

## ***MEMORANDUM***

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**DATE:** December 14, 2021  
**TO:** File  
**FROM:** Wendy J. Manson, CPA and William J. Palazzolo, Esq.  
**RE:** NY Pass-Through Entity Tax Payment

### **Conclusion**

A payment of the estimated tax liability for the Pass-through Entity Tax (“PTET”) needs to be made by December 31, 2021, to be deductible by the pass-through entity (“PTE”) in 2021.

For tax year 2021, an electing entity, i.e., a PTE, is not required to make any estimated tax payments for the PTET. However, the PTE needs to make an optional online estimated tax payment prior to December 31, 2021 to get the deduction in 2021 by logging into the Business Online Services account and making an ACH debit payment.

New York State has issued two worksheets to calculate the New York PTE taxable income and the partnership worksheet adds back guaranteed payments paid by the PTE. As a result, a PTE that makes guaranteed payments to partners pays additional taxes at the entity level as a result of this tax treatment by New York State. The individual partner or member receives the benefit of a reduction in their personal New York State tax liability by their flow-through New York State tax credit.

The PTE is entitled to deduct as an expense the PTET payments made by December 31, 2021, reducing the income that flows through to each partner or member. The expense is a reduction in the ordinary income line item on the K-1, not a separately stated line item. There is no impact or reduction due to the \$10,000 cap limitation on the state and local tax deduction imposed at the federal level. As a result, the federal tax liability of the partner or member is reduced by the full amount of the PTET imposed.

The PTE generally must make quarterly estimated payments based on the expected income of the PTE. For 2021, such payments are not required, although, as noted above, full payment of the PTET by the PTE in 2021 would be necessary to qualify for the federal deduction in 2021. In addition, for 2021, individuals who are partners/shareholders of the PTE must continue to make estimated payments as required by Article 22, calculated as if they were not entitled to the tax credit allowed under the PTET. This double payment of tax will likely create a refundable overpayment for partners/shareholders, which may be partially or fully subject to federal income tax in the year received. An individual who does not continue to make their estimated tax payments calculated without taking into account the PTET credit, could be subject to underpayment interest and penalties.

Penalties and interest will apply for late filing of the annual NY PTET return due March 15 or late payments based on the rules under Article 22. An electing entity, and certain responsible persons, will be liable for any unpaid NY PTET due.

## Discussion

For tax year 2021, an electing entity, i.e., a PTE, is not required to make any estimated tax payments for the PTET. However, the electing entity may choose to make an optional online estimated tax payment prior to December 31, 2021, in order to get the tax deduction in 2021. Both authorized persons and tax professionals may make estimated PTET payments on behalf of the entity.

To make an estimated PTET payment:

1. Log in to the entity's Business Online Services account.
2. Select the *Services* menu in the upper-left corner of the business' *Account Summary* homepage.
3. Choose *PTET web file* from the *Corporation tax* or *Partnership tax* expanded menu, then select *Pass-through entity tax (PTET) estimated payment*.

Entities must use the online Web File application and pay by ACH debit when making PTET payments. They cannot pay by check or other methods.

If an electing entity chooses to make optional estimated tax payments for tax year 2021, personal income tax estimated payments must still be made by or on behalf of partners, members, or shareholders under Article 22 calculated as if they were not entitled to the PTET credit. Personal income tax estimated payments are not considered prepayment of the PTET and may not be applied to the PTET liabilities. Thus, for 2021, individuals who are partners/shareholders of the PTE must continue to make estimated payments as required by Article 22, calculated as if they were not entitled to the tax credit allowed under the PTET. This double payment of tax will likely create a refundable overpayment for partners/shareholders, which may be partially or fully subject to federal income tax in the year received. An individual who does not continue to make their estimated tax payments calculated without taking into account the PTET credit, could be subject to underpayment interest and penalties.

New York State has issued worksheets to calculate the New York PTE taxable income. The partnership worksheet adds back guaranteed payments paid by the PTE. As a result, a PTE that makes guaranteed payments to partners pays additional taxes at the entity level as a result of this tax treatment by New York State. The individual partner or member receives the benefit of a reduction in their personal New York State tax liability by their flow-through New York State tax credit. The link for the worksheets are <https://www.tax.ny.gov/e-services/ptet/calculations.htm>. Click on the Calculating PTE taxable income + sign and the two worksheets are shown below.

The PTE is entitled to deduct as an expense the PTET payments made by December 31, 2021, reducing the income that flows through to each partner or member. The expense is a reduction in the ordinary income line item on the K-1, not a separately stated line item. There is no impact or reduction due to the \$10,000 cap limitation on the state and local tax deduction imposed at the federal level. As a result, the federal tax liability of the partner or member is reduced by the full amount of the PTET imposed.

The NY PTET due on the PTE taxable income is calculated by using the table below. Use these figures to determine PTET payment amounts due when making estimated payments, filing for an extension, or filing the return.

<b>Pass-through entity taxable income</b>	<b>Rate</b>
Not over \$2 million	6.85%
Over \$2 million but not over \$5 million	\$137,000 plus 9.65% of the excess over \$2 million
Over \$5 million but not over \$25 million	\$426,500 plus 10.30% of the excess over \$5 million
Over \$25 million	\$2,486,500 plus 10.90% of the excess over \$25 million

Penalties and interest will apply for late filing of the annual NY PTET return due March 15 or late payments based on the rules under Article 22. An electing entity, and certain responsible persons, will be liable for any unpaid NY PTET due.