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Virginia Pass-Through Entity Tax Frequently Asked Questions for Taxable Year 2022 and After

1. Can estimated payments of Virginia individual income tax made by owners of the pass-through entity (“PTE”) prior to the PTET (“pass-through entity tax”) election being made be transferred, so that they count as estimated payments of Virginia PTET for Taxable Year 2022?

Owners of a PTE can request a reallocation from their account to that of the PTE by submitting a written request to the Virginia Department of Taxation, Customer Services, P.O. Box 1115, Richmond, VA 23218-1115. To prevent processing issues and bills, the request should be made before the respective individual and PTE returns are filed and as far in advance as possible.

2. Does a pass-through entity need to be a “qualifying pass-through entity” for the entire taxable year, or only at the end of the taxable year or at some other point during the taxable year, in order to be eligible for the PTET?

The law authorizing the PTET does not specify a time period during which the PTE must meet the “qualifying pass-through entity” test. As a result, a PTE can make the PTET election so long as it meets the “qualifying pass-through entity” test at any time during the taxable year and it only flows through refundable PTET credits to direct natural person owners (or in the case of a Subchapter S corporation, direct natural person owners or direct owners who are persons eligible to be shareholders in an S corporation) in proportion to each owner’s distributive or pro rata shares of income.

3. Can a taxpayer submit a paper Form 502V with a check to make a valid PTET election?

No, this would not be a valid election because electronic payment and filing are required. The Department of Taxation may process the payment, but it would not count as a valid election.

4. Should a taxpayer use online Form 502V or online Form PTET-PMT to make PTET payments?

Online Form PTET-PMT is the preferred method to make PTET payments, and payments made using such form will count as a valid election. While previously-made payments using the online Form 502V will be processed and will count as a valid election, all future payments should be made using the online Form PTET-PMT rather than the online Form 502V.

5. Can a PTE make PTET payments using ACH Credit?

Taxpayers can make an ACH Credit payment using return payment code 00032, and payments made using such code will count as a valid election.

6. Can a PTE filing a short-year return (“short-year filer”) make the election for Taxable Year 2022?

Yes, a short-year filer can make the PTET election for Taxable Year 2022. If there was no mechanism for the short-year filer to pay the PTET by the applicable due dates, it may file an offer in compromise on Form OIC B-2 documenting why extension, late payment or other penalties should not be imposed. If

there was no mechanism for such PTE to file the PTET return by the applicable extended due date, taxpayers also may file an offer in compromise on Form OIC B-2 documenting why a late filing of the Form 502PTET should be allowed. Such offers will be considered on a case-by-case basis.

7. Can the draft PTET guidelines be relied upon by taxpayers?

Yes, the PTET guidelines, even the draft version, can be relied on by taxpayers until such time when the Department of Taxation ("the Department") issues final guidelines.

8. Can a non-Virginia PTE that does not have Virginia source income nor any Virginia tax filing requirements make the election and pay the Virginia PTET on behalf of its partners, owners, or members that are Virginia residents?

Yes, PTEs with no Virginia-source income will be permitted to make the PTET election.