

MEMORANDUM

TO: Glenn Farley, Office of Arizona Governor Doug Ducey

FROM: Arizona Society of CPAs

DATE: 9/30/2021

SUBJECT: HB 2838 (Laws 2021, Chapter 425)

Each year the Arizona Society of CPAs (ASCPA) reviews all tax related legislation considered by the Legislature. The goal of the ASCPA's Tax Legislation Review Committee (TLRC) is to provide nonpartisan feedback to policymakers on the mechanics, feasibility and simplicity of proposed tax legislation.

In 2021 the TLRC assisted Representative Joseph Chaplik (R-LD 23) with drafting the initial language of HB 2838 (income tax; partnerships; S corporations). As the legislation made its way through the process and was amended, a provision was incorporated which the TLRC later identified as contradictory. However, this provision was not identified in time and the legislation was signed with the contradiction.

Under 43-1014 (C) (2) it states, "the portion of the taxable income attributable to a partner or shareholder who is an individual, estate or trust and who opts out **or waives the right to opt out** of the election pursuant to subsection D of this section **is not included** in the entity level tax under subsection A of this section."

However, under 43-1014 (D) the final sentence states, "If the partner or shareholder who is an individual, estate or trust does not respond within the sixty-day period **or waives the right to opt out**, the partner or shareholder **will be included in the election.**" Under the current language referenced above, a taxpayer who waives the right to opt out is considered not taxed in 43-1014 (C) (2) but is then considered taxed under 43-1014 (D).

Upon checking with Legislative Council, they agreed that "or waive the right to opt out" should not have been included in subsection C, paragraph 2 (see attached).

To correct this the ASCPA's TLRC proposes the elimination of "or waive the right to opt out of" on page 3, lines 12 and 15 (see attached) in legislation in the 2022 session.