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## **Ohio Pass-Through Entities & Fiduciaries - Electing Pass-Through Entities (EPTE) (IT 4738)**

<https://tax.ohio.gov/help-center/faqs/pass-through-entities-fiduciaries-electing-pass-through-entities-epte-it4738> (visited 7/29/23)

### **1 What is the new Electing Pass-Through Entity (EPTE) Income Tax that has been enacted in 2022?**

Senate Bill 246 (134th General Assembly), creates a third PTE tax that allows a qualifying PTE to elect to be subject to this entity-level tax starting tax year 2022. This new PTE tax is meant to comply with [IRS Notice 2020-75](#).

### **2 What is the difference between the new IT 4738 electing pass-through entity (EPTE) tax vs. the pass-through entity (PTE) withholding tax paid on the IT 1140 and the composite income tax paid on the IT 4708?**

The new IT 4738 electing pass-through entity tax is an entity level tax that is imposed on the entity's total qualifying taxable income (all the PTE's business income subject to apportionment plus all the PTE's nonbusiness income subject to allocation). The tax paid on the IT 4708 and IT 1140 is filed and paid by the entity BUT is filed and paid on behalf of the entity's shareholders/partners/investors. Neither tax (IT 4708/IT 1140) is imposed on the entity directly.

	IT 4738 Income Tax Return	IT 4708 Composite Income Tax Return	IT 1140 Withholding Tax Return
Filing Date	<u>April 15th</u> after the year in which the entity's taxable year ends	<u>April 15th</u> after the year in which the entity's taxable year ends	<u>15th day of fourth month</u> after close of fiscal year
Can the return include resident investors?	Yes *All investors (owners) must be included.	Yes	No
Tax Rate	5% (all) *For reporting periods that begin on or after 1/1/2022 3% (all) *For reporting periods that begin on or after <u>1/1/2023</u>	3.990% (All) *For reporting periods that begin on or after <u>1/1/2021</u>	5% (Individuals) 8.5% (Entities)
Can the return claim refundable and/or nonrefundable business credits (including PTE credits received from other PTEs as shown on an OH IT K-1, credits received via certificate issued by Ohio Department of Development, Department of Education, others)?	No	Yes	No
Individual Investor Filings	Nonresident: May file Ohio IT 1040 Individual Income Tax Return Ohio resident: Must file Ohio IT 1040 Individual Income Tax Return	Nonresident: May file Ohio IT 1040 Individual Income Tax Return Ohio resident: Must file Ohio IT 1040 Individual Income Tax Return	Nonresident investors: Must file Ohio IT 1040 Individual Income Tax Return
Entity Investor Filings	Must file Ohio PTE return (IT 1140, IT 4708 OR IT 4738): *Entities with no qualifying investors are not required to file a PTE return	May or must file Ohio PTE return (IT 1140, IT 4708 OR IT 4738): *Entities with Ohio-sourced income from multiple sources might have a filing requirement. See instructions or contact: <a href="mailto:Pass-ThroughEntity@tax.ohio.gov">Pass-ThroughEntity@tax.ohio.gov</a>	Must file Ohio PTE return: *IT 1140, IT 4708 <u>OR</u> IT 4738
Trust as Investor Filings	May file Ohio IT 1041 and/or beneficiary files IT 1040 if income is distributed. *Trusts may have an IT 1140 filing requirement if a distribution is made. See instructions or contact <a href="mailto:Pass-ThroughEntity@tax.ohio.gov">Pass-ThroughEntity@tax.ohio.gov</a>	May file Ohio IT 1041 and/or beneficiary files IT 1040 if income is distributed: *Trusts with Ohio-sourced income from multiple sources might have a filing requirement. See instructions or contact <a href="mailto:Pass-ThroughEntity@tax.ohio.gov">Pass-ThroughEntity@tax.ohio.gov</a>	May file Ohio IT 1041 and/or beneficiary files IT 1040 if income is distributed: *Trusts may have an IT 1140 requirement if a distribution is made. See instructions or contact <a href="mailto:Pass-ThroughEntity@tax.ohio.gov">Pass-ThroughEntity@tax.ohio.gov</a>

► Email link: [Pass-ThroughEntity@tax.ohio.gov](mailto:Pass-ThroughEntity@tax.ohio.gov)

### 3 How does an entity elect to be subject to this new tax on “electing” PTEs?

The Department has developed a new form, the IT 4738, for taxable year 2022. The election is made by filing the IT 4738 on or before the filing deadline. A PTE that receives a federal extension from the IRS will automatically receive an extension to the same due date as provided by the IRS, provided that the federal extension due date is beyond the unextended due date for the Ohio return. The PTE or fiduciary must attach a copy of its IRS extension to the IT 4738 return. Please note that an extension of time to file the IT 4738 return does NOT extend the payment due date.

### 4 What is the tax rate for the IT 4738 Electing Pass-Through Entity Income Tax Return?

For taxable years beginning in 2022, the IT 4738 tax rate is 5%; For taxable years beginning in 2023 and later, the tax rate is equal to the tax rate imposed on taxable business income pursuant to [R.C. 5747.02 \(A\)\(4\)\(a\)](#), which is currently 3%

## 5 What is the due date for filing the IT 4738 Electing Pass-Through Entity Income Tax Return?

The due date for filing the IT 4738 is April 15th after the year in which the entity's fiscal year ends. For taxable year 2022, the due date for filing is April 18, 2023.

## 6 Can an entity with a fiscal year filing period that begins prior to 1/1/2022 and ends during calendar year 2022 file the new electing pass-through entity tax (IT 4738) for taxable year 2022?

No. Entities may only elect to be subject to the new electing pass-through entity tax for taxable years beginning 1/1/2022 or later. If the taxable year begins prior to 1/1/2022, the new EPTE tax is not available for taxable year 2022.

## 7 When are estimated payments due for the IT 4738 Electing Pass-Through Entity Income Tax Return?

Estimated payments are due for the IT 4738 on the 15th day of the month after the end of each quarter.

The IT 4738 universal payment coupon (UPC) is available in the [Forms](#) section at tax.ohio.gov. Until 1/19/23, the Department advised using the IT 1140 UPC when a PTE intends to make the election to file the IT 4738 Electing Pass-Through Entity Income Tax Return and needs to remit an estimated payment; however, that method is no longer required.

**Note:** If the entity has already remitted estimated payments using the IT 1140 UPC and subsequently makes the election to file the IT 4738, the IT 4738 features a line in Schedule I to notify the Department to transfer payments from one of the other PTE form types (IT 1140 or IT 4708) to the IT 4738 for previously made payments (shown below).

### Schedule I – Taxable Income, Tax, Payments and Net Amount Due Calculations...cont.

9. Tax liability (see instructions for tax rate) .....	9.
10. Interest penalty on underpayment of estimated tax (include Ohio IT/SD 2210).....	10.
11. Ohio IT 4738 estimated UPC/electronic payments for the taxable year .....	11.
12. Ohio IT 1140 and IT 4708 estimated UPC/electronic payments claimed on this return (see instructions).....	12.

## 8 Can the entity claim estimated (UPC/electronic) payments on the IT 4738 Electing Pass-Through Entity Income Tax Return that were originally remitted for the IT 1140 and/or IT 4708 for the taxable year?

Yes. The IT 4738 features a line to claim estimated payments the entity made for an IT 1140 and/or IT 4708 for the taxable year.

**IT 4738 Schedule I, Line 12:**

**Schedule I – Taxable Income, Tax, Payments and Net Amount Due Calculations...cont.**

9. Tax liability (see instructions for tax rate) .....	9.
10. Interest penalty on underpayment of estimated tax (include Ohio IT/SD 2210).....	10.
11. Ohio IT 4738 estimated UPC/electronic payments for the taxable year .....	11.
12. Ohio IT 1140 and IT 4708 estimated UPC/electronic payments claimed on this return (see instructions).....	12.

**9 How does an electing pass-through entity (EPTE) make estimated payments if the entity intends to file the IT 4738?**

If the entity intends to file the IT 4738, remit a payment via one of the following two methods:

- Include check or money order with the **IT 4738ES** universal payment coupon (UPC); or
- EFT (ACH credit) payment using the [IT 4738 Instructions/information](#) page.

**IT 4738 Schedule I, Line 12:**

**Schedule I – Taxable Income, Tax, Payments and Net Amount Due Calculations...cont.**

9. Tax liability (see instructions for tax rate) .....	9.
10. Interest penalty on underpayment of estimated tax (include Ohio IT/SD 2210).....	10.
11. Ohio IT 4738 estimated UPC/electronic payments for the taxable year .....	11.
12. Ohio IT 1140 and IT 4708 estimated UPC/electronic payments claimed on this return (see instructions).....	12.

If the entity is a **first-time** Ohio PTE filer, the [PTE Registration Form](#) should accompany the first estimated payment so the Department can set up the account for correct application of the payment. Upload the PTE Registration Form (PTE REG) via the Online Notice Response Service (ONRS) at [tax.ohio.gov](http://tax.ohio.gov), email directly to the PTE & Fiduciary Income Tax Division at [pass-throughentity@tax.ohio.gov](mailto:pass-throughentity@tax.ohio.gov), fax to (206)984-1685, or include a copy of the form when mailing the check/UPC.

See the [PAYMENTS: Pass-Through Entity \(PTE\) & Fiduciary Income Tax](#) page at the Department's website [tax.ohio.gov](http://tax.ohio.gov) for additional payment information.

**NOTE:** The 2022 IT 4738 features a line in Schedule I to notify the Department to transfer estimated payments from one of the other PTE form types (IT 1140 or IT 4708) to the IT 4738.

**10 Can the entity claim a credit carryforward from a prior year IT 1140 and/or IT 4708 on the IT 4738 Electing Pass-Through Entity Income Tax Return?**

Yes. The IT 4738 features a line on the form to claim a credit carryforward from the prior year IT 1140 and/or IT 4708 filing. See the 2022 IT 4738 instructions for additional details.

**11 Can a disregarded entity elect to file the IT 4738 Electing Pass-Through Entity Income Tax Return?**

No. A disregarded entity may not make the election to file the IT 4738.

**12 Are all owners bound by the entity's election to file the IT 4738 Electing Pass-Through Entity Income Tax Return?**

Yes. The entity's election to file the IT 4738 is binding on all owners of the entity.

**13 Must all owners' qualifying taxable income be included on the IT 4738 Electing Pass-Through Entity Income Tax Return?**

Yes. All owners' qualifying taxable income is required to be included on the IT 4738.

**14 Are compensation and guaranteed payments made by an electing pass-through entity to owners who directly or indirectly own at least 20% of the entity subject to an add-back on the IT 4738?**

Yes, if the owner directly or indirectly owns at least 20% of the profits or capital of the electing pass-through entity at any point during the tax year the entity is subject to an add-back. (See IT 4738 Instructions for lines 26 and 27 and R.C. 5733.40(A)(7)). Link to IT 4738 instructions available below:

► [https://tax.ohio.gov/static/forms/pass-through\\_entities/2022/pte-it4738-instructions.pdf](https://tax.ohio.gov/static/forms/pass-through_entities/2022/pte-it4738-instructions.pdf)

**15 Can the entity file the IT 1140 and/or the IT 4708 for the same taxable year if the entity has already filed the IT 4738?**

No. Once the election is made by filing the IT 4738, that election is irrevocable for the taxable year.

**16 Can a trust that typically files the IT 1041 return elect to file the IT 4738, instead?**

No. A trust is not a qualifying pass-through entity; thus, it is disallowed from filing the IT 4738 Electing Pass-Through Entity Income Tax Return.

However, a trust, as an owner of an electing pass-through entity (EPTE) which has elected to file, must be included on the IT 4738, as all owners' qualifying taxable income is required to be included on the IT 4738. Note: When filing the IT 1041, the trust must add back its proportionate share of the tax amount paid on the entity's IT 4738. See [R.C. 5747.01\(S\)\(5\)](#).

**Note:** Ohio law allows for a trust to utilize credits listed in R.C. 5747.98, including the refundable credit received on an IT K-1 for IT 1140, IT 4708 and/or IT 4738 payments made by another pass-through entity, when filing the IT 1041.

**17 When a trust or estate as owner of a PTE that files the IT 4738 makes a distribution, how does the trust or estate report the income and claim the PTE credits on the IT 1041?**

A trust or estate files the IT 1041 to report only the retained (undistributed) income for the filing period. When a trust or estate distributes income to the beneficiaries, the proportionate share of the PTE credits must follow the distribution to the beneficiaries of the trust or estate.

**Scenario 1: All the income is distributed to beneficiaries:**

If all income were distributed for the taxable year, the trust or estate will not file the IT 1041; therefore, it is not entitled to claim any of the credits passed to it as shown on the IT K-1 issued by the PTE that filed the IT 4738. Instead, the beneficiaries will report their proportionate share of the income distributed by the trust or estate and claim the

proportionate share of the PTE credits and/or withholding on the IT 1040 individual income tax return. Further, the beneficiaries must add back their proportionate share of PTE tax paid on the IT 4738 using line 2 of the IT 1040's Ohio Schedule of Adjustments, to the extent the tax was not included in federal or Ohio adjusted gross income.

### **Scenario 2: Only a portion of income is distributed to beneficiaries:**

In the case of a partial distribution, the trust or estate must file the IT 1041 to report its proportionate share of the retained (undistributed) income and claim its proportionate share of credits as shown on the IT K-1 issued by the PTE in proportion to the trust or estate's retained (undistributed) income. Note, the PTE will likely be required to file the IT 1140 to report the distributed portion of the income and pay the withholding tax due. Estates do not have the IT 1140 filing requirement. For further information, please see the PTE FAQ [Withholding Tax Return \(IT 1140\)](#) for "When would a PTE or trust file an IT 1140 form?".

Further, the trust is required to add back its proportionate share of tax paid by the PTE on the IT 4738 using line 24 of the IT 1041's Schedule II – Adjustments to Federal Taxable Income, to the extent the tax was not included in the trust's federal taxable income (FTI). The beneficiaries must add back their proportionate share of tax paid by the PTE on the IT 4738 using line 2 of the IT 1040's Ohio Schedule of Adjustments, to the extent the tax was not included in federal or Ohio adjusted gross income.

- See: [R.C. 5747.02\(C\)\(3\)](#).
- See also: [R.C. 5747.08\(I\)](#), [R.C. 5747.059](#), [R.C. 5747.38](#), and [R.C. 5747.39](#).

### **18 Ohio law states the election to file the IT 4738 Electing Pass-Through Entity Income Tax Return is irrevocable for the taxable year. Can an entity choose each year whether to file the IT 4738, despite having filed an IT 4708 in a prior taxable year?**

Yes. The election to file the IT 4738 is made each year. The entity can alternate between filing the IT 4738 and the IT 4708. Note the IT 1140 Pass-Through Entity and Trust Withholding Tax Return does not allow the inclusion of Ohio resident owners.

	IT 4738 Income Tax Return	IT 4708 Composite Income Tax Return	IT 1140 Withholding Tax Return
Filing Date	<u>April 15th</u> after the year in which the entity's taxable year ends	<u>April 15th</u> after the year in which the entity's taxable year ends	<u>15th day of fourth month</u> after close of fiscal year
Can the return include resident investors?	Yes *All investors (owners) must be included.	Yes	No
Tax Rate	5% (all) *For reporting periods that begin on or after 1/1/2022 3% (all) *For reporting periods that begin on or after <u>1/1/2023</u>	3.990% (All) *For reporting periods that begin on or after <u>1/1/2021</u>	5% (Individuals) 8.5% (Entities)
Can the return claim refundable and/or nonrefundable business credits (including PTE credits received from other PTEs as shown on an OH IT K-1, credits received via certificate issued by Ohio Department of Development, Department of Education, others)?	No	Yes	No
Individual Investor Filings	Nonresident: May file Ohio IT 1040 Individual Income Tax Return Ohio resident: Must file Ohio IT 1040 Individual Income Tax Return	Nonresident: May file Ohio IT 1040 Individual Income Tax Return Ohio resident: Must file Ohio IT 1040 Individual Income Tax Return	Nonresident investors: Must file Ohio IT 1040 Individual Income Tax Return
Entity Investor Filings	Must file Ohio PTE return (IT 1140, IT 4708 OR IT 4738): *Entities with no qualifying investors are not required to file a PTE return	May or must file Ohio PTE return (IT 1140, IT 4708 OR IT 4738): *Entities with Ohio-sourced income from multiple sources might have a filing requirement. See instructions or contact: <a href="mailto:Pass-ThroughEntity@tax.ohio.gov">Pass-ThroughEntity@tax.ohio.gov</a>	Must file Ohio PTE return: *IT 1140, IT 4708 <u>OR</u> IT 4738
Trust as Investor Filings	May file Ohio IT 1041 and/or beneficiary files IT 1040 if income is distributed. *Trusts may have an IT 1140 filing requirement if a distribution is made. See instructions or contact <a href="mailto:Pass-ThroughEntity@tax.ohio.gov">Pass-ThroughEntity@tax.ohio.gov</a>	May file Ohio IT 1041 and/or beneficiary files IT 1040 if income is distributed: *Trusts with Ohio-sourced income from multiple sources might have a filing requirement. See instructions or contact <a href="mailto:Pass-ThroughEntity@tax.ohio.gov">Pass-ThroughEntity@tax.ohio.gov</a>	May file Ohio IT 1041 and/or beneficiary files IT 1040 if income is distributed: *Trusts may have an IT 1140 requirement if a distribution is made. See instructions or contact <a href="mailto:Pass-ThroughEntity@tax.ohio.gov">Pass-ThroughEntity@tax.ohio.gov</a>

► Email link: [Pass-ThroughEntity@tax.ohio.gov](mailto:Pass-ThroughEntity@tax.ohio.gov)

**19 Does the filing of the IT 4738 Electing Pass-Through Entity Income Tax Return eliminate a nonresident owner's IT 1040 Individual Income Tax Return filing requirement or a trust's IT 1041 Fiduciary Income Tax Return filing requirement?**

The IT 4738 satisfies the Ohio filing requirements for the entity's nonresident and trust owners, unless the owners have other Ohio-sourced taxable income. However, a nonresident or trust is not prohibited from filing an IT 1040 or IT 1041, as applicable. See [R.C. 5747.08\(L\)](#).

**20 How does an individual owner report the tax paid on the IT 4738 Electing Pass-Through Entity Income Tax Return when filing the IT 1040 Individual Income Tax Return?**

Owners who file an IT 1040 must add back the proportionate share of taxes paid on the IT 4738 (to the extent not included in computing federal or Ohio adjusted gross income) on the Ohio Schedule of Adjustments. A refundable credit equal to the owner's proportionate share of tax paid on the IT 4738 will be available on the Ohio Schedule of Credits. See [FAQ](#) **"Can the entity's owners claim a refundable business credit from the entity's IT 4738 Electing**



**Pass-Through Entity Income Tax Return when they file their own IT 1040 Individual Income Tax Return?”**

**21 Can the entity’s owners claim a refundable business credit from the entity’s IT 4738 Electing Pass-Through Entity Income Tax Return when they file their own IT 1040 Individual Income Tax Return?**

Yes. Owners can report a refundable business credit in the amount of their proportionate share of the tax paid by the entity on the IT 4738, which the entity reports on the IT K-1 it issues to its owners. The credit is reported on the Ohio Schedule of Credits as a pass-through entity credit.

**22 PTE A did not make any estimated payments for tax year 2022 but did make the electing pass-through entity election by filing the 2022 IT 4738 return and paid the tax liability on 4/18/2023. Can the individual owners of PTE A claim their proportionate share of Ohio’s electing PTE credits paid by PTE A on the owner’s 2022 IT 1040, Schedule of Credits?**

Individual owners, when filing their 2022 Ohio Individual Income tax return (IT 1040) using the Schedule of Credits, can claim the refundable Ohio PTE credit for their proportionate share of the tax levied on PTE A’s IT 4738 for tax year 2022 and remitted by PTE A. In other words, similar to the other PTE credits, this credit is limited to the lesser of the owner’s proportionate share of PTE A’s tax liability reported on the entity’s 2022 IT 4738 or the electing PTE tax paid by PTE A for tax year 2022.

**23 PTE A did not make any estimated payments for tax year 2022 but did make the electing pass-through entity election by filing the 2022 IT 4738 return and paid the tax liability on 4/18/2023. Are the individual owners of PTE A required to add back their proportionate share of Ohio’s electing PTE credits paid by PTE A on the owner’s 2022 IT 1040, Schedule of Adjustments?**

Individual owners, when filing their 2022 Ohio Individual Income tax return (IT 1040) using line 2 of the Schedule of Adjustments, are required to add back their proportionate share of Ohio’s electing PTE tax paid by PTE A on the entity’s IT 4738, to the extent the Ohio electing PTE tax paid by PTE A was not included or was deducted in computing the owner’s federal or Ohio adjusted gross income for tax year 2022. In other words, if PTE A deducted the Ohio electing PTE tax paid in computing its federal ordinary income on their federal 1065 or 1120-S for tax year 2022, then each individual owner would add-back their proportionate share of the Ohio electing PTE tax paid using line 2 of the Schedule of Adjustments on their IT 1040.

**24 Is an entity’s Ohio electing pass-through entity tax expense (referred to as “a specified income tax payment” in IRS Notice 2020-75) that is reported as a deduction on the federal return (1065 or 1120-S) required to be added back on the Ohio IT 4738?**

No. There is no requirement to make this add-back on the IT 4738. Instead, the individual investor/owner is required to report the add-back of their proportionate share of the Ohio electing pass-through entity (EPTE) tax paid on the IT 4738 using the IT 1040, line 2 of the Schedule of Adjustments, to the extent deducted or excluded from the individual’s federal or Ohio adjusted gross income. See R.C. 5747.01(A)(36). An entity should issue to each individual investor an IT K-1 to reflect the proportionate share of the EPTE tax paid that is to be added back on the individual investor’s IT 1040.



For more information, please see the personal income tax (PIT) FAQ category [Income - Pass-Through Entity \(PTE\)](#).

**25 Will the Department impose the 2210 interest penalty on entities that elect to file the 2022 IT 4738 Electing Pass-Through Entity Income Tax Return for failure to make, or paid late, estimated payments?**

No. The Department **will not** impose the 2210 interest penalty on any entities that elect to file the **2022 IT 4738** for failure to make, or paid late, estimated payments.

From tax years starting 1/1/23 or after, entities that elect to file the IT 4738 will be subject to the 2210 interest penalty for failure to make timely estimated payments.

See PTE FAQs category [Estimated Payments & the 2210 Interest Penalty](#) at tax.ohio.gov for additional details.

**26 How should an entity with only Ohio resident investors that makes IT 4738 estimated payments and decides not to elect to file the IT 4738 for the taxable year claim a refund of the IT 4738 estimated payments?**

Generally, if all owners are individual Ohio residents, no IT 1140 or IT 4708 would otherwise be required. If the entity makes IT 4738 estimated payments and decides not to elect to file the IT 4738 for the taxable year, it can claim a refund of the IT 4738 estimated payments.

The entity should file the IT 1140 return to claim the IT 4738 estimated payments on Schedule I line 3a to request a refund of these estimated payments (image below). Please contact [Pass-ThroughEntity@tax.ohio.gov](mailto:Pass-ThroughEntity@tax.ohio.gov) for additional information.

**Schedule I – Reconciliation Tax and Payments**

If the amount on a line is negative, place a  
Column

1. Tax Liability from line 20, columns A and B or line 30 .....	
2. Interest Penalty (see instructions) .....	
2a. Add lines 1 and 2 .....	
3. Ohio IT 1140 estimated (UPC/electronic) payments and 2021 overpayment credited to 2022 .....	
3a. Ohio IT 4708, IT 4738 estimated (UPC/electronic) payments and prior year IT 4708 overpayment claimed on this return (see instructions). ....	

**27 How should a PTE with a filing requirement (PTE will file an IT 1140 or IT 4708) claim the IT 4738 estimated payments made if the PTE decides not to elect to file the IT 4738 for the taxable year?**

An entity that makes IT 4738 estimated payments and decides not to elect to file the IT 4738 for the taxable year can claim the IT 4738 estimated payments on either of the PTE forms the IT 1140 Pass-Through Entity & Trust Withholding Tax Return or the IT 4708 Pass-Through

Entity Composite Income Tax Return. The forms feature a line to transfer in the IT 4738 estimated payments.

The IT 1140 and IT 4708 forms and instructions can be found at [tax.ohio.gov](http://tax.ohio.gov) on the searchable [FORMS](#) page.

**28 What should entities of a multi-tier ownership structure consider in deciding whether to file the IT 4738 Electing Pass-Through Entity Income Tax Return?**

An entity should consult with its owners and tax advisor in making this decision. Am. S.B. 246 states that the tax levied on the IT 4738 is intended to comply with [IRS Notice 2020-75](#) in which the tax is deductible to the entity for federal income tax purposes. The Tax Cuts and Jobs Act (2017) limited the amount of state and local taxes that could be deducted federally as an itemized deduction to \$10,000 – the SALT Cap.

**29 Could an entity (PTE A) that is an owner of an electing PTE (EPTE) that has no other income other than the income included on an IT 4738 return have a PTE filing requirement of its own?**

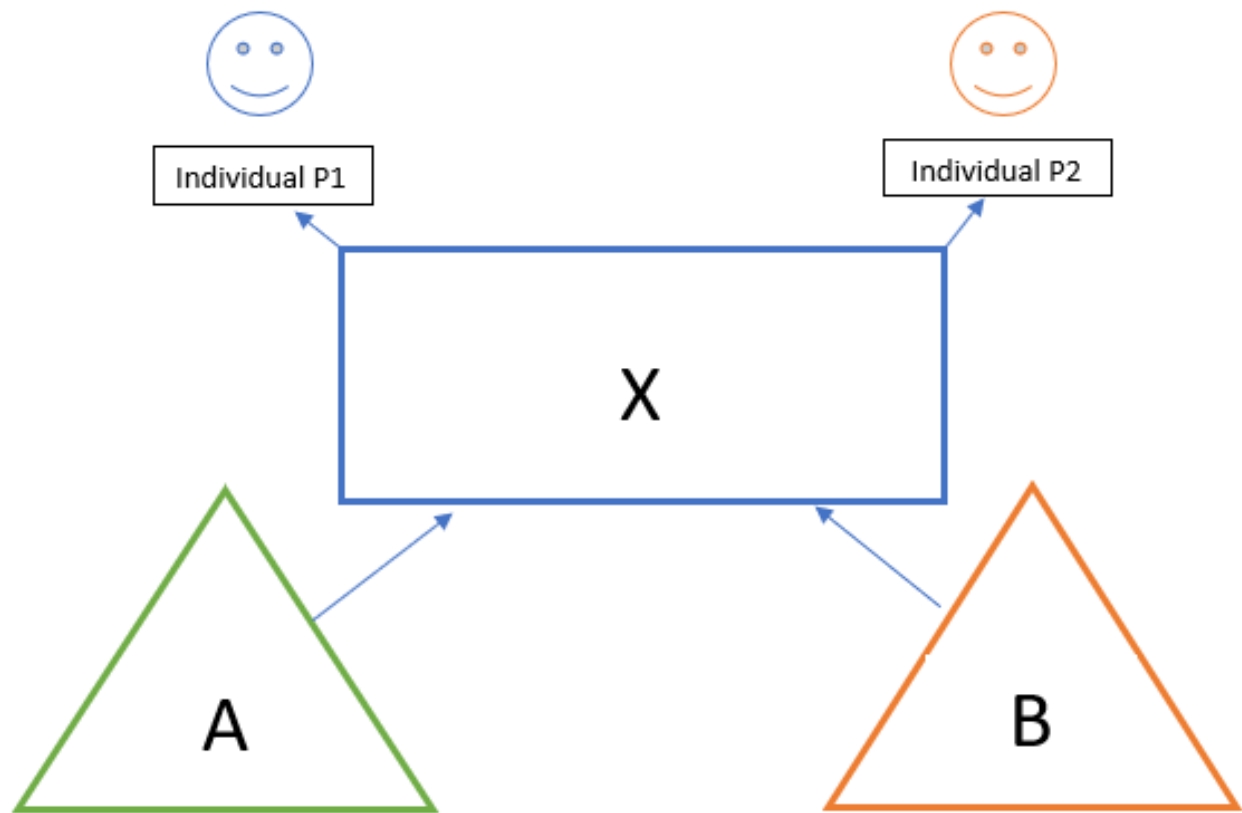
Yes. PTE A, as an owner of an electing PTE (EPTE) that has no other income other than the income included on an IT 4738 return, could have a filing requirement of its own. If PTE A otherwise meets the requirements to file an IT 1140, it must file the IT 1140 to report the income or may elect to file the IT 4708 to report the income and the refundable PTE credit received from the EPTE. Additionally, PTE A could elect to file an IT 4738 to report the income and pass the credit through to its own investors which it received from the other electing PTE.

**Note:** When filing the IT 4738 or the IT 1140, Ohio law does not allow for a pass-through entity to utilize any credits listed in [R.C. 5747.98](#), including the credit for IT 1140 and/or IT 4738 payments made by another pass-through entity.

For examples of the filing scenarios for the IT 4738, IT 1140 and IT 4708, see **FAQ: "The following questions use the diagram below to address these scenarios. For all three scenarios, assume PTE A and PTE B both elected to file an IT 4738."**

**30 The following questions use the diagram below to address these scenarios. For all three scenarios, assume PTE A and PTE B both elected to file an IT 4738.**

**PTE A and PTE B are both owned by PTE X. PTE X has two individual investors, P1 and P2.**



### Scenario 1

**If X also elects to file the IT 4738, how would X calculate its tax on the IT 4738, and can X claim the PTE credits for the IT 4738 tax paid by A and B?**

When X files the IT 4738, it will calculate its tax based on all of X's qualifying taxable income, including X's distributive share of income received from A and B. However, when filing the IT 4738 return, Ohio law does not allow X to utilize any credits listed in R.C. 5747.98, including PTE credits passed from A and B to X.

### **How are the PTE credits to be utilized by the owners of X (Individuals P1 and P2)?**

X is able to "pass through" A and B's PTE credits as indirect credits by issuing Ohio IT K-1s to X's owners (Individuals P1 and P2) using line 4 of the Ohio IT K-1 (image below). Additionally, X reports the FEINs of A and B on line 4.

In addition, the resulting credit from the tax paid by X on the IT 4738 is proportionately distributed to P1 and P2 on the Ohio IT K-1 issued by X using line 3. If Individuals P1 and P2 file an IT 1040 to claim the direct and indirect PTE credits, they must also add back their proportionate share of tax paid by A, B and X on each IT 4738 using line 2 of the Ohio Schedule of Adjustments, to the extent the tax was not included in federal or Ohio adjusted gross income.

**Part IV - Investor's / Owner's / Beneficiary's Share of Ohio Tax Credits**

3. Direct pass-through entity credit (Ohio tax paid by this entity after nonrefundable business credits and refunds).
  4. Indirect pass-through entity credits or withholding (attach IT K-1/W2/1099).....
- Include the FEIN for any indirect pass-through entities \_\_\_\_\_

**Scenario 2**

**If X elects to file the IT 4708, how would X calculate its tax on the IT 4708, and can X claim the PTE credits for the IT 4738 tax paid by A and B?**

Yes, if X files the IT 4708, it can claim the PTE credit for the tax paid by A and B on the IT 4738 returns. X will claim the PTE credit on Schedule V, line 38 (image below) of the IT 4708.

**Schedule V – Refundable Business Credits**

**Note:** Certificates from the Ohio Department of Development and/or Ohio IT K-1s must be included

- |   |    |
|---|----|
| 46. Refundable Ohio historic preservation credit (include a copy of the credit certificate).....            | 46 |
| 47. Refundable job creation credit and job retention credit (include a copy of the credit certificate)..... | 47 |
| 48. Pass-through entity credit (include a copy of the Ohio IT K-1).....                                     | 48 |

**May the PTE credits claimed by X on the IT 4708 also be utilized by the owners of X (Individuals P1 and P2)?**

No. The refundable credit for the tax paid by A and B on the IT 4738 returns was claimed by X on its IT 4708 filing.

X will issue an Ohio IT K-1 to X's owners (P1 and P2) reflecting their proportionate share of the income and refundable PTE credit for the tax paid by X on the IT 4708 (direct credits reported on line 3, image below). If P1 and P2 file an IT 1040 return to claim the direct credit for the tax paid by X on the IT 4708, P1 and P2 will add back their proportionate share of tax paid by A and B on each IT 4738 using line 2 of the Ohio Schedule of Adjustments, to the extent the tax was not included in federal or Ohio adjusted gross income.

**Part IV - Investor's / Owner's / Beneficiary's Share of Ohio Tax Credits**

3. Direct pass-through entity credit (Ohio tax paid by this entity after nonrefundable business credits and refunds).
  4. Indirect pass-through entity credits or withholding (attach IT K-1/W2/1099).....
- Include the FEIN for any indirect pass-through entities \_\_\_\_\_

**Scenario 3**

**If X files the IT 1140, how would X calculate its tax on the IT 1140 and can X claim the PTE credits for the IT 4738 tax paid by A and B?**

When X files the IT 1140, it must include only the proportionate share of income of its nonresident investors (Ohio resident investors cannot be included on an IT 1140 filing). X will calculate its tax based on X's adjusted qualifying amount, including X's distributive share of

income received from A and B. However, when filing the IT 1140 return, Ohio law does not allow X to utilize any credits listed in R.C. 5747.98, including PTE credit passed from A and B to X.

### **How are the PTE credits to be utilized by the owners of X (Individuals P1 and P2)?**

X is able to “pass through” A and B’s PTE credits as indirect credits by issuing Ohio IT K-1s to the nonresident owners (P1 and P2) using line 4 of the Ohio IT K-1 (image below).

Additionally, X reports the FEINs of A and B on line 4.

In addition, the resulting credit from the tax paid by X on the IT 1140 is proportionately distributed to nonresident owners P1 and P2 on the Ohio IT K-1 issued by X using line 3. When P1 and P2 file the IT 1040 to claim the direct and indirect credits, they must also add back their proportionate share of tax paid by A and B on the IT 4738 and X on the IT 1140 by using line 2 of the Ohio Schedule of Adjustments, to the extent the tax was not included in federal or Ohio adjusted gross income.

#### **Part IV - Investor's / Owner's / Beneficiary's Share of Ohio Tax Credits**

3. Direct pass-through entity credit (Ohio tax paid by this entity after nonrefundable business credits and refunds).

4. Indirect pass-through entity credits or withholding (attach IT K-1/W2/1099).....

Include the FEIN for any indirect pass-through entities \_\_\_\_\_

### **31 If a C corporation (“C corp”) is an owner of an entity that elects to file the IT 4738, will the C corp’s distributive share of the entity’s income be taxed on the return? If so, can the C corp claim a credit for its proportionate share of the tax paid by the entity?**

The election to file the IT 4738 is an election to be taxed at the entity level and is on all of the entity’s qualifying taxable income, as that term is defined in Ohio law. Income includes the sum of owners’ distributive shares of the income, gain, expense, or loss of an electing pass-through entity, as reported for federal income tax purposes. The distributive share of a C corp is not excluded from the tax. Therefore, the C corp’s distribution is included and taxed on the IT 4738.

No credit is available to the C corp. The Ohio refundable credit available to owners of electing pass-through entities for the proportionate share of tax levied on the IT 4738 is only available to a “taxpayer,” which does not include a C corp. Therefore, a C corp cannot file a PTE return to claim this credit.

For reference, see R.C. 5747.01(N), 5747.38, and 5747.39.

### **32 Would 501(c) entities, publicly traded partnerships, REITs, REMICs and RICs be allowed to make the election to file the IT 4738 Electing Pass-Through Entity Income Tax return?**

No. An electing pass-through entity is a qualifying pass-through entity that elects to be subject to the IT 4738. 501(c) entities, publicly traded partnerships, REITs, REMICs and RICs are not considered a “qualifying pass-through entity”; therefore, these entities are prohibited from making the election to file the IT 4738.

However, 501(c) entities, publicly traded partnerships, REITs, REMICs, and RICs can be owners of an electing pass-through entity (EPTE) that has elected to file the IT 4738.

See R.C. 5733.40(N), 5733.09(C), and 5747.38(A)(1).

**33 My client already made IT 1040 estimated payments, but now wishes to take advantage of the SALT cap workaround by making the electing PTE election. Can IT 1040 estimated payments be applied as IT 4738 estimated payments?**

No. Ohio law does not allow an individual's estimated tax payments to be applied to IT 4738 estimated payments.

**34 By what date must an entity make the electing PTE election?**

The filing of the IT 4738 in itself is an election. By law, this election must be made on or before the due date of the return. This includes an extended due date for an electing pass-through entity that has received an extension for filing its federal income tax return.

**35 The IT 4738 has a section (Schedule V) to report prior years' section 168(k) bonus depreciation and excess section 179 add-backs and deductions. When would this be used on an initial IT 4738 return? Would the add-backs and related deductions from a prior year's IT 4708 or IT 1140 apply to the IT 4738?**

Yes, the bonus depreciation adjustments for an entity that filed an IT 4708 or IT 1140 in previous tax years will apply to that same entity if it elects to file the IT 4738 in subsequent tax years.

**36 How does an electing pass-through entity (EPTE) calculate the Ohio bonus depreciation add-back?**

The amount of the add-back depends on a few different circumstances. First, the EPTE must compute the amount of federal depreciation subject to the add-back. The amount subject to the add-back is the EPTE's total §179 expense less \$25,000 plus all the EPTE's §168(k) depreciation expense. This includes depreciation from the EPTE's business operation, as well as their proportionate share of depreciation from any other PTE in which the EPTE is an investor. If the amount of qualifying §179 depreciation expense is greater than \$200,000, the \$25,000 deduction is reduced dollar for dollar for any amount over \$200,000, per the IRC as it existed as of December 31, 2002.

Then, the amount subject to the add-back is multiplied by one of the following fractions:

- 6/6 if the EPTE had a federal net operating loss (NOL) resulting from the deduction of §179 and §168(k) depreciation expense;
- 2/3 if the EPTE did not incur an NOL and it increased its Ohio employer withholding by at least 10% over the previous year; OR
- 5/6 for EPTEs in all other situations

**Example 1:** EPTE A has \$125,000 of §179 depreciation expense and \$80,000 of §168(k) depreciation expense included in its federal taxable income for the current tax year. The §179 depreciation is from EPTE A's business operations, while the §168(k) depreciation is from its 100% ownership in ABC LLC. EPTE A's total amount of depreciation subject to add-back is calculated as:

- Depreciation subject to add-back:  $(\$179 - \$25,000) + \$168k$
- EPTE A's depreciation subject to add-back:  $(\$125,000 - \$25,000) + \$80,000 = \$180,000$

Neither EPTE A nor ABC LLC has a federal NOL or any changes to their Ohio employer withholding amounts. Thus, EPTE A calculates their depreciation add-back as:

- EPTE A's total depreciation add-back:  $5/6 \times \$180,000 = \$150,000$

**Example 2:** EPTE A still has \$180,000 subject to add-back for the current tax year. However, ABC LLC increased its Ohio employer withholding for its employees by at least 10% over the previous tax year. EPTE A must use a different add-back fraction for each source of depreciation, and thus calculates its depreciation add-back as follows:

- EPTE A's add-back from ABC LLC:  $2/3 \times \$80,000 = \$53,333$
- EPTE A's add-back from its business operations:  $5/6 \times (\$125,000 - \$25,000) = 5/6 \times \$100,000 = \$83,333$
- EPTE A's total depreciation add-back:  $\$53,333 + \$83,333 = \$136,666$

**Example 3:** EPTE A still has \$180,000 subject to add-back for the current tax year, but its federal taxable income is -\$100,000 (i.e., EPTE A has a federal NOL). EPTE A would calculate its depreciation add-back as:

- EPTE A's total depreciation add-back:  $6/6 \times \$180,000 = \$180,000$

See R.C. [5747.01\(A\)\(17\)\(a\)\(i-v\)](#).

### **37 How does an Electing PTE calculate the Ohio bonus depreciation deduction?**

The amount of the deduction depends solely on the amount of the add-back. Taxpayers can only deduct based on amounts added back in a prior year. This deduction can be claimed even if the taxpayer no longer directly or indirectly owns the depreciated asset. The deduction is not transferable from one taxpayer to another.

Taxpayers who added back:

- 5/6 of their depreciation expense in a given tax year should deduct 1/5 of the amount added back in the subsequent five years;
- 2/3 of their depreciation expense in a given tax year (due to a 10% increase in Ohio employer withholding) should deduct 1/2 of the amount added back in the subsequent two years; AND/OR
- 6/6 of their depreciation expense in a given tax year (due to a federal net operating loss (NOL)) should deduct 1/6 of the amount added back in the subsequent six years.

Example 1: PTE A added back \$150,000 (5/6) of depreciation for the current tax year. For each of the 5 subsequent tax years, PTE A can deduct:

Future Tax Year 168(k) Depreciation and 179 Expense Deduction Worksheet



Business Name	Add-back Amount	Add-back Fraction	Deduction Period	Annual Depreciation Deduction Amount
PTE A	\$ 83,333.00	5/6	5 years	\$ 16,667.00
ABC LLC	\$ 66,667.00	5/6	5 years	\$ 13,333.00

- PTE A's annual depreciation deduction:  $\$16,667 + \$13,333 = \$30,000$

Example 2: If instead, PTE A added back \$100,000 (5/6) for the current tax year for its business operations and an add-back of \$80,000 (2/3) for ABC LLC. for the subsequent tax years, it can deduct:

#### Future Tax Year 168(k) Depreciation and 179 Expense Deduction Worksheet

Business Name	Add-back Amount	Add-back Fraction	Deduction Period	Annual Depreciation Deduction Amount
PTE A	\$ 83,333	5/6	5 years	\$ 16,667
ABC LLC	\$ 53,333	2/3	2 years	\$ 26,667

- PTE A's annual depreciation deduction:  $\$16,667 + \$26,667 = \$43,334$  for the first two years. The remaining three years will be \$16,667.

Example 3: Finally, if PTE A added back \$180,000 (6/6) for the current tax year, for each of the 6 subsequent tax years, it can deduct:

#### Future Tax Year 168(k) Depreciation and 179 Expense Deduction Worksheet

Business Name	Add-back Amount	Add-back Fraction	Deduction Period	Annual Depreciation Deduction Amount
PTE A	\$ 100,000	6/6	6 years	\$ 16,667
ABC LLC	\$ 80,000	6/6	6 years	\$ 13,333

PTE A's annual depreciation deduction:  $\$16,667 + \$13,333 = \$30,000$

Exception: However, a PTE cannot claim the deduction in any tax year that directly or indirectly results in a federal NOL. Instead, the PTE must carry forward the deduction to the next subsequent tax year that does not report a NOL and use any accumulated deductions at that time.

Example 1: PTE A added back \$150,000 (5/6) of depreciation for the current tax year. The following table shows PTE A's federal taxable income for the subsequent 5 years:

	Current Year	Year 1	Year 2	Year 3	Year 4	Year 5
PTE A's Fed. Taxable Income	\$100,000	-\$50,000	-\$90,000	\$45,000	\$75,000	\$125,000

Because of the NOLs, PTE A cannot claim its Ohio depreciation deduction in years 1 or 2. Instead, it must carry each of them forward to the first year without a NOL (year 3).

The following table shows PTE A's Ohio depreciation deduction for the applicable period:

	Year 1	Year 2	Year 3	Year 4	Year 5
PTE A's Ohio Depreciation Deduction	\$0	\$0	\$90,000*	\$30,000	\$30,000

\*Year 3 depreciation deduction: Deduction from tax years 1, 2 and 3 = \$30,000 + \$30,000 + \$30,000.

Note: A PTE may need to report a mixture of add-back fractions on the Bonus Depreciation Add-back Schedule, due to investment in multiple PTEs. In this scenario, check the 5/6 box and provide a breakdown of the various sources of bonus depreciation and the fractions used. You may wish to attach this explanation to future years' returns. Follow the same procedure for the investors of the PTE on the IT K-1 under Depreciation Information and fill out the Supplemental Information portion.

See [R.C. 5747.01\(A\)\(18\)\(a\)\(i-iii\)](#).

**Note:** For further information, please see the Bonus Depreciation FAQ category <https://tax.ohio.gov/help-center/faqs/pass-through-entities-fiduciaries-bonus-depreciation>.

### **38 Is an e-file option available for the IT 4738 Electing Pass-Through Entity Income Tax returns?**

Yes. A PTE can e-file the IT 4738 using a Department-approved vendor software package. See the list of approved software vendors at the Department's website [tax.ohio.gov](https://tax.ohio.gov) on the [Software Developers: MeF 2022](#) page.

### **39 Does the IT K-1 that an owner/investor receives from an entity indicate the type of PTE return that the entity filed for a taxable year?**

Yes. The PTE/EPTE form filed by the entity is reported at the top of the investor/owner's IT K-1 in Section I. The amount of tax withheld or paid by the entity is reported on line 3 in Section IV.

### **40 What form will a PTE owner attach to the IT 1040 to support the PTE credit claimed from an IT 4738 return filed?**

An IT K-1 should be provided to the owner by the electing PTE (EPTE) that filed the IT 4738. The IT K-1 will be needed as supporting documentation in claiming the refundable PTE credit on the IT 1040.