

JAN 19 2024

A BILL FOR AN ACT

RELATING TO TAXATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that Act 50, Session Laws
2 of Hawaii 2023 (Act 50), allowed certain pass-through entities
3 to elect to pay Hawaii income tax at the entity level. Act 50
4 was enacted to help Hawaii's small businesses by allowing
5 taxpayers to deduct Hawaii state income taxes paid on their
6 federal income tax returns. These deductions from federal
7 taxable income were eliminated through changes to the federal
8 tax code in 2017, which deprived Hawaii taxpayers of significant
9 federal tax benefits.

10 Under Act 50, the entity level tax is calculated by
11 applying the highest individual income tax rate to the taxable
12 income to be distributed, i.e., eleven per cent, entitling pass-
13 through entity members to receive a nonrefundable income tax
14 credit that cannot be carried forward to a subsequent year if
15 the credit exceeds the member's tax liability. The legislature
16 finds that due to the high tax rate and the inability to



1 carryforward the tax credit, many pass-through entity members
2 remain unable to benefit from Act 50 as intended.

3 Accordingly, the purpose of this Act is to:

- 4 (1) Reduce the tax rate for pass-through entities electing
5 to pay Hawaii income taxes at the entity level; and
6 (2) Allow certain pass-through entity members entitled to
7 a tax credit to use the credit against the member's
8 net income tax liability in subsequent years until
9 exhausted.

10 SECTION 2. Section 235-51.5, Hawaii Revised Statutes, is
11 amended as follows:

12 1. By amending subsection (b) to read:

13 "(b) Notwithstanding any provision of law to the contrary,
14 the following tax is imposed on each electing pass-through
15 entity: the sum of all member's distributive shares and
16 guaranteed payments of Hawaii taxable income as calculated under
17 this chapter, multiplied by [~~the highest rate of tax applicable~~
18 ~~to the individual under section 235-51.5;~~] nine per cent; provided
19 that the distributive shares and guaranteed payments of members
20 who are corporations, partnerships, S Corporations, tax-exempt
21 entities, and other taxpayers designated by the department of



1 taxation shall not be included in the sum and shall not be
2 subject to the tax under this section. If the income calculated
3 pursuant to this subsection reflects a net loss for the electing
4 pass-through entity, the net loss may be carried forward to
5 subsequent tax years for as long as the electing pass-through
6 entity elects to be subject to the tax pursuant to this section
7 until exhausted."

8 2. By amending subsection (e) to read:

9 "(e) Each member of an electing pass-through entity whose
10 distributive share or guaranteed payment of Hawaii taxable
11 income is subject to tax under this section shall be entitled to
12 a nonrefundable credit equal to the member's share of the tax
13 paid pursuant to this section. If the amount of the credit
14 authorized by this subsection exceeds the member's tax liability
15 imposed pursuant to this chapter, [~~the excess amount shall not~~
16 ~~be refundable to the member.~~] the excess of the credit over
17 liability may be used as a credit against the member's income
18 tax liability in subsequent years until exhausted. Any member
19 claiming a credit shall not be entitled to deduct from the
20 member's Hawaii state taxable income those amounts of Hawaii
21 state income taxes paid by the member on the member's



1 distributive share or guaranteed payment of income from the
2 electing pass-through entity."

3 SECTION 3. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 4. This Act, upon its approval, shall apply to
6 taxable years beginning after December 31, 2023.

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INTRODUCED BY: 



S.B. NO. 2701

Report Title:

Department of Taxation; Income Tax Pass-Through Entity Taxation Election; S Corporations; Partnerships; Tax Credit; Carry Forward

Description:

Reduces the tax rate for pass-through entities electing to pay Hawaii income taxes at the entity level. Allows certain members of pass-through entities entitled to a tax credit to use the credit against the member's net income tax liability in subsequent years until exhausted.

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