Tax Commission.  
9 The effective date of a revocation (i) made within two (2) months  
10 and fifteen (15) days of the electing pass-through entity's taxable  
11 year shall be the first day of such taxable year and (ii) made  
12 during the electing pass-through entity's taxable year but after  
13 such fifteenth day shall be effective on the first day of the  
14 following taxable year. No election made by a pass-through entity  
15 with respect to income tax to be paid by such entity using the  
16 calculations prescribed by this section shall be binding on any  
17 other pass-through entity, and each pass-through entity shall be  
18 able to make an election under the provisions of this act  
19 independently.

20 SECTION 2. This act shall become effective January 1, 2022.

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22 COMMITTEE REPORT BY: COMMITTEE ON JOINT COMMITTEE ON APPROPRIATIONS  
23 AND BUDGET, dated 05/17/2021 - DO PASS, As Amended.

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