

State Tax Observations

New York's Budget Bill and Subsequent Legislation Includes Significant Pass-Through Entity Tax (PTET) Changes

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New York's fiscal year 2022-2023 State Budget Bill (Bill) as well as subsequent legislation, recently signed by Governor Hochul, contains significant changes to the New York State (NYS) PTET and creates a New York City (NYC) PTET. The Bill also includes NYS and NYC corporate and personal income tax modifications. The key changes and some thoughts follow.

NYS PTET

Under the prior PTET law, the PTET election had to be made by March 15, 2022. For 2022 only, the subsequent legislation extended the due date of the PTET election to September 15, 2022 for all pass-through entities.

Moreover, under the prior PTET law, an S corporation calculated its PTET based on NYS source income irrespective of the shareholders' state of residence. Effective January 1, 2022, the Bill created two types of S corporations for PTET purposes: an "electing standard S corporation" and an "electing resident S corporation."

An "electing standard S corporation" is one that does not certify that all its shareholders are NYS residents. For these entities, the PTET remains calculated based solely on its NYS source income.

An "electing resident S corporation" is one that certifies at the time of its annual PTET election that all its shareholders are NYS residents. Once made, the certification is irrevocable. For these entities, effective January 1, 2022, the PTE is based on all income, gain, loss, or deduction to the extent included in the resident shareholder's NYS personal income tax.

Since this is effective January 1, 2022, for this year only, this certification must be made by March 15, 2023. The NYS Department of Taxation & Finance will need to issue guidance as to how this certification will be made.

In addition, there is a change in the PTET required estimated tax payments for electing partnerships, LLCs electing partnership treatment for federal income tax purposes that are required to file NYS partnership returns (LLCs) and S corporations as follows:

- If the PTET election is made on or before March 15, 2022, the March 15, 2022 and June 15, 2022 estimates must both equal 25% of the required annual payment.
- If the PTET election is made after March 15, 2022, and before June 15, 2022, an estimated payment with the PTET election must be made equal to 25% of the required annual payment as previously mentioned.
- If the PTET election is made on or after June 15, 2022, and before September 15, 2022, an estimated payment with the PTET election must be made equal to 50% of the required annual payment.
- If the PTET election is made on September 15, 2022, an estimated payment with the PTET election must be made equal to 75% of the required annual payment.

For estimated tax purposes, the required annual payment of electing resident S corporations is determined as if the electing resident S corporation was an electing standard S corporation.

NYC PTET

The NYC PTET is effective January 1, 2023 for eligible entities. The tax rate is a flat 3.876%.

Eligible Entities: Eligible entities include partnerships, LLCs and NYS S corporations with only NYC resident shareholders.

Election: For partnerships and LLCs, the election may be made by an authorized partner or member. For eligible S corporations, the election may be made by an authorized officer. The NYC PTET election must be made by a NYC resident individual. The election is irrevocable and must be made annually and is due by March 15th of the year for which the NYC PTET is applicable.

Pass-Through Entity Income: For partnerships, LLCs and S corporations, the NYC PTET is based on the sum of all items of income, gain, loss, or deduction to the extent included in the NYC resident's taxable income.

Filing Due Date: The PTET return is due March 15th of the year after the tax year closes. The extended due date is September 15th.

Estimates: Estimates are due on March 15th, June 15th, September 15th and December 15th. Estimates are payable for the calendar year during which the tax year ends.

Credits: NYC individual residents are entitled to a credit against their NYC personal income tax equal to their direct share of the entity's NYC PTET.

Modifications: For NYS personal income tax purposes, an additional modification must be made to NYS income equal to the amount of the NYC PTET credit.

NYS Personal Income Tax

Effective January 1, 2022, any student loan forgiveness award included in federal AGI will be subtracted when calculating NYS AGI.

Effective January 1, 2022, the small business subtraction modification percentage for both NYS and NYC personal income taxes is increased from 5% to 15%. Those eligible for the subtraction was expanded to include:

- a. sole proprietors with one or more employees and less than \$250,000 of net business income or net farm income;
- b. partnerships, LLC's and NYS S corporations with one or more employees and net farm income of less than \$250,000; and
- c. partnerships, LLC's and NYS S corporations with one or more employees and less than \$1.5 million of "New York gross business income" attributable to a non-farm business.

For purposes of "c" and with respect to entities treated as partnerships, "New York gross business income" is defined by reference to Tax Law § 658(c)(3)(B). This Law provides that New York source gross income is the sum of the partners' or members' shares of federal gross income from the partnership or LLC derived from or connected with NYS sources, determined in accordance with Tax Law §631 as if those provisions and any related provisions expressly referred to a computation of federal gross income from New York sources. For this purpose, federal gross income is computed without any allowance or deduction for cost of goods sold.

For purposes of "c" regarding S corporations, "New York gross business income" means receipts included in the numerator of the corporation's apportionment factor.

The individual income tax rate reductions – originally intended to phase in beginning in 2024 – were accelerated to 2023.

Miscellaneous Provisions

The new law extends the sales tax exemption for certain food and drinks sold through vending machines from May 31, 2022 to May 31, 2023. It also suspends the state excise tax on diesel and motor fuels and state sales tax on motor fuels from June 1, 2022 to December 31, 2022.

Further, the new law creates tax credits including energy related credits, a capital cost tax credit for small business COVID-19 related expenses and a digital gaming media production credit. It extends or expands 11 existing credits including the Hire-a-Veteran Credit and film credits.

Contact Us

If you have any questions or need assistance regarding the New York Budget Bill or state taxes generally, contact your client engagement partner or any of the following:

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