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NOTICE 22-16

SALT PARITY ACT

(DECEMBER 13, 2022)

During the 2022 Legislative Session House Bill 2239 was passed and signed into law. New Sections 1 - 6 of the Bill create the SALT Parity Act which provides certain pass-through entities with the option of paying state income taxes at the entity level rather than the tax being paid by the individual owners of the pass-through entities on their individual income tax returns. Sections 38 and 39 of the Bill amend existing provisions of K.S.A. 79-3220 (filing requirements) and K.S.A. 79-32,111 (credit for taxes paid to another state) to recognize the new Act. The Act applies for tax year 2022 and all tax years thereafter.

To file an income tax return at the entity level, the entity must be an "electing pass-through entity". New Section 2(c) defines the term by stating: "'Electing pass-through entity' means, with respect to a taxable period, an S corporation or partnership that has made the election under section 3, and amendments thereto, with respect to the taxable period." As provided in New Section 3, the election to be subject to tax at the entity level is made annually by the entity, on the return (the K-120S) it files for the tax year. The filing of the return, and therefore the election, is binding on all electing pass-through entity owners. New Section 2(d) provides, "'Electing pass-through entity owner' means, with respect to an S corporation, a shareholder of the S corporation and, with respect to a partnership, a partner in the partnership, except that a partner does not include a C corporation."

New Section 4(a) provides electing pass-through entities are subject to income tax at the rate of 5.7% on the sum of each resident owner's distributive share of the entity's income and each nonresident owner's distributive share of the entity's income attributable to Kansas.

New Section 4(b) provides electing pass-through entities that elect to be subject to the tax are to be treated as corporations for purposes of estimated tax payments (made by filing the K-120ES), except they are not subject to penalties for underpayment of estimated tax during tax year 2022. While not required in 2022, in subsequent years, the estimated payments will need to be made, or else the pass-though could be subject to the under payment of tax penalty.

New Section 4(c) provides any credit that is attributable to the activities of an entity, other than credits for taxes paid to other states, must be claimed by the electing pass-through entity. Credits are not passed through to pass-through entity owners in any year for which an election is made.

New Section 4(c) also provides any excess income tax credit, net operating loss, or other modification may be carried forward on the electing pass-through entity's return. Any limitation specified in the specific statutory section for an income tax credit, net operating loss, or modification applies to the pass-through entity. And, such credit, loss, or modification may only be utilized in a subsequent tax year when an election is made. If, in a taxable period following a period when an election was made, an election is not allowed or not made by an entity, any excess income tax credits that already exist may be transferred to the electing pass-through entities owners. Any excess income tax credits shall be available to each owner in the same proportion and manner as would have applied without the election for the taxable period in which each credit was generated. All other rights and obligations pertaining to the credits shall also be transferred to the electing pass-through entity's owners. Once such credit is distributed to the owner, it will not be used by the pass-through entity again.

New Section 5 provides individual owners of electing pass-through entities are not separately or individually liable for entity tax. It also provides owners are entitled to a credit against their individual income for their direct share of the tax imposed on the electing pass-through entity.

Section 38 of the Bill amends K.S.A. 79-3220 to provide, in new subsection (a)(3), that a nonresident individual or fiduciary whose only source of income from Kansas is from an electing pass-through entity under the SALT parity act is not required to file a Kansas income tax return.

Section 39 of the Bill amends K.S.A. 79-32,111 to provide, in new subsection (c), that the amount of income tax paid to another state by an electing pass-through entity on income that is included in the Kansas adjusted gross income of a resident individual taxpayer are to be considered taxes paid to the other state by the resident individual taxpayer for purposes of the credit for taxes paid to other states.

For additional information, please see: **SALT Parity Act – Frequently Asked Questions** which is available through our website at: www.ksrevenue.gov.

TAXPAYER ASSISTANCE

Additional copies of this notice, forms or publications are available from our web site, www.ksrevenue.gov. If you have questions about this Notice, please contact:

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