



MULTISTATE INCOME/FRANCHISE TAX

New Mexico enacts changes to pass-through entity tax

Tax Alert

Overview

On April 5, 2023, New Mexico [House Bill 368](#) (H.B. 368) was enacted into law. Pursuant to the legislation, which is effective on June 16, 2023 for tax years beginning on or after January 1, 2023, certain provision of the state's pass-through entity tax ("PTET") are amended.

This Tax Alert summarizes some of the provisions of H.B. 368.

New Mexico H.B. 368

H.B. 368 makes various changes to New Mexico's PTET provisions including the following:

- The legislation clarifies the election is binding on all owners of the electing pass-through entity.
- The legislation defines pass-through entity as "a partnership or corporation that elects to pass income, losses, deductions, and credits through to the entity's owners for federal tax purposes."
- When calculating a pass-through entity's distributed net income, income allocated to a pass-through entity that is an owner of the electing pass-through entity is now excluded.
- The bill clarifies that for partnerships, distributed net income includes guaranteed payments (other than premiums for health insurance paid by the partnership on behalf of the partner).
- Net capital gains that are deductible under N.M. Stat. Ann. § 7-2-34 are now excluded from the distributed net income of a pass-through entity if such gains are properly allocated to owners who are subject to tax under the New Mexico Income Tax Act.
- In computing the PTET, net operating losses may not be included in distributed net income of a pass-through entity but may be carried forward until exhausted.

- An owner of an entity electing to pay the PTET may now be allowed a credit equal to the owner's share of the tax if: (1) the pass-through entity paid the tax and (2) sufficient information is included on the pass-through entity's return to identify the owner. If the credit exceeds the owner's tax liability, the excess will be refunded to the owner.
- PTET estimated payments are no longer required to be made at the same time and in the same amounts as withholding. Estimated payments must now be made on forms and in the manner determined by the New Mexico Taxation & Revenue Department. Amounts remitted for withholding by an electing pass-through entity shall be deemed payments of PTET.

Get in touch

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

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