

Pass-Through Entity – Elective Tax FAQs

Source: <https://www.oregon.gov/dor/programs/businesses/Pages/Pass-Through-Entity-Elective-Tax.aspx>

FREQUENTLY ASKED QUESTIONS

1) Q: What is the PTE-E Tax?

A: For Oregon tax purposes, income and losses of a PTE are passed through to its members/owners. However, for taxable years beginning on or after January 1, 2022 certain qualifying pass-through entities may elect to pay a PTE-E Tax on the sum of each of the member/owner's share of distributive proceeds. The member/owner(s) may then claim a tax credit for the tax paid by the PTE on their share of distributive proceeds.

2) Q: Is the PTE-E Tax mandatory?

A: No. The PTE-E Tax is elective.

3) Q: Must the entity make an election to pay the PTE-E Tax each year?

A: Yes. The entity must make an election to pay each year. The election is made when the return is timely filed.

4) Q: Which entities may elect to pay the PTE-E Tax?

A: A PTE is a partnership or S corporation or limited liability company electing to be treated as a partnership or S corporation. The PTE may elect to pay the PTE-E Tax if all the member/owners are individuals, or are pass-through entities that are owned entirely by individuals subject to the personal income tax imposed under Oregon Revised Statutes Chapter 316.

Sole proprietorships and single member LLCs electing to file as sole proprietorships may not elect to pay the PTE-E Tax.

5) Q: When is a fiscal year partnership eligible to make the PTE-E Tax election?

A: A fiscal year pass-through entity may make the election for taxable years beginning on or after January 1, 2022.

6) Q: Can a taxpayer transfer an overpayment from a composite return to a PTE's elective tax account?

A: No. The PTE-E Tax is a separate tax apart from the composite tax return filed on behalf of individuals. The overpayment from the composite return cannot be transferred to the pass-through entity's elective tax account.

7) Q: How does the PTE determine its tax liability?

A: To calculate the amount of tax due, the PTE must determine the sum of each member's share of distributive proceeds attributable to the PTE for the taxable year. Distributive proceeds means the portion of distributive proceeds attributable to a member/owner of a PTE in a tax year.

The tax is then imposed in accordance with the following table.

| Sum of Each Member's Share of Distributive Proceeds | Tax Rate |
|---|----------|
| First \$250,000 | 9% |
| Amount over \$250,000 | 9.9% |

Example 1: PTE A has two Oregon resident member/owners with net income of \$100,000, interest of \$15,000, and gains of \$50,000 all sourced to Oregon. The distributive proceeds total \$165,000 and are allocated to member/owner A \$82,500 and member/owner B \$82,500.

Using the table above the total tax is calculated as follows:

$\$165,000 \times 9\% = \$14,850$. This is allocated to member/owner A \$7,425 and member/owner B \$7,425.

Example 2: PTE B has two member/owners each owning 50% of the company with net income of \$1,200,000, rents of \$40,000 and guaranteed payments \$80,000. The net income is 80% sourced to Oregon. The rents are not sourced to Oregon and the guaranteed payments are all sourced to Oregon.

Member/owner A is an Oregon resident and member/owner B is a nonresident. Member/owner A & B distributive proceeds is \$600,000 net income, \$20,000 of rents and \$40,000 of guaranteed payments each.

What is A's PTE-E taxable income? \$660,000 all income is taxable to an Oregon resident

What is B's PTE-E taxable income? \$520,000, ($\$600,000 \times 80\% = \$480,000 + \$40,000$) only Oregon source income is taxable for a nonresident

Using the table above the total tax is calculated as follows:

Owner/Member A - $\$250,000 \times 9\% = \$22,500$ plus $\$660,000 - \$250,000 = \$410,000 \times 9.9\% = \$40,590 + \$22,500 = \$63,090$ total tax due.

Owner/Member B - $\$250,000 \times 9\% = \$22,500$ plus $\$520,000 - \$250,000 = \$270,000 \times 9.9\% = \$26,730 + \$22,500 = \$49,230$ total tax due.

8) Q: Can a grantor trust be a qualified member of an eligible PTE?

A: Yes. The grantor trust is treated as a qualified member because they are subject to the personal income tax laws under ORS Chapter 316.

9) Q: Can an eligible out-of-state PTE with income, subject to tax in Oregon, elect to pay the PTE-E Tax?

A: Yes.

10) Q: Is the election to pay the PTE-E Tax revocable?

A: Yes. The election can be revoked on or before the due date of the return, including extensions.

11) Q: What income is subject to tax by the eligible pass-through entity?

A: The PTE will pay tax on the distributive proceeds of the entity. Distributive proceeds include net income, dividends, royalties, interest, rents, guaranteed payments, and gains of a PTE derived from or connected with sources within Oregon.

12) Q: Can a non-resident Oregon composite return filer claim the PTE-E tax credit?

A: Yes. A PTE that files an Oregon composite return (OR-OC) on behalf of its participating non-resident members may claim the credits allocable to the members who are included on the OR-OC.

13) Q: Are estimated tax payments required for the PTE-E Tax? When are they due?

A: Yes, estimated payments are required. Senate Bill (SB) 1524 (2022) includes a provision that requires estimated payments for the PTE-E tax. The bill has passed both chambers and is waiting for the Governor's signature. For tax year 2022, the first required payment will be due June 15, 2022. PTE's electing to pay the PTE-E tax will be able to register and begin making their estimated payments starting June 6, 2022. Estimated taxes payment due dates are April 15, June 15, September 15 of the current year and January 15 of the following year or the next business day if the due date falls on a weekend or holiday.

14) Q: How do I make estimated tax payments for the PTE-E Tax?

A: Estimated tax payments can be made in the following ways:

- Electronic payment using Revenue Online. Choose to pay directly from your bank account or by credit card, service provider fees may apply.
- Mail a check or money order. Please include the OR-21-V voucher form.
- ACH Credit. Submit your application by going to Revenue Online and clicking on Apply for ACH credit under Tools. Payment is coordinated through your financial institution and they might charge a fee for this service.

15) Q: Will there be a registration required for the PTE-E tax?

A: Yes, you will be required to register on Revenue Online before estimated tax payments can be made. Registration will open on June 6, 2022.

16) Q: Will the members be required to show an addition for the state tax deduction if they claim a credit on their individual return for their share of the PTE-E tax paid?

A: Yes.

17) Q: When are the PTE-E tax returns due?

A: The returns will be filed on a calendar year basis and will be due on the same day that the personal income tax returns are due, which is normally April 15th. For fiscal filers the returns will be due for the year that coincides with the fiscal year end. For example: if your fiscal year is July 1, 2022 to June 30, 2023 you would file a 2023 calendar year end PTE-E tax return reporting the income on the June 30, 2023 PTE return.

18) Q: If a pass-through entity elects to pay the new Pass-through Entity Elective tax, can the owners qualify for the qualified business income reduced tax rate (QBIRTR)?

A: Yes, if there is income that meets the conditions for the use of the elective rates under ORS 316.043.

19) Q: Is the addition that is required to be added back to income of an owner of a pass-through entity, that claims the credit for the Pass-Through Entity Elective (PTE-E) tax, considered qualifying income for the qualified business income reduced tax rate (QBIRTR)?

A: Any amount that is added back for the PTE-E tax that meets the conditions for the use of the elective rates under ORS 316.043 may be treated as qualifying income under ORS 316.043. If the distributive income from the PTE is a mix of qualifying and nonqualifying income, the addition that is qualifying income is a proration determined by the department by rule.

Other resources:

KS Advisor Blog: Oregon Pass-Through Entity – Elective Tax