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New York Provides Tax Relief to Eligible Taxpayers of Partnerships and S Corporations

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Published September 1, 2021 - As part of the Tax Cuts and Jobs Act, individual taxpayers may only deduct up to $10,000 of state and local taxes paid during the calendar year. This limitation has greatly affected New York residents and non-residents, given that New York has one of the highest combined state and local tax rates in the country. In response to the $10,000 cap, New York passed the pass-through entity tax (PTET) under new Tax Law Article 24-A to provide tax relief to eligible taxpayers.

The pass-through entity tax is an optional tax that partnerships or S corporations may annually elect to pay and deduct beginning on January 1, 2021. If an eligible partnership or S corporation elects to pay PTET, its partners, members, or shareholders subject to tax under Article 22 may be eligible to take a PTET credit on their NYS income tax returns for the PTET paid by the eligible entity.

Under the new rule, an authorized person may make an election to be taxed under the PTET regime on behalf of the partnership or S corporation. The authorized person must create a Business Online Services account online in order to opt in. Generally, the election is due on March 15. For the 2021 taxable year, the deadline to opt in is October 15, 2021. The election once made cannot be revoked.

Entities not eligible for PTET include single member LLCs, sole proprietorships, trusts, non-profit corporations, and corporations that are not New York S corporations.

PTET Credit

Each eligible taxpayer will claim the credit on Form IT-653 and attach it to their NYS personal income tax. In addition, those claiming the credit must make an addition modification to federal AGI on NYS Form IT-255-I. If the eligible taxpayer has more than one PTET credit, the credits will be aggregated. If the eligible taxpayer receives a PTET credit that is more than the amount of tax due, the excess amount will be an overpayment credited to the next tax year or refunded.

Annual PTET Return

An electing entity must file an annual PTET return using the online return application on or before March 15. An extension request can be made online by March 15, extending the due date to September 15. Any late filing or late payment will result in assessed penalties and interest.

All PTET tax returns are filed on a calendar-year basis. An electing entity on fiscal-year basis does not need to recompute its income; instead, its PTE taxable income is computed for the fiscal year that ends within the PTET calendar year.

An electing entity reports its total PTET and the direct share of its PTET made available to each direct partner, member, or shareholder in the form of a credit. The return requires the electing entity to provide sufficient information (including residency status of each partner on a partnership PTET return) regarding each eligible partner, member, or shareholder and their credit amounts. The total PTET credits cannot exceed the total PTET paid by the electing entity. If the total PTE taxable income is zero, no partner or member is entitled to any credits but the electing entity may file the PTET return to request a refund.

Conclusion

The new tax is designed to mitigate the adverse effect of the $10,000 cap on state and local tax deductions available to individuals. The PTET election for the 2021 tax year is due on October 15, 2021 and eligible entities should consider whether or not their partners/shareholders would benefit from electing into PTET. Non-resident taxpayers may also benefit from this new tax if their home states allow them to take a deduction or credit for tax paid to another state.

Please consult your Dopkins and Company, LLP tax adviser with any additional questions, or contact Dawn Chen at dchen@dopkins.com with any additional questions.