HOUSE No. 4009

Section 39 contained in the engrossed Bill making appropriations for the fiscal year 2022 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (see House, No. 4002), which had been returned by His Excellency the Governor with recommendation of amendment (for message see Attachment I of House, No. 4019). July 22, 2021.

The Commonwealth of Alassachusetts

In the One Hundred and Ninety-Second General Court (2021-2022)

An Act relative to the taxation of pass-through entities.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to establish forthwith an elective excise on the income of certain pass-through entities, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- SECTION 1. The General Laws are hereby amended by inserting after chapter 63B the
- 2 following chapter:-
- Chapter 63D
- 4 TAXATION OF PASS-THROUGH ENTITIES
- 5 Section 1. As used in this chapter, the following words shall, unless the context clearly
- 6 requires otherwise, have the following meanings:

7 "Code", the Internal Revenue Code of the United States as defined in section 1 of chapter 8 62.

"Commissioner", the commissioner of revenue.

"Eligible pass-through entity", an S corporation under section 1361 of the Code, a partnership under section 7701 of the Code or a limited liability company that is treated as an S corporation or partnership under said section 1361 of the Code or said section 7701 of the Code.

"Qualified income taxable in Massachusetts", the income of an eligible pass-through entity determined under chapter 62 allocable to a qualified member and included in the qualified member's Massachusetts taxable income under said chapter 62.

"Qualified member", a shareholder of an S corporation or a partner in a partnership, including a member of a limited liability company that is treated as an S corporation or partnership under section 1361 of the Code or section 7701 of the Code, that is a natural person or trust or estate subject to tax under section 10 of chapter 62; provided, however, that a qualified member may be a resident, nonresident or a part-year resident.

Section 2. An eligible pass-through entity may elect to pay an excise on its qualified income taxable in Massachusetts at a rate of 5 per cent. A qualified member of an electing eligible pass-through entity shall be allowed a refundable credit against the tax imposed under this chapter. The credit shall be available to qualified members in an amount proportionate to each qualified member's share of the tax due and paid under this chapter by the eligible pass-through entity multiplied by 0.9. The credit shall be available for the member's taxable year in which the electing eligible pass-through entity's taxable year ends.

Section 3. This chapter shall not apply to any taxable year for which the federal limitation on the state and local tax deduction imposed by section 164(b)(6) of the Internal Revenue Code of the United States, as amended and in effect for the applicable year, has expired or is otherwise not in effect.

Section 4. The excise under this chapter shall be in addition to, and not in lieu of, any other Massachusetts tax required to be paid, including tax imposed by chapter 62 or chapter 63. The excise under this chapter shall be due and payable on the eligible pass-through entity's original, timely-filed return. A return that reports the excise shall be due at the same time as a partnership information return or corporate excise return would be due for the entity under chapter 62C. Nothing in this chapter shall alter any filing requirements for a qualified member under said chapter 62C.

Section 5. The collection and administration of the excise under this chapter shall be governed by chapter 62C unless expressly provided otherwise in this chapter or in regulations promulgated by the commissioner pursuant to this chapter.

Section 6. The election under this chapter shall be made by the eligible pass-through entity on an annual basis in a manner determined by the commissioner. All members of the electing eligible pass-through entity shall be bound by the election. Once an election is made for a particular year, the election shall not be revoked.

Section 7. The commissioner shall promulgate regulations or other guidance to carry out the purposes of this chapter. Such regulations or other guidance may: (i) make the credit available to qualified members with income from eligible pass-through entities that in turn have income from other eligible pass-through entities; (ii) provide rules on the application of this

- 50 chapter to eligible trusts and estates; and (iii) require estimated payments of the excise by
- 61 electing eligible pass-through entities and their qualified members in a manner consistent with
- 52 chapter 62B.
- 53 SECTION 2. Section 1 shall apply for taxable years beginning on or after January 1,
- 54 2021.