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FREE WEBINAR

New York State Pass-Through Entity Tax (PTET) What All Business Owners Need to Know

TUESDAY AUGUST 31ST
10:00 - 11:00 AM



Presenter:



Edward McWilliams
Partner

About the Speaker

- ▶ Tax Partner at Cerini and Associates, LLP
- ▶ Industry expertise includes Healthcare, Financial Services, Technology, Professional Services, State and Local Taxation, & International Taxation
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New York State Pass-Through Entity Tax

- ▶ In a Nutshell - an **OPTIONAL** tax that a pass-through entity can pay to New York State on behalf of its shareholders to satisfy their New York State personal income tax obligations.

New York State Pass-Through Entity Tax

- ▶ Passed as a response to the State and Local Tax (SALT) limitation of \$10,000 imposed by the Tax Cuts and Jobs Act (TCJA).
- ▶ “Originally” created in other states (CT) in 2018/2019, along with other potential programs (charitable deduction credits)
- ▶ IRS ruled against most of these programs; however, Notice 2020-75⁽¹⁾ released in November 2020 specifically allowed for these types of taxes as a federal deduction.
- ▶ New York State added their Pass-Through Entity Tax (PTET) as part of the 2021 budget; details were released on August 25, 2021.
- ▶ New York State and 13 other states now allow for these taxes, with 4 states having proposed taxes.

(1) <https://www.irs.gov/pub/irs-drop/n-20-75.pdf>

PTET Benefits for Business Owners

A Federal Level Deduction on business income can result in significant savings for owners.

Based on Single Filer, non-self employment and not Qualified Business Income Deduction (QBID) eligible

| | | | | | | | | | |
|---------------------------------------|----------------|----------------|-----------------|-----------------|------------------|------------------|------------------|-------------------|--------------------|
| Base Taxable Business Income | 100,000 | 250,000 | 500,000 | 1,000,000 | 2,000,000 | 5,000,000 | 10,000,000 | 25,000,000 | 50,000,000 |
| NYS PTET Deduction | (6,850) | (17,125) | (34,250) | (68,500) | (137,000) | (426,500) | (941,500) | (2,486,500) | (5,211,500) |
| <i>Updated Federal Taxable Income</i> | <i>93,150</i> | <i>232,875</i> | <i>465,750</i> | <i>931,500</i> | <i>1,863,000</i> | <i>4,573,500</i> | <i>9,058,500</i> | <i>22,513,500</i> | <i>44,788,500</i> |
| Federal Tax on Base Income | 15,009 | 57,652 | 145,152 | 329,429 | 699,429 | 1,809,429 | 3,659,429 | 9,209,429 | 18,459,429 |
| Federal Tax on Updated Income | 13,481 | 51,658 | 133,164 | 304,084 | 648,739 | 1,651,624 | 3,311,074 | 8,289,424 | 16,531,174 |
| Savings | (1,528) | (5,994) | (11,988) | (25,345) | (50,690) | (157,805) | (348,355) | (920,005) | (1,928,255) |
| %age | -1.53% | -2.40% | -2.40% | -2.53% | -2.53% | -3.16% | -3.48% | -3.68% | -3.86% |

The above are just high-level examples - your individual savings may vary based on filing status, tax attributes, qualified business income deduction, “self-employed” status & other forms of income.

Eligible Entities

ELIGIBLE ENTITIES

- ▶ Partnerships
 - ▶ Includes Limited Liability Companies (LLCs) with more than 1 member that have not elected to be treated as an S Corporation
- ▶ S Corporations
 - ▶ Includes LLCs that have elected S Corporation Status

INELIGIBLE ENTITIES

- ▶ C Corporations
 - ▶ Do not pass-through to owner and get a corporate level deduction for state tax regardless
- ▶ LLCs with one-member that have not-elected S Corporation status & sole proprietorships (1099s)
 - ▶ These are considered “disregarded entities” and reported directly on owner return and therefore not a pass-through entity

Pass-Through Entity Tax Mechanics

1. Annual Election
2. Pass-Through Entity Taxable Income
3. Calculating Pass-Through Entity Tax
4. Filing of Pass-Through Entity Tax Return
5. Allocating Pass-Through Entity Tax Credits
6. Claiming Pass-Through Entity Tax
7. Estimated Payments of Pass-Through Entity Tax

Annual Election

- ▶ To be made by an “authorized person” on behalf of an eligible S Corporation or Partnership

| If the entity is: | Authorized persons include: |
|--------------------------|--|
| 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. |

- ▶ Simplest way to think of it: whomever is signing the tax return
- ▶ Election must be made each year and is *IRREVOCABLE*
- ▶ The election is made via the entity's NYS Business Online Services account

| Year | Deadline |
|-------------|-------------------------|
| 2021 | October 15, 2021 |
| 2022 | March 15, 2022 |
| 2023 | March 15, 2023 |

New York State Business Online Services Account

<https://www.tax.ny.gov/online/>

Department of Taxation and Finance Log in | Create account

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Online Services

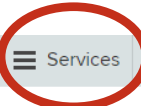
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New York State Business Online Services Account


Same account used to file sales tax returns or make estimated payments of tax

 Services Account Summary

Account Summary for: CERINI & ASSOCIATES, LLP (11-3066459)


 Tax relief for New Yorkers impacted by COVID-19.
See [Tax Department response to novel coronavirus \(COVID-19\)](#) to view guidance and stay up to date.

Account messages

 You have no messages at this time.

Account summary

Bills

 You have no tax bills at this time.

| Assessment ID | Tax type | Filing period end date | Original bill date | Current balance (\$) |
|--|----------|------------------------|--------------------|----------------------|
| <i>There is no information to display.</i> | | | | |

Filings and payments

Tax type:



New York State Business Online Services Account

Business

- » Account summary
 - Master Administrator summary
 - User summary
 - Tax professional summary

Services

- ▶ Frequently used
- ▶ Payments, bills and notices
- ▶ Sales tax - file and pay
- ▶ Employment and withholding taxes
- ▶ Corporation tax
- ▶ Partnership tax
- ▶ Other taxes

▼ Corporation tax

- File a corporation tax extension
- Make estimated or MFI payment

PTET web file

- View and cancel a scheduled corporation tax payment

▼ Partnership tax

- Estimated tax bulk upload
- File a partnership return extension

PTET web file

New York State Business Online Services Account - Election

Form Selection

PTET is an optional tax imposed on S corporations and partnerships filing in New York.

Select the form you would like to file from the list below.

For more information, see [Pass-Through Entity Tax \(PTET\)](#).

i PTET estimated payments are not required for 2021. Members, shareholders, and partners should continue to make their personal income tax (PIT) estimated tax payments without regard to the PTET credit they plan to claim on their 2021 PIT return. The PTET estimated tax payment application will be available by December 15, 2021 for entities that have opted into PTET and wish to make payments for their 2021 taxable year by the end of 2021.

i Our applications to file PTET annual returns and file PTET extensions will be available in February 2022.

PTET forms

Form description

Pass-Through Entity Tax (PTET) Annual Election

Select

New York State Business Online Services Account - Election

Authorized person information

You must be an authorized person to make the annual election.

To determine if you are an authorized person, see [Authorized persons](#).

First name: *

Last name: *

Social Security number (SSN): * [Show](#)

Confirm Social Security number (SSN): * [Show](#)

Title: * [?](#)

Phone number: * [?](#)

Acknowledgment

An entity is not required to be subject to the pass-through entity tax (PTET). If it opts in, its election is irrevocable and will remain in effect for the entire year.

The entity must:

- make all payments of tax electronically;
- file an annual PTET return electronically by the due date below (fiscal year taxpayers, see [instructions](#) for additional information); and
- provide certain PTET information to your partners, members, or shareholders.

Due date: **March 15, 2022** [?](#)

I agree to opt in to the pass-through entity tax (PTET) on behalf of the entity and comply with all requirements listed above: * Yes No [?](#)

[Return to Form Selection](#)

[Continue](#)

Pass-through Entity Taxable Income

- ▶ The base which the PTET is calculated on.
- ▶ Includes **ALL** items of income, deduction, gain or loss that flows-through to a member that pays NYS Personal Income Tax
 - ▶ Would **EXCLUDE** the share of income allocated to another partnership or C Corporation
 - ▶ Do **NOT** adjust for any limitations for capital losses, passive activity losses or basis
- ▶ Separate (but similar) calculation for S Corporations & Partnerships

S Corporation PTET Taxable Income



Includes **ALL** items of income, deduction, gain or loss that flows-through to a member that pays NYS Personal Income Tax

An S Corporation cannot have an ineligible shareholder by default - therefore all income would be included



Net Income must be apportioned to New York based on the S Corporation apportionment rules (broadly - percentage of receipts earned in New York)



No need to determine residency vs nonresidency status per guidance**

Assumption:

S Corporation owned by 2 individuals - 50% each

| | 1 | 2 | 3 | 4 |
|--------------------------------|----------------|----------------|--------------------------|--------------------------|
| Gross Receipts | 2,000,000 | 2,000,000 | 2,000,000 | 2,000,000 |
| Capital Gain/(Loss) | | | ^(A) (150,000) | ^(A) (250,000) |
| Cost of Goods Sold | (600,000) | (600,000) | (600,000) | (600,000) |
| Deductions | (1,200,000) | (1,200,000) | (1,200,000) | (1,200,000) |
| PTE Taxable Income - Pre Alloc | 200,000 | 200,000 | 50,000 | - |
| Allocation | 100% | 80% | 100% | 100% |
| PTE Taxable Income | 200,000 | 160,000 | 50,000 | ^(B) - |

^(A) loss would normally be limited to lessor of capital gain income or \$3,000

^(B) cannot go below zero

****OPEN POINT: A NYS Resident is allocated 100% of income for Personal Income Tax purposes; however, the guidance indicates the allocation is based on the S Corporation NY Allocation.**

Partnership PTET Taxable Income



Includes **ALL** items of income, deduction, gain or loss that flows-through to a member that pays NYS Personal Income Tax

A partnership would exclude any income allocated to another Partnership, S Corporation or C Corporation.

INCLUDES guaranteed payments



The income is broken into 2 pools: resident and non-resident based upon residency of owner

A resident pool is 100% of income, regardless of NYS Sourcing

A nonresident pool is only based on NYS Sourced Income

- The rules for Partnerships are different than S Corporations for Sourcing - uses 3 factor allocation and a different rule for services.



The income within the pools is then allocated to each partner based on their relative percentages.

Note that unlike S Corporation the resident allocation is 100%, regardless of business allocation percentage. Non-resident only is for business allocation percentage.

Partnership PTET Taxable Income Example

Assumption: Partnership owned by 2 NYS Residents, 1 NYS Nonresident

| | | | | |
|--------------|-----|-----|-----|-----|
| Resident 1 | 50% | 50% | 50% | 50% |
| Resident 2 | 35% | 35% | 35% | 35% |
| Non-Resident | 15% | 15% | 15% | 15% |

| | 1 | 2 | 3 | 4 |
|---------------------------------|----------------|----------------|-------------------|---------------|
| Gross Receipts | 2,000,000 | 2,000,000 | 2,000,000 | 2,000,000 |
| Capital Gain/(Loss) | | | (B) (150,000) | (B) (250,000) |
| Cost of Goods Sold | (600,000) | (600,000) | (600,000) | (600,000) |
| Deductions | (1,200,000) | (1,200,000) | (1,200,000) | (1,200,000) |
| Guaranteed Payments (A) | (100,000) | (100,000) | (100,000) | (100,000) |
| Guaranteed Payment Addback | 100,000 | 100,000 | 100,000 | 100,000 |
| PTE Taxable Income "Gross" Pool | 200,000 | 200,000 | 50,000 | - |
| <i>Resident Pool</i> | | | | |
| Ordinary Income | 85,000 | 85,000 | (42,500) | (127,500) |
| Guaranteed Payments | 100,000 | 100,000 | 100,000 | 100,000 |
| <i>Total Resident Pool</i> | <i>185,000</i> | <i>185,000</i> | <i>57,500</i> | <i>-</i> |
| Ordinary Income Allocation | 15,000 | 15,000 | (7,500) | (22,500) |
| | 100% | 80% | 100% | 100% |
| <i>Total Non Resident Pool</i> | <i>15,000</i> | <i>12,000</i> | <i>-</i> | <i>-</i> |
| PTE Taxable Income | 200,000 | 197,000 | 57,500 (C) | - |

(A) paid to Resident 1 only

(B) loss would normally be limited to lessor of capital gain income or \$3,000

(C) cannot go below zero

| | | | | |
|------------|-----|-----|-----|-----|
| Resident 1 | 50% | 50% | 50% | 50% |
| Resident 2 | 35% | 35% | 35% | 35% |

| | 1 | 2 | 3 | 4 |
|--------------------------|----------------|----------------|---------------|----------|
| Total Resident Pool | 185,000 | 185,000 | 57,500 | - |
| Resident 1 Allocation \$ | 150,000 | 150,000 | 75,000 | 25,000 |
| Resident 2 Allocation \$ | 35,000 | 35,000 | (17,500) | (52,500) |
| Total | 185,000 | 185,000 | 57,500 | - |
| Resident 1 Allocation % | 81% | 81% (D) | 100% | 0% |
| Resident 2 Allocation % | 19% | 19% | 0% | 0% |

(D) A scenario like this has not been covered under the issued guidance; this is our best interpretation of this scenario.

Calculating the Pass-Through Entity Tax

| If the PTE taxable income is: | then the PTET due is: |
|---|--|
| \$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. |

| | 1 | 2 | 3 | 4 |
|-------------------------|---------|---------|--------|-------|
| S Corporation | | | | |
| PTE Taxable Income | 200,000 | 197,000 | 57,500 | - |
| Rate | 6.85% | 6.85% | 6.85% | 6.85% |
| Pass-Through Entity Tax | 13,700 | 13,495 | 3,939 | - |
| Partnership | | | | |
| PTE Taxable Income | 200,000 | 197,000 | 57,500 | - |
| Rate | 6.85% | 6.85% | 6.85% | 6.85% |
| Pass-Through Entity Tax | 13,700 | 13,495 | 3,939 | - |

Filing of Pass-Through Entity Tax Return

- ▶ The PTET will be a separate return due March 15 of every year (same day as Partnership and S Corporation returns).
- ▶ Can have a 6 month extension to file.
- ▶ Return cannot be amended once filed.
- ▶ NYS Guidance says filed using “online return application”; to be determined if included with IT-204/CT-3-S and eligible to be filed via tax filing software.

Allocating Pass-Through Entity Tax Credits

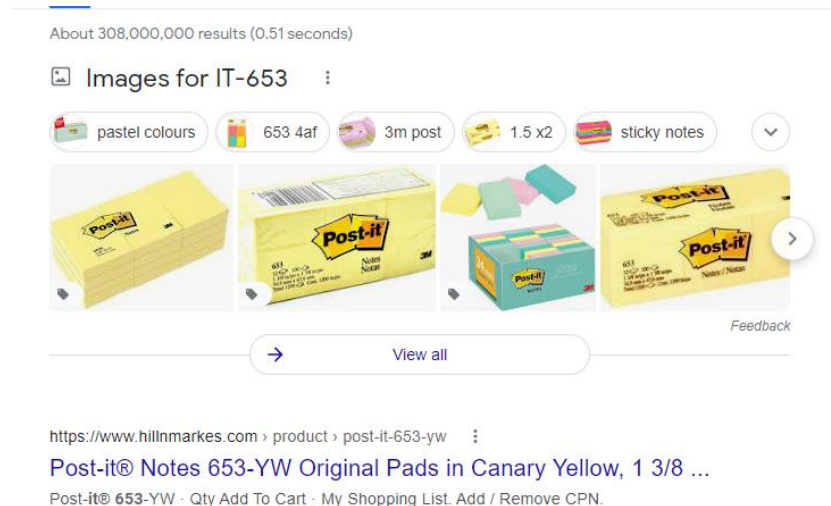
- ▶ The allocation will depend on the status of the entity
- ▶ S Corporations
 - ▶ Allocated based on percentage ownership
- ▶ Partnerships
 - ▶ Allocated first between non-resident and resident pool, depending on percentage of income
 - ▶ Allocated then to owners based on relative percentages in their pool

Allocating Pass-Through Entity Tax Credits

| | 1 | 2 | 3 | 4 |
|-----------------------------------|----------|---------|---------|-------|
| S Corporation | | | | |
| PTE Taxable Income | 200,000 | 197,000 | 57,500 | - |
| Rate | 6.85% | 6.85% | 6.85% | 6.85% |
| Pass-Through Entity Tax | 13,700 | 13,495 | 3,939 | - |
| Owner 1 | 6,850 | 6,747 | 1,969 | - |
| Owner 2 | 6,850 | 6,747 | 1,969 | - |
| Partnership | | | | |
| PTE Taxable Income | 200,000 | 197,000 | 57,500 | - |
| Rate | 6.85% | 6.85% | 6.85% | 6.85% |
| Pass-Through Entity Tax | ① 13,700 | 13,495 | 3,939 | - |
| Resident Pool % | ② 92.50% | 93.91% | 100.00% | 0.00% |
| Nonresident Pool % | ③ 7.50% | 6.09% | 0.00% | 0.00% |
| <u>Resident Allocation</u> | | | | |
| Resident 1 Allocation % | ④ 81% | 81% | 100% | 0% |
| Resident 2 Allocation % | 19% | 19% | 0% | 0% |
| Resident 1 Allocation (① x ② x ④) | 10,275 | 10,275 | 3,939 | - |
| Resident 1 Allocation (① x ② x ⑤) | 2,398 | 2,398 | - | - |
| <u>Nonresident Allocation</u> | | | | |
| Resident 1 Allocation (① x ③) | 1,028 | 822 | - | - |

Claiming Pass-Through Entity Tax Credits

- ▶ Credits will be claimed on Form IT-653 which has yet to be released.



- ▶ Any excess credit will be treated as an overpayment which can be refunded or applied to individual estimated tax for the following year.

Estimated Payments of Pass-Through Entity Tax

- ▶ For 2021
- ▶ NO estimated payments of tax are required
- ▶ NYS will make available optional online estimated tax payments by **December 15, 2021**.
 - ▶ Cash basis taxpayers will need to pay by **December 31, 2021** to deduct in 2021.

FOR 2022 AND BEYOND

- ▶ Quarterly Estimated Payments will be required (3/15, 6/15, 9/15 and 12/15) based on either
 - ▶ 90% of Current Year Tax
 - ▶ 100% of Prior Year Tax

Open Items

- ▶ How will Resident S Corporations be allocated? Will it be only on NY Source or on full amount?
 - ▶ Partnership allows full amount, but the writing suggests may only be NY Allocated.
- ▶ Investment Holding Partnership
 - ▶ The activity of these partnerships normally does not rise to a trade or business - will this be an allowable deductible expense?
- ▶ Will NYS actually get the forms and payment out on time?
- ▶ Will the PTET be able to be filed via tax preparation software?
- ▶ Will NYS Expand to cover NYC Personal Income Tax and MCTMT?

Questions?

Thank you for your attendance. If you have any questions or comments or potentially need assistance with these programs, please feel free to reach out to us. (631) 582-1600