

# NEW YORK STATE'S PASS-THROUGH ENTITY TAX

Enacted as part of the New York State Budget adopted on April 19, 2021 is new Article 24-A, applicable to partnerships, New York S Corporations, and limited liability companies treated as partnerships or S Corporations for federal and NY income tax purposes effective for taxable years beginning January 1, 2021.

An elective tax applicable to pass-through entities (PTE) as a workaround to the Federal cap of \$10,000 on state and local tax (SALT) deductions for individual taxpayers. The pass-through entity tax (PTET) is not mandatory, however, once the election is made it is irrevocable for that tax year.

## ELECTION/FILING DUE DATES

### 2021 CALENDAR YEAR – PARTNERSHIP/S CORP LEVEL

- Election due date: October 15, 2021 (irrevocable)
- Estimated tax payments due:
  - o Accrual basis pass-through entities are not required to pay estimated tax payments but 2021 tax would be paid with PTE return by March 15, 2022
  - o Cash basis PTEs are not required to pay estimated tax payments but would need to pay 2021 tax by December 31, 2021 for deduction in 2021
- PTE return filing due date: March 15, 2022 or extended due date of September 15, 2022

### 2021 CALENDAR YEAR – PARTNER/SHAREHOLDER (INDIVIDUAL LEVEL)

- Estimated tax payments due: must be paid regardless if PTET is paid for 2021

### 2022 CALENDAR YEAR – PARTNERSHIP/S CORP LEVEL

- Election due date: March 15, 2022 (irrevocable)
- Estimated tax payments due: March 15 / June 15 / September 15 / December 15 (calendar and fiscal year filers)
- PTE return filing due date: March 15, 2023 or extended due date of September 15, 2023

### 2022 CALENDAR YEAR – PARTNER/SHAREHOLDER (INDIVIDUAL LEVEL)

- Estimated tax payments due: If PTET election is made, does not appear that estimated tax payments would be needed for income from the PTE

# NEW YORK STATE'S PASS-THROUGH ENTITY TAX

## PASS-THROUGH ENTITY TAXABLE INCOME

Partnerships calculate their PTE taxable income by including the NY source income, loss, gain, or deductions for its nonresident partners and all items of income, gain, loss, and deduction (not just NY source) to the extent included in the taxable income of resident partners. NY source income subject to taxation would include state addition and subtraction modifications (i.e. decoupling from bonus depreciation). This does not include income attributable to partners who are not individuals or trusts (i.e. – corporations or upper-tier partnerships).

S Corporations calculate their PTE taxable income by including only the NY source income, loss, gain, or deduction that is includable in the taxable income of a shareholder who is subject to personal income tax. NYS Corporations use market-based sourcing rules to compute NY source income. NY source income subject to taxation would include state addition and subtraction modifications (i.e. decoupling from bonus depreciation).

For each taxable year beginning on or after January 1, 2021, the tax rates are graduated based on the total taxable income of the PTE:

PARTNERSHIP / S CORPORATION LEVEL	NY INDIVIDUAL TAX RATES
Not over \$2 million	6.85%
Over \$2 million but not over \$5 million	\$137,000 plus 9.65% of the excess over \$2 million
Over \$5 million but not over \$25 million	\$426,500 plus 10.30% of the excess over \$5 million
Over \$25 million	\$2,486,500 plus 10.90% of the excess over \$25 million

## DEDUCTION/CREDIT FOR PASS-THROUGH ENTITY TAX PAID

In accordance with IRS Notice 2020-75, eligible PTE's can claim a deduction for the NY PTET paid. The PTET credit will be considered an add back in calculating the partner/shareholder's personal NY taxable income. A partner or shareholder will get a dollar-for-dollar refundable credit on their NY individual tax return for their allocable share of PTET paid, and excess credits will be fully refundable. It is not yet clear if the PTET credit can be used to offset NY tax due on other income. Any refundable portion of the PTET credit would be considered taxable income for federal income tax purposes in the tax year received.

### FOR MORE INFORMATION

**Cory Van Deusen, CPA**  
cvandeusen@LumsdenCPA.com