

Maryland

Tax Alert



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Process Change: Instructions for Electing and Nonelecting Pass-Through Entities for Tax Years Beginning after December 31, 2022

Introduction

This alert addresses a change in how pass-through entities (PTEs) make the election under Tax-General Article § 10-102.1(b)(2)(ii). A PTE must make the election to (1) pay at the entity level on all members' shares of income or (b) pay the mandatory tax on behalf of nonresident members only with the first filing or payment for the tax year. The election or nonelection made with the first payment or filing is irrevocable for the tax year in which it is made.

Throughout this Tax Alert, the following terms have the meanings indicated:

- “Not to elect” means a PTE has decided to pay the mandatory tax with respect to the distributive or pro rata shares of the nonresident and nonresident entity members of the PTE pursuant to Tax-General Article § 10-102.1(b)(2)(i).
- “To elect” means a PTE has elected to pay tax with respect to the distributive or pro rata shares of all members of the PTE pursuant to Tax-General Article § 10-102.1(b)(2)(ii).
- “Nonelecting PTE” is a PTE that has decided to pay the mandatory tax with respect to the distributive or pro rata shares of the nonresident and nonresident entity members of the PTE under Tax-General Article § 10-102.1(b)(2)(i).
- “Electing PTE” is a PTE that elects to pay tax with respect to the distributive or pro rata shares of all members of the PTE under Tax-General Article § 10-102.1(b)(2)(ii).
- “Nonelection” is the decision to pay the mandatory tax with respect to the distributive or pro rata shares of the nonresident and nonresident entity members of the PTE under Tax-General Article § 10-102.1(b)(2)(i).
- “Election” is the decision to pay tax with respect to the distributive or pro rata shares of all members of the PTE under Tax-General Article § 10-102.1(b)(2)(ii).

General Information

PTEs are required to pay tax on behalf of nonresident members. In 2020 and 2021, the Maryland General Assembly passed Senate Bill 523 (2020), Senate Bill 496 (2021), and Senate Bill 787 (2021), authorizing a pass-through entity to elect to pay tax at the entity-level in lieu of paying the mandatory tax on behalf of nonresident members.

The PTE entity-level tax operates differently from the mandatory tax paid on behalf of only nonresident members. The entity-level tax is calculated based on the PTE's federal income calculated without regard to any federal deduction for state and local taxes. Further, a member of an Electing PTE must addback the amount of the K-1 credit claimed.

Prior to the enactment of the PTE entity-level tax, all PTEs filed Maryland Form 510, Pass-Through Entity Income Tax Return, as their year-end return. To implement the elective PTE tax, a new form, Maryland Form 511, Pass-Through Entity Election Income Tax Return, was created. Nonelecting PTEs file Form 510; Electing PTEs file Form 511.

Beginning in July 2021 and through tax year 2022, Electing and Nonelecting PTEs report estimated tax payments with Form 510D. PTEs that calculate their quarterly estimated tax payments with respect to the distributive or pro rata shares of all members are instructed to indicate via a check box on Form 510D that they are electing to remit tax with respect to all members' shares.

For tax years beginning after December 31, 2022, a PTE must decide to elect or not to elect with the first filing or payment of the tax year.

- To elect, a PTE checks the box on the first form of the tax year that accompanies a payment or is filed to report a loss. All forms subsequently filed with respect to the tax year must also reflect the election by checking the appropriate box on the form.
- To not elect, a PTE must leave the checkbox blank on the first form of the tax year that accompanies a payment or reports a loss. All forms subsequently filed with respect to the tax year must also reflect the nonelection by leaving the checkbox blank.

The election or nonelection is made each tax year independent of the election or nonelection that was made the previous tax year. Each annual election is **irrevocable once made**.

Specific Instructions

Electing PTE reporting the tax year's first payment on a 510/511D, Pass-Through Entity Declaration of Estimated Income Tax

On the 510/511D that accompanies the first payment of the tax year, Electing PTEs must check the box that states, "check here if PTE has made the irrevocable election for Tax Year [year] to remit tax with respect to all members' shares."

The election is irrevocable once made for each tax year. After making the election, an Electing PTE must:

- check the box on each subsequently filed 510/511D;

- check the box on Form 510/511E, Application for Extension to File Pass-Through Entity Return, if filed; and
- file Form 511, Pass-Through Entity Election Income Tax Return at the end of the tax year.

Nonelecting PTE reporting the tax year’s first payment on a 510/511D, Pass-Through Entity Declaration of Estimated Income Tax

On the 510/511D that accompanies the first payment of the tax year, Nonelecting PTEs must leave the election check box blank. Leaving the box blank is an irrevocable nonelection for the tax year.

The nonelection is irrevocable once made for each tax year. After making the nonelection, a Nonelecting PTE:

- may not check the box on a subsequently filed 510/511D;
- may not check the box on Form 510/511E, if filed; and
- must file Form 510, Pass-Through Entity Income Tax Return at the end of the tax year.

Electing PTE reporting the tax year’s first payment on Form 510/511E, Application for Extension to File Pass-Through Entity Return

An Electing PTE submitting the first filing and payment of the tax year with Form 510/511E must check the box that states, “check here if electing to remit tax with respect to all members’ shares.” If a PTE previously submitted a 510/511D with the election box checked, the box must also be checked on the 510/511E. The election, once made, is irrevocable. The Electing PTE must file Form 511, Pass-Through Entity Election Income Tax Return at the end of the year.

Nonelecting PTE reporting the tax year’s first payment on Form 510/511E for Extension to File Pass-Through Entity Return

A Nonelecting PTE submitting the first payment of the tax year with the 510/511E should leave the election check box blank. If a PTE previously submitted a 510/511D with the box left blank, the box must also be left blank on the 510/511E. Leaving the box blank is an irrevocable nonelection. A Nonelecting PTE must file Form 510, Pass-Through Entity Income Tax Return by the return due date.

PTE making the tax year’s first payment with the year-end return on Form 510, Pass-Through Entity Income Tax Return, or Form 511, Pass-Through Entity Election Income Tax Return.

A PTE that has not submitted Form 510/511D, 510/511E or any estimated payments prior to the year-end return makes the election by filing a 511, or makes the nonelection by filing Form 510.

Additional information for all PTEs

An Electing PTE is not required to file Form 510/511D for the sole purpose of making the election. A PTE that does not make an estimated payment in the first or any subsequent quarter may make the election or nonelection on Form 510/511E Application for Extension to File Pass-Through Entity Income Tax Return,

if that form is accompanied by the first payment of the tax year. Only if no estimated payments are made, and if no Application for Extension is filed, is the election or nonelection made on the year-end return by filing either Form 510 (Nonelecting PTEs) or Form 511 (Electing PTEs).

A late-filed 510/511D, submitted with the first payment of the tax year, is a valid irrevocable election or nonelection. The Comptroller will not disregard the election or nonelection merely because the 510/511D was received late. Penalty and interest may apply for the late payment.

A PTE does not have to file Form 510/511E for the sole purpose of making the election. A PTE that has not made estimated payments during the taxable year, is not submitting payment with Form 510/511E, and would not otherwise file Form 510/511E, has not foregone the election. The PTE may elect by filing Form 511 by the return due date. A Nonelecting PTE files Form 510.

A PTE that checked the box on Form 510/511D or 510/511E must file a 511. A PTE that submitted a payment without a form or did not check the box on a 510/511D or 510/511E must file Form 510.

If the first PTE payment of the tax year is made without an accompanying form, the PTE is deemed to have made an irrevocable nonelection for the tax year.

Note: Credit card payments and ACH payments are not currently supported for pass-through entities. All PTE payments made without an accompanying form, including non-supported credit card or ACH payments, are deemed to be an irrevocable nonelection for the tax year. See Tax Alert 04-06-2023.

Questions and Answers

1. **Can I revoke the election on an amended declaration?** The election or nonelection made on the form that accompanies the first payment of the year is irrevocable. An election or nonelection may not be revoked or made on an amended Declaration of Estimated Income Tax.

Each estimated payment must represent at least 25% of the tax calculated on the 510/511D. However, if it is necessary to change the total amount of estimated payments, the PTE may recalculate the amount of estimated tax required using the estimated tax worksheet provided and adjust the amount of the next installment to reflect any previous underpayment or overpayment. The remaining installments must be at least 25% of the amended estimated tax due for the year.

2. **May I change the election or nonelection by filing an amended return?** No. For tax years beginning after December 31, 2022, an election may not be changed to a nonelection on an amended return. Likewise, a nonelection may not be changed to an election on an amended return.
3. **If I elected last year, do I have to elect this year? If I did not elect last year, may I elect this year?** The election is made each year with the first payment of the tax year, independently of any prior year election/nonelection. A PTE that elected last year may choose not to elect this year. A PTE that did not elect last year may elect this year.
4. **An Electing PTE requested an overpayment from 2022 be applied to estimated payments for tax year 2023. Does this affect a PTE's ability to make a nonelection for tax year 2023?** No.

The overpayment will be credited to the PTE's account for 2023 based on the 2023 election. See answer to question 3.

5. **What payment types are accepted for pass-through entity tax declarations, extensions, and final payments?** PTEs may schedule payment via direct debit using software from an approved vendor or pay via check or money order mailed with the appropriate PTE tax form.