

Revenue Information Bulletin No. 19-019

February 5, 2020

**Individual Income Tax
Corporation Income Tax
Fiduciary Income Tax**

Guidance on the Pass-Through Entity Election

Act 442 of the 2019 Regular Session allows an S corporation or an entity taxed as a partnership for federal income tax purposes to elect to be taxed as if the entity had been required to file a federal income tax return as a C corporation. Act 442 also provides for an individual income tax exclusion for shareholders, members and partners who would otherwise pay Louisiana income tax on the income that is not subject to tax at the entity level due to this election. Louisiana Administrative Code 61:I.1001, as published in the January 2020 Edition of the Louisiana Register, provides guidance to taxpayers on the types of documentation required to make the election and to provide when the entity and shareholder, member, or partner is filing a tax return after the election has been made.

The purpose of this bulletin is to provide guidance to Louisiana taxpayers on remaining administrative issues related to the election such as the requirements to make the election, which shareholder, member, or partner can utilize the exclusion provided for in Act 442, and the effect of an Act 442 election on franchise tax liability.

How and When to Make the Election

Entities may make the election under Act 442 on or after February 1, 2020, for taxable years beginning on or after January 1, 2019. The election is made by submitting Form R-6980, Tax Election for Pass-Through Entities and all required documentation as stated in LAC 61:I.1001(B)(3)(a) to the Louisiana Department of Revenue (“Department”) by email to Section732.2election@la.gov. Shareholders, members, or partners holding more than one half of the ownership interest in the electing entity must approve the election. The determination for more than one half of the ownership interest will be made by examining the owners’ capital account balances. However, in the case of an S corporation or other pass-through entity type where shareholders do not have capital account balances, the determination of more than one half of the ownership interest will be made by examining ownership percentages. Ownership can be evidenced by shares of stock, membership shares, or partnership shares.

The Department will send an email confirmation of receipt of the election request, Form R-6980 and attached documentation. The Department will then review and verify that all required information has been provided and verify that more than one half of the ownership interest in the electing entity has approved the election. If the required documentation is incomplete, the

Department will notify the entity and allow 45 calendar days for submission of supplemental documentation.

Following review and verification of the documentation, the Department will notify entities requesting the election by email that the election has been approved. An approved election is effective for the entire taxable year for which it was made as well as all subsequent years until the election is terminated.

Eligibility for the Pass-Through Entity Exclusion

Act 442 provides a pass-through entity exclusion for shareholders, members, or partners. The exclusion applies to income that is taxed at the entity level. The exclusion is provided for in LA R.S. 47:297.14 and does not include any amount of income that does not bear tax at the entity level under the election.

The exclusion provided for in LA R.S. 47:297.14 is only applicable to individuals who are shareholders, partners, or members of electing entities. Therefore, shareholders, members or partners who are corporations, estates, or trusts are not eligible for the exclusion.

Franchise Tax Implications of an Act 442 Election

Act 442 is silent on any potential franchise tax implications for entities that make an Act 442 election. The act of electing entity level taxation pursuant to Act 442 will not, in and of itself, subject the electing entity to franchise tax liability.

Questions concerning this bulletin may be e-mailed to Policy.Publications@La.gov.

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Secretary