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STATE TAX DEPARTMENT

ADMINISTRATIVE NOTICE 2023-01

Time requirements for pass-through entity election to report and pay West Virginia personal income tax at the entity level under section 11-21-3a of the West Virginia Code.

This notice relates to the time requirements for the filing and paying of personal income tax by a pass-through entity that elects to pay the tax at the entity level due to the provisions of SB 151 (2023 Regular Legislative Session) recently approved but not effective until June 8, 2023.

Automatic Extension of Time to Make Election

W.Va. Code §11-21-3a authorizes a pass-through entity to elect to be taxed at the entity level for tax years beginning on or after January 1, 2022. Without an extension of time to file, the tax return for the 2022 calendar tax year is due on March 15, 2023.

However, the section 11-21-3a election for a pass-through entity to be taxed at the entity level may not be made, and may not be filed with the West Virginia State Tax Division, earlier than June 8, 2023 (the effective date of the bill). Because of these time restraints, an extension of time will be granted until September 15, 2023 to make the election. Such an election may be made and allowed through September 15th even where a taxpayer has already filed a pass-through entity return for the taxable year. Further guidance will be issued by the Tax Division as to the method and manner of the election and the procedure for filing amended returns.

Automatic Extension of Time to File Return

The return authorized under W.Va. Code §11-21-3a for a pass-through entity that is to be taxed at the entity level does not yet exist, and may not yet be filed with the West Virginia Tax Division. As a result, an extension of time will be granted until September 15, 2023 to file the required return. Further guidance will be issued by the Tax Division as to the method and manner of the filing of the return.

Automatic Extension of Time to Pay the Tax Due

An extension of time will be granted until April 18, 2023 to pay the entity level tax due as a nonresident withholding payment. The nonresident withholding payment may be used

to pay the entity level tax so long as the pass-through entity receives agreement from the partners to apply the nonresident withholding tax payments as entity level tax payments and certifies the same upon the filing of the entity level tax return.

Conditional Extension of Time to Pay the Tax Due

If an entity does not pay the entity level tax through a nonresident withholding payment, an extension of time will be granted until September 15, 2023, to pay the entity level tax due for calendar tax year 2022 only if:

The partners, shareholders, members, and any other interest holders in the pass-through entity have paid the personal income tax liability due by April 18, 2023 without regard to the credit allowable under section 11-21-3a(q) of the West Virginia Code for the tax elected to be paid by the pass-through entity.

Waiver of penalty and interest for those pass-through entities that do not meet the rules for conditional extension will be determined on a case-by-case basis. Further guidance will be issued by the Tax Division as to the method and manner of making payment.

Automatic Extension of Time to Make Estimated Nonresident Withholding Tax Payments

For Tax Year 2023 only, calendar year taxpayers are granted an automatic extension of time to pay the first two quarters of estimated nonresident withholding tax payments until September 15th. Provided, that the payment must include the estimated liability for the first three quarters of the taxable year.

Fiscal year taxpayers for 2023 are granted an extension of time to pay all previous estimated liability upon the first due date of an estimated payment following the June 8th effective date.

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State Tax Commissioner