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Georgia HB 149 Pass-Through Entity Tax FAQ

<https://dor.georgia.gov/hb-149-pass-through-entity-tax-faq> (visited 7/29/23)

For taxable years beginning on or after January 1, 2022, S-Corporations and Partnerships may annually make an irrevocable election to pay income tax at the entity level.

- Which pass-through entities are eligible to make the election to pay tax at the entity level?

The election may only be made by a Partnership or S-Corporation that is 100 percent directly owned and controlled by “persons” eligible to be shareholders of an S-Corporation under § 1361 of the Internal Revenue Code of 1986, as amended. Single-member LLCs not taxed as a Partnership or S-Corporation are not eligible to make the election. “Persons” can include certain estates and grantor trusts.

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- How does the pass-through entity make the election?

The election is made by checking the box and filling out the applicable schedule(s) on Form 600S if the entity is a Subchapter "S" corporation or on Form 700 if the entity is a partnership. The election must be made by the due date or extended due date of the entity's income tax return and is irrevocable after the applicable due date passes.

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- If the pass-through entity is planning to make the election to pay tax at the entity level, then is the entity required to make estimated tax payments?

An electing pass-through entity is required to make estimated tax payments in the same manner as a C-Corporation. You can submit the estimated tax payments using Form 602-ES or submit them electronically through the Georgia Tax

Center. Please note that partnerships are not currently able to make quick payments outside of a Georgia Tax Center account so the partnership account needs to be registered on the Georgia Tax Center to make estimated tax payments.

- Is an electing pass-through entity relieved of penalties for failing to make estimated tax payments if 100% of the entity's preceding income tax liability was \$0.00 because it did not elect to pay tax at the entity level in the preceding year?
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Not always. For purposes of the 100% of the immediately preceding year's tax exception, the entity must compute the penalty on Form 600 UET assuming the tax for the prior year was equal to 5.75% of the prior's year's income and may check the "UET Annualization Exception Attached" box on the Form 600S or Form 700.

- Are Schedule 1 on the Form 600S for S-Corporations and Schedules 1 and 3 on the Form 700 for Partnerships not required to be completed when the pass-through entity does not elect to pay tax at the entity level?
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When the election to pay tax at the entity level is not made, Schedule 1 on the Form 600S and Schedules 1 and 3 on the Form 700 are not required to be completed unless additional Georgia taxable income is also being included. When the election is made, those schedules are required to be completed for the applicable return.

- How do the owners report their share of income or loss of the electing pass-through entity?
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For owners of a passthrough entity or entities that have elected to pay tax at the entity level, they will enter the allocable share of loss that was apportioned and allocated at the entity level on Schedule 1, Line 5 of Form 500 with description PTEADD and enter the allocable share of income that was taxed at the entity level on Schedule 1, Line 12 of Form 500 with description PTEDED.

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- If the election to pay tax at the entity level is made, then is a composite return still required to be filed for the nonresident owners?
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No. The election to pay tax at the entity level is binding on all the owners including the nonresident owners that would otherwise be on a composite return. A composite return for the nonresident owners should not be filed if the election is made.

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- If there is an overpayment credit from a composite return and the entity elects to pay the tax at the entity level in the following year, can the overpayment credit be carried forward and claimed on the electing entity's income tax return?
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The overpayment credit from the composite cannot be claimed on the electing entity's income tax return. The overpayment credit can be refunded upon request.

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- What happens to the electing entity's tax attributes, such as credits and net operating losses, when the entity does not make the election in the following year?
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Tax attributes, including but not limited to credits and net operating losses, do not pass through to the owners but remain with the electing pass-through entity if the entity does not make the election in a later year.

However, an electing pass-through entity may make an irrevocable election to pass through all or part of any credit, that is generated within the applicable statute of limitation period for the entity, to its owners for the taxable year the credit is generated. This election is not available for the Qualified Education Expense Tax Credit, the Qualified Education Donation Credit, and the Qualified Rural Hospital Expense Tax Credit.

Net operating losses shall be treated in the same manner as is allowed for C-Corporations as provided in Regulation 560-7-3-.06.

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- Are owners of an electing entity eligible to take a credit for taxes paid to Georgia on their individual returns if the electing entity makes an election to pay Georgia tax at the entity level?
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The owners are not eligible to claim a credit for taxes paid to Georgia with respect to income taxed at the entity level by Georgia.

- Are owners of an electing entity eligible to take a credit for taxes paid to other states on their individual returns if the electing entity makes an election to pay tax at the entity level in another state?
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The owners would be eligible for a credit for taxes paid to other state with respect to income not taxed at the entity level by Georgia, provided that the requirements of O.C.G.A. § 48-7-28 are met.

- Are owners of an electing entity eligible to take an adjustment for income taxed in other states on their individual returns if the electing entity makes an election to pay tax at the entity level in another state?
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The owners would be eligible for an adjustment for income taxed in other states with respect to income not taxed at the entity level by Georgia, provided that the requirements of subsection (d) of O.C.G.A. § 48-7-27 are met. The adjustment is available if the electing entity makes a similar election in another state provided the requirements of subsection (d) of O.C.G.A. § 48-7-27 are met.

- Can the electing pass-through entity deduct foreign tax paid or accrued in calculating its entity-level taxable income?
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No. In computing the net income that is subject to taxation, the electing pass-through entity cannot take a deduction for taxes that are based on or measured by gross or net income or any other variant thereof.
