



TaxNewsFlash

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New York State: Guidance on New York City passthrough entity tax for 2022-2023

The New York State (NYS) tax authority provided guidance on its [website](#) on the New York City (NYC) passthrough entity tax (PTET) election.

Background

[Tax Law Article 24-B](#) allows eligible pass-through entities who elect to pay the NYS PTET to make a similar optional election specific to NYC's individual (personal) income tax. The law provides that an NYC S corporation or partnership may elect to pay a tax at a rate of 3.876% on all its income, gains, losses, or deductions that flow through to a direct partner, member, or shareholder that is an NYC resident. If an eligible NYC pass-through entity makes the election, the partners, members, or shareholders may claim an NYC PTET credit against their NYC individual (personal) income taxes for their share of the tax paid by the entity.

NYC PTET election

For tax years beginning on or after January 1, 2022, a pass-through entity that has at least one NYC resident individual partner or member may make an annual election to pay the NYC PTET if it also elects to pay the NYS PTET for the same tax year. Similarly, the election is available to S corporations that elected the NYS PTET if all shareholders are NYC resident individuals. As defined in [Tax Law § 1305\(a\)](#), a partner, member, or shareholder who resides in NYC for at least half of the tax year is a NYC resident individual eligible for purposes of the NYC PTET. The election itself may only be made by a person authorized to do so by the electing entity through the entity's business online service account. It may not be made on behalf of an electing entity by a tax professional.

For a tax year that begins on or after January 1, 2022, and ends before January 1, 2023, the annual NYC PTET election must be made by March 15, 2023, and is revocable prior to that date. For tax years beginning on or after January 1, 2023, the annual NYC PTET election may be made at any time on or after January 1 but prior to March 15 and is irrevocable after the March 15 deadline.

To make the NYC PTET election, an entity must align its election periods for both the NYS PTET and NYC PTET. Entities considered as federal calendar-year taxpayers must use this same basis to elect, file, and pay the NYC PTET. Likewise, fiscal-year taxpayers must elect, file, and pay the NYC PTET for the calendar year in which the

fiscal year ends. In the event of an entity with more than one tax year within a single calendar year, the NYC PTET election may be made only once per each calendar year.

NYC PTET estimated payments

For tax year 2022, electing entities are not required to make any estimated tax payments for the NYC PTET. If an entity so chooses, estimated NYC PTET tax payments may be made using the PTET estimated payment application in the entity's business online services account prior to December 31, 2022. Even if an entity decides to make the optional estimated NYC PTET payments in 2022, partners, members, or shareholders are required to continue their Article 30 NYC individual (personal) income tax estimated payments for this tax year as if they were ineligible for the NYC PTET credit. A NYC resident individual's income tax payments are not treated as a prepayment for NYC PTET purposes and are also inapplicable to an entity's NYC PTET liabilities.

For tax years beginning on or after January 1, 2023, an electing entity must pay an estimated NYC PTET tax amount on or before March 15, June 15, September 15, and December 15 in the calendar year before that in which the PTET return is due. Each quarterly payment should be made online—and for an amount equal to 25% of a tax year's requisite annual payment. The required annual payment for a tax year is the lesser of 90% of the required NYC PTET as reported on an electing entity's return for the taxable year, or 100% of the NYC PTET for the electing entity's preceding NYC PTET tax year as reflected on their return. If an entity did not pay the NYC PTET in the preceding year, the required payment is calculated using 90% of the NYC PTET for the taxable year. Eligible partners, members, and shareholders may account for NYC PTET payments when calculating their individual estimated payments from January 1, 2023 onward.

NYC PTET estimated payments will be applied only to the NYC or NYS PTET liabilities and may not be transferred between related entities or individuals. Underpayments or late payments are subject to penalties and interest as set forth in the Article 22 rules with one exception: taxpayers are prohibited from reducing or eliminating underpayment penalties through use of the annualized installment method found in Tax Law § 685(c)(4).

For more information, contact a KPMG State and Local Tax professional:

Aaron Shafer | ashafer@kpmg.com

Julia Flanagan | juliaflanagan@kpmg.com

kpmg.com/socialmedia



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