

## Income/Franchise:

### Virginia Department of Taxation Issues Guidance on New PTE Tax Election and Announces Some Delays

*Tax Bulletin 22-6*, Vir. Dept. Tax. (4/15/22). The Virginia Department of Taxation (Department) issued a tax bulletin “intended to provide taxpayers with preliminary guidance” on new law that permits qualifying pass-through entities to make an annual election in Virginia to pay an entity-level state income tax (PTE tax) for taxable years beginning on and after January 1, 2021, but before January 1, 2026 [see H.B. 1121 / S.B. 692, signed by gov. 4/11/22, and previously issued Multistate Tax Alert for more details on this new tax]. In this guidance, the Department states that pass-through entities interested in making the election for taxable year 2021 must file returns by their original or extended due date, “but do not try to pay the elective PTE tax” with such taxable year 2021 returns as the Department “cannot accept or process the elective PTE tax at this time.” Correspondingly, the Department states that individuals must file their taxable year 2021 returns by their original or extended due date “but do not try to claim a credit for the elective tax paid by your PTE to Virginia,” warning that doing so may result in the assessment of interest and penalties. Instead, the Department explains that if a PTE makes the election for taxable year 2021, the corresponding individuals “will receive information from your PTE on or after October 2023 informing you of the amount to claim and how to claim it.”

**URL:** <https://www.tax.virginia.gov/laws-rules-decisions/tax-bulletins/22-6>

**URL:** <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=221&typ=bil&val=hb1121>

**URL:** <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=221&typ=bil&val=sb692>

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

Under Virginia’s new law, individuals may claim a credit for certain taxes paid by a pass-through entity under another state’s substantially similar pass-through entity level state income tax for taxable years beginning on and after January 1, 2021, but before January 1, 2026; the bulletin states that the implementation of this provision is *not* delayed. As such, for taxable year 2021, individuals may claim a credit for taxes paid by a pass-through entity under another state’s substantially similar pass-through entity level tax in proportion to their ownership in such pass-through entity. Please contact us with any questions or comments.

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