

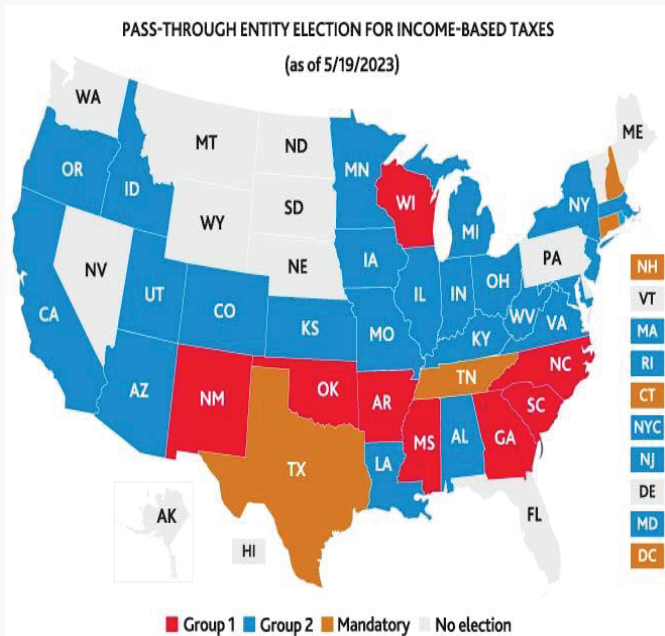
# ARKANSAS ELECTIVE PET

Presented by  
Tommy Burns



THE TAX CUTS AND JOBS ACT OF 2017 IMPOSED A \$10,000 CAP ON THE STATE AND LOCAL TAX DEDUCTIONS (SALT DEDUCTION) FOR TAX YEARS 2018 THROUGH 2025.

HOWEVER, BUSINESS-LEVEL TAXES PAID BY A PARTNERSHIP OR AN S CORPORATION TO A STATE TO SATISFY A LIABILITY FOR INCOME TAXES ARE NOT SUBJECT TO THE CAP ON THE SALT DEDUCTION BECAUSE THEY ARE EXPENSES OF THE ENTITY.

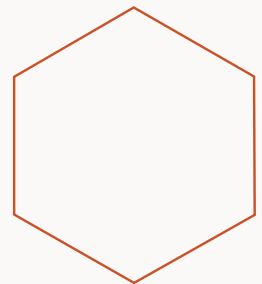


Most states have now adopted what are commonly called pass-through entity taxes that allow the entity to elect to pay tax on their income earned in the state. For owner/members of a pass-through entity the income is generally exempted from state income tax or a credit is allowed for pass-through entity taxes paid on behalf of each member.

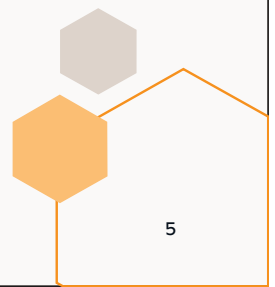
Arkansas law allows for an exemption from income tax for members of a pass-through entity that elect to pay the pass-through entity tax also known as the PET tax.

# Act 362 of 2021

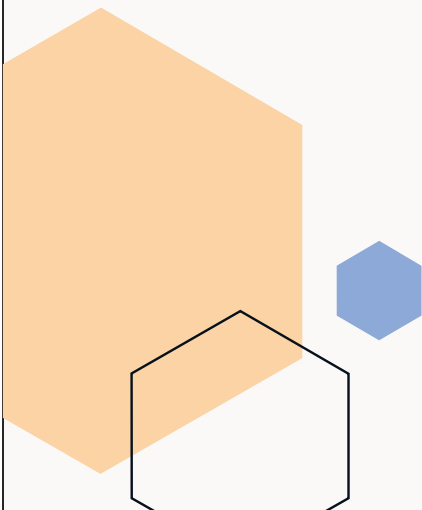
was passed and signed into law to allow Arkansas businesses to reduce their Federal Tax burden by electing Entity-level taxation.




- Act 362 of 2021 creates a voluntary tax for pass-through entities if members with more than 50% of the voting rights of a pass-through entity elect to do so.
- Income of a member that is subject to the pass-through entity tax would be exempt from Arkansas income tax.
- This may increase the Arkansas income tax liability of a taxpayer, but will decrease the SALT deduction subject to the federal \$10,000 limit for Federal income tax purposes and decrease the amount of income from the pass-through entity to each member, and thus reduce the member's Federal tax liability.



- Act 362 of 2021 amended Arkansas Code §26-51-404(b) to add an exemption for a person that is subject to the tax imposed by the Elective Pass-through Act so that the income is not subject to tax on both the business entity and its member(s). Income subject to a similar tax in another state or the District of Columbia would also be exempt from Arkansas income tax.
- Non-resident members of an entity subject to the pass-through entity tax are not required to file an Arkansas income tax return if all pass-through entities the member has an ownership interest in pay the pass-through entity tax or composite tax.
- Act 362 of 2021 is effective for tax years beginning on or after January 1, 2022.





Act 362 of 2021 defines “Business entity” as a general partnership, limited partnership, limited liability company, or a Subchapter S Corporation, that:

1. Is engaged in a business for *profit* and;
2. Is required to file a return under this title.

The PET tax is not available to sole proprietorships or C corporations.

## Pass-Through Entity Tax Rates

Act 362 of 2021 created a voluntary tax that pass-through entities would pay at a flat rate of 5.9% on net taxable income for tax years beginning on or after January 1, 2022.

- The rate was reduced to 5.5% by Act 1 of the Second Extraordinary Session of 2021.
- The rate was reduced to 4.9% by Acts 1 and 2 of the Third Extraordinary Session of 2022.
- Act 532 of 2023 reduced the rate to 4.7% for tax years beginning in 2023.
- Act 6 of the First Extraordinary Session of 2023 lowered the rate to 4.4% beginning in tax year 2024.

Act 362 of 2021 limits the rate of tax on net capital gains to 50% of the flat rate on ordinary income. The rate under Act 362 for net capital gains was 2.95%. Subsequent acts eventually reduced the rate to 2.45% for tax years beginning in 2022. Act 532 of 2023 reduced the capital gains credit to 2.35% for 2023. For years 2024 and after, the capital gains tax rate is 2.2%.

Act 362 of 2021 provides that the business entity can elect to receive any business incentive credit against its tax liability that the business entity has received or pass them down to the members.



Act 362 of 2021 provides that entities subject to the pass-through entity tax (PET) would be allowed the same provisions for net operating loss deductions as provided in Arkansas Code §26-51-427. Net operating losses incurred by an entity filing a PET tax return may be carried forward 10 tax years.

# PET Tax Election and Revocation

- Filing an election and registering for the PET tax in advance will help ensure quicker processing of the AR100PET and help DFA track payments made on an account prior to the filing of the return.
- All members of the Pass-Through Entity must be included in the AR100 PET if the election is made by members that hold >50% voting rights.
- Act 362 requires an annual election, but DFA will assume the taxpayer will continue to file PET tax returns in the future unless the election is revoked on Form AR362 or Form AR100PET is marked as a final return.

**AR362** **2022**

**ARKANSAS PASS-THROUGH ENTITY INCOME TAX ELECTION OR REVOCATION FORM**

Software ID  
**DFA WEB**

Pass-through entity making the election:

- The entity listed below is electing to be taxed at the entity level for this tax year. By checking this box, I affirm that this election has been approved by members holding more than fifty percent of the voting rights.
- Revocation of election of pass through entity tax • \_\_\_\_\_ Effective date of revocation

Tax year begin date: • \_\_\_\_\_ Tax year end date: • \_\_\_\_\_

Any credits at the time of Revocation will be applied as:

- Refund •  Carry-Forward •  Income Tax Composite •  Pass-Through Withholding

Date of first operations in Arkansas: • \_\_\_\_\_ NAICS code: • \_\_\_\_\_

Federal employer identification number: • \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Type of Organization: (check the one box that applies)

- S-Corp
- LLC
- Partnership (All types including limited (LP), limited liability (LLP), general (GP, etc.))
- Other (explain: \_\_\_\_\_)

Responsible Party:

Name	Title	SSN
• _____	• _____	• _____
Email	Telephone Number	
• _____	• _____	

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of authorized partner, shareholder, corporate officer, or member \_\_\_\_\_ Date \_\_\_\_\_

Mail To:  
Pass-Through Entity Tax  
P O Box 919  
Little Rock, AR 72203-0919

Instructions:

This form is intended for S-Corps, LLCs, and partnerships that are electing to be taxed at the entity level under AR 26-65-101 et seq. Complete this form or file form AR100PET to make the election. This election is valid for the pass-through entity for the tax year listed at the top of this form and for each tax year after until the election is revoked. If the amount of tax required to be paid by the pass-through entity pursuant to the provisions of AR 26-65-101 et seq is not paid when due, the Department of Finance and Administration may assess the individual members of the entity based on each member's pro rata share of income in addition to assessing the entity for tax liability. The election is due before the due date or extended due date of the entity's tax return for each tax year. For partnerships, this form is to be signed by a partner or member who is authorized to sign and file such income tax return. For S-Corps, this form is to be signed by a corporate officer or a member who is authorized to sign and file such income tax return. For revocation of PET tax, please provide the first date of the tax period after last return filed under PET tax.

Form AR362 Arkansas Pass-Through Entity Income Tax Election/Revocation form is not required to elect to be taxed on the Entity level under AR 26-65-101. The election may also be made by filing form AR100PET. If Business Entities wish to establish estimated payments, filing an election using this form will help in tracking estimated payments.

AR362 (R 8/19/2022)

# PET Tax Election and Revocation

Act 362 requires taxpayers to elect the PET tax before the due date for the Arkansas income tax return as may be extended. There are several methods available to elect the PET Tax:

- Complete Form AR362 Pass Through Entity Income Tax Election or Revocation Form.
- Complete Form AR1R Combined Registration Form
- Register for the PET tax in ATAP, (online version of Form AR1R).
- File the Arkansas Pass-Through Entity Tax Return Form AR1100PET.

Form AR1100PET is used to file the Arkansas Pass-Through Entity Income Tax Return.

Form AR1100PET is a 4-page return

- Page 1: tax calculation
- Page 2: member's share of income,
- Page 3: income and deductions for entities operating only in Arkansas
- Page 4: apportionment of income for multistate filers.

PRINT FORM      CLEAR FORM

## AR1100PET

**Arkansas Pass-Through Entity Tax Return**

**2022 P1**      **2022 P2**      **2022 P3**      **2022 P4**

Software ID  
DFA WEB

For the taxable year from  through 

 Final Return       Extension Filed  
 Initial Return       Amended Return

Federal employer identification number

Name

Address 1

City, town, or post office  State  ZIP code  NAICS code

**Entity types:**  LLC    LLP    LP    Partnership    SMLLC    S-Corp

**FILING STATUS:**  1 Pass-Through Entity operating only in Arkansas    2 Multistate Pass-Through Entity - Apportionment    3 Multistate Pass-Through Entity - Direct Accounting (Prior written approval required for Direct Accounting)

1. Total Pass-through Entity Income taxable in Arkansas, excluding capital gains	1.	00
2. Arkansas Tax: Multiply Line 1 by 4.90%	2.	00
3. Capital Gains subject to AR tax	3.	00
4. Arkansas Capital Gains Tax: Multiply Line 3 by 2.45%	4.	00
5. Pass-through Entity Election Tax. Add lines 2 and 4	5.	00
6. Business Incentive Credits (BIC) From Form AR1100BIC (Line 6 can not exceed amount of line 5)	6.	00
7. Net Income Tax (Line 5 minus line 6)	7.	00
8. Pass-through Entity Estimate payments From Form AR1100ESPET	8.	00
9. Payment with Extension Request	9.	00
10. Withholding Payments (Attach Form AR1100-WH and/or Form 1099PT)	10.	00
11. Amended Return: [Enter Net tax paid (or refund) on previous return(s) for this tax year]	11.	00
12. OVERPAYMENT: (Total of lines 8-10 plus or minus line 11; less line 7)	12.	00
13. Amount of overpayment to be applied to 2023 estimated tax	13.	00
14. Amount of overpayment to be refunded	14.	00
15. Tax Due: (Line 7 less 8, 9, 10; Plus or minus line 11)	15.	00
16. Interest on tax due	16.	00
17. Penalty for Late Filing or Payment: (See Instructions)	17.	00
18. Penalty for Underpayment of Estimated Tax: (Attach AR2220) Enter exception checked in Part 3 <input type="checkbox"/>	18.	00
19. Amount Due: (Add lines 15 through 18)	19.	00

Under penalties of perjury, I declare that I have examined this return and accompanying schedule and statements, and to the best of my knowledge and belief, it is true, accurate, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge. By filing this return, Entity and their Shareholders understand they are electing to file as a Pass-Through Entity Tax type.

Officer's Signature <input type="text"/>	Date <input type="text"/>	Title <input type="text"/>	Telephone Number <input type="text"/>
Preparer's Signature <input type="text"/>	Date <input type="text"/>	Preparer's PEIN/PTIN <input type="text"/>	<input type="checkbox"/> Check if self-employed
Preparer's Printed Name <input type="text"/>	May the Pass-Through Entity Tax Section contact your preparer?		<b>Per Department Use Only</b>
Area Code and Telephone Number of Preparer <input type="text"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No		<b>A</b> •
			<b>B</b> •
			<b>C</b> •

**Due on or before the 15th day of the 4th month following the close of the taxable year.**

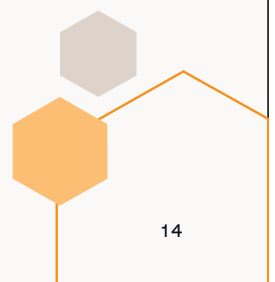
file year.



- Must include a copy of their federal income tax return with Form AR1100PET.
- Multi-state Businesses that file Form AR1100PET will follow the apportionment rules for corporations and partnerships.
- Forms AR1100REC, AR1100BIC, AR1100NOL, AR2220 and AR2220A will be used for PET tax. Note: In addition to NOL, pass-through entities may have tax credits, capital loss, and contribution carryforwards.
- **Businesses that file Form AR1100PET should not file Form AR1100S or Form AR1050.**



- The pass-through entity tax would be subject to all interest and penalty provisions of the Arkansas Tax Procedure Act (ATPA).
- The pro-rata interest of each member of a pass-through entity shall be reported to each member on a Form ARK1.
- DFA has developed forms and instructions for reporting and paying the tax that are available on the DFA website. ([www.dfa.arkansas.gov](http://www.dfa.arkansas.gov))
- The elective pass-through entity tax is NOT the same as filing a composite return which allows pass-through entities to file and pay the individual tax on behalf of nonresident members who elect to be included.



## SUMMARY



- Effective for tax years beginning on or after January 1, 2022.
- Net Taxable Income excluding capital gains is taxed at a flat rate of 4.9% in 2022.
- Capital Gains are taxed at 50% of the ordinary rate.
- Tax is due on the 15<sup>th</sup> day of the fourth month after the close of the tax year.
- Must be paid in quarterly installments to avoid underpayment penalties.
- Members get corresponding exclusion from income.
- All members included if election made by members that hold >50% voting rights
- Annual election so status can change year to year.

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# Thank you!

Tommy Burns

Assistant Administrator

Income Tax Administration (Corporate)

[Tommy.Burns@dfa.Arkansas.gov](mailto:Tommy.Burns@dfa.Arkansas.gov)

