

NEW YORK STATE'S PASS-THROUGH ENTITY TAX

NEW YORK STATE PTET RECAP

The NYS Pass-Through Entity Tax (PTET) was enacted as part of the New York State Budget (Article 24-A) adopted on April 19, 2021. PTET is an elective tax applicable to pass-through entities (PTEs) as a work-around to the federal cap of \$10,000 on state and local tax (SALT) deductions for individual taxpayers. Many taxpayers were able to take advantage of savings from opting into the first year of New York State's PTET. The 2022-23 NYS budget package (S.B. 8009) includes provisions which may make opting into the PTET tax even more beneficial.

UPDATES TO THE NYS PTET PROVISIONS

ELECTION DEADLINE

Originally March 15, 2022, the deadline to elect in for PTET was extended until September 15, 2022. This gives eligible taxpayers additional time to determine if they will benefit from the election for 2022. In order for the election to be valid, an estimated payment must be made with the election.

- For elections made between June 15, 2022 - September 15, 2022, an estimated payment of 50% of the annual payment is required when the election is made
- Remaining installments will be due September 15 and December 15, 2022

NYC PTET ELECTION

The new budget bill also created a New York City PTET effective January 1, 2023. The NYC PTET tax will be at a rate of 3.867%, and is in addition to the unincorporated business tax and general corporation tax. You must elect into the NYS PTET in order to qualify for the NYC election, and meet certain residency requirements:

- Partnerships - must have at least one member that is a NYC resident
- S Corporations - all shareholders must be NYC residents
- Election must be made by the due date of the first estimated payment

ADDITIONAL BENEFITS FOR ELIGIBLE S CORPORATIONS

New legislation creates two classes of S corporations for PTET purposes, beginning in 2022. S corporations now have the option to be treated as an "Electing Resident S Corporation." Otherwise, they will default to being treated as an "Electing Standard S Corporation." What does this mean for S corporations filing in NYS?

Previously, as an S corporation, your PTET tax base was limited to New York Sourced Income. This means that even if all shareholders were NYS residents, any income earned outside of the state was excluded from the PTET tax base. The new legislation passed allows an S corporation to certify that ALL shareholders are residents of New York (an Electing Resident S Corporation). Once the certification is made, the S corporation qualifies to expand their tax base to include all income, gain, loss and deduction for the year.

- If your S corporation already made the PTET election prior to this legislation passing, the certification will be due March 15, 2023. Stay tuned for more guidance from NYS on how to make this election.
- If your S corporation hasn't made the PTET election yet, you may want to consider if the expanded tax base will benefit your shareholders and take advantage of the extended election deadline.

ELIGIBILITY

ELIGIBLE

- Partnerships
- New York S corporations
 - Electing Resident S Corporation
 - Electing Standard S Corporation
- Limited liability companies treated as partnerships or S corporations for federal and NY income tax purposes

NOT ELIGIBLE

- Corporations that are not New York S corporations
- C corporations
- Nonprofit corporations
- Single-member LLCs
- Sole proprietorships
- Trust

ELECTION & FILING DUE DATES

2022 CALENDAR YEAR

PARTNERSHIP/S CORP LEVEL

- Estimated tax payments due: March 15 / June 15 / September 15 / December 15
- PTE return filing due date: March 15, 2022 or extended due date of September 15, 2022
- PTE election due date: September 15, 2022

PARTNER/SHAREHOLDER (INDIVIDUAL LEVEL)

- Estimated NY tax payments should exclude any income from the PTE

2023 CALENDAR YEAR

PARTNERSHIP/S CORP LEVEL

- NYS and NYC election due date: March 15, 2023 (irrevocable)
- Estimated tax payments due: March 15 / June 15 / September 15 / December 15
- PTE return filing due date: March 15, 2023 or extended due date of September 15, 2023

PARTNER/SHAREHOLDER (INDIVIDUAL LEVEL)

- Estimated NY tax payments should exclude any income from the PTE

FOR MORE INFORMATION

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