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Massachusetts guidance on elective pass-through entity excise

<https://www.mass.gov/info-details/elective-pass-through-entity-excise>

(updated: March 28, 2023)

IMPORTANT: Eligible pass-through entities must register for the 63D-ELT tax type before making a payment. Do not make 63D-ELT payments on other pre-existing tax types. The pass-through entity must file its annual return and make the election before filing the 2021 Form 63D-ELT.

Introduction

On September 30, 2021, the Massachusetts Legislature enacted an elective pass-through entity (PTE) excise in response to the \$10,000 cap on the federal state and local tax (SALT) deduction added in the 2017 federal Tax Cuts and Jobs Act.

Massachusetts joins several other states in enacting an entity-level excise that responds to the SALT cap. Under the new legislation, for tax years beginning on or after January 1, 2021, entities taxed as S corporations and partnerships, and certain trusts, may elect annually to be subject to the pass-through entity excise (PTE Excise) at a rate of 5%. The law will expire if the federal SALT deduction limitation expires or is repealed.

Qualified members of an electing PTE are eligible for a credit equal to 90% of a member's distributive share of PTE Excise paid. To elect the excise, a PTE must file electronically Form 63D-ELT, their income tax return, and all schedules. The PTE Excise must be paid electronically. Taxpayers should consult their tax advisors to determine whether they might benefit from the election.

Frequently Asked Questions

This page will be updated as needed with new frequently asked questions and will include the date of the update for easy reference.

PTE Eligibility

Who is eligible to make an election to pay the PTE Excise under chapter 63D? (Updated 12/15/21)

Only an eligible pass-through entity can make an election to pay the PTE Excise. “Eligible pass-through entity” is defined as an S corporation under section 1361 of the Internal Revenue Code (Code), a partnership under section 7701 of the Code or a limited liability company that is treated as an S corporation or partnership under those Code sections. In addition, a trust can make the election with respect to income that passes through the trust to beneficiaries that are subject to tax on that income under the Massachusetts personal income tax. Accordingly, the following entities may elect to be subject to the excise:

- Partnerships, including limited liability companies that are treated as partnerships for federal income tax purposes, but excluding publicly-traded partnerships;
- S corporations, including limited liability companies that are treated as S corporations for federal income tax purposes; and
- Trusts, to the extent that they have income that is taken into account by beneficiaries for Massachusetts personal income tax purposes.

Sole proprietorships and single-member limited liability companies that are disregarded for federal income tax purposes cannot elect to be subject to the PTE Excise because they are not pass-through entities.

What is a qualified member of an eligible PTE?

A qualified member is a natural person, estate or trust that is subject to the Massachusetts personal income tax and that is a shareholder, partner or beneficiary of an electing PTE. A qualified member may be a resident, nonresident or part-year resident.

Can a grantor trust be an eligible PTE or a qualified member of an eligible PTE? (Added 12/15/21)

A grantor trust cannot be an eligible PTE. If a trust is a grantor trust then the grantor is treated as the owner of the grantor trust's assets, the grantor trust is disregarded as a separate tax entity, and all income of the grantor trust is taxed to the grantor. Where a grantor trust owns an interest in an eligible electing PTE, the grantor is treated as a qualified member where the grantor would be a qualified member if he or she held the ownership interest in the PTE directly.

Can an out-of-state eligible PTE with income subject to tax in Massachusetts make an election to pay the PTE Excise? (Added 12/15/21)

Yes. An out-of-state eligible PTE can elect to pay the PTE Excise even if it is not otherwise required to file in Massachusetts. The out-of-state eligible PTE must make the election on a timely filed Form 3, Form 355S or Form 2, and must complete the relevant form, including all schedules. In addition, the out-of-state eligible PTE must file Form 63D-ELT.

Can a Non-resident Composite Return filer claim the PTE Credit? (Added 12/15/21)

Yes. A PTE filing Form NRCR on behalf of its participating non-resident members may claim the sum of all PTE credits allocable to the members who have elected to participate in the Non-resident Composite Return.

Can a trust that files Form 2 be an eligible PTE?

Yes, a trust filing Form 2 can be an eligible PTE and make the chapter 63D election if it has income that flows through to its beneficiaries that is reported on MA Schedule 2K-1 for Massachusetts personal income tax purposes.

Can a disregarded entity be an eligible PTE?

No. A disregarded entity cannot be an eligible PTE because it is not a partnership, an S corporation, or a trust for Massachusetts tax purposes.

Is the owner of a disregarded entity eligible to receive the PTE credit? (Updated 11/30/2021)

Yes. A disregarded entity cannot itself receive the PTE credit because a disregarded entity is not a qualified member subject to tax under chapter 62. But the credit is available to an owner of a disregarded entity where

the owner would be a qualified member if it held the ownership interest in the PTE directly

Can a general partnership be an eligible PTE?

Yes, so long as the general partnership also meets the qualifications for the PTE election.

Can a single member LLC that is a disregarded entity for federal purposes be an eligible PTE?

No. A disregarded entity cannot be an eligible PTE because it is not a partnership, an S corporation, or a trust for Massachusetts tax purposes.

Credit Eligibility and Allowance

Is the owner of a disregarded entity eligible to receive the PTE credit? (Updated 11/30/21)

Yes. A disregarded entity cannot itself receive the PTE credit because a disregarded entity is not a qualified member subject to tax under chapter 62. But the credit is available to an owner of a disregarded entity where the owner would be a qualified member if it held the ownership interest in the PTE directly.

Is a general partnership eligible to receive the PTE credit?

No. A general partnership cannot receive the PTE credit because a general partnership is not a qualified member subject to tax under chapter 62.

Is a trust that is a member of an electing eligible PTE bound by the PTE's election with respect to its share of the PTE's income? If so, how does the trust apply the 90% credit? (Added 2/14/22)

A trust that is a member of an electing eligible PTE will be bound by the PTE's election with respect to its share of the PTE's income. The trust cannot opt out. The trust's share of PTE income will be included in the PTE Excise tax base and the trust will receive a credit equal to 90% of its share of the PTE Excise paid by the PTE. The trust will be permitted to claim the credit itself or assign the credit to its beneficiaries, provided that the aggregate amount of credit claimed by the trust and its

beneficiaries cannot exceed 90% of the PTE Excise paid by the PTE that is attributable to the trust.

How much of a credit is allowed to qualified members for the PTE Excise paid?

A qualified member is eligible for a credit equal to 90% of the member's apportioned distributive share of the amount of PTE Excise actually paid by the PTE.

How does a qualified member know the amount of PTE Excise credit to claim?

A PTE must report the amount of PTE Excise paid at the entity level and the amount of such excise that is allocated to each of its qualified members on Schedule K-1. Qualified members must use the amounts shown on the K-1 in determining their credit, which is their distributive share of the PTE Excise paid.

In what year may a qualified member claim the PTE credit?

A qualified member may claim the PTE Excise credit against the member's personal income tax due under chapter 62 for the taxable year in which the electing eligible PTE's taxable year ends. For example, where the PTE has a fiscal year ending in March of 2022, a qualified member with a calendar tax year would claim the credit for the PTE Excise on the member's 2022 tax return.

What happens if the PTE Excise credit exceeds a qualified member's personal income tax liability?

The PTE Excise credit is refundable if it is claimed against the personal income tax imposed under chapter 62. Any excess credit is treated as an overpayment. The qualified member may request a refund subject to general refund procedures set out in chapter 62C, § 37.

Election

Is the PTE Excise Mandatory?

No. The PTE Excise and the related administrative provisions apply to a PTE only if the PTE elects to be subject to the excise. The election is made on an annual basis, on an original tax return.

Is the election to pay the PTE Excise revocable?

No. Once the election is made for a particular tax year it is irrevocable for that year, and it is binding on all qualified members of the PTE.

How and when does an eligible PTE make an election to pay the PTE Excise? (Updated 12/15/21)

The election is made annually by a PTE on its timely filed Form 3, Form 355S – Schedule S, or Form 2 and is confirmed by submitting new Form 63D-ELT. An S corporation that is a financial institution may make the election on Schedule S of its timely filed Form 63-FI. The election may not be made on an amended return. Form 63D-ELT must be filed on or before the due date of the PTE's tax return, taking into account valid extensions. Once the election is made, it is irrevocable. Qualified members cannot opt out of an election.

Can a PTE that uses a 52-53 week tax year that begins in the last week of calendar year 2020 make an election to be subject to the PTE Excise for the 2021 tax year? (Added 2/14/22)

For purposes of making the election, 52-53 week tax years that begin in the last week of December 2020 will be treated as beginning on January 1, 2021 and ending on December 31, 2021. Eligible PTEs that use such tax years can make the election and report the PTE Excise using 2021 forms and schedules.

How does an S corporation that is a member of a combined group filing a combined return on Form 355U make the election and pay the PTE Excise? (Added 12/30/2021; Updated 10/17/2022)

The filing and payment of the PTE Excise by an S corporation is not impacted by the S corporation's inclusion in a group filing a combined report (Form 355U). An S corporation must separately make the election to pay the PTE Excise when filing Form 355S or Form 63-FI and submit Schedules S and SK-1. The election is made on line 23 of the Schedule S. S corporations, including one that is the principal reporting company, that are members of the same combined group can each choose whether to make the election. Each electing S corporation is responsible for separately determining and paying any PTE Excise that may be due and

the payment must be separate from any payment of the corporation excise tax due under Chapter 63.

Including and Reporting Taxable Income

What is included in the eligible PTE's income subject to tax under chapter 63D?

Income taxable under Chapter 63D is the sum of the distributive shares of income subject to Massachusetts personal income tax of each qualified member.

Are guaranteed payments included in the income subject to the PTE Excise? (Added 12/15/21)

Yes. Guaranteed payments are included in the distributive income that a PTE reports to members and are included in the members' distributive income subject to the personal income tax. Therefore, guaranteed payments are included in the PTE's income subject to the PTE Excise.

How does an electing eligible PTE report the income of nonresident or part-year resident qualified members for purposes of the Massachusetts Schedule K-1?

The electing eligible PTE must report on Schedule K-1 the amount of each qualified member's distributive share of the PTE Excise paid whether the member is a resident or nonresident of the Commonwealth. The PTE must also provide each qualified member with a Massachusetts Schedule K 1 reporting amounts of PTE income or loss derived from or connected with Massachusetts sources.

Filing

Is Form 63D-ELT required to be filed electronically?

Yes. A PTE that elects to pay the PTE Excise is required to first make the election on its Form 3, Form 355S or Form 2, then file Form 63D-ELT and make tax payments electronically. The filing of Form 63D-ELT and payment of the associated tax may be done through [MassTaxConnect](#). Taxpayers may also file Form 63D-ELT and make payments due with a return using third party software.

When is Form 63D-ELT due? (Updated 3/2/2022)

Form 63D-ELT is due at the same time as a PTE's Form 355S, Form 3 or Form 2. The actual due date depends on the type of PTE that has made the election to pay the PTE Excise and the PTE's tax year. The Form 355S corporate return and the Form 3 partnership return are both generally due on March 15 for calendar year filers, and the Form 2 Fiduciary return is generally due on April 15 for calendar year filers. For fiscal year filers, Form 355S and Form 3 are generally due on the 15th day of the third month following the close of the tax year. For fiscal year filers, Form 2 is generally due on the 15th day of the fourth month following the close of the tax year.

Excise Calculation

Once the election is made, how is the PTE Excise calculated under chapter 63D?

Several factors must be taken into account as illustrated by the following simplified example:

- Partnership ABCD does business in MA with 50% apportionment
- Partnership net income for 2021 is \$1,000
- Partners A and B are Massachusetts resident individuals
- Partner C is a nonresident individual
- Partner D is a resident partnership
- Each partner is a 25% owner

The PTE Excise would be calculated as follows:

1. Determine the partners subject to tax in Massachusetts under chapter 62. Here it would be partners A, B and C.
2. Determine the amount of taxable income allocable to each partner. Partners A and B each have \$250 of income ($\$1,000 \times 25\%$). Partner C has \$125 of income. ($\$1,000 \times 25\% \times 50\%$ apportionment). Total income subject to tax under chapter 62 = $\$250 + \$250 + \$125 = \625 . Partner D is not a qualified member and its share of income is not taken into account under the PTE Excise.
3. Apply 5% PTE Excise rate to such income ($\$625 \times 5\% = \31.25).

*Note that in this example no PTE Excise is allocable to Partner D—the upper-tier PTE—regardless of the identity of the partners of Partner D. Its un-apportioned 25% of the \$1,000 income flows up to its own Form 3 return. Partner D may make its own election to be subject to the PTE Excise.

If a PTE makes an election to pay the PTE Excise, the entity's income is taxed at a rate of 5%, regardless of whether the income is Part A, B or C income under the Massachusetts personal income tax statute. The statutory rates that apply to each class of income must nevertheless, as relevant, be applied on the return of each qualified member.

Is there a limitation on the use of capital losses to offset other items of income in calculating the PTE Excise under chapter 63D?

Yes. Capital gains and losses must be netted against each other. Net capital gain is included in income subject to the PTE Excise. Net capital losses cannot be used to offset items of income when calculating the excise under chapter 63D.

Can losses determined under chapter 63D be carried forward?

No. Losses determined under chapter 63D cannot be carried forward by the PTE as there is no provision that allows for such carryforwards in chapter 63D.

What information other than the information shown on the Massachusetts K-1 does the PTE need to calculate the PTE Excise?

It depends. If an eligible PTE has qualified members that are corporations, the PTE needs to know the portion of its income attributable to such corporations because this income is not subject to the PTE Excise. If the PTE has qualified members that are nonresidents, it needs to know its Massachusetts apportionment percentage. Income attributable to nonresidents is subject to the PTE Excise only to the extent that it is apportioned to Massachusetts using the PTE's Massachusetts apportionment percentage for the tax year.

PTE Payments, Withholding and Penalties

Will PTEs be required to pay both the PTE Excise and PTE withholding tax on the same income in 2021? (Added 11/30/21)

There is no requirement for duplicative payments under Chapter 63D or in the Massachusetts withholding rules. Entities' required PTE withholding and members' required estimated tax payments are determined with regard to the PTE Excise credit available to members. Thus, payments of estimated PTE Excise, which result in the credit, reduce the required amount of PTE withholding or estimated tax. For years after 2021 it should be possible for PTEs and their members to manage their PTE Excise payments, PTE withholding and estimated taxes without substantial duplication of tax on any income.

For 2021 tax years, PTEs may wish to pay the PTE Excise prior to the end of the year to achieve their desired federal tax results. PTE withholding and members' estimated taxes paid prior to the PTE Excise payment may not be recharacterized or otherwise treated as PTE Excise payments. For a payment to be treated as a payment of PTE Excise it must be specified as such at the time of the payment. Therefore, in order to achieve their desired federal tax results for 2021, PTEs may have to pay PTE Excise on income that was already taken into account in determining prior PTE withholding and members' estimated tax payments. Any resulting overpayment will be refunded to members or, at a member's direction, be applied to the next tax year. Note that required 2021 fourth quarter PTE withholding and members' estimated taxes may be determined taking into account any PTE Excise previously paid for the 2021 tax year.

Are estimated payments required for the PTE Excise?

Yes. As with other taxpayers, an electing eligible PTE must make estimated tax payments if the PTE's required annual payment is \$400 or greater. Estimated payments are due for a taxable year even though the chapter 63D election for the taxable year cannot be made until the return is filed. In general, estimated payments for calendar year filers are due on April 15, June 15, September 15, and January 15 (the due dates for fiscal year filers are adjusted based upon their fiscal year). However, given the recent enactment of the PTE legislation, for the taxable year beginning on January 1, 2021 the total amount of all estimated payments for the 2021 taxable year must be made by January 15, 2022.

For future years, a PTE's required estimated payments will be equal to the lesser of:

- 80% of the PTE Excise ultimately determined to be due on the PTE's current year Massachusetts Form 63D-ELT; or
- 100% of the PTE Excise shown on the PTE's prior year Massachusetts Form 63D-ELT, if the PTE made the PTE election for the prior year and filed a prior year return that covered a 12-month period.

How do I make an estimated tax payment? (Added 12/1/21)

You will need a MassTaxConnect (<https://mtc.dor.state.ma.us/mtc/>) account as an existing business and you'll need to be registered for an entity level excise (Corporate, financial institution excise, partnership, or fiduciary). If you're not registered on MassTaxConnect, do that first. After logging in to your MassTaxConnect account, you can register for a 63D Entity Level Tax by selecting "More" and selecting "Add an Account" in the Access panel. Choose "63D Entity Level Tax" and complete the registration. Next, navigate to the "Summary" tab, locate the "63D Entity Level Tax" panel and select "Make a Payment." Choose "Estimated Payment" from the drop-down menu and complete the payment information.

Do penalties apply to underpayments of PTE Excise for the 2021 taxable year? (Updated 12/30/21)

Yes. For the 2021 taxable year, if 80% of the excise that is ultimately determined to be due is not paid by January 15, 2022 an addition to tax or underpayment penalty, calculated at the rate provided in section 14 of Chapter 62B, is due on the amount of the underpayment from January 15th until the due date of the return (April 15th if the electing pass-through entity is a trust, March 15th if the electing pass-through entity is a Partnership or an S Corporation.) The entity is not required to submit Form M-2210 with its 2021 Form 63D-ELT. Taxpayers should determine the penalty with respect to the PTE excise manually and enter the amount directly on Form 63D-ELT.

Do penalties apply to underpayments of PTE Excise for the 2022 and future taxable years? (Updated 12/20/22)

Yes. For 2022 and future taxable years, PTEs must calculate any underpayment and resulting penalty using Form M-2210. If a penalty is

due, enter the penalty on Form 63D-ELT and submit Form M-2210. Form M-2210 must be submitted to claim any penalty exception to which the PTE may be entitled. See Form 63D-ELT and Form M-2210 instructions.

Will MassTaxConnect accept estimated tax payments prior to December 31, 2021? (Updated 12/1/21)

Yes, entities can register and make payments on MassTaxConnect as of 11/30/2021.

If a qualified member of a PTE has made estimated income tax payments for tax year 2021, can such payments be applied to the PTE's PTE Excise?

No. Estimated income tax payments for a given tax year, which are made by a qualified member, cannot be applied to the PTE Excise due from the PTE. The burden is on the PTE to pay the excise and such excise is separate from the personal income tax liabilities of its qualified members. Please see FAQ on estimated payments.

If a PTE has made estimated income tax payments for tax year 2021 but later determines not to make the election, can such payments be refunded to the PTE? (Added 3/31/22)

Yes. A PTE that makes estimated income tax payments for the 2021 tax year can seek a refund if it does not make the election with its return for that year. The PTE must file its 2021 tax return but must **not** check the applicable box to make the 63D election. The PTE must then send an e-message through [MTC](#) to DOR explaining that it did not make an election for 2021 and requesting a refund of the estimated payment made. DOR will then review the PTE's 2021 return and confirm that the PTE (1) did not elect to pay the 63D Excise and (2) did not purport to pass on any 63D Excise credit to members on its Schedule K-1s. DOR will then process a refund of the estimated payments to the PTE.

Does a PTE's failure to pay any amount of corporate excise, personal income tax or PTE Excise prior to the original due date of the PTE's 355S, 63FI, Form 3 or Form 2 affect the validity of a 63D election made on those returns? (Added 4/26/22) (Updated 3/28/23)

A PTE's failure to pay any amount of corporate excise, personal income tax or PTE Excise prior to the original due date of the PTE's 355S, 63FI,

Form 3 or Form 2 will not affect the validity of a 63D election made on such a return, so long as the return is filed within 6 months of the original due date. However, because the PTE Excise is due on the original due date of the PTE's 355S, 63FI, Form 3 or Form 2, there will be an underpayment of PTE Excise under these circumstances. Interest and penalties will apply to the underpayment of PTE Excise starting on such original due date as provided in chapters 62B and 62C.