



TAX BULLETIN 23-3
Virginia Department of Taxation
March 29, 2023

**IMPORTANT INFORMATION REGARDING
2022 VIRGINIA PTET RETURNS**

CHANGES TO VIRGINIA'S PASS-THROUGH ENTITY TAX

Under legislation enacted by the 2023 General Assembly (House Bill 1456, Chapter 686 of the 2023 Acts of Assembly and Senate Bill 1476, Chapter 687 of the 2023 Acts of Assembly), changes were made to Virginia's Pass-Through Entity Tax ("PTET") that relaxed the requirements to qualify for the PTET election and altered how the PTET is calculated. This bulletin is intended to provide taxpayers with guidance on reconciling this legislation with their 2022 Virginia PTET returns.

Changes to the Virginia Pass-Through Entity Tax

Replacement of the Qualifying PTE Requirement with an Eligible Owner Requirement

This legislation replaces the existing qualifying pass-through entity requirement with a new eligible owner requirement. Prior to this legislation, the qualifying pass-through entity requirement provided that a pass-through entity ("PTE") could only make the PTET election if it was 100 percent owned by natural persons or persons eligible to be shareholders of an S corporation. As a result, PTEs owned in part or in full by corporations, other PTEs, and other entities were prohibited from making the election.

This legislation repeals the qualifying pass-through entity requirement and replaces it with an eligible owner requirement. Under the eligible owner requirement, only a direct owner of a PTE who is (1) a natural person subject to Virginia's individual income tax or (2) an estate or trust subject to Virginia's fiduciary income tax may claim a refundable PTET credit. Consequently, all PTEs can make the PTET election, but only owners meeting the eligible owner requirement are eligible to claim refundable PTET credits.

Change to the PTET Computation

The legislation also states that only the pro rata or distributive share of income, gain,

loss, or deduction attributable to eligible owners is subject to the PTET. Therefore, such amounts attributable to non-eligible owners, including corporations and other PTEs, are not subject to the PTET. To reflect this on Form 502PTET, PTEs should ensure that only amounts attributable to eligible owners are included in the computation on Page 2, Section 1 of such form.

Effective Dates for PTET Changes

The changes made to the PTET by this legislation are effective for Taxable Year 2021 and thereafter. Therefore, unless the PTE is taking advantage of Virginia's automatic filing extension (described below), all PTEs choosing to make the PTET election (including those not meeting the qualifying PTE requirement under prior law as described above) should file their Taxable Year 2022 PTET return and pay the amount shown on such return by the original filing deadline. The original filing deadline for calendar year filers is April 17, 2023. The return should be completed based upon changes to the PTET computation made by this legislation (described above).

No action is generally required as a result of this legislation for qualifying PTEs that have already filed a Taxable Year 2022 PTET return, as this legislation does not change the computation of PTET for them.

In addition, those seeking to make the election for Taxable Year 2021 should continue to follow [Tax Bulletin 22-6](#). Pursuant to 2022 House Bill 1121 (Chapter 690 of the 2022 Acts of Assembly) and Senate Bill 692 (Chapter 689 of the 2022 Acts of Assembly), the Department is required to delay implementation of the PTET for Taxable Year 2021 until at least October 15, 2023. Accordingly, subsequent guidance will be published by the Department regarding how to make the election for Taxable Year 2021, and such guidance will incorporate the changes made by this legislation.

Automatic Filing Extension

All PTEs choosing to make the PTET election (including those not meeting the qualifying PTE requirement under prior law as described above) can take advantage of Virginia's automatic six-month filing extension if they are unable to file by the original deadline (April 17, 2023 for calendar year filers). No application is required to file on extension. However, the PTET filer must make an extension payment equal to at least 90% of the tax owed by the original due date to avoid extension penalties. Interest is assessed on all tax not paid by the original due date until the tax is paid in full. The extension payment should be computed based upon the changes to the PTET computation made by this legislation (described above).

PTET filers who opt to file on extension but who fail to pay at least 90% of the tax owed by the original due date will be assessed an extension penalty. If any taxes due with the return are not paid on or before the date the return is filed during the extension, the PTE will be assessed a late payment penalty. Please see the [Draft Guidelines for the Pass-](#)

[through Entity Tax](#) (10/31/2022) for more information on how such penalties are calculated. All penalties are in addition to interest, which is assessed whenever the full amount of tax is not paid by the original due date. The extended due date for PTET filers who file on a calendar year basis is October 16, 2023. Please see the Department's website for more information.

Further Instructions

If you have additional questions, please visit <https://www.tax.virginia.gov> or contact the Department at 804.367.8037.