

By: Representatives Lamar, Boyd (19th)

To: Ways and Means

HOUSE BILL NO. 1668
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 27-7-26, MISSISSIPPI CODE OF 1972, TO
 2 REVISE THE METHOD BY WHICH A PARTNERSHIP, S CORPORATION OR SIMILAR
 3 PASS-THROUGH ENTITY MAY ELECT TO BECOME AN ELECTING PASS-THROUGH
 4 ENTITY FOR INCOME TAX PURPOSES, AND BY WHICH SUCH ELECTION MAY BE
 5 REVOKED; TO INCLUDE EACH OWNER'S, MEMBER'S, PARTNER'S OR
 6 SHAREHOLDER'S PRO RATA OR DISTRIBUTIVE SHARE OF THE ELECTING
 7 PASS-THROUGH ENTITY'S INCOME IN THE COMPUTATION OF SUCH INDIVIDUAL
 8 TAXPAYER'S INCOME TAX LIABILITY; TO PROVIDE THAT THE INDIVIDUAL
 9 TAXPAYER'S CREDIT SHALL BE EQUAL TO HIS OR HER PRO RATA OR
 10 DISTRIBUTIVE SHARE OF TAX DUE BEFORE APPLICATION OF ANY
 11 ENTITY-LEVEL CREDITS BY THE ELECTING PASS-THROUGH ENTITY; TO
 12 PROVIDE THAT ANY ADDITIONAL INCOME TAX CREDITS GENERATED BY AN
 13 ELECTING PASS-THROUGH ENTITY SHALL PASS THROUGH TO THE OWNERS,
 14 MEMBERS, PARTNERS OR SHAREHOLDERS ON A PRO-RATA BASIS AND MAY BE
 15 CLAIMED ON THE RETURNS OF THOSE TAXPAYERS; TO PROVIDE THAT IF AN
 16 OWNER'S, MEMBER'S, PARTNER'S OR SHAREHOLDER'S AGGREGATE INCOME TAX
 17 CREDITS EXCEED HIS OR HER INCOME TAX LIABILITY, SUCH EXCESS SHALL
 18 BE CARRIED FORWARD AS AN OVERPAYMENT OR REFUNDED AT THE ELECTION
 19 OF SUCH PERSON; TO PROVIDE THAT ANY CARRYFORWARD LIMITATIONS
 20 APPLICABLE TO CREDITS GENERATED BY THE PASS-THROUGH ENTITY, OTHER
 21 THAN THE CREDIT PROVIDED BY THIS SECTION FOR INCOME TAXES PAID BY
 22 THE PASS-THROUGH ENTITY, SHALL APPLY AT THE OWNER, MEMBER, PARTNER
 23 OR SHAREHOLDER LEVEL; AND FOR RELATED PURPOSES.

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

25 **SECTION 1.** Section 27-7-26, Mississippi Code of 1972, is
 26 amended as follows:

27 27-7-26. (1) (a) For calendar year 2022, and for each
 28 calendar year thereafter, any partnership, S corporation or



29 similar pass-through entity may elect to be taxed as an electing
30 pass-through entity and pay the tax imposed under this chapter at
31 the entity level. For the purposes of this section, the term
32 "electing pass-through entity" means a partnership, S corporation
33 or similar pass-through entity that has made an election pursuant
34 to this section.

35 (b) A partnership, S corporation or similar
36 pass-through entity desiring to be taxed as an electing
37 pass-through entity shall submit the appropriate form to the
38 department * * * at any time during the tax year * * * for which
39 the entity elects to be taxed as an electing pass-through entity,
40 or by the due date of the return for that tax year, or by the date
41 such return is filed, whichever is latest. This election shall be
42 binding for that taxable year and all taxable years thereafter and
43 shall not be revoked unless the electing pass-through entity
44 submits the appropriate form to the department at any time during
45 a subsequent taxable year * * * for which the entity elects to no
46 longer be taxed as an electing pass-through entity, or by the due
47 date of the return for that tax year, or by the date such return
48 is filed, whichever is latest. Both the election to become an
49 electing pass-through entity and the revocation of that election
50 shall be accomplished by a vote satisfying such threshold required
51 for taking official action as may be specified within the entity's
52 governing documents, within the time prescribed in this
53 subsection. If the entity's governing documents do not contain



54 any such provisions governing the approval of official actions,
55 such election shall be accomplished by * * * a vote by or written
56 consent of the owners, members, partners or shareholders holding
57 greater than fifty percent (50%) of the voting control of the
58 entity, and also, if the entity has a governing body, by a vote by
59 or written consent of the members of the governing body, within
60 the time prescribed in this subsection.

61 (c) Each owner, member, partner or shareholder of an
62 electing pass-through entity shall report his or her pro rata or
63 distributive share of the income of the electing pass-through
64 entity * * *, and such share shall be used in computing the
65 taxpayer's gross income tax liability. Each owner, member,
66 partner or shareholder of an electing pass-through entity shall be
67 allowed a credit against the taxes imposed under this chapter in
68 an amount equal to his or her pro rata or distributive share of
69 tax paid by the electing pass-through entity with respect to the
70 corresponding taxable year. Any additional income tax credits
71 generated by the electing pass-through entity shall pass through
72 to the owners, members, partners or shareholders on a pro-rata
73 basis and may be claimed on the returns of those taxpayers. In
74 the event an owner's, member's, partner's or shareholder's
75 aggregate credits shall exceed his or her income tax liability,
76 such excess shall be carried forward as an overpayment or refunded
77 at the election of such person. Any carryforward limitations
78 applicable to credits generated by the electing pass-through



79 entity, other than the credit provided by this section for income
80 taxes paid by the electing pass-through entity, shall apply at the
81 owner, member, partner or shareholder level.

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

86 **SECTION 2.** This act shall take effect and be in force from
87 and after January 1, 2023, and shall be applicable to any income
88 tax returns the original due date of which are on or after such
89 date.

