



MULTISTATE INCOME/FRANCHISE TAX

## New York 2022-2023 budget includes revisions to pass-through entity tax and creates New York City pass-through entity tax

### Tax Alert

## Overview

On April 9, 2022, New York Governor Kathy Hochul signed into law New York's 2022-2023 Budget Act, including [Senate Bill S8009C/Assembly Bill A9009C](#) ("the Budget Act"). The Budget Act makes certain revisions to the New York pass-through entity tax (the "NYS PTET") under New York Tax Law Article 24-A and enacts a pass-through entity tax for New York City (the "NYC PTET") under New York Tax Law Article 24-B. See [previously issued Tax Alert from June 7, 2021](#) for more details on the NYS PTET, as well as [previously issued Tax Alert from October 7, 2021](#) for additional NYS PTET implementation guidance.

This Tax Alert summarizes some of the pass-through entity tax provisions and certain other provisions enacted in the Budget Act.

## Revisions to the New York PTET election

For taxable years beginning on or after January 1, 2021, the Budget Act clarifies that for partners and shareholders of an electing entity, in calculating New York adjusted gross income, the addback for "income taxes" under New York Tax Law section 612(b)(3) does not include the NYS PTET, the new NYC PTET (described below), or similar taxes imposed by other states provided that those taxes are added back under a separate tax provision.

Furthermore, for taxable years beginning on or after January 1, 2022, the Budget Act provides a new option of electing into the NYS PTET as an "electing resident S corporation" for New York S corporations whose shareholders are all New York residents. In computing NYS PTET taxable income for an electing resident S corporation, all items of income, gain, loss, or deduction included in the taxable income of a New York resident under Article 22 are included.

Pursuant to the Budget Act, an electing resident S corporation must

certify at the time of its NYS PTET election that all of its shareholders are residents of New York. The certification to be treated as an electing resident S corporation is irrevocable as of the date of the NYS PTET election. If the electing S corporation does not make the certification at the time of the NYS PTET election, it will automatically be treated as an “electing standard S corporation,” wherein only income from New York sources (attributable to both resident and non-resident shareholders) is included in computing NYS PTET taxable income.

The legislation provides that the certification must be made by March 15, 2023 for tax year 2022 (i.e., the same date that the 2023 NYS PTET election and certification must be made for electing resident S corporations). An S corporation planning on certifying as an electing resident S corporation for tax year 2022 must pay 75% of the required annual payment under the electing resident S corporation regime by September 15, 2022.

## New York City PTET election under Tax Law Article 24-B

### NYC PTET election

Applicable for taxable years beginning on or after January 1, 2023, the Budget Act provides for a NYC PTET under the newly created New York Tax Law Article 24-B, which will supplement the existing NYS PTET and allow electing city partnerships and electing city resident S corporations to pay the applicable New York City personal income tax at the entity level. The NYC PTET election is available to eligible pass-through entities that also make the NYS PTET election, including:

- Eligible city partnerships, which is any partnership, other than a publicly traded partnership, where at least one partner or member is a New York City resident individual or a disregarded entity owned by a New York resident individual.
- Eligible city resident S corporations, which is any New York S corporation that has only New York City resident individual shareholders (including disregarded entities owned by nonresident individuals).

The NYC PTET requires an annual election made in the same manner as the NYS PTET election. The NYC PTET election must be made by the due date of the first quarter estimated payment (i.e., March 15 of the tax year) and is irrevocable as of that date. For the NYC PTET election to be valid, the NYC PTET election must be made by a city taxpayer (i.e., a New York City resident individual) and:

- For S corporations, by any officer, manager or shareholder of the S corporation who is authorized under the law of the state where the corporation is incorporated or under the S corporation’s organizational documents to make the election and who represents to having such authorization under penalty of perjury.
- For partnerships, by any member, partner, owner, or other individual with authority to bind the entity or sign returns.

### NYC PTET calculation

The NYC PTET taxable income includes city taxable income allocated to a city taxpayer (i.e., New York City resident individual). City taxable income has the same meaning as the term defined in New York Tax Law section 1303, which includes all items of income, gain, loss, or deduction included in the taxable income of a New York resident, with certain exceptions.

The NYC PTET tax rate is 3.876%.

### **NYC PTET credit**

A city taxpayer who is a direct partner, member, or shareholder in an electing entity may claim a credit against their New York City personal income tax equal to the partner's, member's, or shareholder's direct share of the NYC PTET. If the amount of credit exceeds the tax due for such year, the excess amount will be treated as an overpayment, to be credited or refunded, without interest.

### **NYC PTET estimated tax payments**

Electing entities must pay estimated taxes in four equal installments on March 15, June 15, September 15, and December 15. The required annual payment is the lesser of:

- 90% of the tax shown on the return for the taxable year; or
- 100% of the tax shown on the return for the preceding taxable year.

### **NYC PTET return**

The annual NYC PTET return is due on or before March 15 following the close of the taxable year (with an extended due date of September 15) for both calendar year and fiscal year taxpayers. For fiscal year taxpayers, the return is due on or before March 15 following the close of the calendar year that contains the final day of the electing entity's taxable year. Once a return has been filed, it cannot be amended without consent from the Tax Commissioner.

### **Other PTET considerations**

- For purposes of the New York City General Corporation Tax and the Banking Corporation Tax, the Budget Act clarifies that the addback for "taxes on or measured by profits or income" under New York City Administrative Code sections 11-602(8)(b)(3) and 11-641(b)(2) includes the NYS PTET and NYC PTET. This amendment is effective for taxable years beginning on or after January 1, 2021.
- Each partner, member, or shareholder of an electing entity shall be severally liable for its direct share of NYC PTET to the extent the tax due is not remitted by the electing entity.
- However, a partner/shareholder may be jointly and severally liable for the NYC PTET if the partner/shareholder:
  - is a general, managing or controlling partner of the electing partnership;
  - is a managing or controlling shareholder of the electing S corporation;
  - owns greater than fifty percent of the interests or profits of the electing NYC pass-through entity;
  - is under a duty to act for the electing NYC pass-through entity in complying with the provisions of New York Tax Law addressing the NYC PTET; or
  - is the individual that made the election on behalf of the electing NYC pass-through entity.

### **Other provisions of the Budget Act**

The Budget Act amendments amend and extend certain New York State tax credits, including:

- Extending the Hire-a-Veteran Credit to be effective for taxable years beginning before January 1, 2026, increasing the tax credit amount per qualified veteran to up to \$20,000, and making various technical amendments to the tax credit eligibility criteria;
- Extending the Empire State Film Production Credit and the Empire State Film Post-Production Credit three years through benefit year 2029 and requiring applicants to submit a diversity plan to the Governor's Office for Motion Picture and Television Development effective on or after January 1, 2023 as a condition for the granting of the tax credit;
- Extending the New York Youth Jobs Credit for an additional five years through benefit year 2027; and
- Allowing for remote workers to be deemed present in NYS for purposes of the Excelsior Jobs Incentives Program and other programs that require maintaining headcount in the state for the duration of state disaster emergency executive order 11 of 2021.

The Budget Act also amended the tax law, suspending the excise tax, prepaid sales tax and state sales taxes on motor fuel and Diesel motor fuel from June 1, 2022 to December 31, 2022.

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Have a question relating to this or any other pass-through entity tax regime? Reach out to one of our national multistate pass-through entity tax specialists.

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