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Utah FAQs – 2022 House Bill 444 – Federal State and Local Tax Deduction Workaround

<https://tax.utah.gov/training/salt-faq> (visited 7/29/23)

Terms used in this Guidance

- **“Final pass-through entity taxpayer”** or **“Final PTET”** means a pass-through entity taxpayer who is a resident or nonresident individual. This includes an individual who is a member of an LLC, partner of a partnership, shareholder of an s-corporation, or beneficiary of an estate or trust. A Final PTET does not include a business entity or an estate or trust.
- **“HB 444”** means Utah House Bill 444, Income Tax Revisions (Spendlove), passed during the 2022 General Session of the Utah Legislature.
- **“Pass-through entity”** or **“PTE”** means a business entity that is an S-Corporation, an estate or trust, or classified as a partnership for federal income tax purposes.
- **“SALT Report”** means the TC-75 report that an electing PTE is required to electronically file with Utah. In this report the electing PTE must report information for each Final PTET.
- **“SALT tax”** means a state income tax payment made by a PTE on behalf of a Final PTET on voluntary taxable income.
- **“Voluntary taxable income”** means PTE income that is attributed to a Final PTET who is a Utah resident individual or PTE income derived from Utah sources that is attributed to a nonresident individual.

What is HB 444?

HB 444 allows a PTE to elect to pay Utah income tax on voluntary taxable income on behalf of all Final PTETs as a method of mitigating the federal limitation on the deduction for state and local taxes. This process may not always be beneficial. A PTE should consult an independent tax advisor to determine if this process is beneficial for their circumstances.

Which entity types entities can elect to be treated as an electing PTE?

The election is permitted for a PTE with Utah source income that distributes this income to one or more Final PTET. The election is not allowable for entities that are disregarded for federal income tax purposes.

If a PTE makes this election, which members, partners, shareholders, or beneficiaries does it apply to?

If a PTE makes the election, the PTE must pay SALT tax on behalf of every Final PTET who is a member, partner, shareholder, or beneficiary of the PTE. A Final PTET of an electing PTE is not permitted to “opt out” of having the SALT tax paid on their behalf if the PTE has made the election. The election does not apply to any member, partner, or shareholder who is a resident or nonresident business entity or resident or nonresident estate or trust.

How does the PTE make this election?

The election to be treated as an electing PTE is made by electronically filing a SALT Report and submitting an electronic SALT tax payment on or before the last day of the PTE’s taxable year. The SALT tax and the SALT Report must be filed electronically through Taxpayer Access Point (TAP).

Note: The TC-75 SALT Report and instructions are available in Taxpayer Access Point (TAP) in the **Returns** section, or at these links:

- [TC-75, State and Local Tax \(SALT\) Report](#)
- [Instructions for TC-75 State and Local Tax \(SALT\) Report](#)

Steps to Make Election

- PTE navigates to the [Taxpayer Access Point \(TAP\)](#) website;
 - Click the link for “File SALT Report”;
 - Fill out the report with all Final PTETs (individuals only);
 - Enter total state taxes paid to Utah and any other state(s) for each individual;
 - Calculate the SALT tax on voluntary taxable income; and
 - Make an online payment of SALT tax and submit the SALT Report.
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If a PTE makes the election, what type of income does the election apply to?

If a PTE makes this election, SALT tax is due on all voluntary taxable income. The PTE is not permitted to exclude certain types of voluntary taxable income. (See definition of voluntary taxable income, above.)

How do I fill out the SALT Report?

Instructions for the Salt Report may be found on the [TC-75, State and Local Tax \(SALT\) Report Instructions](#).

When is the SALT tax due and what are the penalties for late payment?

A PTE must pay SALT tax on or before the last day of the PTE's taxable year. (For example: If the PTE is reporting voluntary taxable income for a taxable year ending December 31, to qualify as a valid election, the SALT tax must be paid by December 31.) Any payment made after the last day of the PTE's taxable year will not qualify as a valid SALT tax payment. As a result, a penalty for late payment is unnecessary. Payments made after the last day of the PTE's taxable year will be refunded to the PTE.

What are the requirements for the PTE to notify a Final PTET that an election has been made?

If a PTE has paid SALT tax on behalf of a Final PTET, the PTE must issue the Final PTET a Utah Schedule K-1 detailing the amount of voluntary taxable income attributable to the Final PTET and the amount of SALT tax paid on that income. If a PTE fails to provide this notice to a Final PTET, the PTE is subject to a penalty of up to \$100 per Utah Schedule K-1 that should have been provided to a Final PTET.

How is the SALT tax calculated?

The SALT tax is calculated by multiplying the total amount of voluntary taxable income for all Final PTETs by the individual income tax rate for the taxable year.

Is a PTE required to make quarterly prepayments or separate payments for each member?

No. The election is valid to the extent that the SALT tax is paid and the SALT Report is filed on or before the last day of the PTE's taxable year.

Once the election has been made for a taxable year, is the election revocable?

No, once a PTE has made the election by making a valid SALT tax payment, the election is irrevocable for the taxable year. This means that the PTE may not reduce the amount of the election or receive a refund of amounts paid.

What happens if the PTE underestimates the Utah taxes?

A PTE is required to estimate voluntary taxable income by the last day of the PTE's taxable year for all Final PTETs.

If the PTE underestimates the Utah taxes for a Utah resident individual, the individual is required to pay any underpayment when the individual files their Utah individual income tax return.

If the PTE underestimates the Utah taxes for a Utah non-resident individual, the PTE is required to withhold the difference in Utah taxes when the PTE files their annual Utah partnership, s-corporation, estate, or trust return.

What happens to the SALT tax paid if it is paid on behalf of a Final PTET who doesn't owe Utah tax for the taxable year?

The tax paid by the electing PTE becomes a nonrefundable tax credit that may be claimed by the Final PTET. This nonrefundable tax credit has a five year carry forward for amounts that exceed the individual's Utah tax liability. Any nonrefundable credit not used within the carry forward period is lost.

Is the nonrefundable tax credit limited to only the income received from the PTE?

No. The nonrefundable tax credit can be applied to any Utah income tax that the Final PTET owes for the current tax year or for years within the carry forward period.

What happens if the Final PTET has other losses that reduce Utah taxable income?

If a PTE elects to pay the SALT tax, this election applies to all Final PTETs of the electing PTE regardless of any other losses that may apply to a Final PTET. An individual Final PTET may not opt out if the PTE has made the election.

How is the process created under HB 444 different than the existing pass-through entity withholding requirement?

Utah's Pass-through Entities and Pass-Through Entity Taxpayers Act requires a PTE to withhold Utah tax on Utah income attributed to a pass-through entity taxpayer who is not a Utah resident individual or an entity exempt from withholding requirements. The amount of Utah tax withheld is a refundable credit that can be claimed by a pass-through entity taxpayer against their Utah tax liability. Amounts in excess of the pass-through entity taxpayer's Utah tax liability may be refunded to the pass-through entity taxpayer.

Under H.B. 444, a PTE may elect to pay Utah taxes (SALT tax) in a way that mitigates federal state and local tax (SALT) deduction limitations that apply to Final PTETs. If a PTE makes this election and pays the SALT tax, it does not necessarily eliminate a PTE's requirement to withhold taxes under the Utah Pass-through Entities and Pass-Through Entity Taxpayers Act. However, payment of the SALT tax does reduce the withholding requirement by the amount of SALT taxes paid on behalf of nonresident Final PTETs under the provisions of H.B. 444.

How does paying Utah taxes this way impact a PTE's Utah income tax return?

The amount of Utah taxes required to be withheld by the PTE is reduced by the amount of SALT tax paid for an individual with this election. (See the instructions for Schedule N of the [TC-20S – Utah S Corporation Return](#), [TC-65 – Utah Partnership/LLP/LLC Return](#), or [TC-41 – Utah Fiduciary Income Tax Return](#).)

How does the Final PTET report they had Utah taxes paid under this election?

An individual who is a Final PTET will file their Utah return as normal with two minor changes.

1. **TC-40A – Income Tax Supplemental Schedule – Part 1 – Additions to Income**
Enter the total of all state income taxes paid by any PTE to Utah and any other state for the year that were not included in the federal adjusted gross income calculated on the individual's federal return. Enter the amount using code: 67 – *Tax Paid on Behalf of a Pass-Through Entity Taxpayer*.
2. **TC-40A – Income Tax Supplemental Schedule – Part 4 – Nonapportionable Nonrefundable Credits**
Enter the nonrefundable credit as reported on the Utah Schedule K-1 for taxes paid by the PTE. Enter the credit using code: AP – *Pass-through entity taxpayer income tax credit*.

If taxes are imposed by other states by the PTE on behalf of an individual PTET, can an individual claim a credit for those taxes on their Utah return?

Yes. Utah allows resident individuals to claim a nonrefundable tax credit for income taxes imposed by other states. This includes taxes imposed at the PTE level for the individual.

If the individual does not file an individual income tax return in the other state they may claim a credit for the amount of tax imposed at the PTE level for the individual as reported to the individual on their state Schedule K-1 or Schedule K-1 equivalent.

If the individual files an individual income tax return with the other state and receives a credit for the taxes imposed on the PTE on the individual's return, the credit for taxes imposed by that state is based on the amount of tax imposed on the individual return.

Is a disregarded entity, such as a single member LLC, considered a PTE for purposes of making the election under HB 444?

No. A disregarded entity can never make the SALT election under HB 444.

Can a disregarded entity, such as a single member LLC or a grantor trust, be considered a Final PTET?

No, a disregarded entity may not be named as a Final PTET on a SALT Report filed by a PTE. However, if a disregarded entity is taxed as an individual (so that after being disregarded, the income is reported on the income taxes of the individual owner of the disregarded entity) the PTE should report the individual owner's name, SSN, and residency in the PTE's SALT Report rather than the disregarded entity's name and EIN which may not be reported on the SALT Report.

Is HB 444 supported and endorsed by the IRS as an ordinary business deduction at the federal level?

HB 444 is only a tool. There is no guarantee that the Internal Revenue Service will treat the workaround provisions in the same way that the Utah legislature intended when they passed this bill. The legislature has done its best to conform with the only guidance given by the IRS in Public Notice 2020-75.

The Utah State Tax Commission does not enforce federal tax law. Therefore, we do not have the authority to determine how the IRS will treat this election. Please follow federal guidelines for how to report these payments and consult independent tax advice.

Can a SALT Report be amended to reallocate taxes paid amongst the Final PTET if it's determined the amounts were reported incorrectly after the last day of the PTE's taxable year?

Yes, a PTE can file an amended SALT Report after the last day of the taxable year. However, the total amount of tax paid by the PTE cannot be changed (increased or decreased). An amended SALT Report can be filed to correct names, SSNs, Utah residency, total state taxes paid, and the amount of tax allocated to each Final PTET. The amount of tax allocated to each Final PTET cannot exceed the tax due on the voluntary taxable income distributed to a Final PTET.

If you have tiered pass-through entities (an LLC owned by other LLC's for example) does the payment of tax place at the top of the tier or at each level?

A PTE may only make the election for its directly related members who are taxed as individuals. In a tiered series of PTEs, only the PTE who has the individual as a member may make the election. The election may NOT be made by a PTE for income that will pass through to another PTE before getting to a Final PTET.

Does a PTE need to have a TAP account to pay the tax and file the SALT Report?

No. A PTE does not need a TAP login to use this process. When you go to tap.utah.gov, look for a link to "File SALT Report" that allows you to file the report and make the payment without logging into your Utah tax accounts.

What if I have additional questions?

If you have additional questions regarding HB 444 please email the question to taxmaster@utah.gov.