

Income/Franchise:

New York Department of Taxation and Finance Issues Memo on New Pass-through Entity Tax

TSB-M-21(1)C, (1)I, N.Y. Dept. of Tax. & Fin. (8/25/21). A technical memorandum recently issued by the New York Department of Taxation and Finance (Department) addresses New York's new elective pass-through entity-level tax (PTET), which was enacted under New York's 2021-2022 Budget Act in response to the \$10,000 cap on the federal individual income tax deduction for state and local taxes that was part of the 2017 federal tax overhaul legislation known as the Tax Cuts and Jobs Act (*i.e.*, P.L. 115-97) [see previously issued Multistate Tax Alert for more details on New York's new pass-through entity tax]. The memo explains that the PTET 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 the PTET, partners, members, or shareholders of an electing partnership or New York S corporation who are subject to tax in New York under Article 22 may be eligible for a PTET credit on their New York State income tax returns. Among other issues, the memo addresses who may make the election, the election period, how to calculate pass-through entity taxable income, how to calculate the PTET and underlying estimated payments, and how to calculate and claim the PTET credit. Additionally, note that the memo:

URL: <https://www.tax.ny.gov/pdf/memos/ptet/m21-1c-1i.pdf>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-overview-of-new-yorks-new-pass-through-entity-tax.pdf>

- Provides how to make the election (*i.e.*, through the Department's website);
- Provides that an electing pass-through entity may, but is not required to, make a payment starting December 15, 2021 through the Department's website;
- Provides that the PTET credit cannot 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; and
- Provides that the PTET credit can be claimed by a trust, but the trust cannot distribute the PTET credit to its beneficiaries.

Please contact us with any questions.

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