

KENTUCKY SOCIETY OF CPAs

**SUMMARY OF Q&A WITH THE KY DEPARTMENT OF
REVENUE ABOUT THE KY PASS-THROUGH ENTITY TAX -
KRS § 141.209**

AUGUST 29, 2023

IMPORTANT INFORMATION ABOUT THIS SUMMARY

DEPARTMENT OF REVENUE (“DOR”) NOTICE: The information presented during the August 29, 2023 Webinar hosted by the Kentucky Society of CPAs (“KyCPA”) and the related August 29, 2023 Handout of the DOR’s slides (“Handout”) are for educational and informational purposes only and do not constitute legal advice. The information presented was general and is subject to law changes. Any statement in error that may have occurred during the Webinar or on the Handout shall not expressly or implicitly supersede the DOR’s official interpretation of the law or its policies utilized in administering state revenue and tax laws.

KyCPA NOTICE: This Summary is designed to be a clear and concise recap of the questions asked of and answered by DOR concerning the Pass-Through Entity Tax enacted during the 2023 Regular Session of the Kentucky General Assembly (House Bill 5). It is based on the August 29, 2023 Webinar hosted by the KyCPA, the Handout, and subsequent email communications on August 31, 2023 between the KyCPA and DOR. Embedded in the Summary are additional questions being asked of DOR.

Please be advised that this Summary has not been reviewed or approved by the DOR, it is not a word-for-word copy of the Handout, nor is it a verbatim transcription of the Webinar. The content does not establish standards or preferred practices, nor does it represent official opinions or positions of the Board of Directors, Tax Committee, or Members of the KyCPA. This content does not constitute legal, accounting, or other professional advice. If professional advice or other expert assistance is required, the services of a competent professional should be sought.

I. General Information from the Department of Revenue and KRS § 141.209 (Qs. 36, 46, 47, 58.)

House Bill 5 of the 2023 Regular Session of the General Assembly, now codified as KRS § 141.209, provides for an annual election bypass-through entities (“PTE”) to pay income tax at the entity level. This election is referred to as the pass-through entity tax (“PTET”) election. (p. 1, sl. 2.)¹

KRS § 141.209(3) provides a refundable PTET credit (“PTET Credit” or “Credit”) equal to one hundred percent (100%) of a partner’s, member’s, or shareholder’s (collectively “owners”) proportionate share of the tax paid by the PTE based upon the proportionate share of the entity owner’s income from the PTE for the taxable year. (p. 2, sl. 4.)

The general rules applicable to the PTET and the PTET Credit are as follows:

- Under the election, income tax will be imposed at the PTE level at the rate applicable to individuals under KRS § 141.020. (p. 1, sl. 2.)
- The tax is based upon the ordinary income and separately stated items of income calculated in accordance with KRS § 141.206. (p. 1, sl. 2.)
- Individual owners filing Kentucky individual income tax returns reporting the tax imposed under KRS § 141.020 may claim the refundable PTET Credit on Kentucky Form 740 or Form 740NP, Line 31(g). (p. 2, sl. 4 and p. 6, sl. 12.)
- KRS § 141.209 allows an authorized person of a PTE to make an annual election to pay income tax at the entity level for taxable years beginning on or after January 1, 2022. (p. 1, sl. 2.)
- Form 740-PTET has been implemented for taxpayers to (1) make the election, (2) file the return, and (3) pay the income tax due. (p. 1, sl. 2.)
- The tax rate that applies to the PTET is set forth in KRS § 141.020. The rate is 5% for 2022 and 4.5% for 2023. (p. 6, sl. 11.)

General Questions

Q. 58: How is the tax rate calculated for a fiscal year end entity? Is the tax rate prorated?

Q. 46: What is the average timeline to process Form 740-PTET once received by the Department for both a paper and an electronic filing?

Q. 36: Before issuing refunds, will DOR match PTET Credits claimed by individuals with the payments made by the related PTE?

II. Entities Eligible to Make the PTET Election (Qs. 1, 7, 10, 12, 13, 20, 22, 28, 31, 40, 51, 54, 64, 65, 66, 72, 75, 77, 81, 84, 88, 93, 95, 98, 103, 113, 116.)

Effective for tax years beginning January 1, 2022, PTEs doing business in the state that would be subject to the reporting and tax withholding and payment requirements under KRS § 141.206 may elect to pay the PTET. (p. 6, sl. 11.) PTEs that qualify for the PTET election include any partnership, S corporation, limited liability company, limited liability partnership, limited partnership, or similar entity recognized by the laws of the Commonwealth of Kentucky that is not taxed for federal income tax purposes at the entity level,

¹ The references to page (“p.”) and slide (“sl.”) numbers are references to the Handout. “Webinar response” refers to answers provided by DOR during the webinar. The Department of Revenue is referred to throughout this summary as either the “Department,” “Department of Revenue,” or “DOR.”

but instead passes to each partner, member, shareholder, or owner their proportionate share of income, deductions, gains, losses, credits, and any other similar attributes. (p. 6, sl. 11 and KRS § 141.010(28).)

The Department recognizes that the following entities may make a PTET election: single member limited liability companies (“SMLLC”)²; a PTE with a C Corporation (“C Corp”) owner, a PTE with a tax-exempt owner, and a PTE with a trust owner. (p. 7, sl. 14, p. 11, sl. 22, Webinar response.)

Per KRS § 141.209(1)(a), only an “authorized person” may make the election on behalf of a PTE. “Authorized person” means any individual with the authority from the electing entity to bind the electing entity or sign returns on its behalf. (p. 4, sl. 8.)

If a PTE does not make an election, an unauthorized individual partner, member, or shareholder cannot make the election. If no PTET election is made, each partner, member, or shareholder must report and pay income tax on his or her distributive share income just as it did before the enactment of the PTET election. (p. 5, sl. 9.)

If a PTE does make the PTET election, a partner, member, or shareholder of the PTE cannot opt out of the PTET. Once a PTET election is made, the election is binding upon all entity owners. (p. 5, sl. 9.)

A trust cannot make a PTET election. (p. 11, sl. 21.)

Question

Q. 95: Are estates that file a trust return (Federal Form 1041 and KY Form 741) allowed to make the PTET election? (This question relates solely to estates that file a trust return and is not related to the filing of estate taxes.)

PTEs with C Corp Owners

PTEs with owners that are C Corps are eligible to make the PTET election. However, the refundable PTET Credit may only be claimed against the tax imposed under KRS § 141.020 on individuals. (p. 6, sl. 12.)

The Department of Revenue believes the General Assembly did not intend for the distributive shares of corporate partners, members, and shareholders to be subject to the tax imposed on electing entities under KRS § 141.209 and the tax imposed under KRS § 141.040. (p. 6, sl. 12.). If a partner is a C Corp, the partner’s share of income will be excluded from Form 740-PTET, and it will not receive a PTET Credit. (Webinar response.) As a result, a PTE with a C Corp partner, member, or shareholder should make estimated payments based only on the income of the non-C Corp owners.

If a PTE has a partner that is a C Corp, the partnership can file Form 740-PTET, make the election, and report only the net distributive income from non-C Corp partners. (Webinar response.) As stated in the

² Note: State law determines what entities are eligible to make a PTET election. SMLLCs are eligible to make a PTE election because they meet the definition of “passthrough entity” under Kentucky statute. However, tax practitioners should be aware that the benefit of a PTET election is a federal income tax benefit and is therefore determined by federal law.

As of Aug. 2023, IRS Notice 2020-75 (“Notice”) is the federal authority that permits certain PTET deductions. These deductions are referred to as “Specified Income Tax Payments” (“SITPs”) in the Notice. The Notice only refers to payments by partnerships and S corporations in its definition of SITPs. Therefore, there is some uncertainty as to whether a PTET election by a SMLLC will meet the requirements of the Notice and not be subject to the \$10,000 federal SALT cap. The Department of Revenue defers to the IRS on issues of federal law.

instructions for Line 2 of Form 740-PTET, C Corps are not included in the number of non-individual partners, members, or shareholders included in the return.

Question

Q. 64: If the distributive share income of a C Corp *is* included in the total PTE distributive share income, is there a means by which the C Corp can claim its share of the PTET Credit, or is the C Corp's PTET Credit lost?

PTEs with Tax-Exempt Owners

The Kentucky distributive share income of a tax-exempt partner, member, or non-C corp shareholder is subject to the PTET. (p. 11, sl. 22.) If the partner is tax-exempt, the tax paid on the partner's share of income will be passed through to the partner as a Credit. (Webinar response.)

Question

Q. 113: Is there a way for the tax-exempt entity to claim the PTET Credit and receive a refund?

PTEs with Trust Owners

An entity that is a trust cannot make the PTET election. (p. 11, sl. 21.) **But** a PTE with an owner that is a trust can use Form PTET-CR to transfer the Credit for tax paid to the trust or its beneficiaries. A trust that files a KY Form 741 will either claim the Credit (i) on Line 20(c) if it pays the tax, or (ii) pass the Credit to the beneficiary on the Form 741 Schedule K-1. (p. 8, sl. 16; p. 11, sl. 22; and 08 31 23 email from Barbara Quackenboss, DOR to Anthony Allen, KyCPA.)

Questions

Q. 98: May a SMLLC owned by a trust make the PTET election?

Q. 54: May a grantor trust that is disregarded for federal income taxes make the PTET election?

Q. 93: Should a trust beneficiary receive a PTET-CR?

PTEs with an ESOP Owner

Some PTEs have a sole owner that is an ESOP and others have multiple owners, one of which is an ESOP.

Questions

Q. 51: If a PTE, for example, an S. corp, is solely owned by an ESOP, may the S. corp make the PTET election? If so, how should ESOP shareholders be treated?

Q. 103: If a PTE, for example, an S. corp, has multiple owners, one of which is an ESOP, may the PTE make the PTET election? If so, how should the distributive share income of the PTE be calculated, and how should the PTET Credit be allocated?

III. Making the Election and Filing the Return (Qs: 5, 19, 21, 23, 24, 26, 30, 34, 35, 44, 62, 63, 74, 90, 94, 97, 102, 107, 109, 117.)

The PTET election is made on Kentucky Form 740-PTET. Form 740-PTET is a standalone election form and tax return which is filed separately from Form PTE, Form 725, and Form 740. (p. 9, sl. 17) When filing Kentucky Form 740-PTET, Form PTET-CR, and any other required forms or schedules must be submitted. (p. 5, sl. 10.)

Form 740-PTET cannot be a pdf attachment to a Form PTE whether electronically or paper filed. Form 740-PTET must be filed separately. (p. 12, sl. 23.)

If a PTE previously filed the 2022 Form PTE, the **Form PTE should not be amended** to make the PTET election. The PTE makes the PTET election by filing Form 740-PTET. (p. 9, sl. 18.) The PTE has already computed the ordinary income/distributive share, so no amended Form PTE is required.

Making a PTET election does not extend the due date of the 2022 Form PTE. (p. 5, sl. 9.)

Once an election is made for a taxable year, it is irrevocable and binding upon all entity owners. (p. 2, sl. 3.)

A partner, member or shareholder of an electing PTE should be issued a Form PTET-CR. The partner, member or shareholder also should have received Kentucky Schedule K-1 (Form PTE). (p. 12, sl. 23.)

Method of Filing

The 740-PTET can be paper-filed or filed electronically. The 740-PTET **cannot** be a pdf attachment to an e-filed Form PTE. (p. 12, sl. 23.)

Electronic filing is available through third-party vendors that support Kentucky Form 740-PTET and Form PTET-CR. As of 8/15/2023, there were 5 approved e-file vendors: Thomson Reuters CGS, PGS (GoSystem/OneSource), Intuit, CCH Prosystem, and Corp Tax. The form cannot be attached as a PDF. It must be filed separately. (p. 12, sl. 23.) E-filing is also available through CCH Axcess.

When the PTE must Make the Election

To make the election for taxable years beginning on or after January 1, 2022, but before January 1, 2023, an authorized person must file Form 740-PTET. The election for this taxable year must be made after March 31, 2023, but before August 31, 2024, using Form 740-PTET. (p. 2, sl. 3 and p.4, sl. 8.)

For taxable years beginning on or after January 1, 2023, an authorized person must file Form 740-PTET to make the election. The election must be made at any time during the taxable year, but not later than:

- The 15th day of the fourth month after the close of the taxable year; or
- The 15th day of the tenth month if the return is filed under KRS § 141.170, that is, the extended due date. (p. 2, sl. 3 and p.4, sl. 8.)

Making Payments

The Department will honor the PTET Credit if an entity chooses to delay payment of the PTET until 8/31/24. (Webinar response.) However, the Department prefers the election, filing of the return, and payment be made at the same time. (p. 8, sl. 16.)

Questions

Q. 117: Because KY Form 740-PTET is both the form for electing the PTET **and** the PTET tax return, should the form only be filed once, that is, when the tax return is filed?

Q. 109: Is there an e-file authorization form that Kentucky requires to be signed for a tax preparer to submit Form 740-PTET on behalf of a taxpayer?

Q. 102: If the PTET election was originally checked as not being made, can the PTET form be amended before 8/31/24 to make this election?

Q. 94: Is there a form separate from the federal form for obtaining an extension of time to file Form 740-PTET?

Q. 107: How is the PTET Credit considered in determining the penalty for underpayment of estimated taxes?

IV. Estimated Tax Payments, Payments Made Previously, Refunds, Nonresident Withholding (Qs. 3, 8, 9, 11, 16, 17, 27, 29, 32, 33, 36, 37, 38, 48, 53, 60, 61, 68, 69, 70, 87, 96, 101, 105, 110, 112, 118.)

Estimated tax payments may be made online.

For taxable years beginning on or after 1/1/22, but before 1/1/24, an electing entity is not required to make estimated income tax payments and no estimated tax penalty shall be assessed under KRS § 141.985. (p. 3, sl. 5 and p. 10, sl. 19.)

For taxable years beginning on or after January 1, 2024, an electing entity must make estimated tax payments if the provisions of KRS § 141.305 are met. DOR will assess the estimated tax penalty under KRS 141.985 if the required estimated tax payments are not remitted. (p. 3, sl. 5.)

The Form PTET-ES, i.e., estimated payment voucher, will be published with the release of the 2023 tax forms in January 2024. **However**, if the entity would like to make a payment, a payment may be made utilizing the online payment system at revenue.ky.gov. and selecting the “Make a Payment or File a Return” tab. (p. 10, sl. 19 and p. 12, sl. 24.)

No penalty will be assessed, and no waiver letter is necessary if a tax preparer is unable to meet the e-pay requirements due to software limitations. (08/29/2023 Webinar response.)

Questions

Q. 112: May an electing PTE who had an owner(s) that paid non-resident withholding for tax year 2022 report both the non-resident withholding and PTET Credit on the individual income tax return?

Q. 118: At least one software vendor has provided access to a Form PTET-ES and the software is populating estimate payment instructions for 2023 PTET estimates. However, the form has a 2024 date on the voucher. Many people did not notice the 2024 date and have been sending the vouchers to clients with instructions to make estimated payments by check with these vouchers. What should tax practitioners do for clients that have submitted 2023 estimated payments using a voucher with a 2024 date?

Payments made previously – no transfers.

The Department of Revenue has found no statutory authority under the new enactment that would allow it to credit or transfer to the PTE any overpayment that may be due to the nonresident partner, member, or shareholder. (p. 3, sl. 6.)

Estimated tax payments made by an entity owner prior to a PTET election **cannot be transferred** to the electing entity’s PTE tax account. (p. 3, sl. 6.)

Payments made previously, whether they were estimated payments, payments of nonresident withholding, or tax payments, **will not be reclassified** or transferred by the Department to the PTE account. (p. 8, sl. 16.)

Nonresident withholding

Nonresident withholding (Form 740NP-WH) **is not required** if the entity elects, files, and pays the PTET imposed under KRS § 141.209. (p. 7, sl. 14.)

Question

Q. 53: How does the PTET impact nonresidents who normally file composite returns?

Refunds

Nonresidents whose withholding has already been remitted with an estimate, extension, or filed return, should file an amended Form 740NP-WH return, put \$0 for income, enter all payments, and request the payments be refunded (p. 8, sl. 16, Webinar response.)

Resident partners, members, or shareholders that have already filed their 2022 Kentucky income tax return, must file an amended income tax return to claim the 2022 PTET Credit and receive a refund for any tax overpayments.

As of August 29, 2023, the processing time for individual electronically filed returns is 4-6 weeks and for paper-filed returns is 10-14 weeks. Processing time for an amended or prior year return is 20-24 weeks. (p. 12, sl. 24 and 08 31 23 email from Barbara Quackenboss, DOR to Anthony Allen, KyCPA.)

For refunds of tax issued on an amended Kentucky individual income tax return that has been filed to claim a PTET Credit, the refund (or credit) will be reported on Form 1099-G as required for all refunds of state taxes under the Internal Revenue Code. The refund (or credit) will be reported on Form 1099-G for the calendar year that the refund is paid, or an amount is allowed as a credit carryforward, by DOR. Given the individual return processing times, it is possible that an amended 2022 return filed in 2023 will not be processed until 2024; therefore, the refund will be reported on a Form 1099-G issued for 2024 instead of 2023. (08 31 23 email from Barbara Quackenboss, DOR to Anthony Allen, KyCPA.) Tax practitioners should take this timeline into consideration when advising clients and calculating estimated tax payments.

If a PTE makes estimated payments or has a prior year tax credit applied toward its PTE account and ultimately decides not to make the PTET election, the PTE can request a refund (or credit the overpayment to the following year) of these payments and by filing Form 740-PTET and not checking the box on page 1, Item D, making the PTET election. (p. 11, sl. 21.) This is an example of a situation in which Item D at the top of page 1 of Form 740-PTET is not checked. (p. 9, sl. 17.)

Decisions on how to handle monies already paid in by entity owners, whether via estimated payments, non-resident withholding, or with extensions, are the entities' decisions. (p. 10, sl. 20.)

V. The Calculation of Net Distributive Share Income (Qs: 6, 25, 31, 38, 73, 76, 82, 83, 86, 91, 99, 100, 106, 108, 111.)

The taxable income of an electing PTET is "based upon the ordinary income and the separately stated items of income calculated under KRS § 141.206." (KRS § 141.209(2)(a) and p. 9, sl. 18.)

Pass-through entities must calculate net income in the same manner as in the case of an individual under KRS § 141.019 and the adjustment required under Sections 703(a) and 1363(b) of the Internal Revenue Code. (KRS § 141.206(2)(a).)

Computation of net income under this section and the computation of the partner's, member's, or shareholder's distributive share shall be computed as nearly as practicable identical with those required for federal income tax purposes except to the extent required by differences between this chapter and the federal income tax law and regulations. (KRS § 141.206(2)(b).)

Guaranteed payments are included in the calculation of net distributive share income. (p. 9, sl. 18.)

Any deduction that would flow over to an individual return and impact owners differently should not be included on Form 740-PTET. For example, a charitable contribution deduction or a retirement deduction are not allowed on Form 740-PTET. (Webinar response.)

A Section 179 deduction (limited to \$100,000) is an allowed deduction when calculating net distributive share income. (Webinar response.)

The determination of the allowable cost or percentage depletion for oil and gas properties held by a partnership must be made separately by the partners, not by the partnership. Therefore, the net distributive share of income from Form PTE does not include a deduction for depletion. This deduction will not be taken on Form 740-PTET. The individual owner must compute their own depletion deduction on the individual income tax return. (p. 10, sl. 19.)

The PTET expense will be an addback on KY Form PTE, line 2, since it is a KY income tax. (Webinar response.)

A non-resident business owner of portions of two Kentucky PTEs, one of which elects the PTET and the other does not, must include their proportionate share from both PTEs on their tax return. (Webinar response.)

Question (Please refer to Exhibit 1 - PTE Distributive Share Income Reconciliation Worksheet, Excel File):

- Is net long-term capital (loss) limited to \$3,000?
- Are the following *included* in the calculation of net distributive share income:
 - IRC Section 743(b) positive adjustments?
 - IRC Section 951A(a) income inclusions (GILTI)?
 - Inclusions of subpart F income?
 - Section 951(a)(1)(B) inclusions?
- Are following *excluded* from the calculation of net distributive share income:
 - IRC Section 743(b) negative adjustments?
 - Amounts paid for medical insurance?
 - Educational assistance benefits?
 - Dependent care benefits?
 - Pensions and IRAs?

VI. Apportionment (Qs: 2, 4, 14, 71.)

KRS § 141.206 governs the apportionment of income for PTEs doing business both within and outside Kentucky. Per the DOR, the PTET is due on the apportioned amount of the PTE's income distributed to the partner, member, or shareholder regardless of whether the owners of the PTE are residents or nonresidents of Kentucky. (p. 7, sl. 14 and Webinar response.) DOR stated it would consult with the legal department and provide additional clarification. (Webinar response.)

VII. Priority and Treatment of Credit, incl. LLET and Inventory Credits (Qs. 5, 7, 26, 56, 89, 104, 114.)

KRS § 141.0205 governs the order and use of credits and payments against the calculation of individual income taxes (KRS § 141.020), corporation income taxes (KRS § 141.040), and the limited liability entity tax ("LLET") (KRS § 141.0401). However, a shortcut to understand the use and order of credits is by

reference to the individual and entity tax returns, Sch. ITC, and their instructions. A visual aid is attached as Exhibit 2.

Form 740-PTET, Line 7 and Form PTET-CR, Line 8 require entry of the partners', members', or shareholders' nonrefundable tax credits from the owners' Schedules K-1. (KY Form 740-PTET, Form PTET-CR, and instructions.) The nonrefundable tax credits are numerous and include the LLET and inventory credits. (Webinar response.) The credits are not removed from Sch. K-1.

Per KRS § 141.0205 and the relevant forms, payments are processed in the following order: withholding, estimated tax/extension payments, certain refundable tax credits, and lastly the PTET Credit.

VIII. Multi-tier Entities (Qs. 50, 57, 80.)

As the Department pointed out during the webinar, the difficulty in answering questions related to multi-tier entities is the nomenclature is dependent upon your perspective. The meaning of the terms lower-tier and upper-tier entities and how the PTET Credit works with multi-tier entities is best explained by example.

Assume Partnership B ("B") is partially owned by Partnership A ("A"). B, a lower-tier entity, passes income and provides a K-1 to A, the upper-tier entity. Thus, a lower-tier entity is an entity that provides a K-1 to an owner and the owner is an upper-tier entity (or individual). The upper-tier entity (A, owner of B) receives a K-1 and PTET-CR from the lower-tier entity (B).

B, an electing lower-tier entity, will complete Form PTET-CR to reflect A's pro-rata share of B's distributive income and PTET paid. A, the upper-tier entity, regardless of whether it makes the PTET election, files a Form 740-PTET. A will report its share of the tax paid, reflected on the PTET-CR from B, as an estimated tax payment on Line 9 of Form 740-PTET (for 2022 and Line 8 for 2023). (The 2023 forms have not yet been released by DOR.)

If A also makes the PTET election, it will check the last box in part D of Form 740-PTET. If Partnership A does not make the PTET election, it will not check the last box in part D. A visual aid is attached as Exhibit 3.

Questions

Q. 57. and 80. Assume a lower-tier entity (B as described above) passes through a \$2,500 PTET Credit to A and that A does not make the PTET election. Will the \$2,500 PTET Credit be refunded to A, the upper-tier entity, or, instead, can A choose to pass that PTET Credit through to A's owners?

IX. Other Questions (Qs: 15, 18, 39-43, 45, 48, 49, 52, 55, 59, 67, 69, 78, 79, 85, 92, 96, 115.)

The questions listed are not being asked or asked again of the Department of Revenue for one or more of the following reasons: (1) the questions involve a matter of federal law; (2) require the judgment of the tax practitioner or taxpayer; (3) are too fact specific; (4) are outside the domain of the Department; and/or (5) can be answered by reference to existing guidance (including KRS §§ 141.020, 141.0205, 141.040,

141.0401, and 141.209, the following forms and their instructions: Form 740-PTET, Form 740 PTET-CR, Form PTE, Form 725, KY Sch A, KY Sch ITC, and KY Form K-1).

Attachments:

- August 29, 2023 Handout
- Sequentially numbered list of questions posed by KyCPA to DOR
- Exhibit 1 - PTE Distributive Share Income Reconciliation Worksheet to assist in understanding the calculation of Kentucky distributive share income subject to the PTET (Excel file)
- Exhibit 2 – a visual aid to assist in understanding the flow-through of credits, including the PTET Credit
- Exhibit 3 – a visual aid to assist in understanding the PTET Credit for multi-tier entities

August 29, 2023 Handout



PASS-THROUGH ENTITY TAX

Department of Revenue
August 29, 2023



Kentucky Department of Revenue • 501 High Street • Frankfort, KY 40601 • (502) 564-8139

1

Overview

- The Kentucky General Assembly passed HB 5 during the 2023 Regular Session that established KRS 141.209 allowing an authorized person to make an annual election to file and pay income tax at the entity level on behalf of the pass-through entity for taxable years beginning on or after January 1, 2022. Form 740-PTET has been implemented to make the election, file the return, and pay the income tax due.
- Under the election, the income tax will be calculated at the pass-through entity level. This election imposes the tax rate under KRS 141.020 upon the electing entity and is based upon the ordinary income and separately stated items of income calculated in accordance with KRS 141.206.



2

Making the Election and Filing the Return

- To make the election for taxable year beginning on or after January 1, 2022, but before January 1, 2023, an authorized person must file Form 740-PTET. The election for this taxable year must be made after March 31, 2023, but before August 31, 2024, using Form 740-PTET.
- For taxable years beginning on or after January 1, 2023, an authorized person must file Form 740-PTET to make the election. The election must be made at any time during the taxable year, but not later than:
 - The 15th day of the fourth month after the close of the taxable year; or
 - The 15th day of tenth month if the return is filed under KRS 141.170.
- Once the election is made for a taxable year, it is irrevocable and binding upon all entity owners.

Refundable Credit

- HB 5 established a refundable pass-through entity tax credit equal to one hundred percent (100%) of a partner's, member's, or shareholder's proportionate share of the tax paid by the pass-through entity based upon the proportionate share of the entity owner's income from the pass-through entity for the taxable year. This credit may be claimed on a return filed by an entity owner against the tax imposed by KRS 141.020.

Estimated Tax Payments

- For taxable years beginning on or after January 1, 2022, but before January 1, 2024, estimated tax payments are not required to be made by the electing entity. No estimated tax penalty under KRS 141.985 will be assessed by DOR for the above-referenced tax periods.
- For taxable years beginning on or after January 1, 2024, an electing entity must make estimated tax payments if the provisions of KRS 141.305 are met. DOR will assess the estimated tax penalty under KRS 141.985 if the required estimated tax payments are not remitted.

Transfer of Estimated Payments

- Estimated tax payments made by an entity owner prior to a pass-through entity's election cannot be transferred to the electing entity's pass-through entity (PTE) tax account.
- Upon the due date of the PTE's tax return for taxable year 2022, as between a nonresident partner and the PTE, any refund or credit related to the tax withheld to satisfy the nonresident partner's liability for tax on his or her distributive share of the PTE's income belongs to the nonresident partner, not the PTE.
- The Department of Revenue has found no statutory authority under the new enactment that would allow it to credit or transfer to the PTE any overpayment that may be due to the nonresident partner, member, or shareholder.

Interest and Penalty

- **No interest, late payment penalty, late filing penalty, or other penalty authorized under KRS 131.180 will be assessed on the electing entity for tax due in taxable years beginning on or after January 1, 2022, but before January 1, 2024.**
- **Interest and penalties will apply to untimely returns filed and tax payments made by an electing pass-through entity for tax years beginning on or after January 1, 2024.**

Frequently Asked Questions

- **Q: Who is authorized to make the election on behalf of the pass-through entity?**
 - **A: An authorized person is any individual with the authority from the electing entity to bind the electing entity or sign returns on its behalf.**
- **Q: Is the entity required to make an election to pay pass-through entity tax each year?**
 - **Yes, an election must be made each year.**
- **Q: When is the pass-through entity required to make an election?**
 - **For the taxable year beginning on or after January 1, 2022, but before January 1, 2023, the election must be made after March 31, 2023, but before August 31, 2024.**
 - **For the taxable years beginning on or after January 1, 2023, the election must be made during the taxable year, or after the end of the taxable year but no later than the 15th day of the fourth month following the taxable year, or the extended due date (if an extension is filed).**

Frequently Asked Questions

- **Q: Does the pass-through entity making an election to pay income tax at the entity level extend the filing of the 2022 Form PTE for the limited liability entity tax (LLET)?**
 - No, the election does not extend the due date of the 2022 Form PTE.
- **Q: If the pass-through entity does not make an election, can a partner, member, or shareholder of that entity make an election to pay the pass-through entity tax?**
 - No; an unauthorized individual partner, member, or shareholder of a pass-through entity that does not make the election must report and pay income tax on his or her distributive share when reporting his or her income tax.
- **Q: May a partner, member, or shareholder of a pass-through entity opt out of the election and not be included in the pass-through entity tax if the pass-through entity makes the election?**
 - No, once made, the election is binding upon all entity owners.



Frequently Asked Questions

- **Q: What is required by the entity to make the election and file the return?**
 - A: The election is made on Kentucky Form 740-PTET. When filing the return, Kentucky Form 740-PTET, Form PTET-CR, and any other required forms or schedules applicable must be submitted.
- **Q: Is electronic filing available for the pass-through entity tax?**
 - A: Yes, electronic filing is available through third-party vendors that support Kentucky Form 740-PTET and Form PTET-CR.
- **Q: Can an electing entity make an electronic payment for the pass-through entity tax?**
 - Yes, electronic payments may be made on the Department of Revenue's website.



Frequently Asked Questions

- **Q: What is the tax rate that applies to the pass-through entity tax for income tax imposed by KRS 141.020?**
 - **A: 2022– 5%**
2023– 4.5%
2024– 4%
- **Q: What entities may elect to pay the pass-through entity tax?**
 - Pass-through entities doing business in this state that would be subject to the reporting and tax withholding and payment requirements under KRS 141.206 may elect to pay the tax authorized under KRS 141.209.
 - Pass-through entities that qualify for the election include any partnership, S-corporation, limited liability company, limited liability partnership, limited partnership, or similar entity recognized by the laws of the Commonwealth of Kentucky that is not taxed for federal income tax purposes at the entity level, but instead passes to each partner, member, shareholder, or owner their proportionate share of income, deductions, gains, losses, credits, and any other similar attributes.



11

Frequently Asked Questions

- **Q: Can a C-corporation be included in the payment of the pass-through entity tax?**
 - **A: No, the refundable credit is solely authorized for claims against the tax imposed on individuals under KRS 141.020. The Department of Revenue believes the General Assembly did not intend for the distributive shares of corporate partners, members and shareholders to be subject to the tax imposed on electing entities under KRS 141.209 and the tax imposed under KRS 141.040.**
- **Q: Can a C-corporation claim the refundable pass-through entity tax credit?**
 - **A: No, the refundable pass-through entity tax credit may only be claimed against the tax imposed under KRS 141.020 on individuals.**
- **Q: How do individual owners claim the refundable tax credit received on Form PTET-CR?**
 - **Individual owners filing Kentucky individual income tax returns reporting the tax imposed under KRS 141.020 may claim the refundable pass-through entity tax credit on Kentucky Form 740 or Form 740NP, Line 31(g).**



12

Frequently Asked Questions

- **Q: Is a nonresident withholding income tax return (Form 740NP-WH) still required if an entity elects to be taxed under the pass-through entity tax?**
 - **A:** No, Form 740NP-WH will not be required if the entity elects, files, and pays the pass-through entity tax imposed under KRS 141.209.
- **Q: Can an electing entity request for the transfer of estimated payments from another tax to the pass-through entity tax account?**
 - **A:** No.
- **Q: How does a multi-tiered pass-through entity claim the pass-through entity tax credit?**
 - **A:** A pass-through entity that is a partner, member, or shareholder of another pass-through entity (lower-tier pass-through entity) shall also complete Form PTET-CR to reflect each of the lower tier pass-through entity's partner's, member's, or shareholder's pro rate share of the lower-tier pass-through entity's income. The electing upper-tier pass-through entity must also file a Form 740-PTET and report the proportionate share of the tax paid attributable to the lower-tier pass-through entity's proportionate share. The lower tier pass-through entity will claim the PTET-CR from the upper-tier pass-through entity on Form 740-PTET, line 8.

Frequently Asked Questions

- **Q: Does the new pass-through entity tax allow SMLLCs to elect to pay tax at the entity level? Does the pass-through entity tax election apply to SMLLCs that are disregarded for federal tax purposes?**
 - **A:** Yes.
- **Q: Will the pass-through entity tax be due on 100% of a KY resident's distributable income or the apportioned amount of that income?**
 - **A:** KRS 141.206 governs the apportionment of income for pass-through entities doing business both within and without Kentucky. The pass-through entity tax is due on the apportioned amount of the pass-through entities income distributed to the partner, member or shareholder.
- **Q: When amending the individual entity owner returns to elect into the pass-through entity tax, can the individual non-resident owner file pass-through entity withholding payments through pass-through entity tax instead?**
 - **A:** No. If the entity makes an election to pay the tax at the entity level, it is binding upon all entity owners.

Frequently Asked Questions

- **Q: How does a 2022 pass-through entity tax election impact cash basis taxpayers? If the pass-through entity is cash basis, how will the pass-through entity benefit since the cash is not paid until 2023? What will the U.S. IRS do if the pass-through entity is cash basis but the pass-through entity accrued the pass-through entity tax? Will there be relief from the U.S. IRS?**
 - **A:** The Department of Revenue defers to the Internal Revenue Service on questions regarding the effect an election made by a pass-through entity to have Kentucky income tax imposed at the entity level may have for federal income tax purposes.
- **Q: Can individual pass-through entity owner 2022 tax returns be amended to elect the pass-through entity tax?**
 - **A:** The election is not made on Form PTE. A new Form 740-PTET is available.

Frequently Asked Questions

- **Q: Are individual owners of trusts able to make the pass-through entity tax election?**
 - **A:** No.
- **Q: If a 2022 return is amended prior to 8/31/2024, is that tax due at the time the election is made, or will they still have until 8/31/2024 to pay the tax?**
 - The Department of Revenue prefers the election, filing of the return, and payment be made at the same time. No late payment, late filing, or other similar penalty shall be imposed on an electing entity if payment is made before August 31, 2024.
- **Q: Will the KY DOR reclassify 2022 KY non-resident withholding already paid, with estimates, an extension, or a filed return, to the pass-through entity tax owed if elected?**
 - **A:** No, the entity should file a Form 740NP-WH return for the estimated taxes withheld and remitted as required under KRS 141.206(4) and (5).

Frequently Asked Questions

- **Q: Item D at the top of page 1 of the form – Should the box “Election to pay income tax at the entity level” always be checked? In what situation(s) would an entity file Form 740-PTET but not check this box?**
 - **A: No, an entity may file a return and not make the pass-through entity tax election if the entity is requesting a refund of payment or prior year credit.**
- **Q: Is Form 740-PTET required to be filed as an attachment to KY Form PTE? Or is it a standalone form that is filed separately from KY Form PTE?**
 - **A: No. This is a standalone return which is to be filed separate from Form PTE or Form 725.**

Frequently Asked Questions

- **Q: If a pass-through entity has already filed a 2022 Form PTE but desires to make the election for 2022, is an amended 2022 Form PTE required to be filed? Or can the entity file a standalone 2022 Form 740-PTET and pay the tax, without amending the 2022 Form PTE?**
 - **A: No. If the entity has already filed the 2022 Form PTE, the entity has already computed the ordinary income/distributive share, so no amended return would be required. The entity may still make the pass-through entity tax election by filing a separate Form 740-PTET.**
- **Q: Can the Department of Revenue provide further clarification on which income and deduction items from KY Form PTE are included as part of “Net distributive share income” on Form 740-PTET line 3?**
 - **A: KRS 141.209(2)(a) imposes the tax “based upon the ordinary income and separately stated items of income calculated under KRS 141.206.” These items include all items listed on the Schedule K reporting distributable share income including, but not limited to, interest income, dividend income, capital gains, guaranteed payments, and rents.**

Frequently Asked Questions

- **Q: Oil and gas businesses – The determination of the allowable cost or percentage depletion for oil and gas properties held by a partnership must be made separately by the partners, not by the partnership. Therefore, does the net distributive share of income from Form PTE include a deduction for depletion?**
 - **A: No, this deduction will not be taken on Form 740-PTET. The individual owner must compute their own depletion deduction on the individual income tax return.**
- **Q: When will the Form PTET-ES be published?**
 - **For taxable years beginning on or after 1/1/22, but before 1/1/24, an electing entity is not required to make estimated income tax payments and no estimated tax penalty shall be assessed under KRS 141.985. The voucher will be published with the release of the 2023 tax forms in January 2024. If the entity would like to make a payment, a payment may be made utilizing the online payment system at revenue.ky.gov.**



19

Frequently Asked Questions

- **Q: What must an electing pass-through entity do for the 2022 tax year if the pass-through entity has already withheld KY tax on non-residents for 2022? If the PTE has already filed a 2022 KY Form PTE and Form 740NP-WH and provided the related PTE-WH form to the non-resident owners, how will that process work?**
 - **A: This decision on how to handle the already paid monies would be the entity's decision since some withhold the amount from the distribution to the partners and some do not.**
- **Q: If the pass-through entity is on extension, does the entity refund 2022 withholdings back to all non-resident shareholders?**
 - **A: This decision on how to handle the already paid monies would be the entity's decision.**



20

Frequently Asked Questions

- **Q: For a pass-through entity that is a trust with income passed through to beneficiaries and has business income and/or rental income, is this pass-through entity eligible to elect into the pass-through entity tax?**
 - **A: No. A trust is not included as an eligible “electing entity” under KRS 141.209(1)(c).**
- **Q: How does an entity claim prior year overpayment credits and estimates toward pass-through entity tax if the entity decides not to elect the pass-through entity tax for a tax year?**
 - **A: File Form 740-PTET for a refund and do not check the box making the pass-through entity tax election.**

Frequently Asked Questions

- **Q: For partnerships with tax-exempt partners, is their share of the pass-through entity income subject to the pass-through entity tax? If so, is there a way for the non-profit to claim the pass-through entity tax credit and get that refunded?**
 - **A: Yes.**
- **Q: Can a pass-through entity elect to file Form 740-PTET if one of the owners is a trust? If so, can the trust use Form PTET-CR to transfer the credit for tax paid to the trust beneficiaries?**
 - **A: Yes.**

Frequently Asked Questions

- **Q: What should the shareholders be given showing their distributive share for filing with their individual income tax return?**
 - **A: Form PTET-CR and the Kentucky K-1 that was issued to the partner, member, or shareholder should be provided.**
- **Q: Does Form 740-PTET have to be paper-filed or can it be attached electronically to the e-filed Form PTE? Can the new forms be included as a PDF attachment to the system generated KY e-file? Will there be a preference for amended returns?**
 - **A: As of 8/15/2023, there are 5 approved e-file vendors: Thomson Reuters CGS, PGS (GoSystem/OneSource), Intuit, CCH Prosystem, and Corp Tax. No, the form cannot be attached as a PDF. It must be filed separately.**

Frequently Asked Questions

- **Q: Many individual taxpayers will have tax overpayments when the PTET credit is applied since they would have already made estimated tax payments before the law was passed. Since software limitations will necessitate paper filing of the PTET forms for many PTEs, but electronic filing will still be possible for individual returns, what is the projected processing time for the refunds?**
 - **A: Processing time for individual electronically filed returns is 4-6 weeks and for paper-filed returns is 10-14 weeks. Processing time for an amended or prior year return is 20-24 weeks.**
- **Q: For entities making the PTET election for the 2023 tax year and want to make estimated tax payments before the end of calendar year 2023, how should these entities make these payments to DOR?**
 - **A: If the entity would like to make a payment in 2023, a payment may be made utilizing the online payment system at revenue.ky.gov and selecting the "Make a Payment or File a Return" tab.**

Pass-Through Entity Tax

Gary Morris

✉ Gary.Morris@ky.gov

☎ (502) 564-0424

Barbara Quackenboss

✉ Barbara.Quackenboss@ky.gov

☎ (502) 564-7343

The information in this presentation is for educational and informational purposes only and does not constitute legal advice. Information is presented generally and is subject to law changes. A copy of House Bill 5 from the 2023 Regular Session of the General Assembly discussed in this presentation may be accessed at legislature.ky.gov.

Information in this presentation is believed to be accurate as of the date of publication. However, any statement in error that may occur during presentations made by the Department of Revenue as part of its tax education program shall not expressly or implied supersede the Department of Revenue's official interpretation of the law or its policies utilized in administering state revenue and tax laws.



Kentucky Department of Revenue • 501 High Street • Frankfort, KY 40601

25

Sequentially numbered list of questions posed by KyCPA to DOR

Question Asked of DOR about the PTET

As of 09 08 2023

Q #	Question
1	Does the new PTET allow SMLLCs to elect to pay tax at the entity level? Does the PTET election apply to SMLLCs that are disregarded for federal tax purposes?
2	Will the PTET be due on 100% of a KY resident's distributable income or the apportioned amount of that income?
3	Will the KY DOR reclassify 2022 KY non-resident withholding already paid, with estimates, an extension or a filed return, to the PTET tax owed if elected?
4	Please provide further guidance regarding the treatment of non-resident and resident shareholders on the same PTE return.
5	If a pass-through entity has already filed a 2022 Form PTE but desires to make the election for 2022, is an amended 2022 Form PTE required to be filed? Or can the entity file a standalone 2022 Form 740-PTET and pay the tax, without amending the 2022 Form PTE?
6	Can we get further clarification on which income and deduction items from KY Form PTE are included as part of "Net distributive share income" on Form 740-PTET line 3?
7	If a partnership has a partner that is a C Corporation, can the partnership file Form 740-PTET, make the election, and only report net distributive income from non-C Corporation partners? Or is a partnership with any C Corporation partners automatically disqualified from filing Form 740-PTET and making the election?
8	Non-resident withholding is not required if the entity makes the election to pay the PTET. Therefore, for 2023 should tax preparers advise taxpayers to refund the 2023 non-resident withholding already withheld from their owners?

Question Asked of DOR about the PTET

As of 09 08 2023

Q #	Question
9	<p>What must an electing PTE do for the 2022 tax year if the PTE has already withheld KY tax on non-residents for 2022?</p> <p>If the PTE is on extension, does the entity refund 2022 withholdings back to all non-resident shareholders?</p> <p>Will the PTE get credit on the entity's 2022 PTET return for the non-resident withholding tax remitted or will they need to file a separate 2022 740NP-WH reflecting no withholding liability and apply for a refund of all taxes previously remitted?</p> <p>If the PTE has already filed a 2022 KY Form PTE and Form 740NP-WH and provided the related PTE-WH form to the non-resident owners, how will that process work? Such owners have most likely filed a KY tax return and claimed their withholding.</p>
10	<p>A PTE is a trust with income passed through to beneficiaries and has business and/or rental income.</p> <p>Is this PTE eligible to elect into the PTET?</p>
11	<p>Claiming prior year overpayment credits and estimates toward PTE tax – how do you claim those if you ultimately decide not to elect PTE for a tax year?</p>
12	<p>Partnership with tax-exempt partners; is their share of the PTE income subject to PTET? If so, is there a way for the non-profit to claim the PTE credit and get that refunded?</p>
13	<p>Can a pass-through entity elect to file PTET if one of the owners is a trust? If so, can the trust use form PTET-CR to transfer credit for tax paid to the trust beneficiaries?</p>
14	<p>How does the 740-PTET allow for the tax to be paid for resident owners under KRS 141.206(7)?</p>
15	<p>Section 23 effective date not specifically listed, would this provision become effective immediately but be applicable to the 1/1/2022 retroactive date for the SALT provisions?</p>
16	<p>Are PTE's still required to withhold based on tax against their non-resident partners' distributable share of income?</p>
17	<p>When amending individual entity owner returns to elect into the PTET, can the individual non-resident owner file PTE withholding payments through the PTET instead?</p>
18	<p>How does a 2022 PTET election impact cash basis taxpayers? If the PTE is cash basis, how will the PTE benefit since the cash is not paid until 2023? What will the U.S. IRS do if the PTE is cash basis but the PTE accrued the PTET. Will there be relief from the U.S. IRS?</p>

Question Asked of DOR about the PTET

As of 09 08 2023

Q #	Question
19	Can individual PTE owner 2022 tax returns be amended to elect the PTET?
20	Are individual owners of trusts able to make the PTET election?
21	If a 2022 return is amended prior to 08/31/2024, is that tax due at the time the election is made, or will they still have until 08/31/2024 to pay the tax?
22	Form 740-PTET has a line-item instruction that notes not to include C corporations as part of other entities included on the return. What happens when there is a C corporation owner of a PTE? From first review, Form 740-PTET seems like it is formatted to exclude C corporations, so the electing PTE does not pay PTE tax on the income allocated to the C corporation owners.
23	Item D at the top of page 1 of Form 740-PTET, should the box "Election to pay income tax at the entity level" always be checked? In what situation(s) would an entity file Form 740-PTET but not check this box?
24	Is Form 740-PTET required to be filed as an attachment to KY Form PTE? Or is it a standalone form that is filed separately from KY Form PTE?
25	Question specific to oil and gas businesses - The determination of the allowable cost or percentage depletion for oil and gas properties held by a partnership must be made separately by the partners, not by the partnership. Therefore, does the net distributive share of income from Form PTE include a deduction for depletion?
26	The 740-PTET and PTET-CR do not seem to affect anything on Form PTE or K-1 for the PTE. Will it be necessary to file amended PTE and K-1's if the entity elects to file the 740-PTET?
27	When will the Form PTET-ES be published?
28	A PTE is a trust that formed specifically to receive IRA distributions for a surviving spouse. No other income and all IRA distributions are passed through to the surviving spouse. Is this PTE eligible to elect into the PTET?
29	If an electing PTE has previously made estimated tax payments towards non-resident withholding for 2022, will those payments transfer to cover the PTET?
30	Can the KY DOR provide additional guidance for filing since the election form is also the tax return for the 2022 tax year?

Question Asked of DOR about the PTET

As of 09 08 2023

Q #	Question
31	If a non-resident business owner has portions of two Kentucky pass through entities (One company elects the PTET and the other does not), can the owner exclude the PTET income from their individual Kentucky non-resident Income tax return?
32	Can you apply non-resident withholding payments against PTET liability? Or is it possible to do so in the future?
33	Some PTEs with non-resident owners were required to pay estimated taxes in installments in 2022. For a cash basis taxpayer, the estimated taxes paid in 2022 were reported to KY on a Form 740NPWH-V and a PTE-WH-W for each taxpayer. Can these payments now be converted to a PTET thereby providing the taxpayer to receive a federal tax deduction for 2022?
34	What should the shareholder's be given showing their distributive share the PTET-CR for filing with their individual income tax return?
35	Does the 740-PTET have to be paper-filed or can it be attached electronically to the e-filed Form PTE?
36	Many individual taxpayers will have tax overpayments when the PTET credit is applied since they would have already made estimated tax payments before the law was passed. Since software limitations will necessitate paper filing of the PTET forms for many PTEs, but electronic filing will still be possible for individual returns, what is the projected processing time for the refunds? Will the DOR match up credits claimed by individuals with the PTET payments made by the related PTEs before refunds are authorized?
37	For entities that are making the PTET election for the 2023 tax year and want to make an estimated tax payment before the end of the calendar 2023 year, how should these entities make this payment to the DOR? The PTET-ES forms that have been released by the compliance software companies that I have seen are for 2024, not for 2023.
38	What form is used to pay the 2023 KY estimated tax payments for all partners/shareholders (resident AND non-resident) to be applied to the 2023 Form 740-PTET? Are these estimate payments per partner/shareholder or by the partnership/S-corp?

Question Asked of DOR about the PTET

As of 09 08 2023

Q #	Question
39	Are the company's payments of the PTET allowed as a reduction of the pass-thru income subject to tax? Or will these taxes be included on Schedule A ... as an itemized deduction, but how to report so they will not be limited to the \$10,000 amount of that section? Federal question???
40	Should an entity that is disregarded on an individual return be listed as an individual partner in Line 1 of the PTET or as an other entity in Line 2 of the PTET?
41	What line should we pull the Net distributive share income (Line 3 PTET) from on the Form PTE?
42	Where on the PTE does the Schedule A apportionment percentage get taken into account?
43	When will the Schedule A and related instructions associated with the Form 740-PTET be available?
44	For the cash basis S Corps, Partnerships, and Single Member LLCs that we have already prepared and filed could we just file the new PTET form showing the income and the tax amount and mail those in with the payment?? Or will we need to amend the whole return and mail the PTET form & payment in with that?
45	Does KY DOR plan to publish a standardized form for partners/shareholder to sign to show their agreement to make the KY PTET election?
46	What is the average timeline to process a paper PTET election/return once received by KY DOR?
47	Many related individual taxpayers are electronically filing their 2022 personal tax returns and claiming refunds which include the PTET credit. Will KY DOR approve those refunds before the related partnership or S-Corp 740 PTET return has at least been processed?
48	Will the related individual tax refund be delayed until payment is received from the S-Corp or partnership? With the upcoming September 15th tax estimates. It would appear that for our pass through entity shareholders and partners will need to make two estimated tax payments one for the PTET tax and another for other income not associated with the pass through entity such as capital gains, dividends and so forth. Is that correct? Also, it would appear that the only way to submit an estimate for the pass through entity tax is electronically. Is that correct?

Question Asked of DOR about the PTET

As of 09 08 2023

Q #	Question
49	The new 740-PTET form for 2022 would seem to apply only to accrual basis taxpayers. If an entity is on the cash basis they actually will pay the tax in 2023 and would not be able to claim the credit for 2022. Is that correct?. What advantages would it be for a cash basis pass through entity to make the election for 2022?
50	How does a multi-tiered pass-through entity claim the pass-through entity tax credit?
51	1. We have some banking clients that are taxed as S-corporations. How should ESOP shareholders be handled? 3. In regards to banks, how should ESOP shareholders be handled?
52	2. What form does the client need to sign to authorize the Form 740-PTET? (Q 45)
53	4. How does this impact nonresident who normally file composite returns?
54	5. Is a grantor trust considered an authorized person since it is a disregarded entity for federal purposes?
55	6. If the PTET election is made for 2022 and the PTET-CR form is provided to the Individual, is the credit claimed by the individual on their return for 2022 or 2023? Or is there a choice of which year to claim it?
56	7. What happens to the LLET tax credit from gross receipts that can be used as a credit on the shareholder return?
57	8. We have a partnership that filed 740-PTET. One of the partners is a partnership. How would we claim credit from the upper partnership on the lower partnership 740-PTET? Would we claim the credit on line 9 (estimated tax payments)?
58	9. On a fiscal year end entity would we prorate the tax rate?
59	10. If election is made, is the income tax expense to be accounted for as a current year expense or as a shareholder distribution through equity? a. Follow up
60	11. Can you make estimated payments electronically?
61	12. Our software does not adhere to the e-pay requirements. Will you penalize the taxpayer or do we need to edit the letter?
62	13. if the entity chooses to delay payment of 2022 ptet until 8/31/24 with no penalties or interest, is the credit from ptet-cr still available to report on the individual owner's form 740 for 2022?

Question Asked of DOR about the PTET

As of 09 08 2023

Q #	Question
63	14. Is the electronic filing available for 2022 through software vendors? My understanding was no vendors were supporting this.
64	15. Since C corp can't claim credit, is that portion of the credit lost?
65	16. If an electing PTE has a C Corporation partner does that keep them from electing to file the PTET, or are they just left off the return and eligible shareholders are still included.
66	17. Do single member LLC's qualify? (Q1)
67	18. Please confirm this is correct: a qualifying entity with a nonresident member can choose between PTET and 740NP-WH?
68	19. If we paid non resident withholding tax, how do we request refund?
69	20. Can only accrual basis taxpayers take advantage of 2022 PTET since estimates are not paid until 2023?
70	21. Form 740NP-WH was previously filed and the entity elects to file Form 740-PTET what needs to be done? Amend Form 740NP-WH?
71	22. Apportionment comment: Not all states have income taxes though - TN, FL, TX for example b. KY DOR to obtain further clarification
72	24. S corporation has a trust shareholder. Does the trust file a 740PTET - cr to attach to the trust k-1 to beneficiary
73	25. Is the PTET expense an addback for Kentucky purposes?
74	26. Our software doesn't have any PTET for a single member LLC. How would we file it?
75	27. What about Trusts that have a SMLLC?
76	28. What income and expense items are included in distributable income? For example, Is distributable income reduced by pass thru itemized deductions?
77	29. There is a box on the trust KY K-1 that indicates the PTET credit for the beneficiary.
78	30. Think more clarification on SMLLC should be addressed. Wouldn't every Sch C form an LLC in order to take advantage?
79	31. Under KRS 141.206 14 (a), a nonresident individual will not be taxed on investment income distributed by a qualified investment partnership. How is the PTET handled for an entity with investment income passing through to resident and nonresident individuals?

Question Asked of DOR about the PTET

As of 09 08 2023

Q #	Question
80	32. If an upper-tier entity receives a PTET-CR from a lower-tier entity, but the upper-tier entity does not desire to make the election itself, will the payment from the PTET-CR be refunded to the entity, or will the credit be passed along to the upper-tier entity's shareholders/partners/members?
81	33. Line 20 (c) of Trust Form 741 and Line 12 (b) of 741 K-1 both accommodate Pass-through Entity Tax credit. I understood Barbara to state that Trusts cannot make the PTET election. Did I misunderstand?
82	34. Is the charitable contribution deduction included as part of net distributive share income?
83	35. That's the income side of calculation of "distributable income." What about deductions in determining distributable income? Charitable contributions, for example?
84	36. If a grantor trust is a partner, can the partnership make this election. The grantor is in an individual's social.
85	37. The IRS guidance on PTETs in Notice 2020-75 only discusses the PTET as it relates to S corporations and Partnerships. Has the Department discussed with the IRS if the IRS is going to accept PTET deductions for disregarded SMLLCs?
86	38. Is any section 179 deduction shown separately on schedule KY schedule K a reduction to distributable income in computing the KY PTET tax?
87	39. If an 2023 estimated tax payment is desired so the tax basis entity can take advantage of reduction of federal taxable income, what form is used since PTET-ES will not be available until 1/1/24?
88	40. Please clarify. Can a partnership make the election if a partner is a trust. There are 2 conflicting slides.
89	41. Should an LLET credit from Form PTE be claimed against the PTET as a nonrefundable credit?
90	42. Are the software vendors supporting the new PTET forms for 2022 via electronic filing?
91	43. Can you please clarify the determination of taxable income? Does it include separately stated items of income and expenses or just income?
92	44. What order does Ky process payments? Will credits from SITP be processed before or after estimated tax payments?

Question Asked of DOR about the PTET

As of 09 08 2023

Q #	Question
93	45. Barbara said that a beneficiary of a trust should be provided a K-1 in order to claim the PTE credit. However, she didn't mention that the beneficiary should also get a PTET-CR as well. Was that just an accidental omission?
94	46. Does the PTET have a separate extension or will accept the federal extension?
95	47. Are estates treated like trusts
96	48. Did you say that if you make an estimated tax payment online that you should use the entity's EIN and not use their Corp/LLET #? Thanks.
97	49. Thomson Reuters is taking the position that SMLLC's are not eligible for PTET, and therefore not allowing application of the credit on the 740. They state an FAQ is not sufficient to convince them.
98	50. Need clarification: If a trust owns a SMLLC, then the SMLLC can file the PTET.
99	51. Does PTET include separately stated items of income and expenses or just income?
100	52. In determining distributive net income, should contributions made by the PTE be deducted?
101	53. When requesting a refund of NR Withholding, do we simply file the PTE-WH and show \$0 as distributive income and then ask for a refund on any taxes paid?
102	54. If the PTET election was originally checked as not being made, can the PTET form be amended before 8/31/24 to make this election?
103	55. In regards to banks, if the bank is an S-Corp and has 50 shareholders, of which 49 are individuals and 1 is an ESOP, how would the ESOP be handled? Would its share of the income be subject to the PTET?
104	56. Should we claim the LLET credit as a nonrefundable credit against PTET similar to the inventory credit?
105	57. Question on amending previously filed 2022 PTE with Form 740-NPWH & electing to file Form PTET. Entity makes decision to amend 740-NPWH to claim refund & completes/files PTET?
106	58. Do we have to addback the deduction for the PTET tax payments to the KY distributable income?
107	59. Are the individuals credited with the payments as if made ratably/timely during 2022 regardless of actual payment dates, similar to W2 withholdings? How is the PTET credit considered in determining the penalty for underpayment of estimated taxes?
108	60. can you take SE health, retirement and 754 as deductions for the PTET??

Question Asked of DOR about the PTET

As of 09 08 2023

Q #	Question
109	Is there an e-file authorization form that Kentucky requires to be signed for an ERO to submit form 740-PTET on behalf of a taxpayer?
110	1. Slide 6, second bullet: Is a form 740-NP-WH to be filed showing zero income resulting in a refund of the total amount previously paid, or does the withholding go on and get passed to the nonresident owner for them to claim the withholding and get the refund? The clause "belongs to the nonresident partner" would appear to imply the latter. This is related to 3rd Q on slide 16 and 1st Q on slide 20.
111	2. 2nd Q, slide 18: Are all items of expense ignored? i.e. section 179, contributions, etc.
112	3. Slide 20 – 2nd FAQ on this slide – Question - Can an electing PTE that paid non-resident withholding for tax year 2022 report both the non-resident withholding and PTET credit on the individual income tax return?
113	4. Slide 22- 1st FAQ on this slide – Can they provide an answer to the second part of the question? If a pass-through entity pays KY PTET on a tax-exempt partner how does the non-profit/tax exempt partner get their share of tax refunded? Is there a refund form that can be filed?
114	5. Has anyone asked about the state ordering rules for Kentucky? It can make the PTET a moot point if the taxpayer has to report income in the same amount as the deduction.
115	6. I have a general partnership electing the PTET that has 5 LLC's as partners. One of the partner LLC's is leaving the partnership and part of the dissociation agreement was that \$800,000+ income is being allocated to the exiting partner LLC. However, the overall partnership net income/net distributable income is \$250,000 – so the LLC leaving has \$800,000 in income and the other 4 LLC's have negative net income (varying amounts allocated to each, but all of the other 4 are negative this year). When I do the 740-PTET, I'm calculating the net distributable income for the entity as a whole as \$250,000 so a credit of around \$12,000 is to be paid in. But when I do the PTET-CR for each partner is where I get confused. Do I just give all of the credit to the departing LLC (the only one with positive income – even though that LLC has much more than that in net distributable income) and then do zero PTET-CR's for the others? Or do I do the credit based on the departing LLC's net income of \$800,000 (and again give all the credit to that LLC with the others receiving zero PTET-CR's)?

Question Asked of DOR about the PTET

As of 09 08 2023

Q #	Question
116	7. What about a PTE that has owners that are individuals and a C-Corp. Can the credit be paid in for only the individual owners and not the C-Corp? If not, and they elect in, what happens to the money paid on behalf of the C-Corp if they can't claim the credit?
117	Because KY Form 740-PTET is both the form for electing the PTET and the PTE tax return, should the form only be filed once, that is, when the tax return is filed?
118	CCH Axcess Tax Software has a Form PTET-ES and it is populating estimate payment instructions (by check in the mail) for 2023 PTET estimates. It has a 2024 date on the voucher, but I am hearing a lot of people didn't notice this and have been sending clients the estimate vouchers with check payment instructions. Can DOR provide guidance on what to do for taxpayers that have submitted payments using this form?
DOR p. 4, sl. 8	Who is authorized to make the election on behalf of the pass-through entity?
DOR p. 4, sl. 8	Is the entity required to make an election to pay pass-through entity tax each year?
DOR p. 4, sl. 8	When is the pass-through entity required to make an election?
DOR p. 5, sl. 10	What is required by the entity to make the election and file the return?
DOR p. 5, sl. 9	Does the pass-through entity making an election to pay income tax at the entity level extend the filing of the 2022 Form PTE for the limited liability entity tax (LLET)?
DOR p. 5, sl. 9	If the pass-through entity does not make an election, can a partner, member, or shareholder of that entity make an election to pay the pass-through entity tax?
DOR p. 5, sl. 9	May a partner, member, or shareholder of a pass-through entity opt out of the election and not be included in the pass-through entity tax if the pass-through entity makes the election?

Exhibit 1 - Distributive Share Income Calculation Reconciliation Worksheet
See Excel Worksheet

Exhibit 2

	A. Spouse (Use if Filing Status 2 is checked.)	B. Yourself (or Joint)
5 Enter amount from federal Form 1040 or 1040-SR, line 11. (If total of Columns A and B is \$36,908 or less, you may qualify for the Family Size Tax Credit. See instructions.)	5 00	5 600,000 00
6 Additions from Schedule M, line 6	6 00	6 30,000 00
7 Add lines 5 and 6	7 00	7 630,000 00
8 Subtractions from Schedule M, line 17	8 00	8 00 00
9 Subtract line 8 from line 7. This is your Kentucky Adjusted Gross Income	9 00	9 630,000 00
10 Itemizers: Enter itemized deductions from Kentucky Schedule A.		
Nonitemizers: Enter \$2,770 in Columns A and/or B	10 00	10 2,770 00
11 Subtract line 10 from line 9. This is your Taxable Income	11 00	11 627,230 00
12 Tax Computation: Multiply line 11 by 5% (.05) or amount from Schedule J <input type="checkbox"/>	12 00	12 31,362 00
13 Enter tax from Form 4972-K <input type="checkbox"/> ; Schedule RC-R <input type="checkbox"/> ; Schedule DS-R <input type="checkbox"/> ; Angel Investor Recapture <input type="checkbox"/>	13 00	13 00 00
14 Add lines 12 and 13 and enter total here	14 00	14 31,362 00
15 Enter amounts from Schedule ITC, Section A, lines 25E and 25F	15 00	15 19,974 00
16 Subtract line 15 from line 14. If line 15 is larger than line 14, enter zero	16 00	16 11,388 00
17 Enter personal tax credit amounts from Schedule ITC, Section B	17 00	17 00 00
18 Subtract line 17 from line 16. If line 17 is larger than line 16, enter zero	18 00	18 11,388 00
19 Add tax amount(s) in Columns A and B, line 18 and enter here, continue to page 2	19 00	19 11,388 00

FORM 740 (2022) 2 2 0 0 0 2 1 0 1 9 Page 2 of 3

20 Check the box that represents your total family size (see instructions before completing lines 20 and 21)	20 1 X 2 3 4
21 Multiply line 19 by Family Size Tax Credit decimal amount () (%) from Schedule ITC	21 00
22 Subtract line 21 from line 19	22 11,388 00
23 Enter the Education Tuition Tax Credit from Form 8863-K, line 17	23 00
24 Enter Child and Dependent Care Credit from federal Form 2441, line 11 x 20% (.20)	24 00
25 RESERVED	25 00
26 Income Tax Liability. Subtract lines 23 through 25 from line 22. If zero or less, enter zero	26 11,388 00
27 Enter KENTUCKY USE TAX due on Internet, mail order, or other out-of-state purchases (see instructions)	27 00
28 Add lines 26 and 27. This is your TOTAL TAX LIABILITY	28 11,388 00
29 For amended return; overpayment, if any, shown on original return	29 00
30 Add lines 28 and 29, enter here	30 11,388 00
31 a Enter Kentucky income tax withheld as shown on enclosed Schedule KW-2	31a 00
b Enter 2022 Kentucky estimated tax/extension payments	31b 00
c Enter 2022 refundable certified rehabilitation credit	31c 00
d Enter 2022 refundable film industry tax credit	31d 00
e Enter 2022 refundable development area tax credit	31e 00
f Enter 2022 refundable decontamination tax credit	31f 00
g Enter 2022 refundable pass-through entity tax credit from Form PTET-CR, line 9	31g 30,000 00
h For amended return; enter amount paid with original return plus additional payment(s) made after it was filed	31h 00

Exhibit 3

PTET-CR <small>42A740-PTET-CR (4-23)</small>		KENTUCKY PASS-THROUGH ENTITY TAX ON DISTRIBUTIVE SHARE INCOME		Taxable Year Ending Mo. Yr.	
<input type="checkbox"/> Amended					
1 Pass-through entity's FEIN <div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>		4 Partner, member, or shareholder Social Security Number or FEIN <div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>			
2 Pass-through entity's LLET Acct. No. (if available) <div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>					
3 Name of pass-through entity <div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div> <div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div> <div style="display: flex; justify-content: space-between; border: 1px solid black; margin-top: 5px;"> <div style="width: 30%; border: 1px solid black; height: 20px;"></div> <div style="width: 30%; border: 1px solid black; height: 20px;"></div> <div style="width: 30%; border: 1px solid black; height: 20px;"></div> </div>		5 Name of partner, member, or shareholder <div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div> <div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div> <div style="display: flex; justify-content: space-between; border: 1px solid black; margin-top: 5px;"> <div style="width: 30%; border: 1px solid black; height: 20px;"></div> <div style="width: 30%; border: 1px solid black; height: 20px;"></div> <div style="width: 30%; border: 1px solid black; height: 20px;"></div> </div>			
<div style="border: 1px solid black; padding: 5px;"> Tiered entities: upper tier will claim PTET credit reported on Form PTET-CR Line 9 from a lower tier entity as an estimated tax payment on the upper tier PTE return </div>		<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> 6 7 8 </div> <div style="width: 50%;"> <div style="border: 1px solid black; height: 20px; width: 100%; margin-bottom: 5px;"></div> <div style="border: 1px solid black; height: 20px; width: 100%; margin-bottom: 5px;"></div> <div style="border: 1px solid black; height: 20px; width: 100%; margin-bottom: 5px;"></div> </div> </div>			
9 Kentucky income tax paid by entity (line 7 less line 8).....		<div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>			

220263 42A740-PTET-CR (4-23)

Page 1 of 1

FORM 740-PTET (2022)

220263 42A740-PTET-CR (4-23)

upper tier claims PTET credit from a lower tier entity as an **estimated tax payment**

9 Estimated tax payments	▶ 9	<div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>	00
10 Extension payment	▶ 10	<div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>	00
11 Prior year's tax credit	▶ 11	<div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>	00
12 Total tax paid on original return	▶ 12	<div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>	00
13 Total payments (Lines 9 through 12)	▶ 13	<div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>	00
14 Tax overpayment on original return	▶ 14	<div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>	00
15 Income Tax (Line 8 and 14 less Line 13)	▶ 15	<div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>	00
16 Estimated Tax Penalty	▶ 16	<div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>	00
17 Income tax and Estimated Tax Penalty due (Line 15 plus Line 16)	▶ 17	<div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>	00
18 Income tax overpayment (Line 13 less Lines 8, 14, and 16)	▶ 18	<div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>	00
19 Credited to 2022 interest	▶ 19	<div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>	
20 Credited to 2022 penalty	▶ 20	<div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>	
21 Credited to 2023 PTET	▶ 21	<div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>	00
22 Amount to be refunded (Line 18 less Lines 19 through 21)	▶ 22	<div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>	