



MULTISTATE INCOME/FRANCHISE TAX

## New Mexico enacts pass-through entity tax election Tax Alert

### Overview

On March 8th, 2022, the New Mexico governor signed [House Bill 102](#) (H.B. 102) into law. Under the legislation, qualifying pass-through entities may make an annual election to pay an entity level state tax for taxable years beginning on or after January 1, 2022.

This Tax Alert summarizes some of the provisions of the New Mexico pass-through entity tax election.

### Pass-through entity tax election

- Effective for taxable years beginning on or after January 1, 2022.
- A pass-through entity means a personal services business or any other business association other than:
  - a sole proprietorship,
  - an estate or trust that does not distribute income to beneficiaries,
  - a corporation, limited liability company, partnership, or other entity not a sole proprietorship taxed as a corporation for federal income tax purposes for the taxable year,
  - a partnership that is organized as an investment partnership in which the partners' income is derived solely from interest, dividends, and sales of securities,
  - a single member limited liability company that is treated as a disregarded entity for federal income tax purposes, or
  - a publicly traded partnership as defined in subsection (b) of section 7704 of the Internal Revenue Code.
- The election is an annual election.
- The election is made by filing a complete entity level tax return. The return must be filed no later than the due date of the entity's

federal partnership or S corporation return for the taxable year.

## Pass-through entity tax calculation

- The entity level tax is imposed on the distributed net income of the pass-through entity. Distributed net income shall equal the amount of net income of the pass-through entity allocated and apportioned to New Mexico.
- Distributed net income does not include allocations of net income to:
  - the United States, this state or a political subdivision of either,
  - a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico, or any political subdivision thereof,
  - a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code,
  - a corporate partner that would properly include the income in the partner's New Mexico tax return as part of the partner's unitary business income.
- The tax rate of the entity level tax is equal to the higher of the maximum individual income tax rate imposed pursuant to section 7-2-7 NMSA 1978 or the maximum corporate income tax rate imposed pursuant to section 7-2A-5 NMSA 1978 for the taxable year, both currently 5.9%.

## Exemption for income subject to pass-through entity tax

- A corresponding income tax exemption is available to owners of electing pass-through entities for net income subject to the entity level tax.

## Other considerations

- The entity level tax is in lieu of the pass-through entity withholding requirements pursuant to section 7-3A-3.B. NMSA 1978.
- Electing pass-through entities shall make estimated payments at the same time and in the same amounts as withholding pursuant to section 7-3A-3.B. NMSA 1978.
- A pass-through entity may apply for a refund if the sum of the estimated payments of tax made by the pass-through entity for a taxable year exceeds the amount of entity level tax owed. Alternatively, if the entity level tax owed by a pass-through entity exceeds the sum of the estimated payments of tax made by the pass-through entity for a taxable year, the pass-through entity must remit the difference on or before the date the pass-through entity's entity level tax is due.

## Get in touch

[Scott Schiefelbein](#)

[Cindy James](#)

Have a question relating to this or any other passthrough entity tax regime? Reach out to one of our national multistate passthrough entity tax specialists.

[Todd Hyman](#)

[Greg Bergmann](#)

[Hernan Stigliano](#)

[Andrew Cardaci](#)

[Dan Daly](#)

[Jason Kang](#)

[Fiona Pan](#)

[Amanda Sterling](#)

[Alyssa Keim](#)

[Olivia Schulte](#)



[Deloitte.com](#) | [Unsubscribe](#) | [Manage email preferences](#) | [Legal](#) | [Privacy](#)

30 Rockefeller Plaza  
New York, NY 10112-0015  
United States

This alert contains general information only and Deloitte is not, by means of this alert, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This alert is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this alert.

As used in this document, "Deloitte" means Deloitte Tax LLP, a subsidiary of Deloitte LLP. Please see [www.deloitte.com/us/about](http://www.deloitte.com/us/about) for a detailed description of our legal structure. Certain services may not be available to attest clients under the rules and regulations of public accounting.

Copyright © 2022 Deloitte Development LLC. All rights reserved.