



MULTISTATE INCOME/FRANCHISE TAX

Massachusetts enacts pass-through entity tax election Tax Alert

Overview

On September 30, 2021, the Massachusetts Legislature voted to override Governor Charlie Baker's veto of [House Bill 4009](#), thereby establishing a new elective pass-through entity ("PTE") tax, which is generally applicable to partnerships, S corporations, and limited liability companies treated as partnerships or S corporations for federal income tax purposes for tax years beginning on or after January 1, 2021. This provision was originally part of the Massachusetts FY 2022 budget and Governor Baker vetoed this section of the budget. Thereafter the Legislature passed House Bill 4009, which the Governor vetoed for a second time, and then the Legislature again voted to override.

This Tax Alert summarizes some of the provisions of the new PTE tax in Massachusetts.

PTE election

- For taxable years beginning on or after January 1, 2021, an eligible PTE may elect to pay an excise tax on its qualified income taxable in Massachusetts at a rate of 5%. "Qualified income taxable in Massachusetts" is defined as "the income of an eligible pass-through entity determined under chapter 62 allocable to a qualified member and included in the qualified member's Massachusetts taxable income under said chapter 62."
- An eligible pass-through entity includes S corporations, partnerships, and limited liability companies treated as S corporations or partnerships for federal tax purpose.
- A qualified member is a member of an eligible PTE, who is a natural person, trust, or estate, and may be a resident, nonresident, or part-year resident.

- Under House Bill 4009, a credit will be available to qualified members in an amount proportionate to each qualified member's share of the tax due and paid under this chapter by the eligible pass-through entity multiplied by 0.9.
- The elective PTE tax does not apply to any taxable years for which the federal limitation on the state and local tax deduction imposed under section 164(b)(6) of the Internal Revenue Code has expired or is otherwise not in effect.
- The election shall be made by the eligible PTE on an annual basis in a manner determined by the commissioner. All members of the electing PTE shall be bound by the election, and once made for a particular year, the election cannot be revoked.
- A return that reports the excise tax shall be due at the same time as a partnership information return or corporate excise return would be due for the electing PTE.

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