HB187

A4UWQ77-1

By Representative Faulkner

RFD: Commerce and Small Business

First Read: 15-Feb-24

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.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§40-18-24.4

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

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

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

(d)(1) For tax years beginning on or after January 1, 2021, through December 31, 2023, an ~~An~~ electing pass-through entity shall submit the appropriate form to the Department of Revenue at any time during the tax 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. For tax years beginning on or after January 1, 2024, an electing pass-through entity shall submit the appropriate form to the Department of Revenue on or before the due date for filing the applicable income tax return, including any extensions which have been granted

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

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

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

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

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

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

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

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

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

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

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