

Virginia's New Elective Pass-Through Entity (PTE) Tax

The Virginia General Assembly recently enacted legislation allowing qualifying pass-through entities to be taxed at the entity level on their income, rather than requiring the PTE's owners to be taxed on such income. The legislation also allows taxpayers to claim a credit for taxes paid to another state with certain similarly structured PTE tax on their Virginia return. See [Tax Bulletin 22-6](#) for more information.

S Corporations, Partnerships, and Limited Liability Companies

Every pass-through entity (PTE) that does business in Virginia or receives income from Virginia sources must file an annual Virginia income tax return on Form 502.

What is a “pass-through entity”?

A pass-through entity is any business that is recognized as a separate entity for federal income tax purposes and the owners of which report their distributive or pro rata shares of the entity's income, gains, losses, deductions, and credits on their own returns.

For Virginia tax purposes, “pass-through entities” include

- S corporations
- general partnerships
- limited partnerships
- limited liability partnerships (LLPs)
- limited liability companies (LLCs)
- electing large partnerships
- business trusts

For Virginia tax purposes, “pass-through entities” don't include

- individual trusts
- individual estates
- single-member limited liability companies
- investment pass-through entities

For further information, see [Tax Bulletin 05-6 \(/laws-rules-decisions/tax-bulletins/05-6\)](/laws-rules-decisions/tax-bulletins/05-6).

How to File and Pay

There are several different ways to electronically file and pay your return. If you're unable to file and pay electronically, you may request a [hardship waiver \(/forms/search?search=waiver+request+PTE&year=All&category=2&type=All&items_per_page=25\)](/forms/search?search=waiver+request+PTE&year=All&category=2&type=All&items_per_page=25).

Annual returns

- **Electronic filing software** is available that lets you file both your federal and state returns together. If taxes are due, you can make a payment through the software. [Find a list of approved software products here \(/tax-preparation-software-products-pass-through-entities\)](/tax-preparation-software-products-pass-through-entities).
- **eForm 502EZ** (https://www.business.tax.virginia.gov/tax_eforms/502EZ-eForm.html) is available for filing and paying if you meet certain eligibility requirements. See eForm 502EZ for complete details.

Withholding payments

- **eForm 502W** (https://www.business.tax.virginia.gov/tax_eforms/502W-eForm.html) lets you make withholding payments directly from your PTE's checking account.
- **ACH credit** is available for tax due payments or withholding payments if paying separately from filing the return. You'll need to set this up with your PTE's bank. Detailed instructions about initiating ACH credit transactions are available in our [Electronic Payment Guide \(/sites/default/files/inline-files/virginia-tax-electronic-payment-guide.pdf\)](/sites/default/files/inline-files/virginia-tax-electronic-payment-guide.pdf).

When to File

PTE income tax returns are due by the 15th day of the 4th month following the close of the business's taxable year. For calendar-year filers, that means April 15. If the filing deadline falls on a Saturday, Sunday, or holiday, you have until the next business day to file your return.

An automatic 6-month filing extension is allowed for pass-through entities filing on Form 502. No application for extension is required. To avoid late-filing penalties, you must file Form 502 no later than 6 months from the original due date of the return. For example, a calendar year Form 502 is due on April 15; therefore, the return must be filed no later than October 15 for the 6-month extension provision to apply.

The automatic extension of time to file does not extend the payment due date for withholding tax. The withholding tax payment is due on the due date of the pass-through entity's return regardless of whether the

extension to file the income return (Form 502) is used. Use Form 502W to make the withholding tax payment by the due date.

Penalties for Late Filing and Late Payment

Extension penalty

- Applies if at least 90% of the withholding tax due isn't paid by the original return date for the return.
- 2% per month or part of a month until Form 502 is filed
- Maximum penalty is 12%

Late payment penalty

- Applies if the tax is not paid in full when the return is filed.
- 6% per month or part of a month until the tax is paid
- Maximum penalty is 30%

If the return is filed during the extension period, but the tax due is not paid when the return is filed, **both** the extension penalty **and** the late payment penalty may apply. The extension penalty will apply from the due date of the return through the date the return is filed, and the late payment penalty (6% of the amount due) will apply from the date the return is filed through the date of payment.

To avoid paying the late payment penalty during the extension period, you must pay the tax owed when the return is filed.

Late filing penalty

If Form 502 is filed after the extended due date (6 months from the original due date), the extension provisions no longer apply and the PTE will be subject to the maximum late filing penalty of \$1200.

For any month, or part of a month, that the PTE was subject to the late payment penalty and the late filing penalty, the greater of the 2 penalties will apply.

Unified (Composite) Filing

A business pass-through entity (S corporation, partnership, or limited liability company) may file a composite, nonresident individual income tax return on behalf of its qualified owners if it

- does business in Virginia, **and**
- has 2 or more qualified nonresident owners

A PTE may file a composite return for only a portion of its qualified nonresident owners, provided that the business pays the pass-through entity withholding tax for any qualified nonresident owners who aren't included in the composite return.

A qualified owner is a natural person who is a direct owner of the entity filing the composite return, and a nonresident of Virginia with Virginia source income from that entity for the taxable year. If the qualified owner has other income from Virginia sources that is not derived from a pass-through entity, the owner must file a Virginia Nonresident Income Tax Return (Form 763) to account for that income. Income reported in the unified filing on Form 765 should be deducted on Form 763. An individual who is a qualified nonresident owner in more than one pass-through entity may participate in multiple unified returns.

To file a composite return, a PTE must meet the following requirements:

- The PTE must provide a completed copy of Schedule VK-1 to each qualified nonresident owner included in the composite return.
- The Virginia income tax on the composite return must be computed using the highest rate specified under *Va. Code* § 58.1-320 on the partnership's income attributable to the qualified nonresident owners included on the composite return without the benefit of itemized deductions, standard deductions, personal exemptions, credits for income taxes paid to states of residence, any tax credit carryover amounts, or any other tax credits that are not attributable to the pass-through entity.
- The PTE must obtain a signed consent form from each participating qualified nonresident owner indicating the owner's consent to inclusion in the composite return.
- The composite return must be signed by an owner, officer, or employee of the PTE who is authorized to act on behalf of the PTE in tax matters. By signing the composite return, the signer is declaring that he or she is an authorized representative of the PTE and that each participant has signed a consent form authorizing the PTE to act on the participant's behalf in the matter of composite returns and acknowledging the participant's understanding and acceptance of all of the terms and conditions of participation in a composite return.
- The PTE must make estimated payments on behalf of the qualified nonresident owners included on a composite return.
- A PTE that files a composite return on behalf of its nonresident owners is not required to withhold Virginia income tax from distributions made to those owners. Instead, the entity should make estimated tax payments on a composite basis under its own federal employer identification number, using Form 760ES.

For complete instructions on unified filing, see [Form 765 \(/forms/search?search=765&year=All&category=All&type=All\)](#) and Form 765 instructions, and [Schedule L \(/forms/search?search=Schedule+L&year=All&category=All&type=All\)](#), and the Guidelines for Pass-Through Entity Withholding. This filing does not replace the filing of Form 502 for the entity itself. For complete information on unified filing, refer to the instructions for Form 765.

Resources

- [Guidelines for Pass-Through Entity Withholding \(/laws-rules-decisions/rulings-tax-commissioner/15-240\)](#)

- [502EZ eForm Instructions \(https://www.tax.virginia.gov/sites/default/files/inline-files/502EZInstructions.pdf\)](https://www.tax.virginia.gov/sites/default/files/inline-files/502EZInstructions.pdf)