

To Whom It May Concern:

During the 2022 Session, the Virginia General Assembly enacted House Bill 1121 (2022 Acts of Assembly, Chapter 690) and Senate Bill 692 (2022 Acts of Assembly, Chapter 689), which permit a qualifying pass-through entity (“PTE”) to make an annual election to pay an elective income tax at a rate of 5.75 percent at the entity level. The legislation also allows a corresponding refundable income tax credit to certain PTE owners for any amount of income tax paid by a PTE having Virginia taxable income if such PTE makes the election and pays the elective income tax imposed at the entity level.

The legislation allows an individual to claim a credit for taxes paid to other states under laws that are substantially similar to the pass-through entity income tax. This overrules Public Document 21-156 (December 29, 2021), which generally denied a credit for a tax paid to Maryland under that state’s elective pass-through entity income tax. This provision only applies to taxes paid by a pass-through entity under the law of another state that is substantially similar to *Va. Code* § 58.1-390. Therefore, it does not apply to any other entity-level taxes, such as any franchise, privilege, business, license, or occupation taxes described in *Va. Code* § 58.1-332.2.

The legislation requires Virginia Tax to promulgate guidelines regarding the elective pass-through income tax. Accordingly, we are currently in the process of developing such guidelines. You can view a description of these guidelines on Virginia Tax’s Elective Pass-Through Entity Tax Guidelines website. Draft guidelines, public comments, and other information will be posted on this website in the future.

To increase government transparency and facilitate the guideline development process, Virginia Tax will allow an initial 30-day comment period prior to drafting the guidelines. The initial comment period begins on June 9, 2022 and ends on July 11, 2022.

Please submit any comments regarding the development of these guidelines via e-mail to James Ford at tax-guidelines@tax.virginia.gov.

Sincerely,

James Ford