

New York State Pass Through Entity Tax Summary (PTET)

When the Tax Cuts and Jobs Act (“TCJA”) was passed in December 2017, it became federal law that the maximum amount of state and local taxes (“SALT”) that could be included as a federal itemized deduction on a taxpayer’s personal income tax return (Form 1040), and thereby decrease federal taxable income, was limited to \$10,000 regardless of filing status. For many individuals the state income tax withheld plus real estate taxes, greatly exceeded the maximum deduction of \$10,000. In essence the federal government was no longer subsidizing high tax states by capping the deduction at \$10,000 annually.

States have been trying since that time on how to ensure that state and local income taxes could be fully deducted on their federal tax return, trying to identify a way to work around the \$10,000 SALT cap. The IRS opened a window for a SALT work around by issuing Notice 2020-75 which allows for an amount paid by a partnership or an S Corporation to a state (or subdivision thereof) to satisfy its income tax liability, to be deductible in computing the entity’s federal taxable income, and that such payments are not taken into account in applying the SALT cap to any partner or shareholder of such an entity.

The New York State legislature and the governor included this SALT workaround in the most recently approved budget that was passed on April 6, 2021. Other states have passed similar legislation. New York has been slow to issue guidance on this work around and has only recently done so.

The Pass-Through Entity Tax (“PTET”) allows an eligible partnership or S Corporation to **make an annual election to pay the New York State tax at the entity level and the direct individual partner or shareholder of the electing entity will be allowed a credit against the income tax imposed on their New York return.**

By electing the PTET, the entity will take a deduction on their federal return for the amount of state tax paid under this election, effectively reducing the amount of income flowing through to the partners/shareholders by the amount of tax paid.

General Principles of Election:

1. Who may make the election?

Only an authorized person may make this election on behalf of an eligible partnership or S Corporation. This is generally an officer, manager, partner or shareholder of the entity. **Your tax professional cannot make this election for you.** The election to opt into PTET is made online on an annual basis through the entity’s Business Online Services account. You will need to create one if your Company does not already have an account. Please see below for instructions on creating an account.

2. When does this election need to be made?

In general, the annual election must be made by the due date of the first estimated payment and will take effect for the current taxable year. The election is irrevocable for the year in which it is made. Therefore, if a pass-through entity wants to make an election for 2022, it must be made by March 15, 2022. **There is an exception regarding the 2021 taxable year. The deadline to make the 2021 election is required to be made by October 15, 2021.** *For 2021 only*, although the electing partnership or S Corporation is not required to make estimated tax payments for the 2021 taxable year, in order to receive a deduction in 2021, you may need to make an estimated payment by December 31, 2021. Additional guidance is expected from NYS. Partners and shareholders of a 2021 electing partnership or S Corporation must continue to make estimated tax payments as if they were not entitled to a tax credit.

Here is the link to make the election www.tax.ny.gov/bus/ptet/

3. How to calculate the PTET

For each tax year beginning on or after January 1, 2021 PTET, is imposed on each electing entity's PTE taxable income.

If the PTE taxable income is:

then the tax due is:

\$2 million or less

6.85% of the PTE taxable income

> \$2 million but less than \$5 million

\$137,000 plus 9.65% of the excess of PTE taxable income greater than \$2 million

Higher rates apply to income greater than \$5 million

4. Estimated tax payments

For tax year 2021, an electing entity is not required to make any estimated tax payments for PTET. However, it may choose to make optional online estimated tax payments prior to December 31, 2021. An online estimated tax application for PTET will be available by December 15, 2021.

The current law called for payment of the 2021 tax in March 2022, which would have been a problem for cash – basis taxpayers looking to get a 2021 deduction. Accordingly, those taxpayers should make the optional payment in December 2021.

For tax years beginning on or after January 1, 2022 – an electing entity is required to make estimated tax payments which are due on or before March 15, June 15, September 15, and December 15 in the calendar year prior to the year in which the due date of the PTET return falls.

Each quarterly payment should be in an amount equal to at least 25% of the required annual payment for the taxable year. The required annual payment is the lesser of:

- 90% of the PTET required to be shown on the return of the electing entity for the taxable year; or
- 100% of the PTET shown on the return of the electing entity for the preceding PTET taxable year.

If the electing entity did not make the election to be subject to the PTET for the preceding PTET year, the required annual estimated tax payment is 90% of the PTET required to be reported on the return for the taxable year.

5. Claiming the PTET credit

Eligible taxpayers that receive a PTET credit from an electing entity may claim the credit on Form IT-653, Pass – Through Entity Tax Credit, and attach it to their New York State personal income tax return. New York State has not yet released this form yet.

While many pass-through entities see the benefits of the New York State pass-through entity tax election, it does become more complicated when you have non-resident partners or income that is not sourced to New York. In addition, the administrative oversight can be overwhelming as well.

6. Creating a NYS Online Business Account Setup

You will need the following documents:

- Most recently filed S Corporation or partnership income tax return
- Most recently filed Sales tax return (if filed)
- Most recently filed withholding tax return (if filed)

Step by Step Instructions:

- Go to: <https://www8.tax.ny.gov/OSBZ/osbzStart>
- Complete the security check by typing the security code displayed. Select “Continue”.
- For the “I would like to gain access to” question select “All Available Services” from the drop-down.
- Enter your EIN number for Taxpayer ID Number.
- Answer questions on recently filings:
 - Corporation return filed in last 12 months? You will need to enter form filed (ex: if you are an S corporation form CT-3-S would have been filed) Reference your 2020 NYS tax return for the form filed
 - Sales Tax return filed in last 12 months?
 - Withholding tax return (payroll) in the last 12 months?

Please contact our office with any questions or concerns regarding this election.