



NEW YORK
CITY BAR

**REPORT ON LEGISLATION BY THE
STATE AND LOCAL TAXATION COMMITTEE**

**A.8451
S.8115**

**M. of A. Paulin
Sen. Skoufis**

AN ACT to amend the tax law, in relation to the timing of annual tax elections.

THIS BILL IS APPROVED

The New York City Bar Association, by and through its State and Local Tax Committee, supports this legislation that would modify the New York State/New York City Pass-Through Entity Tax (PTET)¹ Election due date.

This bill would change New York State Tax Law (“Tax Law”) Sections 861 and 868 to allow a qualified pass-through entity (PTE) to make the State and City PTET election by September 15 of the tax year to which the election applies. Current law requires the election to be made by March 15 of the electing tax year. If passed, the legislation would be applicable for all tax years beginning on or after January 1, 2024.

The bill would also modify Tax Law Sections 864 and 871 to require a proration of the PTE’s required estimated tax payments. As stated in the proposed legislation, if a qualifying pass-through entity makes the New York State/New York City PTE election after March 15 and before June 15, the taxpayer will be required to make a 25% of the required estimated payment at the time of election; and if the taxpayer makes the election after June 15 and before September 15 the taxpayer will be required to make a 50% payment of the required estimate with the election.

As of January of 2024, thirty-six states (including New York State), and one city (New York City), have adopted a PTET, and most of those states allow this election to be made with the filing of the entity’s tax returns (typically March 15 or April 15 following the end of the applicable tax year) or the extended due date of the return. Only one other state, Michigan, follows New

¹ “The PTET is an **optional** tax that partnerships or New York S corporations may annually elect to pay on certain income for tax years beginning on or after January 1, 2021. If an [eligible partnership](#) or [eligible New York S corporation](#) (*electing entity*) elects to pay the PTET, its partners, members, or shareholders subject to tax under Article 22 (personal income tax) may be eligible for a PTET credit on their New York State income tax returns. The tax is imposed under Tax Law Article 24-A, which was enacted in 2021.” See <https://www.tax.ny.gov/bus/ptet/> (All websites last accessed on Feb. 7, 2024).

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

York's approach to require elections to be made by March 15 of the tax year to which the election applies. Two other states have elections in the same tax year as the election. Oklahoma has designated February 15 of the tax year of the election the last date to make a PTET election; and Hawaii has designated April 20 of the electing tax year as its PTET election date.

Notably, modifications identical to those included in this legislation were previously enacted by the state for the 2022 tax year. Governor Kathy Hochul signed Bill A.10080 / S.8948 on May 6, 2022, which allowed the extension of the New York State and City PTET election to the 2022 tax year only. This legislation would in effect extend those provisions to all future years.

REASONS FOR SUPPORT

In extending the election date for the PTET election, this legislation will better fulfill the legislative intent of making the PTET mechanism available to eligible New York businesses. Extending the required election to September 15 of the tax year will allow existing taxpayers more time to assess the impact of the election and allow unincorporated businesses created after March 15 of a tax year to take advantage of the PTET program for that year. Without this change, unincorporated businesses formed after March 15 will continue to be precluded from making the PTET election.

In addition, modifying the PTET election due date to September 15 will allow electing entities additional time to consider whether to revoke their PTET elections. Tax Law Section 861 allows for a revocation of the PTET election by the electing taxpayer on or before the due date of the election.

Finally, the changes made in this legislation are revenue neutral. Both the New York State and City PTET regimes are designed to be revenue neutral (and based on how the tax and offsetting credits are structured, should result in a net increase in tax revenues for both jurisdictions).

This technical correction is valuable tax reform that will benefit unincorporated New York State and City businesses. We support this legislation and urge its enactment into law.

State and Local Taxation Committee
Michael J. Hilkin, Chair

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