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Oregon Guidance on Pass-Through Entity Elective (PTE-E) Tax

<https://www.oregon.gov/dor/programs/businesses/pages/pass-through-entity-elective-tax.aspx> (visited 7/29/23)

About the tax

In July 2021, Oregon established a Pass-Through Entity Elective (PTE-E) Tax, a business alternative income tax in response to the \$10,000 cap on the federal State and Local Tax (SALT) deduction included in the 2017 federal Tax Cuts and Jobs Act.

For tax years beginning on or after January 1, 2022, entities taxed as S corporations and partnerships may elect annually to be subject to the PTE-E tax at a rate of 9 percent tax on the first \$250,000 of distributive proceeds and 9.9 percent tax on any amount exceeding \$250,000. The law will expire if the federal SALT deduction limitation expires or is repealed.

Qualifying members of an electing PTE are eligible for a credit equal to 100 percent of the member's distributive share of the PTE-E tax paid.

Getting started

An entity must first register with us to make payments for the PTE-E Tax. See our [PTE-E Registration Training](#) for details.

You may receive an error when registering for PTE-E Tax on Revenue Online (ROL). If you receive an error, you may need to have "Third-Party Access" set to "Yes" within your ROL account. To change the setting follow these steps after logging into your ROL account:

- From the main ROL screen select "Manage My Profile" located at the top right.
 - Once that page loads, select "More Options" and then under Access Management select "Manage Third-Party Access"
 - On the next screen make sure "Accountants or Third-Party Logins" says "Yes" next to "Allow", if not, click on "No" and change to "Yes".
 - Once you have completed registering for the PTE-E Tax account, you can change the third-party access back to "No" following the same steps above.
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Frequently asked questions

1. What is the PTE-E Tax?

For Oregon tax purposes, income and losses of a PTE are passed through to its members/owners. However, for taxable years beginning on or after January 1, 2022 certain qualifying pass-through entities may elect to pay a PTE-E Tax on the sum of each of the member/owner's share of distributive proceeds. The member/owner(s) may then claim a tax credit for the tax paid by the PTE on their share of distributive proceeds.

2. Is the PTE-E Tax mandatory?

No. The PTE-E Tax is elective.

3. Must the entity make an election to pay the PTE-E Tax each year?

Yes. The entity must make an election to pay each year. The election is made when the return is timely filed.

4. Which entities may elect to pay the PTE-E Tax?

A PTE is a partnership or S corporation or limited liability company (LLC) electing to be treated as a partnership or S corporation. The PTE may elect to pay the PTE-E Tax if all the member/owners are individuals or are pass-through entities that are owned entirely by individuals subject to the personal income tax imposed under Oregon Revised Statutes Chapter 316.

Sole proprietorships and single member LLCs electing to file as sole proprietorships may not elect to pay the PTE-E Tax.

5. When is a fiscal year partnership eligible to make the PTE-E Tax election?

A fiscal year pass-through entity may make the election for taxable years beginning on or after January 1, 2022.

6. Can a taxpayer transfer an overpayment from a composite return to a PTE's elective tax account?

No. The PTE-E Tax is a separate tax apart from the composite tax return filed on behalf of individuals. The overpayment from the composite return cannot be transferred to the pass-through entity's elective tax account.

7. Can a grantor trust be a qualified member of an eligible PTE?

Yes. The grantor trust is treated as a qualified member because they are subject to the personal income tax laws under ORS Chapter 316.

8. Can an eligible out-of-state PTE with income, subject to tax in Oregon, elect to pay the PTE-E Tax?

Yes.

9. Is the election to pay the PTE-E Tax revocable?

Yes. The election can be revoked on or before the due date of the return, including extensions.

10. What income is subject to tax by the eligible PTE?

The PTE will pay tax on the distributive proceeds of the entity. Distributive proceeds include net income, dividends, royalties, interest, rents, guaranteed payments, and gains of a PTE derived from or connected with sources within Oregon.

11. Can a non-resident Oregon composite return filer claim the PTE-E tax credit?

Yes. A PTE that files an Oregon composite return (OR-OC) on behalf of its participating non-resident members may claim the credits allocable to the members who are included on the OR-OC.

12. Is registration required for the PTE-E tax?

Yes, you are required to register on Revenue Online before estimated tax payments can be made.

13. Are the members required to show an addition for the state tax deduction if they claim a credit on their individual return for their share of the PTE-E tax paid?

Yes.

14. When are the PTE-E tax returns due?

The returns are filed on a calendar year basis and are due on the same day that the personal income tax returns are due, which is normally April 15th. For fiscal filers, returns are due for the year that coincides with the fiscal year end. For example: if your fiscal year is July 1, 2022, to June 30, 2023, you will file a 2023 calendar year end PTE-E tax return reporting the income on the June 30, 2023, PTE return.

15. If a pass-through entity elects to pay the new Pass-through Entity Elective tax, can the owners qualify for the qualified business income reduced tax rate (QBIRTR)?

Yes, if there is income that meets the conditions for the use of the elective rates under ORS 316.043.

16. Is the addition that is required to be added back to income of an owner of a PTE that claims the credit for the PTE-E tax, considered qualifying income for the qualified business income reduced tax rate (QBIRTR)?

Any amount that is added back for the PTE-E tax that meets the conditions for the use of the elective rates under ORS 316.043 may be treated as qualifying income under ORS 316.043. If the distributive income from the PTE is a mix of qualifying and nonqualifying income, the addition that is qualifying income is a proration determined by the department by rule.

17. Does a PTE have to make estimated payments?

Yes. A PTE that will be making the election to be liable for and pay the PTE-E tax must make estimated tax payments.

18. Is making estimated payments the same as making the election to pay PTE-E tax?

No. The election to pay PTE-E tax is made when the PTE-E tax return is filed.

19. What will happen if the PTE doesn't make estimated payments?

The PTE may owe underpayment interest when it files the PTE-E tax return.

20. When are estimated payments due?

Estimated payments have the same due dates as for calendar-year personal income tax filers: April 15, June 15, September 15, and January 15 after the tax year ends. For tax year 2022 only, the April 15 payment is due on June 15 along with the June 15 payment. No underpayment interest will be due for the period before June 15.

21. Are the estimated tax payment due dates the same if the PTE uses a fiscal year for accounting purposes?

Yes, but the PTE figures the payment *amounts* based on its fiscal year that ends during the calendar year for which it's making the election.

22. What is the first step in determining the PTE's estimated payment amount?

The PTE must estimate the income that will be taxed when the PTE-E return is filed after the end of the tax year. The PTE-E tax is based on distributive proceeds from Oregon sources, including:

- Ordinary business income or loss.
- Net rental real estate income or loss.
- Other net rental income or loss.
- If the PTE is a partnership, guaranteed payments to partners.
- Interest income.
- Ordinary dividends.
- Royalties.
- Net capital gain or loss.
- Net IRC section 1231 gain or loss.
- Other income or loss.

If the PTE only does business in Oregon, it totals its income from the listed sources, and then calculates the tax. Separately stated deductions such as IRC 179 expense or contributions are not included in the calculation.

23. What if the PTE also does business outside of Oregon?

If the PTE does business both inside and outside Oregon, it must apportion its income according to Oregon's Uniform Division of Income for Tax Purposes Act, ORS 314.605 to 314.675, unless the PTE is a financial institution or public utility. In that case, the PTE must apportion its income using the provisions of ORS 314.280. See [Schedule OR-AP Instructions](#), Apportionment of Income for Corporations and Partnerships, for information about apportioned and allocated income.

24. How does the PTE figure its income from Oregon sources?

From its total income from the sources listed above, the PTE must subtract the amount that isn't apportionable. Then it multiplies the remaining amount by its apportionment percentage. Use [Schedule OR-AP Instructions](#) as a guide for estimating the apportionment percentage. Then, from the income that isn't apportionable, add back income that must be allocated to Oregon. This is the PTE's total amount of distributive proceeds from Oregon sources.

25. How does the PTE estimate the tax on the distributive proceeds?

If the total distributive proceeds are less than \$250,000, multiply the total by 9 percent (0.09). If the total is more than \$250,000, follow these steps:

1. Subtract \$250,000 from the total distributive proceeds.
2. Multiply the result by 9.9 percent (0.099).
3. Add \$22,500. This is the total estimated tax.

26. Does the PTE have to make estimated tax payments that equal 100 percent of tax that will be due when the return is filed to avoid paying underpayment interest?

No. Underpayment interest won't be charged if the PTE timely pays at least 90 percent (90%) of the tax that it expects will be shown on the PTE-E tax return.

27. How do I figure out the payment amounts?

Estimated tax is payable in four regular installment amounts. Multiply the total estimated tax by 90 percent, then divide that amount by four.

Example: Partnership A's total estimated tax is \$40,000. It takes 90 percent of that amount, or \$36,000 ($\$40,000 \times 0.9$), and divides it by four. A's installment payments equal \$9,000 each ($\$36,000 \div 4$).

28. What if the PTE doesn't receive its income regularly during the year?

A PTE that doesn't receive its income regularly during the year can figure its installment amounts on an annualized basis. For guidance for tax year 2022 use the "Annualized income worksheet" for personal income taxpayers inside [Form OR-10 Instructions](#), Underpayment of Oregon Estimated Tax (skipping references to items that only apply to personal income taxpayers) or ORS 314.505 and 314.525 and the associated Oregon Administrative Rules for PTEs that are S corporations.

29. If the PTE uses a fiscal year for accounting purposes, does it have to annualize its income based on a calendar year instead?

No. A PTE that is a fiscal-year filer should base its estimated tax payments on the total distributive proceeds from Oregon sources for the fiscal year that ends in the calendar year for which the PTE is making the election.

Example: S Corporation B's fiscal year 2022 ends on August 31, 2023. B will make the election for calendar year 2023 based on its income from Oregon sources from September 1, 2022 through August 31, 2023. If B annualizes its income, each of its installment periods start on September 1, 2022 and end on November 30, 2022, January 31, 2023, April 30, 2023, and August 31, 2023, respectively.

30. How does the PTE make the estimated tax payments?

To make estimated PTE-E tax payments, the PTE must first register for a PTE-E account on Revenue Online. Payment can be made by ACH debit or credit while logged into the PTE's Revenue Online account, or by using the account number if not logged in. Payments by check or money order will also be accepted if submitted with Form OR-21-V, Oregon Pass-through Entity Elective Tax Payment Voucher. See [Form OR-21-V Instructions](#) for information about making payments by mail.

31. If the PTE doesn't make the election, does it have to file a return to get a refund?

If the PTE makes estimated PTE-E tax payments, but will not be making the election after all, the PTE may request a refund without having to file a return. The refund request can be made through the PTE's Revenue Online account.

32. Is the PTE elective tax credit Refundable?

Yes

33. Is there an exception for farmers and fishermen for estimated tax payments?

No

34. Is a single member LLC allowed to be a member of a PTE to be eligible to pay the PTE-E tax?

Yes, the PTE must report the individual as the member and not the single member LLC.

35. If I file the PTE elective tax return, do I still need to file a composite for non-residents?

Yes, a composite return will need to be filed for individuals that are electing to be included in the composite return.

36. When are the forms going to be available?

The OR-21 will be required to be electronically filed or filed through our Revenue Online portal. We will not be releasing the OR-21 in paper form. Please see the instructions including worksheets posted on our forms page.

37. Is there a safe harbor for estimated tax payments for the 2023 tax year?

Yes, the amount paid to avoid underpayment of estimated taxes would be 100 percent of prior year tax or 90 percent of current year tax, whichever is lesser, assuming a 2022 return was filed.

38. How does the individual claim the PTE elective tax credit on the personal tax return?

Claim the credit on the Form OR-ASC or OR-ASC-NP as a refundable credit using the code 900.

39. How does the individual claim the add back for the state taxes deducted on the federal PTE return?

Claim the addition on the Form OR-ASC or OR-ASC-NP using code 167.

40. Are amended OR-21 returns required if the OR-65 or the OR-20-S are amended?

No, amended returns are not required.

41. Is there any relief from penalty for any party that did not make sufficient estimated tax payments?

Yes, we will consider written requests for waiver of penalties if a PTE or its members made sufficient estimated payments.