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## Montana Pass-Through Entity Tax Guidance

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Senate Bill 554, passed during the 68th Legislature, created a new elective tax for partnerships and S corporations. The pass-through entity tax (PTET) is a 6.75% elective tax paid by the pass-through entity on an owner's distributive share of Montana source income. The pass-through entity may claim this tax as an above-the-line deduction for federal income tax purposes. The annual election is available beginning with tax year 2023 and is made by the entity on its timely-filed Form PTE.

### Making the PTET Election

The PTET election is made annually by a representative designated by the pass-through entity. This representative has the sole authority to act on behalf of the pass-through entity regarding the PTET.

Once made, the election applies to the distributive share of Montana source income allocable to all owners that are individuals, estates, trusts, and pass-through entities. The election is irrevocable and cannot be made after the extended due date of the return. The distributive share of Montana source income allocable to C corporations and tax-exempt entities is not subject to PTET.

The PTET is calculated based on each owner's distributive share of income apportioned or allocated to Montana. However, the entity may choose to make an election\* to allow Montana resident owners to be assessed on their entire distributive share of income, regardless of apportionment and allocation rules. Additionally, pass-through entities that are not doing business in Montana but that have Montana resident owners can also file a form PTE and elect to pay PTET.

\*Great care should be exercised by S corporations in the use of this election when the entity has resident and nonresident owners, as such election may create a second class of stock. Consult a tax professional.

### Estimated Payments

Electing pass-through entities are required to make quarterly estimated tax payments. For tax year 2023, payments are due June 15, 2023, September 15, 2023, and January 16, 2024, and may be made in equal installments of thirds. When an electing entity previously made an estimated payment, the payment will automatically be applied toward the entity's PTET liability.

When making PTET estimated payments, the pass-through entity must consider that payments made on behalf of the pass-through entity in the form of pass-through withholding, mineral royalty withholding, or PTET credit paid by a lower-tier entity will be applied against the PTET assessed by the electing pass-through entity.

The department will not transfer estimated tax payments between the account of an owner and the account of a pass-through entity. To avoid paying estimated taxes at both the entity level and the owner level, owners of an electing pass-through entity must adjust their own estimated tax payments.

### **Making an Estimated Payment**

Electing pass-through entities can make estimated payments on TAP. Select “Make Payment” in the Quick Links section. If the entity doesn’t have a TAP account, you can use its FEIN to log in and make a payment. Select the entity’s income tax type as the account to make the payment. For example, if the electing entity is a partnership, select “Partnership.”

### **Penalties and Interest**

The PTET is subject to the same interest and penalties as individual income tax with the exception of the late filing penalty. Pass-through entities must make the election to file a PTET return by the due date of the return, including extensions. If not filed on time, the return will be subject to an information return late filing penalty.

Interest on the underpayment of estimated taxes will not be assessed the first year the entity elects to pay the PTET. However, interest on underpayment of estimated taxes may be assessed on the owner if the owner underpays his or her own estimated taxes. To avoid underpayment interest, the owner needs to reduce their tax liability by the amount of PTET when calculating the underpayment interest on Form 2 or on Form EST-I.