

Background

Senate Bill 158 extends the pass-through entity elective tax program (PTE-E) from tax year 2023 to 2025.

Prior to tax year 2018, many personal income taxpayers were allowed to fully deduct their State and Local income taxes (SALT) on their federal tax return. Most taxpayers benefited from this by deducting state income taxes and real estate taxes paid. Individual owners and members of pass-through entities (PTEs – S Corporation and Partnerships) would report and pay their distributive share of PTE income on their Oregon personal income tax return. The payment of Oregon taxes would then be deducted on their federal tax return.

The 2017 Federal Tax Cuts and Jobs Act (TCJA) limited SALT deductions on personal income tax returns to \$10,000, TCJA began in tax year 2018. Many owners and members were not able to fully deduct their Oregon tax payments on their federal return.

In response to the TCJA limitations, [SB 727 \(2021\)](#) created a revenue neutral program we now call PTE-E. For the purposes of PTE-E, members include individual owners, shareholders, and partners. With the permission of all members, PTE's may elect to report and pay Oregon taxes on their member's share of distributive income. Members would offset their share of taxes paid by the PTE by claiming a personal income tax credit. Members would still be required to report their share of the PTE's distributive income on their Oregon personal income tax return.

By electing to have the PTE to pay taxes, and members to claim a tax credit, the net change of zero tax would lead to a revenue neutral impact for Oregon while allowing taxpayers to benefit from a tax deduction on the federal return that would otherwise be disallowed due to TCJA.

Implementation

This filing season (tax year 2022) is the first-year taxpayers can file returns and make payments for the PTE-E program. PTEs sign up and file tax returns using the department's online portal (Revenue Online) or through e-file software. PTE-E payments sent to the department are reconciled with the filed PTE-E tax return. On February 15, the department [issued a determination](#) for the treatment of PTE-E additions and distributed that information through our traditional communication channels.

As of 3/7/2023 the data shows:

- 15,865 PTEs signed up for the program;
- 1,835 PTE-E returns filed; and
- \$7,812,240 tax credits claimed, with more under review.

Amendments

[SB 158-1 \(Trusts as members\)](#)

Trusts can be owners or members of PTEs, but for the purposes of the PTE-E tax trusts are currently not recognized as members for this program. The -1 amendment includes trusts as members of the PTE-E tax starting in tax year 2023 and ending in 2025, while extending the program two more years (tax year 2025) as written in the original bill. The inclusion of trusts may increase the number of PTEs electing to

2023 Legislative Session

file the PTE-E tax, because under current law, PTE's with members that are trusts do not qualify for this program. This amendment will allow trusts to receive a refundable tax credit as a member of the PTE-E. The tax credit cannot be transferred to the beneficiaries of the trust; however, the trust will receive a benefit by filing a return and receiving a refund of the PTE-E tax credit.

The department can administer the inclusion of trusts to this program. However, including trusts as members may increase the complexity of the program due to the difficulty to trace and verify the tax credit.

SB 158-2 (Add back)

The -2 amendment requires the PTE to add back the taxes deducted on the entity's distributive income in calculating the PTE-E tax. The amendment extends the program two years (tax year 2025) as listed in the original bill.

The department can administer the program with the -2 amendment. As drafted, the -2 amendment applies to prospective tax years. If the intent is for this provision to apply to tax year 2022 retroactively, the department may require additional resources to verify amended returns and address the growing administrative complexity of this program.

Agency Contact

Marjorie Taylor, Legislative Director, marjorie.taylor@dor.oregon.gov, phone: (503) 476-7644

Ben Gille, Personal Tax and Compliance – Policy and System Section Manager,
benjamin.p-jr.gille@dor.oregon.gov, phone: (503) 899-0934