

Income/Franchise:

Massachusetts DOR Posts FAQs on New Entity-Level Taxation for Some Pass-through Entities

Elective pass-through entity excise: Introduction and Frequently Asked Questions, Mass. Dept. of Rev. (11/19/21). The Massachusetts Department of Revenue (Department) has posted some guidance and answers to frequently asked questions (FAQs) concerning a new law [see H. 4009 (2021) and previously issued Multistate Tax Alert for more details on this new law] that provides an election for some pass-through entities (PTEs) to pay a new entity-level excise tax on qualified income that is taxable in Massachusetts at a rate of 5%, applicable for taxable years beginning on or after January 1, 2021. In doing so, the Department explains that the new Massachusetts tax (PTE Excise) is a response to the \$10,000 cap on the federal individual income tax deduction for state and local taxes that was enacted in the 2017 federal tax overhaul legislation known as the Tax Cuts and Jobs Act (*i.e.*, P.L. 115-97) – and that this new tax “will expire if the federal SALT deduction limitation expires or is repealed.”

URL: <https://www.mass.gov/service-details/elective-pass-through-entity-excise>

URL: <https://malegislature.gov/Bills/192/H4009>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-massachusetts-enacts-pass-through-entity-tax-election.pdf>

The guidance states that “qualified members of an electing PTE are eligible for a credit equal to 90% of a member’s distributive share of PTE Excise paid,” and that to elect the tax, “a PTE must file electronically Form 63D-ELT, their income tax return, and all schedules.” The FAQs include:

1. A numerical example addressing how the PTE Excise is calculated and illustrating some underlying base computational differences with respect to Massachusetts resident versus nonresident partners;
2. Estimated payment guidance and procedures; and
3. Explanation of a limitation on the use of capital losses to offset other items of income in calculating the PTE Excise.

Moreover, the Department provides that a qualified member generally may claim the PTE Excise credit against the member’s Massachusetts personal income tax due for the taxable year in which the electing eligible PTE’s taxable year ends, and that such PTE Excise credit is refundable if it is claimed against its personal income tax imposed under Massachusetts chapter 62 as the excess credit is treated as an overpayment. The Department suggests that taxpayers “consult their tax advisors to determine whether they might benefit from the election.” Please contact us with any questions.

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