



MULTISTATE INCOME/FRANCHISE TAX

Updated New York State and New York City pass-through entity tax guidance Tax Alert

Overview

On August 17, 2023, the New York State Department of Taxation and Finance (“Department”) [announced](#) it has updated its website for content related to the New York State pass-through entity tax (“NYS PTET”) and New York City pass-through entity tax (“NYC PTET”).

This Tax Alert summarizes some of the updated and new administrative guidance provided by the Department.

NYS PTET updates

NYS PTET election

- The NYS PTET election may be revoked at any time up until the due date of the first estimated payment through the entity’s Business Online Services account.
- An electing entity may not file a zero return to effectively revoke the election.
- The NYS PTET election must be made by March 15th of the tax year for which the entity is making an election. Therefore, if a new entity is formed after March 15th with a short period ending on December 31st, the newly formed entity cannot make the PTET election for the first tax year it exists.

Guidance on federal reorganizations

- If an electing entity undergoes a federal reorganization during its taxable year for which an election was made, the NYS PTET election will remain effective for the successor entity if the following conditions are met:
 - The successor entity is a continuation of the original partnership;
 - The original partnership will not be filing a final return; and
 - All the income for the year, including income earned prior to the reorganization, will be filed on the successor entity’s partnership return.

- If the successor entity did not retain the original entity's EIN, it should file the PTET return using the original entity's EIN. PTE taxable income and PTET should be computed based upon K-1 amounts reported under the successor entity's EIN.
- An individual or trust claiming a PTET credit should file form IT-653 reporting the original entity's EIN as the source of the credit.

NYS PTET credit

- Eligible partners, members, or shareholders must claim the NYS PTET credit on their personal income tax return for the same tax year the NYS PTET annual return is filed, regardless of when the NYS PTET is paid. If the partners, members, or shareholders filed their returns prior to receiving their allocated share of the NYS PTET, they must file an amended personal income tax return to claim the NYS PTET credit.

Amended PTET returns

- Entities can file an amended PTET return but must request permission in advance and the request must be made in writing. Regardless of whether an extension was filed, all requests must be made within one year of the extended due date of the initial return.
- The written amended PTET return request must include:
 - The entity name;
 - The entity's taxpayer ID number;
 - The PTET tax year;
 - A detailed description of the reason for the request, including the reason for the amendment, the specific incorrect information, and the new information;
 - A signature of an owner, officer, previously authorized POA, or other responsible person;
 - Identification of signor's relationship to the entity;
 - The best daytime phone number; and
 - A valid e-mail address.
- Once the request to file an amended PTET return is submitted, the Department staff will contact the entity for further instructions.
- To be considered, amended returns must be received by the Department by September 15, 2023, for tax year 2021 returns and September 16, 2024, for tax year 2022 returns.
- Although the deadline for requesting permission to file an amended return is the same as the deadline for filing the amended return for the applicable tax year, permission requests must be submitted in advance and approved prior to filing an amended return.

Group return for nonresident partners

- The NYS PTET credit cannot be claimed on a group return for nonresident partners. If a pass-through entity has previously received approval to file a group return, it may decide not to file a group return for the tax year by notifying the Department no later than February 15th of the year in which the return is due.

PTET payments

- If an entity elects into both the NYS PTET and NYC PTET, all payments are applied in aggregate to the NYS PTET liability and NYC PTET liability on the annual PTET return. If the total NYS PTET estimated payments exceed the NYS PTET liability on the annual return, the excess is applied to the NYC PTET liability as necessary. Similarly, if a NYC PTET payment exceeds the NYC PTET liability on the annual PTET return, any excess will be applied to the NYS PTET liability.

- Any net overpayment of NYS PTET and NYC PTET will be refunded to the entity once the annual return has been processed.
- An electing entity may not transfer payments between different tax types and payments cannot be transferred between related entities or individuals.
- An electing entity must continue to make estimated metropolitan commuter transportation mobility tax (MCTMT) payments as required by Tax Law section 801(a). There are no provisions in the tax law to reduce the MCTMT due by the partner's or member's anticipated tax credits.

NYC PTET updates

NYC PTET election

- Consistent with the updated guidance above for the NYS PTET election, the NYC PTET election may be revoked at any time up until the due date of the first estimated payment and an electing entity may not file a zero return to revoke the election.

NYC PTET credit

- Pursuant to the technical changes made in New York's 2023-2024 Budget Act, the definition of "city taxpayer" includes city resident trusts and estates so that pass-through entities with city resident trust and estate owners may make the NYC PTET election for tax years beginning on or after January 1, 2023. See previously issued [Tax Alert](#) from May 17, 2023 for more information on the 2023-2024 Budget Act.
- A city resident trust, other than a trust that is disregarded for tax purposes, is allowed a NYC PTET credit on the trust's fiduciary income tax return but is not permitted to distribute any NYC PTET credit it receives to its beneficiaries.

States with tax substantially similar to the NYS PTET

- For tax years beginning on or after January 1, 2021, New York resident partners, members, or shareholders can claim a credit for entity level taxes paid to other states that are substantially similar to the NYS PTET imposed on income both derived from such other state and subject to tax under Article 22.
- The Department updated its list of states with a tax that is substantially similar to the NYS PTET, which now includes Kansas, Mississippi, Missouri, New Mexico, Utah, and Virginia. The full list can be accessed [here](#).

The updated guidance can be accessed at the following links:

- [Pass-through entity tax \(PTET\)](#)
- [New York City pass-through entity tax \(NYC PTET\)](#)
- [Frequently asked question about the pass-through entity tax \(PTET\)](#)
- [Calculating the PTE taxable income, the PTET, and the credit](#)
- [Calculating the NYC PTE taxable income, the PTET, and the credit](#)
- [States with a tax substantially similar to PTET](#)

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