



New York City Pass-Through Entity Tax

The New York City pass-through entity tax (NYC PTET) under new Tax Law Article 24-B¹ is an **optional** tax that city partnerships or city resident New York S corporations that have elected to participate in the New York State pass-through entity tax (NYS PTET) may annually elect to pay on certain income for tax years beginning on or after January 1, 2022.

If an eligible city partnership or eligible city resident New York S corporation elects to pay the NYC PTET (*electing entity*), partners, members, or shareholders who are subject to the New York City personal income tax under Article 30 may be eligible for a NYC PTET credit against New York City personal income taxes on their New York State income tax returns.

Who may make the election

The annual election must be made by an authorized person of the eligible city partnership or eligible city resident S corporation. Tax professionals may **not** make this election on behalf of their clients.

If the entity is:	Authorized persons include:
An eligible city resident S corporation	any officer, manager, or shareholder of the New York 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 that authorization under penalty of perjury.
An eligible city partnership	any member, partner, owner, or other individual with authority to bind the entity or sign returns under Tax Law § 653.

A city resident individual has the same meaning as defined in Tax Law § 1305(a).

Partners, members or shareholders may not be classified as part-year residents for NYC PTET purposes. A partner, member or shareholder should be treated as a city resident if they are a resident of New York City for New York City personal income tax purposes for at least half of the year. All other partners, members or shareholders should be treated as nonresidents for NYC PTET purposes and are not eligible for the NYC PTET credit.

An *eligible city partnership* is any partnership (including a limited liability company [LLC] treated as a partnership for New York and federal income tax purposes) that has elected to participate in the NYS PTET and:

- has a filing requirement under Tax Law § 658(c)(1)
- is not a publicly traded partnership², and
- has at least one partner or member that is a city resident individual.

¹ Chapter 59 of the Laws of 2022, Part MM and Chapter 555 of the Laws of 2022.

² As defined in IRC § 7704.

An *eligible city resident S corporation* is any New York S corporation (including an LLC treated as an S corporation for New York State and federal income tax purposes) as defined by Tax Law § 208.1-A that has elected to participate in the NYS PTET and:

- is subject to the fixed dollar minimum tax under Tax Law § 209, and
- has only city resident individual shareholders.

The election period

An eligible city partnership or eligible city resident S corporation may annually elect to pay the NYC PTET for tax years beginning on or after January 1, 2022, if it opts into the NYS PTET under Article 24-A and:

- if the entity is a partnership, it has at least one partner or member that is a city resident individual; or
- if the entity is an S corporation, the S corporation made the election to be taxed as a resident S corporation under Article 24-A and **all** shareholders are city resident individuals. For the 2022 PTET year, the S corporation must intend to make the election to be taxed as a resident S corporation when it files its annual PTET return or extension.

The election to opt into the NYC PTET must be made on an annual basis and is irrevocable as of the due date of the first estimated payment for NYS PTET.

An electing entity that is a calendar-year taxpayer for federal purposes must use a calendar-year basis to elect, file, and pay the NYC PTET. An electing entity that is a fiscal-year taxpayer must elect, file, and pay the NYC PTET for the calendar year in which its fiscal year ends. An otherwise eligible entity with a tax year beginning before January 1, 2022, may not elect into the NYC PTET. If an electing entity has more than one tax year within a calendar year, it can make **only one election** for the NYC PTET during each calendar year. The entity must have the same election period for the NYC PTET as it does for the NYS PTET.

For tax years beginning on or after January 1, 2022, and ending before January 1, 2023:

- The NYC PTET election must be made by March 15, 2023.
- The election must be made online through the entity's Business Online Services account using the Pass-Through Entity Tax (PTET) 2022 New York City Annual election web application.
- The entity must have already made the 2022 NYS PTET election.

For tax years beginning on or after January 1, 2023:

- The NYC PTET annual election must be made on or after January 1 but no later than March 15. If the March 15 deadline for the election falls on a Saturday, Sunday, or legal holiday, the election deadline is the next business day.

- The election must be made online through the entity's Business Online Services account using the Pass-Through Entity Tax (PTET) Annual Election web application.
- The NYC PTET election will be made at the same time as the NYS PTET election.

How to calculate NYC pass-through entity taxable income (NYC PTE taxable income)

The NYC PTET is imposed on the NYC PTE taxable income of an electing entity. Generally, the NYC PTE taxable income includes all income, gain, loss, or deduction of an electing entity that flows through to a direct partner, member, or shareholder for New York City personal income tax purposes.

A direct partner, member, or shareholder is any partner, member, or shareholder that is issued a federal Schedule K-1 by the electing entity based on the member's, partner's, or shareholder's direct ownership interest in the electing entity. A federal Schedule K-1 issued to an entity that is disregarded for tax purposes, such as a single member limited liability company, is treated as if issued directly to the individual or entity that include the disregarded entity's activity on their income tax returns.

The NYC PTE taxable income only consists of items flowing through to direct partners, members, or shareholders that are city resident individuals.

An electing entity computes its NYC PTE taxable income by aggregating any amounts of income and gain that flow through for New York City personal income tax purposes to city resident partners, members, or shareholders. Aggregated income and gains are reduced by any losses or deductions that flow through for New York City personal income tax purposes to city resident partners, members, or shareholders, without regard for any limitations that would be imposed on the partner's, member's, or shareholder's federal and New York State personal income tax returns.

How to calculate the NYC PTET

For each tax year beginning on or after January 1, 2022, the NYC PTET is imposed on each electing entity's NYC PTE taxable income. This tax is in addition to any other taxes imposed on the entity under the Tax Law. The NYC PTET is equal to 3.876% of the NYC PTE taxable income.

Estimated tax payments for the NYC PTET

For NYC PTET tax year 2022

An electing entity is not required to make any estimated tax payments for the NYC PTET for the 2022 year. However, it may choose to make optional online estimated tax payments prior to December 31, 2022. The estimated NYC PTET tax payments must be made using the PTET estimated payment application in the entity's Business Online Services account.

New York City personal income tax estimated payments under Article 30 for tax year 2022 must continue to be made by or on behalf of partners, members, or shareholders calculated as if they were **not** entitled to the NYC PTET credit, regardless of whether an electing entity chooses to make optional estimated NYC PTET tax payments under Article 24-B. New York City personal income tax estimated payments are not considered prepayment of the NYC PTET and may not be applied to the NYC PTET liabilities.

For NYC PTET tax years beginning on or after January 1, 2023

An electing entity is required to pay estimated tax on the amount of the NYC PTET calculated for the current taxable year using the online application. Estimated payments are due on or before March 15, June 15, September 15, and December 15 in the calendar year prior to the year in which the due date of the PTET return falls. If the due date of the estimated payment falls on a Saturday, Sunday, or legal holiday, the payment is due on the next business day.

Each quarterly payment should be an amount equal to at least 25% of the required annual payment for the taxable year. The required annual payment is the lesser of:

- 90% of the NYC PTET required to be shown on the return of the electing entity for the taxable year; or
- 100% of the NYC PTET shown on the return of the electing entity for the preceding NYC PTET taxable year.

If the electing entity did not make the election to be subject to the NYC PTET for the preceding NYC PTET year, the required annual estimated tax payment is 90% of the NYC PTET required to be reported on the return for the taxable year.

NYC PTET estimated payments will only be applied to the NYC PTET liability or NYS PTET liability and cannot be applied to any other taxes. In addition, payments may not be transferred between related entities or individuals.

Penalties and interest will apply to underpayments or late payments based on the rules in Article 22. However, taxpayers may not apply the annualized installment method under Tax Law § 685(c)(4) to reduce or eliminate underpayment penalties.

Filing the annual PTET return and calculation of the NYC PTET credits

On or before March 15, an electing entity must file an annual PTET return using the online return application to report the information required under Article 24-B for the NYC PTET taxable year. PTET returns are filed on a calendar year basis. The Article 24-A PTET and Article 24-B NYC PTET will be reported on the same PTET return.

A fiscal-year taxpayer does **not** recompute its income on a calendar-year basis. Instead, its NYC PTE taxable income must be computed for the fiscal year that ends within the NYC PTET calendar year. The NYC PTET return for an electing entity with a fiscal year is due on or before March 15 following the close of the calendar year in which its fiscal year ends.

If the due date of the return falls on a Saturday, Sunday, or legal holiday, the return is due on the next business day. An electing entity may make an online request by March 15 for a six-month extension of time to file its annual NYC PTET return. Once a return has been filed, it may not be amended without the consent of the commissioner.

Penalties and interest will apply for late filing of the return or late payments based on the rules under Article 22. An electing entity, and certain responsible persons, will be liable for any unpaid tax due under Article 24-B.

On its return, an electing entity must report its total NYC PTET and the direct share of its NYC PTET it is making available to each direct partner, member, or shareholder in the form of a credit (NYC PTET credit). The total NYC PTET credits reported by an electing entity may not exceed the total NYC PTET paid by the electing entity. The electing entity may provide NYC PTET credits only to its direct partners, members, or shareholders that are city residents and are taxable under Article 30.

The electing entity must provide sufficient information on its return to identify all NYC PTET credit-eligible taxpayers and their credit amounts. If that identifying information is not provided, the otherwise eligible taxpayers will not be entitled to utilize the NYC PTET credit on their New York State personal income tax returns. If the electing entity's total NYC PTE taxable income is zero or less, the eligible taxpayers are not entitled to any NYC PTET credits. Instead, the electing entity may file an annual NYC PTET return to request a refund of any NYC PTET estimated tax payments it made.

The amount of the NYC PTET credit is equal to the partner's, member's, or shareholder's direct share of the NYC PTET. The direct share of the NYC PTET credit is based on the partner's, member's, or shareholder's relative share of PTE taxable income included in computing NYC PTET.

Claiming the NYC PTET credit

Eligible taxpayers that receive a NYC PTET credit from an electing entity may claim the credit on Form IT-653, *Pass-Through Entity Tax Credit*, and attach it to their New York State personal income tax return³.

A partner, member or shareholder that is not subject to tax under Article 30, including but not limited to a corporate partner, is **not** eligible for the NYC PTET credit. Additionally, a partner that is itself a partnership is **not** eligible for the NYC PTET credit.

Each eligible taxpayer's NYC PTET credit is equal to the taxpayer's direct share of NYC PTET that was reported by the electing entity on the entity's NYC PTET annual return. If a taxpayer receives more than one NYC PTET credit, the credits will be aggregated on the taxpayer's personal income tax return. If the amount of the NYC PTET credit allowable for any taxable year exceeds the taxpayer's tax due for the year, the excess will be treated as an overpayment, to be credited or refunded without interest.

³ See Tax Law § 1310.

Addition modification to income

An eligible taxpayer claiming the NYC PTET credit must make an addition modification to federal adjusted gross income or federal taxable income on the eligible taxpayer's New York State personal income tax return for an amount equal to the amount of the NYC PTET credit claimed. See Form IT-225-I, *Instructions for Form IT-225, New York State Modifications*, for more information.

Additional guidance

Additional NYC PTET guidance will be posted on the department's website as it becomes available. To receive notification emails about any additional guidance, sign up for the PTET subscription service (<https://www.tax.ny.gov/help/subscribe.htm>).

Note: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.