



## Pass-Through Entity Tax

The pass-through entity tax (PTET) under new Tax Law Article 24-A<sup>1</sup> is an **optional** tax that partnerships or New York S corporations may annually elect to pay on certain income for tax years beginning on or after January 1, 2021.

If a partnership or New York S corporation elects to pay PTET, partners, members, or shareholders of an electing partnership or New York S corporation (“electing entity”) who are subject to tax under Article 22 may be eligible for a PTET credit on their New York State income tax returns.

### Who may make the election

Only an *authorized person* may make this election on behalf of an eligible partnership or S corporation.

<b>If the entity is:</b>	<b>Authorized persons include:</b>
a New York S corporation	any officer, manager, or shareholder of the New York S corporation who is authorized under the law of the state where the corporation is incorporated or under the S corporation’s organizational documents to make the election and who represents to having that authorization under penalty of perjury.
a partnership	any member, partner, owner, or other individual with authority to bind the entity or sign returns under Tax Law § 653.

An *eligible partnership* is any partnership [including a limited liability company (LLC) treated as a partnership for New York and federal income tax purposes] that has a filing requirement under Tax Law § 658(c)(1) and is not a publicly traded partnership.<sup>2</sup> A partnership is eligible to make the election even if it has partners that are not eligible for a PTET credit including, but not limited to, corporate partners.

An *eligible S corporation* is any New York S corporation (including an LLC treated as an S corporation for New York and federal income tax purposes) as defined by Tax Law § 208(1-A) that is subject to the fixed dollar minimum tax under Tax Law § 209.

### The election period

Eligible partnerships and S corporations may annually elect to pay PTET for tax years beginning on or after January 1, 2021. The election to opt into PTET must be made online on an annual basis and is irrevocable.

<sup>1</sup> Chapter 59 of the Laws of 2021, Part C.

<sup>2</sup> As defined in IRC § 7704.

An electing entity that is a calendar-year taxpayer for federal purposes must use a calendar-year basis to elect, file, and pay PTET. An electing entity that is a fiscal-year taxpayer must elect, file, and pay PTET for the calendar year in which its fiscal year ends. See [Filing the annual PTET return and calculation of the PTET credits](#) for further explanation.

For tax years beginning on or after January 1, 2021, an authorized person can opt in to PTET on behalf of an eligible entity through the entity's Business Online Services account, now through October 15, 2021. If the entity does not have a Business Online Services account, the authorized person will need to create one.

For tax years beginning on or after January 1, 2022, the annual election may be made online on or after January 1 but no later than March 15.

### **How to calculate pass-through entity taxable income (PTE taxable income)**

PTET is imposed on the PTE taxable income of an electing entity. Generally, PTE taxable income includes all income, gain, loss, or deduction of an electing entity that flows through to a direct partner, member, or shareholder for New York personal income tax purposes.

*A direct member, partner, or shareholder* is any member, partner, or shareholder that is issued a federal Schedule K-1 by the electing entity based on the member's, partner's or shareholder's direct ownership interest in the electing entity. A federal Schedule K-1 issued to an entity that is disregarded for tax purposes, such as a single member limited liability company, is treated as if issued directly to the individuals or entities that include the disregarded entity's activity on their income tax returns.

The calculation of PTE taxable income differs between electing New York S corporations and electing partnerships.<sup>3</sup>

#### **Electing New York S corporations**

An electing New York S corporation calculates its PTE taxable income by aggregating amounts of income, gain, loss or deduction that flow through for New York income tax purposes to direct members or shareholders who are taxable under Article 22. Aggregated income and gain is reduced by any losses or deductions without regard to any limitations<sup>4</sup> that would be imposed on the member's or shareholder's federal and New York State personal income tax returns. The electing S corporation must then apportion this net amount of taxable income to New York based on the apportionment rules of Article 9-A included in Tax Law § 210-A.

#### **Electing Partnerships**

Before computing its PTE taxable income, an electing partnership is required to classify all direct members or partners that are taxable under Article 22 as a resident or nonresident of New York. Members or partners may not be classified as part-year residents for PTET

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<sup>3</sup> A limited liability company is required to use the rules for S corporations if it is treated as a New York S corporation for New York tax purposes and the rules for partnerships if it is treated as a partnership for tax purposes.

<sup>4</sup> Examples of limitations include, but are not limited to, capital losses, passive activity losses, and basis limitations.

purposes. A member or partner should be treated as a resident if they are a resident of New York for New York personal income tax purposes for at least half of the year. All other members or partners should be treated as nonresidents. If a member or partner is a trust, the electing partnership must classify the trust as a resident or nonresident of New York State based on the residency status of the trust and not of the beneficiaries.

An electing partnership's calculation of its PTE taxable income must include all items of income, gain, loss or deduction, to the extent they would flow through and be included in the taxable income of direct members or partners that are taxable under Article 22, including guaranteed payments. A partnership must not include in its PTE taxable income any amounts of income, gain, loss, or deduction that flow through to a direct partner that is a partnership or an entity not subject to tax under Article 22, even if the income is ultimately taxable to a partner under Article 22 through tiered partnerships.

To compute its PTE taxable income, an electing partnership must compute both a resident PTE taxable income pool and a nonresident PTE taxable income pool and add these amounts together. This PTE taxable income calculation applies to partners or members who do not have a special allocation of profits that differs from their allocation of losses. If a special allocation is present, an electing partnership must take these allocations into account when computing each pool.

To compute its *resident PTE taxable income pool*, an electing partnership must aggregate any amounts of income and gain that flow through to resident individual members or partners and offset that amount by any losses or deductions that flow through to resident individual members or partners, without regard for any limitations<sup>4</sup> that would be imposed on the member's or partner's federal and New York State personal income tax returns.

To compute its *nonresident PTE taxable income pool*, an electing partnership must aggregate any amounts of income and gain derived from or connected with New York sources<sup>5</sup> that flow through to nonresident individual members or partners and reduce that amount by any losses or deductions derived from or connected with New York sources that flow through to nonresident individual members or partners, without regard for any limitations<sup>4</sup> that would be imposed on the member's or partner's federal and New York State personal income tax returns.

**Example:** *An electing partnership has New York sourced ordinary income of \$2 million flowing to nonresidents and ordinary income of \$2 million and a capital loss of \$1 million flowing to residents for the tax year. The nonresident PTE taxable income pool of the partnership would be \$2 million, and the resident PTE taxable income pool of the partnership would be \$1 million (\$2 million ordinary income less \$ 1 million capital loss). The PTE taxable income for the partnership would be \$3 million (\$2 million nonresident PTE taxable income plus \$1 million resident PTE taxable income).*

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<sup>5</sup> See Article 22 of the Tax Law.

## How to calculate the PTET

For each tax year beginning on or after January 1, 2021, PTET is imposed on each electing entity's PTE taxable income. This tax is in addition to any other taxes imposed on the entity under the Tax Law and is determined as follows:

<b>If the PTE taxable income is:</b>	<b>then the PTET due is:</b>
\$2 million or less	6.85% of PTE taxable income.
greater than \$2 million but less than or equal to \$5 million	\$137,000 plus 9.65% of the excess of PTE taxable income greater than \$2 million.
greater than \$5 million but less than or equal to \$25 million	\$426,500 plus 10.30% of the excess of PTE taxable income greater than \$5 million.
Greater than \$25 million	\$2,486,500 plus 10.90% of the excess of PTE taxable income greater than \$25 million.

## Estimated tax payments for PTET

### For PTET tax year 2021

An electing entity is not required to make any estimated tax payments for PTET. However, it may choose to make optional online estimated tax payments prior to December 31, 2021. An online estimated tax application for PTET will be available by December 15, 2021.

Regardless of whether an electing entity chooses to make optional estimated tax payments for tax year 2021, personal income tax estimated payments must be made by or on behalf of partners, members, or shareholders under Article 22 calculated as if they were **not** entitled to the PTET credit. Personal income tax estimated payments are not considered prepayment of PTET and may not be applied to PTET liabilities.

### For PTET tax years beginning on or after January 1, 2022

An electing entity is required to pay estimated tax on the amount of PTET calculated for the current taxable year using the online application. Estimated payments are due on or before March 15, June 15, September 15, and December 15 in the calendar year prior to the year in which the due date of the PTET return falls. If the due date of the estimated payment falls on a Saturday, Sunday, or legal holiday, the payment is due on the next business day.

Each quarterly payment should be an amount equal to at least 25% of the required annual payment for the taxable year. The required annual payment is the lesser of:

- 90% of the PTET required to be shown on the return of the electing entity for the taxable year; or

- 100% of the PTET shown on the return of the electing entity for the preceding PTET taxable year.

If the electing entity did not make the election to be subject to the PTET for the preceding PTET year, the required annual estimated tax payment is 90% of the PTET required to be reported on the return for the taxable year.

PTET estimated payments will only be applied to the PTET liability and cannot be applied to any other taxes. In addition, payments may not be transferred between related entities or individuals.

Penalties and interest will apply to underpayments or late payments based on the rules in Article 22.

### **Filing the annual PTET return and calculation of the PTET credits**

On or before March 15, an electing entity must file an annual PTET return using the online return application to report the information required under Article 24-A for the PTET taxable year. All PTET tax returns are filed on a calendar-year basis. A fiscal-year taxpayer does **not** recompute its income on a calendar-year basis. Instead, its PTE taxable income must be computed for the fiscal year that ends within the PTET calendar year. The PTET return for an electing entity with a fiscal year is due on or before March 15 following the close of the calendar year in which its fiscal year ends.

**Example:** *A partnership's fiscal year is March 1, 2021 through February 28, 2022. Although the partnership reports its income for Article 22 purposes on a 2021 IT-204, Partnership Return, the partnership will make its PTET election for the 2022 PTET taxable year by March 15, 2022 and file its PTET return by March 15, 2023.*

If the due date of the return falls on a Saturday, Sunday, or legal holiday, the return is due on the next business day. An electing entity may make an online request by March 15 for a six-month extension of time to file its annual PTET return. An electing entity may not amend an annual PTET return for any reason once that return has been filed.

Penalties and interest will apply for late filing of the return or late payments based on the rules under Article 22. An electing entity, and certain responsible persons, will be liable for any unpaid tax due under Article 24-A.<sup>6</sup>

On its return, an electing entity must report its total PTET and the direct share of its PTET it is making available to each direct partner, member, or shareholder in the form of a credit (PTET credit). The total PTET credits an electing entity reports may not exceed the total PTET paid by the electing entity. The electing entity may provide PTET credits only to its direct partners, members, or shareholders that are taxable under Article 22 (eligible taxpayers).

The electing entity must provide sufficient information on its return to identify all PTET credit-eligible taxpayers and their credit amounts. If that identifying information is not provided, the otherwise eligible taxpayers will not be entitled to utilize the PTET credit on their New York

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<sup>6</sup> See Tax Law § 866(c).

State personal income tax returns. If the electing entity's total PTE taxable income is zero or less, the eligible taxpayers are not entitled to any PTET credits. Instead, the electing entity may file an annual PTET return to request a refund of any PTET estimated tax payments it made.

If the electing entity is an S corporation, each eligible taxpayer's PTET credit is computed by multiplying the electing entity's total PTET by the eligible taxpayer's ownership percentage.

If the electing entity is a partnership, the electing entity must compute a nonresident PTET credit pool and a resident PTET credit pool prior to computing each eligible taxpayer's PTET credit. This PTET calculation applies to partners or members who do not have a special allocation of profits that differs from their allocation of losses. If a special allocation is present, an electing partnership must take these allocations into account when computing each pool.

The electing entity must also compute each eligible taxpayer's profit and loss ownership percentage within that eligible taxpayer's PTE taxable income pool. To compute an eligible taxpayer's profit and loss ownership percentage within a pool, the electing entity must determine the ratio of each eligible taxpayer's profit and loss ownership percentage in the electing entity to the total profit and loss ownership percentages of all eligible taxpayers in the pool. The total of eligible taxpayers' profit and loss ownership percentages within each pool must equal 100%.

If the nonresident PTE taxable income pool and the resident PTE taxable income pool are each **more than zero**, the PTET credits are computed as follows:

#### **Nonresident pool**

- The electing entity must divide the nonresident PTE taxable income pool by the total PTE taxable income to determine a percentage.
- Then, the electing entity must multiply the total PTET by this percentage to determine the nonresident PTET credit pool.
- The PTET credit for each eligible taxpayer classified as a nonresident is computed by multiplying the electing entity's nonresident PTET credit pool by the eligible taxpayer's profit and loss ownership percentage within the nonresident PTE taxable income pool.

#### **Resident pool**

- The electing entity must divide the resident PTE taxable income pool by the total PTE taxable income to determine a percentage.
- Then, the electing entity must multiply the total PTET by this percentage to determine the resident PTET pool.
- The PTET credit for each eligible taxpayer classified as a resident is computed by multiplying the electing entity's resident PTET credit pool by the eligible taxpayer's profit and loss percentage within the resident PTE taxable income pool.

Under no circumstances may the sum of the resident PTET pool and the nonresident PTET pool exceed the electing entity's total PTET.

If the **nonresident** PTE taxable income pool is **zero or less**, PTET credits are computed as follows:

- all nonresident eligible taxpayers receive zero PTET credit, and
- each eligible resident taxpayer's PTET credit is equal to the total PTET multiplied by the profit and loss ownership percentage within the resident PTE taxable income pool of the eligible resident taxpayer.

If the **resident** PTE taxable income pool is **zero or less**, PTET credits are computed as follows:

- all resident eligible taxpayers receive zero PTET credit, and
- each eligible nonresident taxpayer's PTET credit is equal to the total PTET multiplied by the profit and loss ownership percentage within the nonresident PTE taxable income pool of the eligible nonresident taxpayer.

**Example:** *Partnership XYZ has five partners:*

<b>Partner</b>	<b>Profit and loss ownership percentage</b>
Partner A (nonresident)	15%
Partner B (nonresident)	25%
Partner C (resident)	20%
Partner D (resident)	30%
Corporate Partner Q	10%

*Partnership XYZ computes a nonresident PTE taxable income of \$4 million and a resident PTE taxable income of \$10 million, for a total PTE taxable income of \$14 million. Partnership XYZ computes and pays a PTET of \$1,353,500 on its PTE taxable income.*

*Corporate Partner Q is not eligible for a PTET credit as a corporation and Corporate Partner Q's income from Partnership XYZ was not included in PTE taxable income.*

*To compute the nonresident PTET credit pool, Partnership XYZ first divides \$4 million by \$14 million to get 28.57%. Partnership XYZ then determines the nonresident PTET credit pool is \$386,694.95 (\$1,353,500 x 28.57%).*

*Partner A and Partner B, combined, have a profit and loss ownership percentage of 40% of Partnership XYZ so the partnership computes their profit and loss ownership percentages within the pool to be 37.5% for Partner A and 62.5% for Partner B. Partnership XYZ computes Partner A's PTET credit to be \$145,010.61 ( $\$386,694.95 \times 37.5\%$ ) and Partner B's PTET credit to be \$241,684.34 ( $\$386,694.95 \times 62.5\%$ ).*

*To compute the resident PTET credit pool, Partnership XYZ divides \$10 million by \$14 million to get 71.43%. Partnership XYZ then determines the resident PTET pool is \$966,805.05 ( $\$1,353,500 \times 71.43\%$ ).*

*Partner C and Partner D, combined, have a profit and loss ownership percentage of 50% of Partnership XYZ so the partnership computes their profit and loss ownership percentages within the pool to be 40% for Partner C and 60% for Partner D. Partnership XYZ computes Partner C's PTET credit to be \$386,722.02 ( $\$966,805.05 \times 40\%$ ) and Partner D's PTET credit to be \$580,083.03 ( $\$966,805.05 \times 60\%$ ).*

<b>Partner</b>	<b>PTET Credit</b>
Partner A	\$145,010.61
Partner B	\$241,684.34
Partner C	\$386,722.02
Partner D	\$580,083.03
Corporate Partner Q	0
Total PTET paid	\$1,353,500

### **Claiming the PTET credit**

Eligible taxpayers that receive a PTET credit from an electing entity may claim the credit on Form IT-653, *Pass-Through Entity Tax Credit*, and attach it to their New York State personal income tax return.<sup>7</sup> A trust, other than a trust that is disregarded for tax purposes, that is a direct partner, member, or shareholder in an electing entity is allowed a PTET credit on the trust's personal income tax return, but it is not permitted to distribute any PTET credit it receives to its beneficiaries.

A partner, member or shareholder that is not subject to tax under Article 22, including but not limited to a corporate partner, is **not** eligible for the PTET credit. Additionally, a partner that is itself a partnership is **not** eligible for the PTET credit.

Each eligible taxpayer's PTET credit is equal to the taxpayer's direct share of PTET that was reported by the electing entity on the entity's PTET annual return. If a taxpayer receives more than one PTET credit, the credits will be aggregated on the taxpayer's personal income

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<sup>7</sup> See Tax Law § 606(kkk).

tax return. If the amount of the PTET credit allowable for any taxable year exceeds the taxpayer's tax due for the year, the excess will be treated as an overpayment, to be credited or refunded without interest.

Eligible taxpayers allowed a PTET credit must file an individual personal income tax return to claim the credit. The PTET credit may not be claimed on Form IT-203-GR, *Group Return for Nonresident Partners*, or Form IT-203-S, *Group Return for Nonresident Shareholders of New York S Corporations*.

### **Addition modification to income**

An eligible taxpayer claiming the PTET credit must make an addition modification to federal adjusted gross income or federal taxable income on the eligible taxpayer's New York State personal income tax return for an amount equal to the amount of the PTET credit claimed. See Form IT-225-I, *Instructions for Form IT-225, New York State Modifications*, for more information.

### **Resident tax credit**

For tax years beginning on or after January 1, 2021, resident partners, members, or shareholders will be allowed a resident tax credit against their New York State personal income tax for any pass-through entity tax imposed by another state, local government, or the District of Columbia, that is substantially similar to the PTET imposed under Article 24-A<sup>8</sup> paid by a partnership or New York S corporation to another jurisdiction. This includes any taxes paid by an LLC treated as a partnership or S corporation for New York tax purposes. In the case of taxes paid by an S corporation, the S corporation must be treated as a New York S corporation. An ineligible S corporation will be deemed to have met this requirement to the extent it is treated as a New York S corporation for purposes of computing the New York adjusted gross income of the resident shareholder.

A list of substantially similar taxes that qualify for the resident tax credit will be posted on our website.

For tax years beginning prior to January 1, 2021, a shareholder of a subchapter S corporation or a partner in a partnership is not allowed a resident tax credit for any tax imposed upon or payable by the S corporation or partnership to another state, local government, or the District of Columbia, even if the tax is substantially similar to New York's PTET. However, a shareholder or partner is allowed a resident tax credit if the taxes are calculated on the income of the S corporation or partnership, but are imposed upon and payable by the shareholder or partner.

### **Addition modification to income**

Resident partners, members, or shareholders must make an addition modification to federal adjusted gross income or federal taxable income on their New York State personal income tax returns equal to the amount of pass-through entity tax paid to another state, local government, or the District of Columbia on their behalf and that is the basis for computing the

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<sup>8</sup> See Tax Law § 620(b).

resident tax credit. See Form IT-225-I, *Instructions for Form IT-225, New York State Modifications*, for more information.

### **Additional guidance**

Additional PTET guidance will be posted on the department's website as it becomes available. To receive notification emails about any additional guidance, sign up for the PTET subscription service ([www.tax.ny.gov/help/subscribe.htm](http://www.tax.ny.gov/help/subscribe.htm)).

**Note:** A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.