

The Commonwealth of Massachusetts

House of Representatives,

The committee on Bills in the Third Reading, to whom was referred the

Engrossed Bill relative to the taxation of pass-through entities (see House, No. 4009), being section 39 contained in the 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 was returned by His Excellency the Governor with recommendation of amendment specified by him (for message see Attachment I of House, No. 4019),

Reports recommending that the amendment recommended by His Excellency, the Governor, be considered in the following form:

By striking out all after the enacting clause and inserting in place thereof the following:

“SECTION 1. The General Laws are hereby amended by inserting after chapter 63B the following chapter:-

CHAPTER 63C.

TAXATION OF PASS-THROUGH ENTITIES

Section 1. For taxable years beginning on or after January 1, 2021, an eligible pass-through entity may elect to pay an excise on its qualified income taxable in Massachusetts at a rate of five per cent. A qualified member of an electing pass-through entity shall be allowed a credit against the tax imposed under chapter 62 for the qualified member’s share of such excise paid by the pass-through entity. The credit shall be available to qualified members in an amount proportionate to each member’s share of the pass-through entity’s qualified income taxable in

Massachusetts. The credit shall be available for the member's taxable year in which the pass-through entity's taxable year ends.

Section 2. This chapter shall not apply to taxable years for which the federal limitation on the state and local tax deduction imposed by Code section 164(b)(6) has expired or is otherwise not in effect.

Section 3. The following words as used in this chapter shall, unless the context otherwise requires, have the following meanings:

“Code”, the Internal Revenue Code as defined in section 1 of chapter 62 and applicable to the taxable year.

“Commissioner”, the commissioner of revenue.

“Eligible pass-through entity”, an S corporation under Code section 1361, a partnership under Code section 701 or a limited liability company that is treated as an S corporation or partnership under those Code sections.

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

“Qualified member of a pass-through entity”, a shareholder of an S corporation or a partner in a partnership that is a natural person. A qualified member may be a resident, non-resident or a part year resident.

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 under chapter 62 or chapter 63. The excise under this chapter shall be due and payable on the 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. This chapter shall not change any filing requirements for a qualified member under chapter 62C.

Section 5. The collection and administration of the excise under this chapter shall be governed by the provisions of chapter 62C unless expressly stated otherwise in this chapter or in regulations promulgated by the commissioner under 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 pass-through entity shall be bound by the election. Once made, the election cannot be revoked.

Section 7. The commissioner shall prescribe 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 pass-through entities, (ii) address the application of this chapter to trusts, and (iii) require estimated payments of the excise by electing pass-through entities and their qualified members in a manner consistent with chapter 62B. Such regulations and other guidance shall, to the extent feasible, ensure that an electing pass-through entity and its qualified members pay an aggregate amount of tax under this chapter and chapter 62 that is generally equivalent to the amount of tax

that would have been due from those members under chapter 62 in the absence of an election to pay an excise under this chapter.

SECTION 2. This act shall apply for taxable years beginning on or after January 1, 2021.”.

And that when so amended the same will be correctly drawn.

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For the Committee.