

By: Representative Busby

To: Ways and Means

HOUSE BILL NO. 1691
(As Sent to Governor)

1 AN ACT TO ALLOW PARTNERSHIPS, S CORPORATIONS OR SIMILAR
2 PASS-THROUGH ENTITIES TO ELECT TO BE TAXED AS AN ELECTING
3 PASS-THROUGH ENTITY FOR STATE INCOME TAX PURPOSES AND PAY INCOME
4 TAX AT THE ENTITY LEVEL; TO PROVIDE THE MANNER BY WHICH A
5 PARTNERSHIP, S CORPORATION OR SIMILAR PASS-THROUGH ENTITY MAY
6 ELECT TO BE TAXED AS AN ELECTING PASS-THROUGH ENTITY; TO PROVIDE
7 THAT EACH OWNER, MEMBER, PARTNER OR SHAREHOLDER OF AN ELECTING
8 PASS-THROUGH ENTITY SHALL REPORT HIS OR HER PRO RATA OR
9 DISTRIBUTIVE SHARE OF THE INCOME OF THE ELECTING PASS-THROUGH
10 ENTITY BUT SHALL NOT BE LIABLE FOR INCOME TAX IMPOSED ON SUCH PRO
11 RATA OR DISTRIBUTIVE SHARE; TO PROVIDE THAT EACH OWNER, MEMBER,
12 PARTNER OR SHAREHOLDER OF AN ELECTING PASS-THROUGH ENTITY SHALL BE
13 ALLOWED A CREDIT AGAINST INCOME TAXES IN AN AMOUNT EQUAL TO HIS OR
14 HER PRO RATA OR DISTRIBUTIVE SHARE OF INCOME TAX PAID BY THE
15 ELECTING PASS-THROUGH ENTITY WITH RESPECT TO THE CORRESPONDING
16 TAXABLE YEAR; TO AMEND SECTIONS 27-7-25 AND 27-8-7, MISSISSIPPI
17 CODE OF 1972, TO CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR
18 RELATED PURPOSES.

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

20 **SECTION 1.** (1) (a) For calendar year 2022, and for each
21 calendar year thereafter, any partnership, S corporation or
22 similar pass-through entity may elect to be taxed as an electing
23 pass-through entity and pay the tax imposed under this chapter at
24 the entity level. For the purposes of this section, the term
25 "electing pass-through entity" means a partnership, S corporation



26 or similar pass-through entity that has made an election pursuant
27 to this section.

28 (b) A partnership, S corporation or similar
29 pass-through entity desiring to be taxed as an electing
30 pass-through entity shall submit the appropriate form to the
31 Department of Revenue at any time during the tax year or on or
32 before the fifteenth day of the third month following the close of
33 that taxable year for which the entity elects to be taxed as an
34 electing pass-through entity. This election shall be binding for
35 that taxable year and all taxable years thereafter and shall not
36 be revoked unless the electing pass-through entity submits the
37 appropriate form to the department at any time during a subsequent
38 taxable year or on or before the fifteenth day of the third month
39 following the close of that taxable year for which the entity
40 elects to no longer be taxed as an electing pass-through entity.
41 Both the election to become an electing pass-through entity and
42 the revocation of that election shall be accomplished by a vote by
43 or written consent of the members of the governing body of the
44 entity as well as a vote by or written consent of the owners,
45 members, partners or shareholders holding greater than fifty
46 percent (50%) of the voting control of the entity, within the time
47 prescribed in this subsection.

48 (c) Each owner, member, partner or shareholder of an
49 electing pass-through entity shall report his or her pro rata or
50 distributive share of the income of the electing pass-through



51 entity but shall not be liable for the tax imposed under this
52 chapter on such pro rata or distributive share of the income of
53 the electing pass-through entity. Each owner, member, partner or
54 shareholder of an electing pass-through entity shall be allowed a
55 credit against the taxes imposed under this chapter in an amount
56 equal to his or her pro rata or distributive share of tax paid by
57 the electing pass-through entity with respect to the corresponding
58 taxable year.

59 (2) The adjusted basis of the owners, members or partners of
60 an electing pass-through entity in their ownership interests in
61 the electing pass-through entity shall be calculated without
62 regard to the election under this section.

63 **SECTION 2.** Section 27-7-25, Mississippi Code of 1972, is
64 amended as follows:

65 27-7-25. (1) Individuals carrying on businesses in
66 partnerships shall be liable for income tax only in their
67 individual capacity, unless for federal purposes the partnership
68 is taxable as a corporation. If so, then the partnership is also
69 taxable as a corporation for state purposes and is subject to all
70 of the corporate tax laws and regulations. The gross income of an
71 individual partner shall be the gross income the partnership
72 distributed on the same basis as net income or earnings may be
73 distributed. If the preceding exception applies, then the partner
74 will be treated as a shareholder in a corporation.



75 There shall be included in computing the net income of each
76 partner his distributive share, whether distributed or not, of the
77 net income of the partnership for the taxable year.

78 The net income of the partnership shall be computed in the
79 same manner and on the same basis as provided for individuals,
80 provided no personal exemption shall be granted and, provided
81 further, that husband and wife partnerships shall not be
82 recognized for the purpose of this article, unless it can be
83 proven that husband and wife have each contributed capital out of
84 their separate estates, and not by gift, from one to the other.

85 In the case of partnerships, each partner that would
86 otherwise be required to include more than twelve (12) months of
87 income in a single taxable year may elect to include such excess
88 in income in one (1) year or ratably over a period of four (4)
89 taxable years.

90 In the event the individual partners fail to report and pay
91 the taxes imposed according to this section, then the partnership
92 and the general partners shall be jointly and severally liable for
93 said tax liability and shall be assessed accordingly. However,
94 the partnership and/or general partner shall not be liable if the
95 partnership withholds five percent (5%) of the net gain or profit
96 of the partnership for the tax year and remits the same to the
97 commissioner. Such amounts paid to the commissioner shall be
98 deemed to be payments of estimated tax of the partners and shall
99 be allocated pro rata to the partners' taxpayer accounts. The



100 commissioner may allow, or require, block or composite filing by a
101 partnership, or withholding on a nonresident partner.

102 Magnetic media reporting may be required in a manner to be
103 determined by the commissioner.

104 Partnership returns shall be filed in such manner and at such
105 time as prescribed by law.

106 (2) For a partnership that has made an election under
107 Section 1 of this act to be taxed as an electing pass-through
108 entity, the partnership shall pay income tax as provided for in
109 Section 1 of this act.

110 **SECTION 3.** Section 27-8-7, Mississippi Code of 1972, is
111 amended as follows:

112 27-8-7. (1) An S corporation shall not be subject to the
113 tax imposed by Section 27-7-5; however, for an S corporation that
114 has made an election under Section 1 of this act to be taxed as an
115 electing pass-through entity, the S corporation shall be subject
116 to and pay such tax as provided for in Section 1 of this act.

117 (2) For purposes of Section 27-7-15, each shareholder's pro
118 rata share of the S corporation's income attributable to the
119 state, and each resident shareholder's pro rata share of the S
120 corporation's income not attributable to the state, shall be taken
121 into account by the shareholder in the manner provided in Section
122 1366 of the Code.

123 (3) For purposes of determining the amounts taken into
124 account by the shareholders of an S corporation under subsection



125 (2) of this section, the amount of any tax imposed on the S
126 corporation under the Code shall not reduce the S corporation's
127 income attributable to the state and income not attributable to
128 the state.

129 **SECTION 4.** Section 1 of this act shall be codified as a new
130 section in Chapter 7, Title 27, Mississippi Code of 1972.

131 **SECTION 5.** This act shall take effect and be in force from
132 and after January 1, 2022.

