

New York Provides Clarity on the New Pass-Through Entity Tax - An Opportunity for Tax Savings

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Passed earlier this year in [April](#), New York's elective Pass-Through Entity Tax (PTE tax) was intended to help taxpayers circumvent the federal limitation on state and local tax deductions. Since its enactment, taxpayers have been eagerly anticipating guidance from the Department of Taxation and Finance (the "Department") to address many [unanswered questions](#) regarding the new regime's application and compliance rules. Thankfully, the Department just released detailed guidance advising on many of the unresolved issues, helping taxpayers decide whether to elect in and how the mechanics of the PTE tax works. Below are highlights from the Department's guidance along with Anchin's observations and recommendations.

Election and Estimates

- S corporations are eligible to elect into the PTE tax regime if they are subject to New York's fixed dollar minimum tax.

- A partnership is eligible to elect into the PTE tax regime if it has a New York tax filing requirement and is not publicly traded.

- A partnership is still eligible to elect into the PTE tax regime even if some of its

partners are not eligible to receive a PTE tax credit. Only direct individual partners, trusts and estates are eligible for the PTE tax credit. Accordingly, a partner that is a partnership in a tiered partnership structure or a corporate partner will not be included in the PTE tax calculation nor receive a credit, even if the ultimate owner is an eligible taxpayer.

-Businesses that are not eligible to elect into the PTE tax regime include single member LLCs, sole proprietorships, trusts, non-profit corporations and C corporations.

-A trust that is a direct partner of an electing entity can receive a PTE tax credit on its return.

-The PTE tax election is available now online through the state's Taxpayer Business Online Service Account and is available for the 2021 tax year until October 15, 2021.

-Taxpayers without an existing account are encouraged to create an account [here](#) as soon as possible.

-PTE tax estimates are not required for electing entities for 2021, however the state's online estimate payment application is expected to be available by December 15th.

-Individuals must still make estimated payments for 2021 even if electing and paying into the PTE tax as underpayment penalties may still apply.

-These personal estimated taxes cannot be reclassified as PTE tax estimates.

-In future years, PTE tax estimates will be due on March 15th, June 15th, September 15th and December 15th of the calendar year prior to the year in which PTE tax's due date falls.

-PTE tax estimates in future years are equal to 90% of current year's PTE tax, or a safe harbor of 100% of prior year's tax can be used to avoid underpayment penalties.

-If a taxpayer did not elect into the PTE tax in the prior year, the safe harbor will not apply.

-Electing entities unable to file their PTE tax return by the March 15th due date can request a six-month extension.

-The extension may be filed through one's Business Online Services account, but it is only an extension to file, not an extension to pay any taxes due.

Rates and Tax Computations

-The PTE tax rates are based on the electing entity's taxable income.

-The rates basically follow New York's personal income tax brackets, particularly for those at higher income levels. However, the PTE tax brackets do allow for the tiered tax benefits at all levels, as opposed to individual rates where the benefit is subject to a phase out.

-Partnerships calculate their PTE tax using a New York resident and nonresident pool, as New York residents are subject to the PTE tax on all their income as opposed to nonresident partners who are only taxed on their state-sourced income.

-This distinction does not apply to S corporations since all shareholders are only taxed on their New York-sourced income.

-Part-year New York residents are not considered for PTE tax purposes. Rather, the guidance uses a half-year test to determine which pool a taxpayer should be in - resident or nonresident.

-Trust partners are either New York or non-New York partners based on the residency of the trust, not its beneficiaries.

-Guaranteed partner payments are included in the PTE tax taxable income calculation.

-This may result in unjust enrichment to non-equity partners, therefore entities may consider either adjusting their compensation models or modifying their partnership agreements for special allocations to correct the economic result of the PTE tax.

-Fiscal year taxpayers compute their PTE tax using the calendar year in which their

fiscal year ends.

-A fiscal year PTE tax return is due on March 15th after the end of the calendar year in which the fiscal year ends.

-Example: A September 30, 2022 fiscal year end results in a PTE tax due date of March 15, 2023, but an election due date of March 15, 2022.

Credits and Modifications

-PTE tax credits pass to partners and shareholders via Form IT-653, Pass-Through Entity Tax Credit. Such credits may only be claimed on individual returns, not group returns.

-Trusts that are direct partners of an electing entity can claim a PTE tax credit on their returns, but cannot pass through the credit to trust beneficiaries.

-If an entity makes estimated payments, but the entity has a loss, the entity may file a request for refund.

-The partners/shareholders are ineligible to claim the payments as credits in this scenario.

-New York requires an addback modification of those claiming the New York PTE tax credit for the amount of the credit.

-New York permits residents to claim a credit for another state's PTE tax.

-If claiming a credit for another state's PTE tax, an addback modification on the New York return is required for the amount of these credits.

New York's PTE tax guidance is welcome news for New York taxpayers and solidifies the attractiveness of the option for many. With the election deadline of October 15th quickly approaching, taxpayers are encouraged to consider the various factors, benefits and drawbacks now. If you have questions about New York's Pass-Through Entity Tax regime, please contact your Anchin Relationship Partner.