

NEW YORK STATE'S PASS-THROUGH ENTITY TAX

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. The pass-through entity tax is not mandatory, however, once the election is made it is irrevocable for that tax year and the election must be made annually by March 15.

BENEFITS OF THE PTET ELECTION

The PTET tax gives eligible partnerships and New York S corporations the option to elect into the new pass-through entity tax. This allows owners of eligible entities to deduct a larger portion of their NYS income taxes paid against their federal income.

The ability to deduct the tax will generate a **deduction of up to 40.8% of the state's PTET tax**. On \$1,000 of income, the New York PTET would be \$109 which will offset the individual's New York personal income tax. The individual will also benefit from a deduction of \$44.47, equaling 40.8% of the tax.

PLANNING STRATEGY

A NYS sole proprietor filing with a Schedule C, E, or F can convert to a flow-through entity such as a partnership or S corporation to qualify as a PTE, thus allowing the entity to bypass the \$10,000 SALT cap.

WHAT ARE THE BENEFITS OF THE PASS-THROUGH ENTITY TAX?

1. For eligible entities, the most apparent advantage of the PTET is the ability to circumvent the \$10,000 SALT deduction cap.
2. Additionally, the tax is not subject to the alternative minimum tax (AMT). The AMT, which applies in addition to regular income tax for certain individuals, estates, and trusts, is designed to limit tax benefits available to taxpayers with high economic income. The AMT was often imposed on SALT deductions in the past, but this is not the case for the PTET.
3. Finally, the PTET also allows New York residents a tax credit against their personal income tax due for all other "substantially similar" pass-through entity taxes paid in other states.

ELIGIBILITY

ELIGIBLE

- Partnerships
- New York S corporations
- 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

2021 CALENDAR YEAR

PARTNERSHIP/S CORP LEVEL

- 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
- PTE return filing due date: March 15, 2022 or extended due date of September 15, 2022

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

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

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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, 2022, 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

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