



SALT Alert!



SALT Alert! 2022-03: PTET Election Considerations for the Upcoming Deadlines

In response to the federal \$10,000 cap on state and local tax itemized deductions, many states have enacted legislation allowing a passthrough entity to elect to pay the tax and provide an owner a credit or deduction for the tax paid by the passthrough entity. There are several considerations in determining whether a passthrough entity can take advantage of this election. Preliminarily, a passthrough entity must consider whether it is eligible to make the election. Some states allow passthrough entities with only individual owners to make the election. For example, Oregon allows partnerships and S corporations with only individual owners or passthrough entity owners held by individual owners to elect to pay the tax. Other states disallow passthrough entities with partnership owners to make the election. For example, Minnesota does not allow a partnership or S corporation that has an owner that is a partnership, non-disregarded limited liability company, or corporation to elect to pay the tax.

Also, a passthrough entity must consider how long the election lasts. Some states provide that the election is binding until the entity revokes the election. For example, in Alabama, the election is binding until the entity files paperwork to revoke the election on or before the 15th day of the 3rd month after the tax year. Other states require the election to be made on an annual basis. For example, in California, the election must be made annually on a timely filed return.

Finally, a passthrough entity must consider whether the states provide any relief for estimated tax payments in the initial effective tax year. For example, in New York, a passthrough entity was not required to make any estimated tax payments for the passthrough entity tax (PTET) for the tax year 2021 but was permitted to make optional online estimated tax payments prior to December 31, 2021.

Modeling

In determining if there will be a benefit to participating in one or more elective PTETs, it is important to prepare computations that show the impact for the passthrough entity and its owners. These computations should include numerous elements such as the tax impact at the passthrough entity level, how the deduction will be split among the owners, how the passthrough entity tax credit or income exclusion or deduction will impact the owner's personal state income tax filings, how the credit for taxes paid computed for an owner's resident state will be impacted, the cash impacts for the owners, the treatment of state credit refunds as additional federal income, and the federal tax impact on the owners.

Determining whether a passthrough owner's resident state will allow a credit for taxes paid by the entity to other states requires consideration of the rules and any guidance issued by the resident state. Some states have specifically indicated that one or more other states' PTETs would not be included in a resident individual's credit for taxes paid (e.g., Maine). Some have noted the PTETs are not includable in a resident partner's credit for taxes paid even though it would be includable in the computation of an S corporation shareholder's credit for taxes paid (e.g., Missouri, Pennsylvania). Some have indicated they would allow a credit for PTETs that are "substantially similar" to that state's PTET and have released lists of which other states impose "substantially similar" PTETs that the state will permit a resident owner to include in their computation of credit for taxes paid (e.g., Illinois and New York).

In addition to the states listed below, additional state legislatures currently have bills that would adopt elective pass-through entity taxes (e.g., New Mexico, Virginia).

Next steps and Contacts

The deadlines for making the election for tax year 2021 and for making estimated payments for the 2022 are included in the table below. March 15 deadlines are highlighted in orange and April 15 deadlines are highlighted in blue in the table below. Note that any remaining payments for 2021 generally must be made by the original due date of the return, **NOT** the extended due date.

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	TY 2021 election deadline	TY 2022 estimated payments	Owner permitted tax credit or income exclusion
AL	March 15 (15th day of 3rd month after tax year)	15th day of 4th, 5th, 9th, and 12th months	100% credit
CA	For 2021 taxable year, election made on timely filed return. For 2022 to 2025 taxable years,	Payment 1 due on or before June 15th of the year of election; Payment 2 due on original return due	100% credit

	election is made when the return is filed and the PTE makes an initial payment by June 15	date without regard to extension.	
CT	No election; tax is mandatory	15th day of 4th, 6th, 9th month of taxable year and 15th day of following year	87.5% credit
ID	Extended due date of return; election made on original, timely filed return	15th day of 4th month after close of tax year	100% credit
IL	Extended due date of return; election made when return is filed	15th day of 4th, 6th, 9th month of taxable year and 15th day of following year	100% credit
LA	April 15 (or 15th day of 4th month after tax year); must file request on Form R-6980 and must receive acceptance by Louisiana Dept. of Revenue.	15th day of 4th, 6th, 9th, and 12th months	Income exclusion
MD	Extended due date of return; election is made on return	15th day of 4th, 6th, 9th month of taxable year and 15th day of following year	100% credit
MA	Extended due date of return; election made when return is filed	15th day of 4th, 6th, 9th month of taxable year and 15th day of following year	90% credit
MI	15th day of 4th month after tax year (for tax years after 2021, election must be made by 15th day of third month of taxable year - taxpayers who elect for 2022, but not 2021 must elect by March 15, 2022 but taxpayers who elect for 2021 must elect by April 15, 2022). Election must be made by making a payment through the state's online system and must specify the year for which the election is being made.	15th day of 4th, 6th, 9th month of taxable year and 15th day of following year	100% credit (but credit for nonresident estates and trusts may be limited)
MN	Extended due date	15th day of 4th, 6th,	100% credit

	of return; election is made on return	9th month of taxable year and 15th day of following year	
NJ	March 15 (or 15th day of 3rd month after tax year)	15th day of 4th, 6th, 9th month of taxable year and 15th day of following year	100% credit
NY	Election period for 2021 has expired. Election must be made by March 15 of the taxable year. A fiscal year entity must elect, file, and pay PTET for the calendar year in which its fiscal year ends.	March 15, June 15, Sept. 15, and Dec. 15 in the calendar year prior to the year in which the due date of the PTET return falls.	100% credit
OK	Election period for 2021 has expired. NOTE: Election for 2022 must be made within 2 months and 15 days from the beginning of the taxable year (March 15).	15th day of 4th, 6th, 9th month of taxable year and 15th day of following year	Income deduction
RI	Extended due date of return; election is made on return	15th day of 4th, 6th, 9th, and 12th month of taxable year	100% credit
SC	Extended due date of return; election is made on return	15th day of 4th, 6th, 9th month of taxable year and 15th day of following year	Income exclusion
WI	Extended due date of return; election is made on return	15th day of 4th, 6th, 9th month of taxable year and 15th day of following year	Income exclusion

PTET Statutes that Become Effective for TY 2022

	TY 2022 election deadline	TY 2022 estimated payments	Owner permitted tax credit or income exclusion
AR	TBD	15th day of 4th, 6th, 9th month of taxable year and 15th day of following year	Income exclusion
AZ	Extended due date; election is made on return	15th day of 4th, 6th, 9th month of taxable year and 15th day of following year	100% credit
CO	Election is made on	15th day of 4th, 6th,	Income

	return	9th, and 12th months	exclusion
GA	Election is made on return	Same due dates as C corporation - 15th day of 4th, 6th, 9th, and 12th months	Income exclusion
NC	Election is made on return	TBD	Income deduction
OR	Election is made on return	TBD	100% credit

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