

New York State Budget Allows New PTET Planning Opportunities for Certain Residents

Written on May 12, 2022

By Patrick D'Angelo, CPA, CFE, MST, Senior Tax Manager

Many things have changed over the past years, some for the better and some for the worse. However, there has always been one constant – the need for corrections and revisions to new tax laws that were hastily drafted without sufficient consideration of unforeseen consequences. In what may seem like the distant past, the 2017 Tax Cuts & Jobs Act limited the deduction for state and local taxes (SALT) to \$10,000 for itemized filers. Many states reacted quickly, working on ways around this new law change, and in late 2020 the IRS allowed workarounds by issuing Notice 2020-75. Many of the workarounds were drafted in a hurry and were far from perfect. Luckily, NYS is one of the states that recognized some of the flaws in their written law governing these SALT tax workarounds and fixed them when the New York State Budget was signed by the Governor on April 9, 2022. Additional items are part of legislation that is expected to be signed soon.

Passthrough Entity Tax – NYS Changes

Based on the original law, entities that filed as partnerships with resident partners had potentially more of a benefit than owners of entities that filed as S Corporations. Resident partners of a partnership were allocated 100% of their share of the entity's income for purposes of calculating the Pass-Through Entity Tax (PTET) tax and credit. However, S Corporation shareholders were only allowed to calculate the credit using the actual income sourced to NYS, based on NYS market sourcing rules.

New York recognized that this was unfair to NYS resident shareholders and created a new category of PTET filers for "Resident S Corporations." If all the shareholders are residents, 100% of the S Corporation income is used to calculate the PTET tax and related credit. To be eligible the S Corporation must file a certification that all the shareholders are NYS residents at the time of the election, which will be before the close of that tax year in most cases. If certification is not made the entity will be denied "Resident S Corporation" status, and the original allocation rules for S Corporations will apply.

NYS realized that the March 15, 2022, election date for the tax year 2022 was an inadequate amount of time for many taxpayers to make an informed decision and have extended the date to elect into the NYS PTET system to September 15, 2022. For S Corporations that have already elected into the PTET but qualify for "Resident S Corporation" status it appears the certification and election are due September 15, 2022. After the transition period, the election and certification will need to be done by March 15th of every year. Note however that guidance and clarification is continually being issued, and the above is subject to change.



NYC Clarification

Some of the provisions in the legislation take effect retroactively to years beginning on or after January 1, 2021 (2022 calendar year end and fiscal years that end in 2022). One of particular interest is the calculation of the City's General Corporation Tax and Banking Corporation Tax. Before the legislation, the PTET was not considered an addback for calculating these taxes for NYC, based on the way the law was written at that time. However, this legislation changes that, and therefore NYC tax deductions now must be added back to compute the PTET income.

NYC PTET

For tax years beginning in 2023, the legislation introduced a new PTET for residents of NYC that are owners of entities that file as partnerships or shareholders of S Corporations. This does not replace any existing NYC taxes. The tax rate is 3.876%, thus giving NYC resident owners of these entities the benefit of an additional deduction on the Federal level, as well as a credit for taxes paid on the NYS return which incorporates NYC tax.

For entities that file as partnerships in NYC, the tax and related credit are calculated based on all the entity's income, however only NYC residents are allowed the credit for the taxes. For S corporations, if all the shareholders are residents of NYC, the related credit is calculated based on all of the entity's income.

Assistance

We encourage you to reach out to your SKP professional for more guidance on this program that may offer tax savings, how to best plan on maximizing any benefits, and on any updates to this program as they occur.